

Volume 6 Issue 2 July 2018
Special Issue on Human Rights and
Democratisation

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Kathmandu School of Law Review

ISSN 2091-2110

Volume 5

Issue 2

November 2017

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Kathmandu School of Law Review

Volume 5, Issue 2, November 2017
 ISSN 2091-2110



KSL



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Status of Differently-abled Persons in Work Place: A Study of Courts inside Kathmandu Valley

Anupa Aryal*

Abstract

Nepal has been adopting a range of policy, legal and institutional measures for the protection and promotion of the rights of persons with disabilities even before the CRPD came into force. It enacted the Disabled Protection and Welfare Act (DPWAct) in 1982 and the Disabled Protection and Welfare Regulation in 1994. These acts intend to protect and promote the rights and interests of the persons with disabilities, recognize the need for the prevention of disability, and provide welfare services such as health, education, care and training to the persons with disabilities in order to make them competent and capable enough. This paper after empirical research using interview and observation method as data collection tool, tries to identify whether the rights to persons with disability are properly protected and promoted in Nepal.

Introduction

Nepal signed the Convention on the Rights of Persons with Disabilities (CRPD) and the Optional Protocol to the CRPD on 3 January 2008 and it came into force for Nepal on 6 June 2010¹. It enacted the Disabled Protection and Welfare Act (DPWAct) in 1982 and the Disabled Protection and Welfare Regulation in 1994. CRPD defines “persons with disability as those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others”². This is a broader definition when compared to the definition provided by DPW Act. The DPW Act defines a person with disability as “a citizen of Nepal who is physically or mentally unable or handicapped to do normal daily life-work, a blind, deaf, dull, crippled-limb, lame, handicapped with one leg broken, handicapped with one hand broken or a feeble-minded persons.”³ The terms used in this Act cannot be considered as disable-friendly and appropriate. Hence, in 2007, the government of Nepal adopted an instrument on the definition and classification of disability. It defines disability as “a condition where a person feels difficulty to perform day-to-day activities and participate fully in social life

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¹ Ministry of Women, Children and Social Welfare, Government of Nepal, *Initial Report of Government of Nepal on Measures Taken to Give Effect to the Convention on Right of Person with Disability*, 2014, p. 1.

² *Convention on Right of Person with Disability*, 2515 UNTS 3, adopted on 13 December 2006, art 1.

³ *Disabled Protection and Welfare Act*, 1982, Nepal, s 2(a).

due to problems in body organs and system, including physical, socio-cultural and communication barriers”⁴.

The total number of disabled people in Nepal is reported to be 5, 13,321, which constitutes 1.94% of total population⁵. This minority has been completely marginalized- they are fewer in number but more vulnerable in status. However, the government is doing series of activities for the protection and promotion of their rights. This article deals only with two basic rights of disability, only those would be the matter of discussion.

The Right to Work and Employment⁶

The Right to employment is a fundamental right of every citizen of Nepal⁷. Everyone has the freedom to practice any profession or carry on any occupation, industry or trade of their will. The DPW Act prohibits discrimination on the ground of disability in anyform – be it in appointments, promotions, governmental service or other public services. It provides various measures to promote training and employment opportunities for the persons with disabilities⁸. The CRPD provides that state parties must employ persons with disabilities in public sector⁹. The Civil Service Act, 1993, in Section 7, provides that out of the 45 percent posts to be fulfilled by open competition, 5 percent are to be set aside and filled up by separate competition between the persons with Disabilities only¹⁰. To see whether this quota is fulfilled or not, the researcher visited 5 different courts of Kathmandu valley and following data is found;

S.No	Court Visited	Total Number of Employee	Number of Disabled Employee	Remarks
1.	Kathmandu District Court, Babarmahal	243	2	Vision impairment, leg deformity
2	Special Court, Babarmahal	47+4	0	

⁴ Initial report, (n 1): Disability has been classified into seven categories: (1) physical disability; (2) visual impairment: blind and low vision; (3) hearing impairment: deaf and hard of hearing; (4) deaf blind; (5) speech impairment: (6) mental disability: intellectual disability, mental illness and autism; and (7) multiple disabilities.

⁵ Central Bureau of Statistics, Government of Nepal, *National Population and Housing Census 2011*, November 2012, p. 211.

(But, *The National Living Standards Survey*, 2010/11 shows that overall 3.6 percent of people had some kind of disability in Nepal. The survey included physical, visual, hearing, hearing and seeing, speaking, mental and multiple disabilities. The disability rates for males and females were 4.2 percent and 3.0 percent, respectively. Of all persons with some kind of disability, 29.2 percent were persons with physical disabilities, 22.3 percent had visual related disability, 23.4 percent hearing related disability, 2.4 percent vision/hearing related disability, 8.6 percent speech related disability, 6.8 percent mentally retarded and 7.3 percent multiple disability.

