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**DISABILITY RIGHTS  
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ASIAN  
WORKPLACE APPROACH  
THAT RESPECTS  
EQUALITY



**HOLISTIC REPORT**

MONITORING THE EMPLOYMENT RIGHTS OF PEOPLE WITH  
DISABILITIES IN KATHMANDU, NEPAL

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HOLISTIC REPORT  
JUNE 2018



# MONITORING EMPLOYMENT RIGHTS OF PEOPLE WITH DISABILITIES IN KATHMANDU, NEPAL

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Monitoring the employment rights of persons with disabilities was crucial for the work of the National Federation of the Disabled- Nepal (NFDN) and for the larger Nepalese disability community. In this era of evidence-based advocacy, we cannot simply equate discrimination with the low employment rates of people with disabilities. There is a need for material evidence and case stories that illuminate the challenges facing people with disabilities in Nepal. This evidence supports targeted advocacy efforts to support a stronger movement for change. This holistic monitoring report about the employment rights of persons with disabilities has become one such tool. The report presents the gap between existing laws and policies, and their implementation, through firsthand experiences of people with disabilities themselves.

On behalf of NFDN, I would like to thank the Government of Canada (Global Affairs Canada) and York University for providing financial support for this research. My sincere gratitude goes to Disability Rights Promotion International (DRPI), especially Prof. Marcia Rioux, Co-Director, and Ms. Paula Hearn, Project Coordinator, for their continuous support and insights while conducting this research and preparing the report.

Prof. Normand Boucher (Laval University, Canada) and Prof. Paula Pinto (University of Lisbon, Portugal) have provided critical input after reading the drafts of this report. Ms. Tammy Bernasky (PhD Student, York University) helped compile all this feedback. I thank all of them.

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NFDN is grateful to the many people with disabilities who participated in interviews

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and shared their stories. We are grateful to the monitors, analysts and transcribers for their active engagement and contribution to successful completion of this research. Our sincere thanks goes to each of them.

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This report is a valuable resource for presenting the real-life situation of employment of persons with disabilities in Kathmandu. It will be useful for advocates to lobby the government for policy level change, as well as support a useful dialogue with employers to make them responsible and inclusive.

Finally, I hope that this report will play an important role in creating more jobs for people with disabilities in coming days, weeks, months and years.

**Mr. Sudarshon Subedi**

**National President, National Federation of the Disabled Nepal**







# FOREWORD

The question we need to ask is why this report at this time? To reiterate Mr Shudarshon Subedi, in an era of evidence based advocacy, it is important that we have facts and figures to back up our advocacy and to set benchmarks for our work. With the Convention on the Rights of Persons with Disabilities (CRPD) in place, countries and NGOs have recognized the importance of understanding and monitoring the rights of persons with disabilities as fundamental to addressing issues of poverty, of inclusion, of equality and non-discrimination and of autonomy.

The CRPD, in Article 27, spells out the expectation of rights in employment for persons with disabilities.

## *Article 27 - Work and employment*

1. *States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:*
  - *Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;*
  - *Protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;*
  - *Ensure that persons with disabilities are able to exercise their labour and trade union*



*rights on an equal basis with others;*

- Enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services and vocational and continuing training;*
- Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;*
- Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;*
- Employ persons with disabilities in the public sector;*
- Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;*
- Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;*
- Promote the acquisition by persons with disabilities of work experience in the open labour market;*
- Promote vocational and professional rehabilitation, job retention and return-to-work programs for persons with disabilities.*

- 2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.*

When the CRPD came into effect, it created a challenge for actors in the NGO sector, both at the local and international level as well as for governments and for employers, in the corporate, NGO and INGO sectors. There were few processes or government regulations to mandate fair and equal employment opportunities or provide guidelines on how to get there. Best practices were scarce, and even those tended to concentrate on training and job readiness practices. There was little that explored innovative ways of hiring, new ways of providing job accommodation and adaptation, and creative initiatives to shift away from presuming the problem rested with the inabilities of a person with a disability.

New strategies were needed that shifted the focus to why employers were not hiring. There was a need for greater recognition that people with disabilities have skills, and employers have jobs that needed to be filled. The emerging question in work and employment was about how to match those skills and gaps. The CRPD provided us with an impetus to re-think the direction of inclusive employment and a mandate to design a road map. The era of employment as charity was challenged.

With the support of NFDN, Nepali people took on this challenge by developing and implementing a new model for employment. This model does not view employment as an add-on, but as a fundamental aspect in the implementation of the CRPD. NFDN has recognized that there were many types of jobs and many types of skills available between employers and job seekers with disabilities. NFDN recognized that matching people with disabilities to jobs leads to better and more diverse workplaces. A business model was crafted that placed the responsibility on the employer – recognizing that they had an obligation to identify new ways of thinking and acting.

We started this process – a collaboration of Disability Rights Promotion International (DRPI) and NFDN – by doing this study, to provide us with a baseline on the employment situation of persons with disabilities in Kathmandu. We gleaned the knowledge and insights we needed to understand the situation and to get the facts. We monitored systems, laws, policies and practices, as well as listened to the voices of people with disabilities. We wanted to know what their expectations were for work and employment, and what were their experiences. This type of monitoring meets the requirement of the CRPD (in Article 33). The Nepal baseline study, reported here, followed a methodology that has been developed by DRPI over more than 10 years of monitoring in over 55 countries (<http://drpi.research.yorku.ca/>). It has validity and reliability.

A guiding principle of this methodology is that persons with disabilities and representatives of their organizations have a central role as key stakeholders in disability rights monitoring. Ensuring a participatory, transformative monitoring approach empowers people with disabilities to engage in democratic processes in a meaningful way. This process bridges challenging gaps, such as the north-south difference, and the gap between researcher and research subjects - perspectives which are often found in

traditional monitoring methodologies. It also facilitates the gathering of holistic data and allows monitoring reports to speak to the lived experience of people with disabilities. It facilitates the way their rights are realized (or not realized) in a unique way, that speaks to the purpose of all human rights activities – for people’s lives to change for the better. The DRPI monitoring methodology used here, juxtaposes the voices of people with disabilities with the legislation, policies and practices aimed at improving their lives. This report evaluates the impact of these efforts and provides a powerful and empowering tool for social justice in Nepal.

This study is part of a larger initiative called the DRPI AWARE (Asian Workplace Approach that Respects Equality) project. The project is a collaborative five-year initiative that is altering the perspective on employment of persons with disabilities in Nepal as well as India, and Bangladesh. DRPI methodology has been adapted to specifically target the monitoring of Article 27 – Right to Work and Employment of the CRPD.

Participants with disabilities have focused specifically on the issues and statistics surrounding disability and employment. In each of the three monitoring sites (Hyderabad, Dhaka, Kathmandu), Monitors used an interview and focus group guide to capture a specialized data set and analyze violations of the right to work and employment. The interview and focus group guides were designed to capture various components of the employment process; including experiences of people with disabilities while job searching, during the interview process, during the training process, and on the job. People with disabilities themselves carried out the data collection, analyzed the data, and wrote this monitoring report ensuring these activities were by people with disabilities, for people with disabilities. Monitoring results have been used to identify barriers to employment, which will help direct actions for increasing sustainable employment for persons with disabilities. The module developed during this project may be used in other regions.

