

Revisiting Nepal's Rights of Persons with Disabilities Act: A Contemporary Analysis

Abstract

This article delves into the constitutional rights guaranteed to persons with disability in Nepal. The Constitution of Nepal, a federal charter, guarantees a plethora of rights to the population with disability. It outlaws discrimination on the grounds of health conditions. A person with a disability has the right to seek a certificate stating their disability, and the state has been entrusted with the power to bring affirmative action for their advancement. Still, the Constitution and the Rights of Persons with Disabilities Act also remain silent on some key issues, including in the political sphere, where the law does not mandate political parties to field a certain percentage of candidates in a way that reflects inclusivity for persons with disabilities. Nevertheless, government reports indicate that the state continues to struggle to fully implement the mandates of laws and policies, both in letter and spirit.

Keywords: Constitution, Fundamental Right, Nepal, Persons with disability

INTRODUCTION

The concerns of persons with disabilities hold global significance. Since its establishment in 1992, the International Day of Persons with Disabilities has been observed worldwide on December 3. This day serves as a powerful reminder of the ongoing need for action, urging nations to adopt equitable laws that promote the inclusion and rights of people with disabilities in society. In alignment with international commitments, the government of Nepal has implemented a series of laws designed to enhance the lives of its differently-abled citizens. The Constitution of Nepal guarantees fundamental rights and includes provisions to foster an inclusive society. These provisions explicitly support the empowerment and integration of persons with disabilities. Articles 16 to 47 outline various fundamental rights, with several progressive measures encompassing socio-economic and civil-political rights.

Article 18(2) prohibits discrimination based on disability. Article 31(3) guarantees individuals with disabilities the right to access free education at all levels. Article 39(9) mandates special protections and benefits for disabled children. Article 42 ensures the right of persons with disabilities to participate in state bodies, following the principle of proportional inclusion. Article 43 guarantees the right to social security, while Article 84(3) requires political parties to consider proportional representation of persons with disabilities when fielding candidates for the proportional electoral system. Through these constitutional guarantees, Nepal has taken significant steps toward creating a more inclusive society for

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persons with disabilities, reinforcing its commitment to international norms and human rights.

LITERATURE REVIEW

The government of Nepal, for the first time, adopted independent legislation dealing with disabled persons' rights in 1982. Such an attempt was after the progress of International Year of Disabled persons proclaimed by the United Nations in 1981. Then, in 1992, the government brought Rights of Children Act and Education Act and later in 1999, Local Self-government Act came into operation and these laws had mandates for the persons with disability. Nepal ratified the Convention on Rights of Persons with Disability in 2009².

The government of Nepal in 2006 brought policy-level interventions, including a quota for disabled persons in government jobs and the state's commitment for the construction of public buildings and places friendlier to persons with disability.³ Also, the government announced for the concession in public transport fare and free health services and free primary and higher-level education for persons with disability. The National Policy for Disabled Citizens, 2023 reveals that as many as 1112 disabled persons have made entry in civil services in between 2007-2008 and 2022-2023.⁴ In addition, the Civil Liberties Act, 1954, and the National Code, 1963, Disabled Persons Rights' Rules, 1994, Interim Plan (2013-2015) and the National Human Rights Action Plan of 2010-2013 too, had, provisioned for the concerns of disabled persons. The Women, Children and Social Welfare Ministry works as a focal ministry for differently-able citizens of Nepal.

As per the census of 2021, Nepal records 2.2 percent of disabled persons (out of the national population). The 2023 National Plan underscores the need to implement different strategies. Also, the plan provides that the government is yet to adopt robust schemes for the health, education, and overall development of persons with disability. The government has adopted a ten-year (2016-2026) Policy, Strategy, and work plan to ensure disabled-friendly

² Consideration of Reports Submitted by States Parties under Article 35 of the Convention: Initial Reports of States Parties due in 2012, available at: <https://un.info.np/Net/NeoDocs/View/5959>

³ Baskota, Mahesh, *Nepal Disability Policy Review*, Disability Research Centre, (School of Arts, Kathmandu University), available at: <https://drc.edu.np/storage/publications/Kele3p6ZwOcvDK2D885O7Rz04F9z2OraQrJgmozx.pdf>