⁶ CRPD(n 2), Art.27; DPW Act (n 3) s. 8.

⁷ *Constitution of Nepal*, 2072, art. 33.

⁸ DPW Act (n3), s 8.

⁹ CRPD(n2), art 27(g).

¹⁰ Here separate competition for the 45% is held between women, indigenous peoples, *Madhesi, Dalit*, persons with disabilities, and candidates from the backward areas.

3	Patan Appellate Court, Hariharbhawan	141+10	3	Hearing disability, leg deformity, haemophilia
4	Supreme Court, Singadurbar	500 (around)	3	Letter registration-leg deformity, library, <u>inspection</u> and supervision- hand deformity
5	Bhaktapur District Court	77	0	
6	Lalitpur District Court, Lagankhel	52	0	

Figure I: Status of Persons with Disabilities as Employees in Courts in Kathmandu Valley

Out of 1,074 employees working on these courts, there were only 8 differently abled people. Mrs. Sabitra Kafle, working at Kathmandu District Court, was the only one appointed on disability quota. Mr. Vinod Dutta, the employee of Patan High Court, was selected on *Madhesi* reservation quota. All others competed in the open category. These employees are appointed by Public Service Commission after passing its examination but some of the workers like Drivers and office assistants are appointed on contract basis either by the court or on an individual. If the civil service act was appropriately followed there must have been at least 24 employees working in these courts. When asked about this provision, Mr Dhurba Kumar Uprety, the Registrar (formally *Shrestedar*) of Kathmandu District Court replied “We have those employees who are appointed by Public Service Commission and it’s not we who decide who comes to the court as employee; and on contract basis, we don’t have any provision for quotas regarding as such; and people who come on quota basis are usually not disabled”. The researcher then went to head office of public service commission at Anamnagar to know about this provision and to know how disabled people are selected and appointed.

Geeta Kumari Humagain¹¹, Information Officer of Public Service Commission said, “We publish advertisements for certain posts along with the eligibility criteria in our website and national newspapers and conduct examination and interview. Generally, only a few numbers of positions are announced in an open advertisement. So, securing 5% of 45% is not possible. When a larger number of positions are open in an advertisement, there are only a few people qualified for the post and sometimes, the quota goes vacant”.

Public service commission has not published any annual data to give the precise information on how many people are employed and on what basis. Hence, it is difficult to find out if this provision of Civil Service Act is properly followed.

¹¹ Interview with Geeta Kumari Humagain, Information Officer of Public Service Commission, Kathmandu, January 10 2016.

However, the following data can be found after going through the record of appointed persons on government services¹².

S. No	Fields	Appointed disables
1	Agriculture	3
2	Engineering	4
3	Administration	15
4	Forestry	1
5	Health	4
6	Legal	0
7	<i>Kharidar</i> ¹³	1
8	Environment	1
9	Geology	1

Figure II: Total Number of Disabled Persons Appointed on Different Government Sectors in 2072-73¹⁴

This data clearly shows that not a single disabled person is appointed in Legal Service of Government of Nepal and only 15 people are appointed in the Administration (*lekha/prasasan*). Mrs Humagain, the Information Officer of Public Service Commission also said, “It is what the government asks for, the government has not identified what type of job are more favourable to disabled persons with different deformities and there is a lack of policy in this regard. This issue can be addressed with a change in policy”. When interviewed, all differently able employees said that it is a matter of disgrace that only a few reserved seats are opened each year. Mrs Sabitra Kafle¹⁵, who passed Public Service Commission exam in the year 2068 said, “On the year I got selected, eight positions were reserved for differently-able people based on quota but six seats remained vacant as there were no competent persons to compete for the post.” She added, “until and unless we groom disabled people from the grass root and make them competent in the respective fields, the reservation right we get will never be utilized fruitfully.”

Right to Accessibility¹⁶

The DPW Act recognises that a barrier-free environment involves a variety of aspects including barrier-free buildings, transportation and information and communications. The CRPD clearly requires state parties to take appropriate measures to ensure that persons with disability enjoy access to the physical

¹² Public Service Commission, ‘Publication Related to Appointment’, *Public Service Commission of Nepal Official Website*, available at www.psc.gov.np, accessed on 1 May 2016.

¹³ Notice published by the Public Service Commission, Nepal failed to address which department the *Kharidars* have been appointed. *Kharidar* is a rank of government employee rather than a department.

¹⁴ This table only represents the number of disabled employee employed on quota basis, differently abled employee selected from the open categories are not included as such records has not been prepared by the Commission itself.

¹⁵ Interview with Sabitra Kafle, *Nayab Subba* (Non-Gazetted 1st Class Officer), Kathmandu District Court, Kathmandu, 27 April 2017.