A report is never carved out by one person. It is the work of a team of people who each contribute their knowledge and skills. DRPI in collaboration with our partner NFDN, are pleased to present this report which provides an overview of the state of the right to employment in Kathmandu, Nepal. It is providing us with a solid base on which to

highlight the strong, supportive elements, which were already in place as we began this work, and to address the changes that are needed now. It is never an easy task to bring together job seekers, employers, disabled persons organizations, government and human rights officials to get an idea of how to push forward an innovative and critical agenda.

Employment of people with disabilities is critical to an inclusive agenda. We need evidence-based information for this to happen. Now, Kathmandu, Nepal truly has a powerful evidence based monitoring report on the state of employment for people with disabilities. This report represents a giant step forward for people with disabilities in Nepal to achieve the right to work.

**Marcia Rioux, C.M., PhD**

**Distinguished Research Professor, York University, Canada**

**Co-Director, DRPI; and Director, DRPI Aware**



## EXECUTIVE SUMMARY

Nepal is a party to the Convention on the Rights of Persons with Disability (CRPD) and its optional protocol and therefore it is important to make sure that the obligations of the state stipulated under CRPD are fulfilled. According to article 27 of the CRPD, States Parties should recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or being accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Nepal, being a signatory member state to CRPD, should put in place necessary measures to prohibit discrimination on the basis of disability with regard to all matters concerning all forms and paths to employment. This includes conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions. Nepal needs proper mechanisms to implement, protect and monitor the rights of the persons with disabilities, including the right to work and employment. This need is outlined in article 33 of the CRPD which requires the government to establish a mechanism to monitor the implementation of the Convention, and urges state parties to involve people with disabilities in this process. Therefore, this report provides persons with disabilities and the organizations advocating for their rights, an important tool to undertake necessary initiatives and alert the government to take necessary steps in all the aspects of work and employment prevalent in the professional life of persons with disabilities. It provides a way to ensure that progressive realization<sup>1</sup> is on track in Nepal and to ensure the employment rights envisioned by the CRPD.

This report presents the results of a monitoring project on the employment situation of persons with disabilities in Nepal. The report is one step toward a comprehensive evaluation of Nepal's constitutional, legal and policy framework. Findings scrutinize

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<sup>1</sup> The CRPD has a progressive realization clause under section 2 of the general obligations which states, "With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law" (United Nations, 2006, p. 6).

the country's implementation of laws and policies based on the daily life experiences of persons with disabilities. These experiences are used to assess the level of rights violations, the reasons behind those violations, and possible solutions.

This holistic report offers an in-depth analysis of the life circumstances for persons with disabilities, with a specific focus on employment. The analysis has been conducted in relation to fundamental human rights principles of dignity, autonomy, participation, inclusion and accessibility, non-discrimination and equality and respect for difference. The report highlights the degree of implementation of the constitution, laws, policies and programs, enacted to protect and advance the human rights, and specifically the employment rights, of persons with disabilities. The report also highlights the experiences of persons with disabilities with reflection of societal attitudes.

Individual experiences are foregrounded in this report and discussed in context with various laws and policies. Issues are considered within the domains of participation and inclusion in society, habilitation and rehabilitation, education, vocational training, income security and support services, work and employment, accessibility, reasonable accommodation, privacy and family life, and personal mobility. Our research reveals a gap between current laws and policies and the reality of life for persons with disabilities. Findings point to troubling responses of persons with disabilities towards the abuse and discrimination that they experience. Persons with disabilities often indicated that they do not report discrimination at the workplace and shared their views on the systemic roots of discrimination in Nepalese society.

We consider the role of government in international cooperation that meets the provisions of the CRPD. Recommendations urge the government to better scrutinize and secure the rights of persons with disabilities, particularly their employment rights, so as to realize the inclusive society dictated in our laws and policies.

## ABBREVIATION AND ACRONYM

<b>Approx</b>	: Approximately
<b>CEO</b>	: Chief Executive Officer
<b>CRPD</b>	: Convention on the Rights of Persons with Disabilities
<b>CTEVT</b>	: Council for Technical Education and Vocational Training
<b>DRPI</b>	: Disability Rights Promotion International
<b>FGD</b>	: Focus group discussion
<b>INGOs</b>	: International Non-governmental Organization
<b>NBC</b>	: National Building Code
<b>NGOs</b>	: Non-Governmental Organization
<b>NFDN</b>	: National Federation of Disabled Nepal
<b>NKP</b>	: Nepal Kanoon Patrika
<b>SC</b>	: Supreme Court
<b>SLC</b>	: School Leaving Certificate
<b>PWD</b>	: People with Disabilities



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- Accessible Physical Structure and Communication Service Directive for People with Disabilities, 2069 BS (2013 AD)
- Children Act 2048 (1992)
- Children Rules 2051 (1995)
- Civil Service Act 2049, (1993)
- Compensation Relating to Torture Act 2053 (1996)
- Constitution of Nepal 2072, (2015)
- Education Act 2028 (1971)
- Education Rules 2059 (2002)
- Election of the Members of Constituent Assembly Act 2064 (2007)
- Evidence Act, 2031 (1974)
- Health Service Rules 2055, (1999)
- Human Body Organ Transplantation (Regulation and Prohibition) Act, 2055 (1998)
- Labour act, 2048
- Labour and Employment Policy, 2062
- Local-Self Governance Act 2055 (1999)
- Money Order Rules 2031, (1974)
- Motor Vehicles and Transportation Management Act 2049, (1993)
- MulukiAin 2020 (Country Code, 1963)
- National Health Policy 2048 (1991)
- National Policy and Plan of Action on Disability, 2063 (2006)
- Nepal National Building Code, 2060 (2003)
- Postal Rules, 2020 (1964)
- Protection and Welfare of the Disabled Persons Act, 2039 (1982)
- Protection and welfare of the Disabled Persons Rules 2051
- Remuneration and Facilities of Authorities and Members of Parliament Act, 2052 (1996)
- Right to Information Act 2064, (2007)
- Scholarship Act 2021 (1964)

- Scholarship Rules 2016 (2003)
- Senior Citizens Act, 2063 (2006)
- Social Welfare Act, 2049
- Special Education Policy, 2053 (1996)
- Teachers Service Commission Rules 2057 (2000)
- Treaty Act 2047 (1990)
- Rights of Persons with Disabilities Act 2074
- Labour Act 2074 (2017)

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# CHAPTER 1

## 1. INTRODUCTION

### 1.1. BACKGROUND

Persons with disabilities have often been deprived of their basic human rights. A lack of strong, legally binding international laws, and domestic laws, have contributed to this situation. Over the past few decades, many international standards have been set to ensure, protect, and promote the rights of persons with disabilities on an equal footing with others. Under such a milieu, the laws related to persons with disabilities, who constitute the largest minority in the world, are no longer mere welfare measures but have grown into fundamental human rights issues including equal employment opportunities.