⁴ National Policy for Disabled Persons, 2023, <https://nfdn.org.np/wp-content/uploads/2024/11/%E0%A4%85%E0%A4%AA%E0%A4%BE%E0%A4%99%E0%A5%8D%E0%A4%97%E0%A4%A4%E0%A4%BE-%E0%A4%AD%E0%A4%8F%E0%A4%95%E0%A4%BE-%E0%A4%B5%E0%A5%8D%E0%A4%AF%E0%A4%95%E0%A5%8D%E0%A4%A4%E0%A4%BE%E0%A4%B8%E0%A4%AE%E0%A5%8D%E0%A4%AC%E0%A4%A8%E0%A5%8D%E0%A4%A7%E0%A5%80-%E0%A4%B0%E0%A4%BE%E0%A4%B7%E0%A5%8D%E0%A4%9F%E0%A5%8D%E0%A4%B0%E0%A4%BF%E0%A4%AF-%E0%A4%A8%E0%A5%80%E0%A4%A4%E0%A4%BF-%E0%A5%A8%E0%A5%A6%E0%A5%AE%E0%A5%A6.pdf>

infrastructural developments, including that of hospitals, schools and government offices.⁵ The 2015 Constitution of Nepal, adopted and enacted by the elected members at the Constituent Assembly, hosts many provisions for disabled citizens. The government has promulgated the Rights of Disabled Persons Act of 2017 to implement the constitutional mandates.

RESEARCH METHODOLOGY

This research is legal research with a socio-legal approach to the relationship between disability and the rights of disabled persons and its implications for Nepal. The paper critically analyzes the constitutional provisions for disabled persons. The data sources in this research include legal documents, literature, case laws, and national policies. The qualitative document analysis technique has been applied in this research. Content analysis was done to identify patterns, themes, and legal mandates. The data collection in legal documents includes laws, regulations, and court decisions relating to disability laws in Nepal. Further, literature documents include journal articles, books, and other research on disabled persons' rights.

FINDINGS & DISCUSSIONS

Toward Legal Recognition of Disability

An Act was adopted in 2017 to defend the rights of persons with disability. The preamble of this law provides the Act has been brought into force to respect the civil, political, social, and cultural rights of differently-abled persons. The Act has been entrusted with an obligation to enable persons with disabilities to earn self-reliant and respectful living. It aims to ensure the respectful participation of citizens with disabilities in the policy-making process and development. In this respect, the law intends to mainstream the differently-abled populations.

Under Section 2(b), "persons with disability" has been defined. It provisions that a person who has long-term physical, mental, intellectual, or sensory disability or functional impairment or existing barriers that may disallow them to participate equally in social life would be considered as "Persons with Disability." Again, if such persons don't have anyone to look after and don't have any property or family members to standby, then such persons would be called "helpless persons with disability," as provided under Section 2(a). These two definitions clarify that persons with physical, mental, or any functional impairment preventing them from participating in social life could benefit from this law. In addition, the law's provisions could help persons with disability.

The "Ministry of Women, Children, and Senior Citizens" can modify the disability classification. A person with a disability could seek an identity card. However, to obtain an identity card, the person concerned or his nearest relative would have to make an application, along with the recommendation of the ward chair of the local body concerned. The local body would have to inquire about the application demanding the issuing of a disability identity card. For a person whose application is not entertained by the local bodies, a complaint could be made before the Ministry within 35 days, and the decision made by the

⁵ Ten-Year Policy, Strategy and Work Plan for the Rehabilitation of Disabled Persons (2016-2026), available at: <https://www.edcd.gov.np/uploads/resource/5c6659c696eec.pdf>

Ministry on such matter would be final. This arrangement has been made under Section 4. Section 5 of the law prohibits the issuance of disability identity cards on false details. Section 6 prescribes that the local bodies shall prepare records relating to persons with disabilities. Later, the source of the record has to be forwarded to the government at the Centre and the Provincial ministry looking after the social sector.