¹⁶ CRPD n (2), art 9.

environment, transportation, information and workplace¹⁷. Various national policies and plans have been adopted for different objectives and strategies to enhance accessibility. The National Policy and Plan of Action on Disability¹⁸ includes policies to make disability friendly physical infrastructure. One of the main objectives of the thirteenth plan (2013-2016)¹⁹ was to increase the access to renovated government buildings, public utilities, road transport and other infrastructures and make disabled friendly environments too.

The Second Five-year Plan of Nepalese Judiciary 2066-2071 had an agenda to make courts disable friendly and accessible by constructing disable friendly parking, ramps, lifts, sign boards and Brielle, wide corridor, toilets and interior. The researcher used Access Handbook template²⁰, universal design booklet²¹, the Five-year Plan of Nepalese Judiciary²² and Article 9 of CRPD to establish 8 criteria to decide either the building is disabled friendly or not i.e. ramps, disable friendly toilets, sign language interpreter, electric lift, electric wheelchair, assistance in access to information, public signage in Braille and signboards. The data collected below is completely based on observation and interviews with responsible authorities.

S.No	Criteria	Kathmandu District Court	Lalitpur District Court	Bhaktapur District Court	Patan Appellate Court	Supreme Court	Special Court
1	Ramps	Yes (at the entrance)	No	No	No	No	Only at the front
2	Toilets	Yes	No	No	No	No	No
3	Electric lift	Yes	No	No	No	Yes	No
4	Sign language interpreter	No	No	No	No	No	No
5	Electric wheelchair	Yes	No	No	No	No	No
6	Assistance in access to information	No	No	No	No	No	No
8	Public signage in Braille	No	No	No	No	No	No
9	Sign boards	No	No	No	No	No	No

Figure III: Accessibility in Court

¹⁷ Ibid.

¹⁸ Ministry on Women Children and Social Welfare Nepal, Government of Nepal, *Policy and the Plan of Action on Disability*, 2006, pp. 8, 39, 40, 47,53.

¹⁹ Ministry for Foreign Affairs of Finland, *Country Strategy for Development Cooperation with NEPAL 2013– 2016*, 2013.

²⁰ National Disability Authority, *Access Hand books*, 2012.

²¹ National Disability Authority (Ireland), *"Building for Everyone: A Universal Design Approach"*, 2012.

²² Supreme Court of Nepal, *Second five-year plan of Nepalese Judiciary* 2066-2071, 2009.

The data demonstrates that accessibility of the court is very difficult. Courts are the place where people usually have to visit in search of justice. But they seem to be a place of injustice for persons with disability as they are lacking on various criteria of accessibility. Except Kathmandu District Court, none of the other courts has disabled-friendly toilets; and ramps are underestimated in almost every place. The right to information and the principle of fair trial require having an interpreter²³. However, none of the courts has an interpreter, thus having a sign language interpreter would be out of question. Nonetheless, all the courts are planning to employ an interpreter (*dobhase*). Sign boards and public signage in Braille, electric wheelchair, assistance in access to information are still in an imaginary state. Electric lift is available in two courts only. Differently abled employees working inside these courts are forced to be more handicapped because of the building structure. Vinod Dutta²⁴, an employee of Patan High Court, who has a leg deformity stated, “At one point in time, I could not even climb the stairs and having no ramps or lifts made it more difficult for me. But what can be done? I hope the new building will include more disabled-friendly structures. Now it is easier because I work on the ground floor.” Durga Dutta Lamsal²⁵, an employee of the same court, stated, “Though the number of differently-able people bringing case to court is minimal, it is difficult for those who come. Court benches aren’t moved to ground floor just for one person’s purpose”. Muluki Ain, 2020 provides that the case of disabled person must be prioritized, however there is no special provision regarding any special privilege to be given to them²⁶.

Analysis

Considering all the facts and figures mentioned above, there are different causes behind the ineffectiveness on the right of employment and accessibility. One of the major reasons is poverty. Eighty percent of the world’s disabled people live in developing countries, making the worldwide disabled population collectively one of the poorest and most marginalised segments of society²⁷. In Nepal and in the majority of developing countries, a large majority of disabled persons are found in economically weak communities²⁸. This is because the poor are more exposed to dangerous working and living condition with lack of access to healthcare facilities and poor nutrition, among others²⁹. In Nepal, the population living below the poverty line is approximately 23.8 percent till 2013³⁰. This resulted in the disabled

²³ *Constitution*, (n7), art 20(8).

²⁴ Interview with Vinod Dutta, *Nayab Subba* (Non-Gazetted 1st Class Officer), High Court of Patan, Kathmandu, 28 April 2017.