In 2006, the United Nations adopted the Convention on the Rights of Persons with Disabilities (CRPD), the first international treaty specifically addressing the rights of people with disabilities, including the right to work. The purpose of the CRPD is to promote the full and equal enjoyment of all human rights, fundamental freedoms, respect and dignity for all persons with disabilities. According to the CRPD, accessibility is only achieved when persons with disabilities can live independently and fully participate in all aspects of life. Independence include the right to employment in a reasonable accommodating environment.

In Nepal, persons with disabilities are one of the most vulnerable and deprived sectors of the population. Persons with disabilities have limited opportunities for education, training and employment. Many persons are mistreated and marginalized. Employment of persons with disabilities is one of the most important indicators of social inclusion as it ensures the participation of persons with disabilities in mainstream activities of the state in an effective and efficient way thereby establishing an inclusive society. There are many constitutional, legislative and policy obligations, to secure the employment rights of persons with disabilities in Nepal but still the effective implementation of such

policies is a matter of inspection.

This report has been prepared through a comparative study of the constitution and domestic legislation of Nepal, with International Standards whereby the compliance level and the shortcomings have been assessed based on individual experiences shared by persons with disabilities with special reference to their employment rights.

## **1.2 OBJECTIVES OF THE STUDY**

The objectives of the study are:

- To expose the current state of employment of persons with disabilities in Nepal.
- To assess whether Nepalese legal provisions and policies are adequate to address the issues of employment rights of persons with disabilities.
- To trace the problems faced by the persons with disabilities and frame a way forward that solves these problems and promotes better quality of life.

## **1.3 RATIONALE OF THE STUDY**

While there has been some research in the sectors of employment rights of persons with disabilities in Nepal, they do not suffice to candidly reflect its current situation in Nepal. There are many aspects that need to be understood to move forward and properly address the needs of persons with disabilities. Therefore, this study may be useful to the concerned ministries, departments, officials, law enforcement officials, parents, guardians, practitioners, employers as well as all anyone interested to learn about employment rights of persons with disabilities in Nepal. This report can also serve as evidence to support advocacy for change.

## **1.4 METHODOLOGY OF THE STUDY**

This study is an analytical exploration of the current state of employment rights of persons with disabilities in Nepal. The study assesses the Nepalese Constitution, legal provisions, case laws and policies and programmes, as to whether they are adequate in addressing the employment rights of persons with disabilities. The study draws from qualitative data collected from the experiences of persons with disabilities, which have



been obtained through interviews and FGD (Focus Group Discussions)<sup>2</sup>.

We adopted a holistic approach to provide us with a better understanding of the experiences of persons with disabilities by examining them in comparison with legal provisions, especially in relation to their employment rights. Prior to conducting the research, a team led by NFDN constituted of systemic and individual experience monitors, were provided with a detailed training by DRPI with regard to conducting the proposed research and thereafter developing the research report. The online training can be found on the DRPI website at <http://drpi.research.yorku.ca/>. The team of Nepalese monitors who took training provided by the DRPI have actively participated and contributed to the research, and thereafter to the preparation of the report.

The research followed a snowball sampling technique to identify key informant interviewees. As a participant recruitment strategy, snowball sampling is a non-probability sampling procedure, most often used in qualitative research that facilitates access to difficult to reach populations, including persons with disabilities. A group of approximately 15 people were identified as potential interviewees at the outset through contacts in local organizations of persons with disabilities in the monitoring site. At the end of each interview, the monitors asked the interviewee if they could recommend some other person who could be interviewed whereby the other interviewee was selected based on these recommendations.

There was a total of 45 interviewees and a group of 40-42 persons with disabilities involved in FGD, based on whose experience the report has been developed. The sample was balanced in terms of sex/gender, age, educational level and types of disability among others (the detail of which have been incorporated in the Annex). The interview and FGD guide consisted of a series of closed and open ended questions to provide persons with disabilities an opportunity to tell their own story and experiences with employment rights. Individuals discussed their experiences over the past five years. With the prior consent of the interviewees, interviews and FGD were audio recorded and transcribed

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<sup>2</sup> The CRPD has a progressive realization clause under section 2 of the general obligations which states, "With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law" (United Nations, 2006, p. 6).

from Nepali language so as to conduct further data processing and analysis. Data processing was done in NVivo 10, based on a coding scheme in accordance to the DRPI tools.

## **Background of the Monitoring Site (Kathmandu Valley)**

Kathmandu is the largest metropolis in Nepal. The valley has a population of 1.4 million in the city proper, and 5 million in its urban agglomeration which includes the towns of Lalitpur, Kirtipur, Madhyapur Thimi and Bhaktapur with a total area of 220 square miles. It consists of the municipal areas of Kathmandu Metropolitan City, Lalitpur Sub-Metropolitan City, Bhaktapur Municipality, Kirtipur Municipality and Madhyapur Thimi Municipality along with a number of Village Development Committees and is part of the Bagmati Zone in Nepalese administrative geography.

The city stands at an elevation of approximately 1,400 meters (4,600 feet) above sea level in the bowl-shaped Kathmandu Valley of central Nepal. The valley is historically termed as “Nepal Proper” and has been the home of Newar culture, a cosmopolitan urban civilization in the Himalayan foothills. The city was the royal capital of the Kingdom of Nepal and hosts palaces, mansions and gardens of the Nepalese aristocracy. It has been home to the headquarters of the South Asian Association for Regional Cooperation (SAARC) since 1985. The Kathmandu valley is a cultural and political hub of Nepal and has been accorded with the status of World Heritage Site by UNESCO in 1979. Kathmandu is the capital city of the Federal Democratic Republic of Nepal, the largest Himalayan state in Asia and is the economic hub of Nepal as the bulk of offices and headquarters are located here in Kathmandu.

In Nepal, about 54.20 per cent of the population of 10 years and above is economically active<sup>3</sup>, and 44.77 per cent is not economically active<sup>4</sup>. According to the Central Bureau of Statistics (CBS), reasons for an economically inactive population are physical and/

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<sup>3</sup>An economically active population (EAP) is defined by the 2011 census as people of 10 years of age and over who are active in agricultural activities, wages/salary earnings, non-agricultural business activities and those seeking jobs.

<sup>4</sup><http://therisingnepal.org.np/news/2032>

or mental disability among other similar factors like age factor, studies, household activities, etc. However, even while considering the economically active population of Nepal, the unemployment Rate is 3.20 percent as per 2016<sup>5</sup>. The main reason for the low unemployment rate can be attributed to the unemployed youths' migration to different countries for employment opportunities as a total of 109 countries have been open for foreign employment and according to the Economy Survey (2013-2014); the number of foreign employment bound workers has reached close to 3.5 million<sup>6</sup>.