Reorienting the Rights of Persons with Disability

Under Chapter 3, the provisions guarantee the rights of persons with disability. Section 7 mandates that persons with disabilities avail themselves of all rights guaranteed under the laws on an equal basis with others; thereby, Section 7 prohibits every form of discrimination and promotes equality. Section 8 slams discrimination. It guarantees personal liberty and protection against discrimination at private and public places, educational institutions, employment, socio-cultural spaces, etc. Even family members cannot discriminate against a person with a disability regarding maintenance, love, provisions of food, property, or any other act. This means the law prohibits discrimination in private and public life. Such persons would have all rights to live with their family members. They have all rights to obtain protection against inhuman and degrading treatment, sexual violence, or any other. Moreover, they have the right to stand in the election. Article 84(3) of the Constitution mandates that the political parties should ensure the representation of disabled persons by fielding candidates in a manner that guarantees their inclusion. However, the law is silent on providing reservation in electoral seats to persons with disability. It means the law does not oblige political parties to field a certain number of candidates who represent persons with disability.⁶

Still, the law allows them to establish, manage and operate unions and organizations. This way, the law treats them equally when it comes to guaranteeing political participation. The unions and organizations working in favour of such persons would have right to suggest the government in regard to policy making. The persons with disability have been conferred with right to participate in cultural life, cultural programs, TV shows, drama, or any. Most importantly, the persons with disability have the right to every access over accessing services and facilities provided for the public.

They have the right to free legal aid for easy access to justice. Along with this, they have the right to information, social security, and movement without distinction. Under Chapter 4, the Act hosts additional rights for women and children with disability. Section 19 of the law obliges the government to make necessary provisions to protect the rights of women with disability so that they can maximize their potential, knowledge, and skills. The government at the central level is shouldered with the responsibility to protect such people's health and reproductive rights—similarly, Section 20 guarantees the rights of children with disabilities. This group's children would have the right to obtain education and a proper teaching and

⁶ Nepali, Bishnu Chandra and Jha, Jivesh, अपांगता अधिकार र कानून पालनाको प्रश्न [Rights of disabled persons and discourse on law implementation], Naya Patrika, (3 December 2024) available at: https://www.nayapatrikadaily.com/news-details/154628/2024-12-03?fbclid=IwY2xjawJObytleHRuA2FlbQIxMAABHW7uvWAKOOMQIkOISluKihfRIV4Zq54FwwOBuBkXyR_RDrdnodTDdDCvYQ_aem_-3yQj4m-QcRJxeMQiXF8pw

learning environment. These provisions are aimed at making women and children with disability capable of standing at their own feet by all means. In addition to this, persons with disability would have the right to free higher education. In this respect, educational institutions are barred from collecting fees. There must be provisions for brail, alternate scripts, and other facilities to ensure their education. Along with this, they would be encouraged to obtain adult learning, technical or vocational and technical education.

Mandates for State's Investment

Chapter 5 of the Act hosts a plethora of provisions regarding education for persons with disability. For instance, Section 21 provides that government-aided schools receive grants to provide scholarships. No fees are to be collected from them, either at the time of admission or during the period of study of a course. In education, there has to be fee relaxation, free technical and vocational training, non-discrimination, use of brail script and other scripts, and among other facilities, if necessary, curriculum and library access; the government may consider providing separate residence to the persons of this category, separate evaluation pattern, curriculum and scholarship to disabled students. Section 22 obliges the government to allocate a budget for ensuring free education to disabled students. Section 22(2) further provides economic assistance to schools for infrastructural developments. The succeeding provision envisages the government to ensure proper arrangements for continuing education of persons with disability. The central government would also provide the reading materials free of cost. However, the actual situation remains modest. Ensuring the compliance of policies, particularly regarding the rights of persons with disabilities in the areas of health, education, and rehabilitation, has been a significant challenge for Nepal.⁷

Under Chapter 6, the law provides legal mandates regarding skill development and employment. The government would give proper training regarding skill development and employment opportunities. If the person with disability wishes to establish or operate business, the government would provide loans to disabled persons at accessible interest rates. The employer would have to provide a working atmosphere to the persons with disability. An employer cannot fire an employee just because of his disability reasons; neither can he degrade his post because of his health conditions.

The law provides that the employer or occupier would maintain a record of employees with disability. Chapter 7, the law covers health, rehabilitation, social security, and entertainment. Section 28 casts an obligation on the government to ensure free medical treatment at government hospitals to such persons who don't have sufficient means. Also, the government should provide free occupational and other therapy. The medicines and treatment of haemophilia should be given at government hospitals. Under the explanation clauses, Section 28 further obliges the government to adopt measures for ensuring access to disabled persons in hospitals. For instance, the government casts a duty on government hospitals to provide medicines freely to persons with Haemophilia. The hospitals operated at the government as well as the private level of more than 25 beds are directed to designate at least two beds for

⁷ National Policy for Disabled Persons, 2023, page 2 (Government of Nepal, Ministry of Women, Children and Senior Citizens, Singh Durbar, Kathmandu).

patients with disability.