²⁵ Interview with Durgadutta Lamsal, *Nayab Subba* (Non-Gazetted 1st Class Officer), High Court of Patan, Kathmandu, 28 April 2017.

²⁶ *Muluki Ain, 2020*, Chapter on Court Management, No 11.

²⁷ Kamal Lamichanne and Yasuyuki Sawada, *Disability education and employment in Nepal*, University of Tokyo, Tokyo, 2011.

²⁸ Sharad Chandra Thakur, ‘*A situation analysis of Disability in Nepal*’, vol. XXV, No 1, Tribhuvan University Journal, 2005.

²⁹ Uttam Narayan Malla, ‘*Disability Statistics in Nepal*’, Presentation of Director General, Central Bureau of Statistics, Nepal.

³⁰ Initial report, (n 1): Nepal has achieved a significant progress in poverty reduction, the absolute poverty has gone down from 42 percent in 2000 to 23.8 percent in 2013. In keeping

persons not having equal opportunities and access. The special needs for disabled are also not fulfilled. Not having access to proper education also has amounted as another major problem to the persons with disability in gaining job opportunities. There are only 85 thousand students enrolled in 365 special/integrated schools in Nepal.³¹ There are only two thousand and forty-eight students who have received a chance to enrol in higher education, which is just 4.38% percentage of the total disabled population. So to increase the job opportunities in any sector- be it legal or others - people with disability must have access to higher and further education. The Supreme Court of Nepal, in the case of *Shudarson Subedi and Babu Krishna Maharjan v. HMG et. al*³², has issued a directive to make sure that disabled persons shall not be charged with any type of fees in public school, universities and training centres within the territory of Nepal. Thus having only 2048 students enrolled in higher education is a lacuna in governance. One of the major hindrances in providing accessibility and employment is the poor and improper execution of law. GoN has executed a number of plans and policies for execution of law but none of them is executed properly and that has resulted in the deprivation of the right to persons with disability. The Supreme Court of Nepal, in the case of *Prakash Mani Sharma v. Government of Nepal*³³, has ordered the government to constitute a committee monitored by Supreme Court itself to prepare six-month periodic review regarding the promotion of disabled people and submit it to Supreme Court for regular inspection. Even after such a step, disabled people are still lagging behind which shows the need for more concern and effectiveness. In Nepal, education for the people with blindness started from 2021 BS³⁴. Although Nepal has signed the treaties and conventions on rights of persons with disability, a situation exists where expected achievements have not been made in respecting, protecting and fulfilling these rights³⁵.

Conclusion

After the empirical research using interview and observation as data collection tool, it is found that the rights to persons with disability are not properly protected and promoted. Persons with disabilities are not having a proper access to public places and their right to employment is also not well guaranteed. There are various reasons behind it but lack of proper education, poverty and non-implementation of the law are arch on the list.

It is essential for the government to take necessary measures to address these problems and secure the rights of disabled people. The overall development goal of the government of Nepal is to attain poverty reduction through sustainable, inclusive and equitable growth. In thee last Three-Year Plan, which ended in July 2016, the GoN stressed on employment generation, infrastructure development and agriculture as the engines for development³⁶. However, only this effort has

with this achievement, the GON is further streamlining its measures to narrow down the gap between the rich and the poor: The average per capita income is 721 US Dollars.

³¹ Ibid.

³² *Shudarsonsubedi and Babu Krishna Maharjan v. HMG et. al*, WN 3586, 2060.

³³ *Prakashmanisharma v. NG*, NKP, 2064, p. 1435.

³⁴ Ibid n (20).

³⁵ Ibid n (19).

³⁶ Country Strategy, n (19).

not improved the standards of differently able persons. Increasing the grant to disabled people, making the provision of free education in every level mandatory, making disability home and promoting higher education for disabled people may help to solve this problem to some extent. Ensuring scholarships to the disabled people studying in private schools, conducting training and establishing high schools for disabled may improve the education standard of differently able persons. This will simultaneously result in increase of employment opportunities. Classifying jobs as per the physical capacity of disabled persons will also improve the employment condition. Hiring only the disabled persons in specific jobs by the government also may improve the condition of such persons.

According to the Supreme Court of Nepal, a legal provision should be made effective as that requires 10 percent quota reservation for training and five percent quota for employment in every sector including governmental and non-governmental³⁷. A lot of work has remained to be done for making workplace accessible for disabled people too and we are at the very initial stage. This process is going to take a very long time. Most of the states have made disabled friendly guidelines for building designs and at the initial stage, it is necessary for the Nepalese government as well to adopt the culture. Disabled friendly construction can be made even using local resources at a very low budget and the government should also focus on this. In older buildings, construction of disabled friendly ground floor will work for now. Employing assistants for the old or disabled people in court should be a temporary alternative until signboards and Braille are arranged.

³⁷ Ibid.