It also has to be noted that, on 25 April 2015, Nepal was struck by a powerful 7.8 magnitude earthquake that resulted in a large number of casualties, widespread devastation of infrastructure and the disruption of everyday life. The numerous aftershocks were equally dangerous and continued for months, causing landslides and more losses and damage. In total, 8,896 people died (3,972 males and 4,918 females, with 6 of unknown determination) and 22,302 people were injured across 45 districts; nearly 9 million houses were either completely or partially damaged. Among the affected districts, 14 were declared "crisis hit" for the purpose of prioritizing rescue and relief operations (Bhaktapur, Dhading, Dolakha, Gorkha, Kathmandu, Kavrepalanchowk, Lalitpur, Makwanpur, Nuwakot, Okhaldhunga, Ramechhap, Rasuwa, Sindhuli and Sindhupalchowk).

Nearly every casualty was from one of the crisis-hit districts. The Post-Disaster Needs Assessment carried out by the Government estimated a total of \$7,065 million in damages and losses across the social, productive and infrastructure sectors. The social sectors incurred the most damages and losses, estimated at \$4,086 million, mainly due to the destruction of housing and human settlement. The productive sectors incurred \$1,781 million in damages and losses along with estimated losses of \$1,712 million in personal income. The most hard-hit sectors were tourism, finance and agriculture resulting in widespread economic vulnerabilities. This disaster has implications for the employment status and opportunities of persons with disabilities in the Valley<sup>7</sup> and the circumstances under which they have been working.

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<sup>5</sup> <http://www.tradingeconomics.com/nepal/unemployment-rate>

<sup>6</sup> <http://therisingnepal.org.np/news/2032>

<sup>7</sup> Valley includes three districts; Kathmandu, Lalitpur and Bhaktapur, all of which were declared "crisis hit" after the earthquake.

## CHAPTER 2

### 2. EMPLOYMENT RIGHTS OF PERSONS WITH DISABILITIES: CONCEPT & UNDERLYING PRINCIPLES

The term “disability” includes a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment<sup>8</sup>. The CRPD under article 1 holds that: persons with disabilities include 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. It summarizes different functional limitations: for instance, people may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness and such impairments, conditions or illnesses may be permanent or transitory in nature.

In the context of Nepal, the Protection and Welfare of the Disabled Persons Act 2039 (1982) offers a disrespectful definition of “Disabled Person”, according to which “disabled person denotes one eyed, blind, deaf, dumb, half-dumb, feeble, crippled, lame, limping, handless or mentally handicapped person” also. Similarly, persons with disabilities mean those who have long-term physical, mental, intellectual or sensory impairments or functional impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others<sup>9</sup>. In most of legislation discussed below, the term disabled person has been used instead of person/people with disability even though it is notably considered as disrespectful.

Persons with disabilities often face attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. That is why

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<sup>8</sup> <http://www.un.org/esa/socdev/enable/rights/ahcstata2tscompilation.htm>

<sup>9</sup> Accessible Physical Structure and Communication Service Directive for People with Disabilities, 2069 BS (2013 AD)

Article 3 of the CRPD sets forth eight principles, to uphold the rights of the persons with disabilities. Among those eight principles, six have been taken as the yardstick to assess the employment rights of the persons with disabilities.

## **FUNDAMENTAL PRINCIPLES:**

**Dignity:** Human dignity is a quality belonging equally to every human being; it is permanent, unconditional, indivisible and inviolable and therefore should be respected and protected. The Constitution of Nepal has secured the right to live with dignity as a fundamental right<sup>10</sup>. The dignity of the human person is not only a fundamental right in itself, but constitutes the basis of other fundamental rights such as the rights to freedom and equality. The concept of dignity therefore forms a network of interconnected ideas related to worth and value and matters fundamentally because it forms the foundation of a civilized society; without it, serious abuse of people is more likely to occur. For this reason, feeling respected and valued and being able to form opinions without fear of any physical, psychological and/or emotional harm should be present in the domain of family life and privacy, education, vocational skills training, labour market, work, social participation, information and communications, access to justice, income security and support services inter alia several other indicators.

1. **Autonomy:** holds that, independent of any characteristics, an individual ought to have the ability to make decisions on issues affecting themselves, their family life and their privacy.
2. **Participation, Inclusion and Accessibility:** People have a right to participate in how decisions are made regarding the protection of their rights. This includes, but is not limited to, having input in government decisions about rights. All people should have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. This principle guarantees that an individual with a disability must be recognized as an equal participant and effective participation of such persons has to be equally ensured in family life and privacy, education, vocational skills training, labour market, work,

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<sup>10</sup> Constitution of Nepal 2015, Article (16.1)

social participation, information and communications, access to justice, income security and support services inter alia similar domains like gender, ethnicity have been analyzed in relation to the employment rights of the disabled persons. In Nepal, the political objective of the State shall be to establish a public welfare system of governance, by establishing a just system in all aspects of national life through the rule of law, values and norms of fundamental rights and human rights, gender equality, proportional inclusion, participation and social justice. At the same time the State shall maintain relations between the Federal Units on the basis of cooperative federalism and incorporate the principle of proportional participation in the system of governance on the basis of local autonomy and decentralization<sup>11</sup>.

3. **Non-discrimination & Equality:** As established by human rights standards, all individuals are equal as human beings and no one should face discrimination based on any status including disability. This includes not only purposeful discrimination, but also protection from policies and practices which may have a discriminatory effect. That is why the rights of persons with disabilities should be guaranteed on an equal basis without any distinction, exclusion or restriction leading towards the denial of the effective recognition, enjoyment or exercise of human rights and basic freedoms on an equal basis with others in the domain of work, vocational training, etc. In Nepal, it has been envisioned that the social and cultural objective of the State shall be to build a civilized and egalitarian society by eliminating all forms of discrimination, exploitation and injustice and uphold dignity and harmony<sup>12</sup>.
4. **Respect for Difference:** Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity has been provided for under article 3(d) of the CRPD. It is intrinsically linked with other principles of human rights including human dignity, autonomy and participation and inclusion. In Nepal there are no constitutional provisions to mandate for the respect for difference and acceptance of persons with disabilities; however, several pieces of legislation have tried to incorporate this principle. For instance, the Government of Nepal may fully or partially exempt the customs duty, excise duty, sales tax, local tax, surcharge and other fees also to be levied in the accessory means, tools or equipment to be used by disabled person and the goods, machine, part and raw materials to be used for the

<sup>11</sup> Constitution of Nepal 2015, Article (50)

<sup>12</sup> Constitution of Nepal 2015, Directive Principle (article 50.2)

training of disabled person or for the employment of disabled person who is assigned in the employment<sup>13</sup>.

### **3. OVERVIEW OF NEPALESE LAWS, POLICIES AND MECHANISMS&INDIVIDUAL EXPERIENCES RELATED TO EMPLOYMENT RIGHTS OF PERSONS WITH DISABILITIES**

#### **3.1 PARTICIPATION AND INCLUSION IN THE SOCIETY**

The principle of participation and inclusion aims to prevent and eliminate all forms of discrimination against persons with disabilities and to promote their full integration into society. Article 3(c) of the CRPD has provided for the full and effective participation and inclusion in society. So, the individual has to be respected regardless of disability status when participating in social, cultural and political life, in sports, recreation and leisure activities.