The law has introduced schemes for “restoration” and “rehabilitation”. Under Section 29, the government has been obliged to allocate funds and other assistance for the “restoration and rehabilitation” of such persons. A fund has been envisaged under Section 30 to reach the aims and objectives of “restoration” and “rehabilitation.” Section 31 provides that the government would initiate research for ensuring the empowerment and access to persons with disability over resources. Under social security schemes, the government has been obliged to ensure community residence, residence to the helpless persons with disability, “life insurance, health insurance, medical insurance,” and “allowance to unemployed youths,” among others, including pension schemes for older people. Still, the disability movement has not been strategic enough for rehabilitation and overall socio-political developments.⁸

In addition to this, Section 33 provides for cultural rights to persons with disability. The government would give scholarships to persons with disability, and they would allot funds for enhancing capacity building to enhance their art, specialties, and other assistance. Section 34 provides schemes for ensuring access to persons with disabilities in sports. The government would change the course structure to promote their access to sports. Moreover, the government would re-design playgrounds and organize competitions for sports activities. Section 35 guarantees additional protection to persons with psycho-social disabilities. They could avail of free medical assistance. Similarly, persons with psycho-social disabilities and psychiatric problems could not be jailed for whatever reason.

Schemes and Policy Level Interventions

The erstwhile constitutions of 1990 and the Interim Constitution of 2007 also mandated inclusivity and diversity. Article 11 of the 1990 charter directed the state to formulate special laws and policies to advance the weaker sections. The Interim constitution pushed for the adoption of laws for the betterment of weaker sections, including reservation mechanisms. The 2007 amendment brought under the Civil Service Act of 1993 introduced 45 percent of reservation in the state apparatuses. Considering the reservation of 45 percent as a total, 5 percent of these seats have been allocated to disabled citizens in civil services.

However, Nepal’s journey towards inclusion depends, to a great extent, on the quality of democracy and constitutionalism it will achieve on the foundation of its constitution.⁹ In fact, inclusivity and diversity are the core focus of the 2015 constitution.¹⁰ The Supreme Court of Nepal, in the case of *Surendra Bahadur Rawal and Others v. Government of Nepal*¹¹, ruled

⁸ Shrestha, S, et al, (2009), "A community assessment of poverty and disability among specific rural population groups in Nepal", *Asia Pacific Disability Rehabilitation Journal*, 20(1), 83-98.

⁹ Bipin Adhikari, et al, *From Exclusion to Inclusion: Crafting a New Legal Regime in Nepal*, p. 152, (2022, Kathmandu: Social Science Baha).

¹⁰ Bipin Adhikari, *Salient Features of the Constitution of Nepal, 2015*, p. 159 (Edn. 1st, 2016, Kathmandu: Nepal Consulting Lawyers Inc)

¹¹ Nepal Kanoon Patrika (NKP), Part 65, 2080 BS (2023) Decision Number 11199.

that the special measures introduced for the betterment of marginalized groups, including women and disabled citizens, should be regarded as substantive rights. This interpretation reflects a transformed form of de jure and de facto law.

The law hosts ample provisions guaranteeing amenities and benefits to persons with disability. Section 37 envisages that the government would provide loans at accessible interest rates, provide assistance in agriculture, or generate employment opportunities. Section 37(2) provides that persons with disabilities would get a 50% relaxation in fare on public transport. They would receive complete or partial relaxation in taxation in excise, customs duty, or any other taxes on equipment, vehicles, education materials, and other goods and services they use. Organizations, banks, and different types of institutions that provide employment opportunities to persons with disabilities would get relaxation in loans. Also, the government would provide free education to the issues of such persons.

The "National Direction Committee" has been envisaged under the ninth chapter. Section 38 provides for it to intervene in the implementation of the laws or to suggest the laws for the protection and promotion of the rights of people with disability. The "Minister for the Welfare of Women, Children, and Senior Citizens" is the chairperson. Section 39 provides for the functions of the committee. It would recommend policies, laws, and planning to protect the rights of such a group of persons. Also, it has been empowered to oversee the effective implementation of the policies law, laws, and programs running for the promotion of the rights of such people.