Community services and facilities for the general population should be made available on an equal basis to persons with disabilities. Article 19 of the CRPD assures that States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community and take effective and appropriate measures to facilitate full enjoyment by persons with disabilities for their full inclusion and participation in the community.

However, our study found there were many expressions of disrespect of an individual's dignity. For example, some participants told us that when they were addressed with derogatory nicknames and disrespect;

*“I had once gone to a wedding ceremony where there was a friend of mine who said, Look! Here comes the lame (Kholte). That friend called me with that name in front of the mass and said that, how might have the lames been able to come to the ceremony. Similar things happen to me even when I apply for any jobs.” (Male, Aged 30, Kathmandu, Nepal)*  
*“While walking in road, going to office, people say-” He is deaf. He can’t do anything.*

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<sup>13</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 8(3)



*What will he do with eyes? He can't do anything.” Similar things happen to me when I apply for job in any organization. Everyone makes derogatory comment about my disability.” (Male, Aged 31, Kathmandu, Nepal)*

Many people shared experiences of discrimination, inequality, segregation and isolation on the grounds of disability in contrast to the fundamental principles protected by the CRPD. These experiences are closely linked with the dignity of persons with disabilities and determine whether their working conditions (i.e., whether they are respected and included in their jobs or not).

Article 50 of the Constitution of Nepal, 2015, as its directive principle, aims to establish a public welfare system of governance, by establishing a just system in all aspects of the national life through proportional inclusion. The Constitution of Nepal, under directive principles, has broadly made a provision to ensure inclusion in all aspects of national life but it has not been able to solidify the essence of social inclusion for persons with disability in a detailed and specific manner. The Protection and Welfare of the Disabled Persons Act addresses the notion of Inclusion and Accessibility in theory, but it also requires a detailed procedural clearance to make it more effective. In addition, Nepal has been able to principally secure social welfare activity to serve the interests of persons with disability which supplements the essence of participation, non-discrimination and equality and inclusion and accessibility. Therefore, it recognizes the equal right of all persons with disabilities to live in the community and facilitates full enjoyment by persons with disabilities for their full inclusion and participation in the workplace but its proper execution is required, if assessed from the experiences shared by the interviewees.

### **3.2. HABILITATION AND REHABILITATION**

Effective and appropriate measures should be taken to enable persons with disabilities to attain and to maintain maximum independence. Measures should also promote full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. For that purpose, states shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the area of employment among others.

In the course of interviews, many people with disabilities shared their experiences which were not in accordance to this principle;

*“During my school days, at times when we, disabled students, could not do the assignments because of unavailability of books the teachers used to say that, “you stay at hostel, eat there, are you here for eating or for studying? Whereas, they never said anything to the other student; it was like a mental torture for the student and it hurt too much” (Male, Aged 25, Kathmandu, Nepal)*

It has to be noted that, there is no constitutional provision and only some scattered provisions can be found in this regard. For instance, in the Protection and Welfare of the Disabled Persons Act<sup>14</sup>, provisions have been made to exempt the income tax so as to facilitate the rehabilitation of persons with disability. Also, the Children Act<sup>15</sup> provides that an Abandoned Child shall, normally, be kept in the Children’s Welfare Home until he attains the age of sixteen years. However, the age bar to live in the Children’s Welfare Home does not apply in case of blind, disabled or mentally retarded Abandoned Child, until they are sent to the Children Welfare Home established for their living. Similarly, section 43 holds that the Government of Nepal shall establish orphanage and centers for “mentally retarded” children as required for the maintenance and dwelling of orphans, disabled or “mentally retarded” children having no parents. Necessary education for children residing in the orphanage shall also be provided by the government. Similarly, protection and earning of livelihood of persons with disability has also been ensured under the Local-Self Governance Act<sup>16</sup>. Our research found that experiences shared by persons with disabilities indicated they have not been able to enjoy such rights to the fullest.

As such, despite the government’s initiative to promote habilitation and rehabilitation in society, we found that a more detailed mechanism needs to be developed to ensure the availability and use of assistive devices and technologies and also provide training for professionals and staff working in habilitation and rehabilitation services.

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<sup>14</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 10(5)

<sup>15</sup> Children Act 2048 (1992), Section 36

<sup>16</sup> Local-Self Governance Act 2055 (1999), Section 25(j)

### 3.3. EDUCATION

In order to realize the right to education without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive lifelong education system at all levels. Actions should assure the development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential. As such, our study aimed to assess the domain of education and its relation with the employment rights of the persons with disabilities;

**Table 1: Educational Level attained by the Interviewees**

SESSION	TOTAL
Below SLC	4
SLC	5
Intermediate	5
Bachelors	17
Masters	12
None	2

A critical appraisal of the data showed that 37 out of 43 interviewees who have had some degree of education were employed and professionally independent. However, many expressed the grievances they had in the course of pursuing their education;

*“Even though there are so many people in my village that are educated but they never feel and support me, they do not have the cooperative feeling. There are so many scholarships for disabled persons in VDC but whenever I try to inquire about it they just divert the issue.”(Female, Aged 27, Kathmandu, Nepal)*

Such experiences shared by persons with disabilities clearly show the disadvantage they might have in the long run in their profession and educational endeavors. Also, we found that some of the interviewees had experienced segregation and isolation on the grounds of disability, including lack of accessibility in school and education. For instance, it was observed that persons with disabilities were too often denied access to essential services due to physical or social barriers which limit their lives and prevent them from exercising

their educational rights.

*“I study in college but there is no ramp even in single class. I always need the help of the friends. Because that I had to take help from them, then if they say something, what to say, I need their help later on as well.” (Female, Aged 26, Kathmandu, Nepal)*

Article 31 of Constitution of Nepal 2072, (2015) has secured that, every citizen shall have the right to compulsory and free education up to the basic level and free education up to the secondary level from the State. In addition, citizens with disabilities and economically indigent citizens shall have the right to free higher education in accordance with the law. Specifically, visually impaired citizens shall have the right to free education with Braille script and citizens with hearing or speaking impairments should have access to free education through sign language, in accordance with the law.

Similarly, if a disabled person is enrolled in an educational organization to obtain education, he or she shall not be levied a fee from such educational organization and the necessary arrangements in order to ensure an appropriate training must be made for the teachers imparting education to the disabled persons. Further, special arrangements may be made to impart education to the blind, deaf and mentally handicapped persons<sup>17</sup>. Additionally there are case laws, which have secured the rights of persons with disabilities in this regard:

- ***Sudarshan Subedi V. Office of Prime Minister and Council of Ministers***

In the case in which a person with a disability wishes to be admitted into an educational institution by applying for a scholarship, then they can do so as mentioned in the law. However, there are no mechanisms developed by the government of Nepal to assist the persons with disability to do so. It should be noted that in any welfare system the government aims at making its citizen qualified and skilled, so it is the duty of the government to develop necessary pre-requisites to execute the laws in favor of the persons with disability to promote competencies. Therefore, the court issued an order in the name of the government that the persons with disability shall be provided with free

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<sup>17</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 6

education in public schools, universities and training centers, and shall not be charged any fee during that period.

Other laws and policies have addressed a range of issues to make education accessible to persons with disability (up to any level s/he wishes to pursue). For instance, the Protection and Welfare of the Disabled Persons Act<sup>18</sup>, the Education Act<sup>19</sup> and Education Rules <sup>20</sup>note that education should be delivered in the most appropriate language, modes and means of communication, and that learning of these modes and formats of communication is facilitated. Similarly, in the Scholarship Act<sup>21</sup> and other policies discussed above, legislation has promoted inclusivity and reasonable accommodation in the education system.

### 3.4 VOCATIONAL SKILLS TRAINING

Article 24 (5) provides that: State parties shall ensure that persons with disabilities are able to access vocational training without discrimination and on an equal basis with others. It is the responsibility of the State to secure the rights of persons with disabilities to get vocational training on an equal footing with others. As such, our study has aimed to assess the rights of persons in this regard, and its association with the employment rights of persons with disabilities:

**Table 2: Number of Interviewees Who Attained Vocational Skills Training**

ATTENDED TRAINING	TOTAL	PERCENTAGE
Yes	35	78
No	3	7
Not Applicable	7	15

<sup>18</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 6

<sup>19</sup> Education Act 2028 (1971), Section 2(d1),( 6.A) (16.J)

<sup>20</sup> Education Rules 2059 (2002), Rule 151(2), (47), (65)

<sup>21</sup> Scholarship Act 2021 (1964), Section 3A

During interviews, we found some instances where persons with disabilities were encouraged to engage in vocational skills training. For instance,

*“In the CTEVT training, there were 20 participants and only I was the only person with disability. I convinced my friends there, if you could help me carrying the wheelchair then I would be able to take the training. They were convinced and I also convinced the trainer that I could do the work similar to those of other able people in the training.”(Male, Aged 41, Kathmandu, Nepal)*

We also found many instances where individuals were disrespected and devalued on the grounds of disability. For instance;

*“A friend of mine got an opportunity to participate in the training but he had the job so was not provided with the leave. He wanted to participate in the training but they told that he had to resign the job to take the training. He lost his job to participate in the training, similar situation has occurred to me as well when I also had to leave the job to participate in the training.” (Male, Aged 31, Kathmandu, Nepal)*

*“I was comparatively slow in learning and that may be the reason that my teacher felt irritated and misbehaved with me while teaching. Teacher used to get easily irritated when there were slow learners like me and then hesitated to teach.” (Male, Aged 25, Kathmandu, Nepal)*

*“There are lots of programs, conferences, meetings but we are not allowed to attain and out casted by giving the reasons like we cannot even know when telephone will ring.” (Female, Aged 35, Kathmandu, Nepal)*

*“There were two teachers in the place where I took my Computer training. One of them was visually impaired and the other was okay. Whenever I asked any question/confusion to the teacher who was not blind, he did not behave well and used to tell me that I was correct even when I clearly knew that I was mistaken. While the other teacher, who was visually impaired, would listen to my queries and helped me point out my mistakes.” (Male, Aged 25, Kathmandu, Nepal)*

The National Policy and Plan of Action on Disability provides a guideline for affirmative action in the selection of candidates for training of people with disability in government agencies and non-governmental organizations. Free training is provided to people with disabilities and five percent of the total number of seats are reserved for them. A policy of affirmative action appropriate for ensuring employment of people with disability in every sector is advanced<sup>22</sup>.

Also, in the Protection and Welfare of the Disabled Persons Rules 2051, Rule 17 provisions that the government authorities and corporate bodies shall give priority to disabled persons in such works conducive to the education, training and physical condition of disabled persons. Rule 15(5) has made a provision that in case of technical and vocational trainings provided by the Government and any corporate body under full or majority ownership of the Government, five per cent of seats shall be reserved for persons with disability in such training and no fees in any form shall be collected from them. Similarly, a factory providing employment to disabled persons shall be fully exempted from income-tax on the amount of remuneration, allowances or any other facilities of concessions provided by the factory to the disabled persons as per Rule 18.

The above-mentioned experiences suggest that, there is a prevalence of situations in which individuals with disabilities are not respected in vocational and/or skills training and do not have their disability-related needs properly addressed. Many participants believed that this contributed to making them less qualified and skilled than people without disability in the long term. The experiences collected here, suggest that existing laws have not been well executed in practice and affects the employment rights of persons with disability. This effect is further demonstrated by the fact that out of the 35 interviewees who had taken training only 6 were unemployed.

### **3.5 INCOME SECURITY AND SUPPORT SERVICES**

Income security is a primary indicator of the employment rights of persons with disabilities. In our study, we asked persons with disabilities about their income security

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<sup>22</sup> National Policy and Plan of Action on Disability, 2063 (2006) Strategy 5.4



in terms of remuneration and discrimination.

**Table 3: Number of Interviewees who had Income Security at Their Work**

INCOME SECURITY	TOTAL	PERCENTAGE
Yes	35	78
No	5	11
Did not answer	5	11

Some interviewees shared their experiences where they were facing income insecurity making them feel disrespected and devalued. For instance, one interviewee said:

*“After having worked at a dohori-sajh for one month, I asked for my salary but I was not provided. As it is said, a lady is an enemy of a lady, the girl (owner’s near one) there never wanted to give me salary and made excuses. Later I was not provided with the total salary and then I threatened them to give their name in the newspaper. I had to struggle a lot to get my salary.” (Female, Aged 29, Kathmandu, Nepal).*

Contrary to the principle discussed earlier, there should not be any distinction or restriction based on disability by denying the effective recognition, enjoyment or exercise of rights. However, many such instances were expressed by persons with disabilities we spoke with.

**Table 4: Number of Interviewees who had Equal Remuneration at Their Workplace**

EQUAL REMUNERATION	TOTAL	PERCENTAGE
Yes	19	42
No	15	33
Did not answer	11	25

*“The salary is different between disabled and other persons. I accept that the salary is as per the job but it’s not balanced.” (Male, Aged 31, Kathmandu, Nepal)*

*“We, the blinds with respect are given the salary in the same scale. The ones who can see have different. I can’t comprehend the reason behind this. Their capability is lesser than us but their salary is more.”(Male, Aged 41, Kathmandu, Nepal*

*“Salary at workplace is not equal, they discriminate. There’s not much work of normal people. In reception also there are two, when one is enough. I need to teach computer a lot. But still, we have less salary than theirs.” (Female, Aged 30, Kathmandu, Nepal)*

In the context of Nepal’s Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 10(5) stipulates that the Government of Nepal may exempt the income tax and all other types of taxes to disabled persons<sup>23</sup> and the organizations established for rehabilitation of disabled persons, which is an incentive given to them. Similarly, the Labour Act 1992, Chapter 4 has been enacted based on the principle of non-discrimination in the remuneration provided to the employees and workers. Therefore, there is a need to make more detailed provisions in this regard so as to protect the rights of persons with disabilities against any kind of inequalities in the remuneration received.