The law obliges the Committee to recommend that the government adopt laws and policies to implement international commitments effectively. As per the mandate of Section 40, the Committee would sit at least once every three months under the chairmanship of the chairperson or vice-chairperson. The vice-chairperson is appointed from amongst the organizations and institutions working to advance the rights of differently able persons. A vice president holds the office for tenure of two-year.

This Committee could be constituted at the provincial level under the chairmanship of the Minister, looking after the welfare of senior citizens, women, children, and disabled citizens. Such a committee is empowered to adopt plans and policies to implement the laws. At the local level, a coordination committee has been envisaged under the leadership of the Mayor. The Coordination committee is empowered to recommend the local body to grant Identity Card to persons with disability. A Member-Secretary of the Committee authenticates the Committee's decisions. The Committee has been given autonomy to decide the procedure of the meeting. The majority opinion prevails in the meeting, but when the "equal number of members stand for and against" a proposal, then in such a case, the view of the chairperson would be given primacy, and the proposal would be passed accordingly. In this respect, the view of the chairperson prevails in the subjects and contents of the proposal.

The law puts every tier of government in the implementation of laws. It provides a shared responsibility of the Centre, Province, and Local bodies to implement the laws enacted to enforce the adopted laws and upkeep the rights and concerns of persons with disability. In addition, the local bodies would have a solemn duty to ensure the amenities received by the

persons. This way, the provincial, local, and central governments have a common goal of enforcing the laws enacted for the betterment of such groups of persons. In a nutshell, it's the "concurrent" responsibility of the center, provincial, and local governments to accelerate the cause of such groups. The educational institutions would have a responsibility to ensure the effective implementation of their rights over education; Section 46 says so.

Family members would have to ensure that such persons are protected or receive timely healthcare and treatment. Medical doctors would have a responsibility to ensure proper treatment and healthcare of such a group of persons. Institutions and corporate houses would have to invest a sum in philanthropic activities. Development partners would have a duty to allot certain funds for the welfare of such a group.

Remedial Measures

The aggrieved persons could approach the "Chief District Officers" to effectively implement the laws in person or with their family members. The "CDOs" could issue orders in the name of persons or institutions violating their rights. Section 51(7) provides that the aggrieved persons who are disappointed with the decisions or order of the "CDO" could invoke the appeal jurisdiction before the concerned High Court within 35 days from the date of the order or decision so issued from the office of "CDO". In addition to this, an aggrieved person could directly file a case before the District Court for the realization of his/her rights (Section 52). A person found to have received a certificate of disability out of producing fake documents would be punished with up to three months of jail sentence or up to ten thousand of fine or both. A person who is found engaging a person with a disability in begging work shall receive an additional 50% of the punishment so prescribed in the law. A person found violating the rights of such persons or failing to abide by his duty towards such groups of persons would be punished with up to 50,000/- fine. The punishment provision has been embodied under Section 55. Section 56 provides the acts punishable under the preceding Section, which would have to be sued within three months from the occurrence of such act. This law has repealed the Disability Protection and Welfare Act, 2039 BS.

CONCLUSION

The Act is a step ahead in the right direction, for the law intends to upkeep the rights and concerns of persons with disability. It obligates the state to introduce schemes for rehabilitation and restoration. In addition, the scholarship schemes, reservations, and other protective measures for persons with a disability further augment the state's commitment. Nonetheless, the actual situation remains modest. The national reports reveal that the laws and policies relating to the rights of disabled persons are yet to come into full-fledged implementation due to many reasons. The law has grossly failed to enhance the political rights of persons with disabilities. It remains silent on ensuring the reservation of electoral seats for persons with disabilities, meaning it does not compel the political parties to field a specific number of candidates who represent this group. As per the mandate, the center, province, and local bodies are empowered to introduce schemes to better the rights of such persons. In this respect, it clarifies that the instrumentalities of the state should be on the same page when it comes to upholding the rights and concerns of persons with disability. However, the law does not specify the allocation ratio of budget shared by the Centre,

Province, and Local bodies for the welfare of disabled citizens. The law would have a mere cosmetic value unless it's implemented in a true and material sense.