### **3.6. WORK & EMPLOYMENT**

According to article 27 of the CRPD, States Parties should recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Nepal, being a signatory member of the CRPD, must enact necessary measures to prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions. Our study has aimed to assess aspects of work and employment prevalent in the professional lives of persons with disabilities;

#### **Experiences while searching for a job:**

People with disabilities should be treated on an equal basis with others without being

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<sup>23</sup> It has to be noted that the term ‘disabled persons’ used in the Act is disrespectful in itself

subject to any form of fear of physical, psychological and/or emotional harm while searching for jobs in the labour market. However, the table below clearly shows the contrary situation.

**Table 5: Number of Interviewees Rejected from the Job**

REJECTED FROM JOB	TOTAL	PERCENTAGE
Yes	26	58
No	12	27
Did not answer	7	15

Persons with disabilities should have the opportunities to make autonomous decisions about their participation in the labour market. However, many participants described contrary situations during the interviews and FGD. For instance, one interviewee said:

*“I applied for a job in disabled organizations because I am also a disabled person. I can’t apply in other organization because other normal people do not trust or believe on me that I can work effectively.” (Female, Aged 27, Kathmandu, Nepal)*

Similarly, segregation and isolation on the grounds of disability were also reported, as in the following example:

*“I always got rejected due to my disability, no matter wherever I applied for job. I felt too much humiliated as my disability was always readily provided as an excuse to not to select me in the given job.” (Female, Aged 30, Kathmandu, Nepal)*

Several instances in contrast to the principle of respect for difference, non-discrimination and equality as well as other essential principles were also reported, such as in the following excerpt:

*“While I was giving interview, they asked, “Do you think we would believe that a blind person can operate computer? This is insane. This is impossible thing to talk about. How*

*do you operate computer? People who can see also can't operate computer properly. Then how would a blind person do? Though you have master's degree but people who can't see cannot work anywhere. They said these types of things and at that time I felt very bad. I was also annoyed.” (Male, Aged 50, Kathmandu, Nepal)*

*“While I gave interviews people used to doubt my capacity so I used to say, I can use computer, see the certificate of computer trainings. Give me your computer for a day, I will show to you that I can do everything. Then, they would make excuses by saying that; “We immediately need staffs. We don't have time to see your work.” (Female, Aged 30, Kathmandu, Nepal)*

*“Once I applied for a job, I appeared in written exams and was selected for interview, during oral interview they knew I was disabled. They asked me questions like, can you see from there? How many fingers are these? I was very disappointed because I was not totally blind. I had only small problem. There is also category of disability. I am in “c” category. They misbehaved with me thinking that I cannot see properly nor do anything.” (Female, Aged 30, Kathmandu, Nepal)*

Therefore, on many occasions people with disabilities are facing problems/ discrimination while searching for jobs, and their skills and capacity are diminished. This is a serious problem and needs to be addressed through effective scrutiny from the government.

## **5. Experiences during the work:**

An individual's dignity and autonomy to make decisions on issues affecting work, as well as equality, respect for difference and effective participation regardless of his/her disability should be ensured. Many instances in these principles being were reflected by the interviewees:

*“Many used to say even if he is a person who cannot hear how properly he does his work. I felt people that people take me in a positive way.” (Male, Aged 32, Kathmandu, Nepal)*

*“We are treated very well there because of our work and unlike others we never cheat or remain absent in the program because it's the only job we have.”(Male, Aged 41,*

Kathmandu, Nepal)

*“After my delivery it was difficult for me to breast feed my child so I requested to go home one hour early for some time. They listened to me and later on they gave me permission.” (Female, Aged 32, Kathmandu, Nepal)*

In contrast, many participants shared stories that did not reflect respect for persons with disabilities:

*“In my work place (dohori-sajh) the owner’s used to call me repeatedly and wanted to visit my room with bad intention.” (Female, Aged 29, Kathmandu, Nepal)*

*“Junior staffs never showed me any level of respect. I could see that others room were neat but my room was dirty as if the table are not wiped up, the glasses of rack were not wiped up which used to make me feel humiliated.” (Male, Aged 50, Kathmandu, Nepal)*

*“There were lots of problems after my delivery and I could not even leave my work little earlier during that time as well. I was called at work four days before my maternity leave was over. So I was compelled to come otherwise I would lose the job.” (Female, Aged 35, Kathmandu, Nepal)*

*“In our work place, we were put into the separate pass section due to our disability, where no one else stayed with us. Some police officer used to come and say it is so delight to you all; you can earn the easy salary. It was said in humiliating way. At that time I felt the being alone but could do nothing.” (Male, Aged 34, Kathmandu, Nepal)*

*“I have seen the people in the authority taking leave for 3-6 months as well. But I was not allowed to take my normal leaves as well, probably because of my disability but I could do nothing.” (Female, Aged 35, Kathmandu, Nepal)*

*“I had bought Octopad instrument in NRs. 83000 taking credit. It had been just 19 days that I bought when it was looted from me at night. I don’t know who did it but I was very much frustrated with life at that point.” (Male, Aged 41, Kathmandu, Nepal)*

Instances like these are clearly contrary to the fundamental principles of work and employment incorporated under the CRPD and other international instruments. Similarly, persons with disabilities being isolated at work, being called nicknames and also similar instances can also be seen in the context of the table presented below:

**Table 6. Number of Interviewees who were Isolated at the Workplace**

ISOLATED IN WORKPLACE	TOTAL	PERCENTAGE
Yes	11	25
No	23	50
Did not answer	11	25

**Table 7: Number of Interviewees who were called by derogatory Nicknames at the Workplace**

CALLED BY NICKNAMES AT WORKPLACE	TOTAL	PERCENTAGE
Yes	17	38
No	23	51
Did not answer	5	11

Article 33 of the Constitution of Nepal ensures that every citizen shall have the right to employment. The terms and conditions of employment and unemployment shall be provided in the federal law. Article 51 provisions, under directive principle, to guarantee social security, while ensuring the basic rights of all labors, in consonance with the concept of decent labour. The Constitution of Nepal is comparatively new and federal laws are yet to be enacted (i.e. Nepal has not yet entered full-fledged federal structure as envisioned in the constitution). A proper mechanism should be developed in the nearest future so that persons with disability are able to effectively participate in employment and there is non-discrimination and equality in the domain of employment and work.

Necessary arrangements of appropriate training and employment may be made to support disabled persons to be economically self-reliant. Also, arrangements to impart

training that can be able to give appropriate returns of labour may be made in suitable situations<sup>24</sup>. Moreover, the Government of Nepal may fully or partially exempt the customs duty, excise duty, sales tax, local tax, surcharge and other fees also to be levied in the accessory means, tools or equipment to be used by disabled persons and the goods, machinery, part and raw materials to be used for the training of disabled persons or for the employment of disabled persons who are assigned in the employment<sup>25</sup>. No discrimination shall be made with respect to remuneration, facilities and other terms of service between disabled employees and other employees working in Government and corporate bodies under full or majority ownership of Government<sup>26</sup>. Similarly, to make the civil service inclusive, 45 percent of posts to be fulfilled by open competition should be set aside and filled by having separate competition between; Women-33%, Adiwas/Janjati-27%, Madhesi -22%, Dalit-9%, Disabled-5% and Backward Area-4%. In doing so, 5% of the work which is to be filled by persons with disability shall be filled through competitive examination between disabled persons only as may be specified for any specific nature of work. Also, section 34.A has made a special provision for the respect of incapacitated persons. If it is certified by the medical board constituted by the Government of Nepal that any civil employee is unable to serve regularly owing to a physical or mental disease, the Government of Nepal may retire that employee, by adding a service period of seven years in maximum to his/her service period<sup>27</sup>. Similarly, the Labour Act protects the rights of persons with disabilities to just and favorable conditions of work, including by the redress of grievances<sup>28</sup>.

Furthermore, in case of *Ramesh Lal Rana Tharu v Office of Prime Minister and Council of Ministers*, NKP 2066, SC of Nepal, the Court held that it would be against the principle of democracy and rule of law for a state to ignore the responsibility of protecting fundamental rights of its citizens as provided by the Constitution. The Interim Constitution of Nepal 2063, in its article 13 and 19, aims for the protection of the right to equality, employment and social security aspiring to provide substantial equality and equitable distribution keeping the marginalized group as the targeted ones, including persons with disability. This decision of the Court has also provided a critical interpretation in this regard and has asked the government to take necessary steps to ensure equity.

Therefore, it is recognized that, if properly implemented, Nepal has been able to ensure that persons with disabilities are not held in slavery or in servitude, and are protected

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24 Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 8

25 Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 10(4)

26 Protection and welfare of the Disabled Persons Rules 2051, Rule 17

27 Civil Service Act 2049, (1993), Section 7 (7)

28 Labour act, 2048, Section 38

on an equal basis with others, from forced or compulsory work. Additionally, the bulk of laws and policies that have been mentioned above make provisions to prohibit discrimination on the grounds of disability with regard to all matters concerning all forms of employment. As such, the experiences of persons with disabilities who have been facing discrimination in the workplace come under the scope of laws discussed above. Many of the provisions require effective implementation and monitoring.

### 3.7. ACCESSIBILITY

The principle of accessibility envisages enabling persons with disabilities to live independently and participate fully in the physical environment, transportation, information and communications, including information and communications technologies and systems, and other facilities and services open or provided to the public.

**Table 8: Number of Interviewees who asserted that their Workplace was Disability-friendly**

Disability-friendly Workplace	Total	Percentage
Yes	19	42
No	19	42
Did not answer	7	16

Any segregation and isolation on the grounds of disability should not be present in the workplace. However, many shared their experiences of distinction or restriction of some kind, based on disability, denying them their effective recognition. For instance, one interviewee said:

*“There were two of us, the other friend was blind, and I am physically disabled person. Even though we couldn’t reach everywhere by ourselves, we were as efficient as our other colleagues. But I heard it from other that they said, “One can’t see, and the other can’t walk, so we can’t ask them to work the way we want to, and that they can’t reach the place on time they are asked to”. Such things happening at work place are really saddening.” (Female, Aged 28, Kathmandu, Nepal)*

The Accessible Physical Structure and Communication Service Directive for People with Disabilities, 2069 (2013) have made an exhaustive provision to ensure that the inclusion and accessibility of persons with disabilities is effectively safeguarded. Similarly, Nepal



National Building Code, NBC 2060 (2003) and National Policy and Plan of Action on Disability, 2063 (2006) are in accord with the principles of human rights as they aim at the identification and elimination of obstacles and barriers to accessibility. However, the directive is a newly enacted law so it needs more effort to bring it into effective implementation.

### 3.8. REASONABLE ACCOMMODATIONS

As per article 2 of the CRPD, reasonable accommodation means necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities enjoy or exercise on an equal basis with others of all human rights and fundamental freedoms and in order to promote equality and eliminate discrimination. States Parties need to take all appropriate steps to ensure that reasonable accommodation is provided.

In the study conducted, many interviewees reflected the reality of searching for a job as a person with a disability. Participants indicated that most organizations believe that if persons with disabilities are hired then the business will have to renovate the entire organization by making a disability-friendly toilet, making a ramp, etc. This belief is troublesome.

In Nepal, several laws have incorporated the notion of reasonable accommodation. For instance, arrangement of unemployment allowance, livelihood allowance, and old age pension as prescribed for disabled persons or a special allowance for a disabled person unable to make livelihood by earning may be made<sup>29</sup>. Similarly, for persons who are blind, deaf, incapacitated or have intellectual disabilities, provisions may be made to attempt the questions in examinations in a symbolic language which he/she may understand<sup>30</sup>.

Additionally, the concerned agencies, to provide access in physical structure or facilities of school, home or workplace without extra economic burden, should provide reasonable accommodation like special assistive devices, classroom, toilet or bathroom, table and utensils for eating, arranging special sitting chairs or desks, computer software, arrangement of key board and mouse to be used by feet for those who operate computer by their feet, racks, filing cabinet, telephone, printer, photocopy machine, scanner etc<sup>31</sup>. Progressive provisions have been made under section 22 of the Remuneration and Facilities of Authorities and Members of Parliament Act, 2052 (1996) which holds that the Special facility to the blind and disabled Office-bearers or Members: If the Speaker or Chairperson thinks that any Office-bearer or Member who, being blind or physically

<sup>29</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 10(9)

<sup>30</sup> Education Rules 2059 (2002), Section 47

<sup>31</sup> Accessible Physical Structure and Communication Service Directive for People with Disabilities, 2069 BS (2013 AD)

disabled, needs the service of attendant to make movement, s/he shall be provided with an Office-bearer or Member who shall be provided with allowances as per this Act.

### 3.9. PRIVACY AND FAMILY LIFE

No one shall be subjected to arbitrary or unlawful interference with his /her privacy, family, home or correspondence, or to unlawful attacks on his honor and reputation. There should not be any interference by a public authority with the exercise of this right except in accordance with the law. In such context, the table presents the situation in the course of the interviews:

**Table 9: Number of Interviewees having Family Support**

FAMILY SUPPORT	TOTAL	PERCENTAGE
Yes	36	80
No	3	7
Did not answer	6	13

Among 45 interviewees, 80% (36 interviewees) responded that they had family support. This support was present regardless of how society treated them. Family support can help persons with disabilities to move forward in life and encourage employment. For instance, several participants said:

*“There is stigma in the society with regard to disabled people that is why I used to hide myself from the society. It was very difficult for me but my family was very supportive and always motivated me to face the society.”(Female, Aged 37, Kathmandu, Nepal)*

*“I used to move like monkey but my dad taught me to walk and now he feels glad by seeing my mobility whereas other same types of persons with disabilities are lying on bed and more importantly I am employed now.” (Male, Aged 43, Kathmandu, Nepal)*

*“If it’s the matter of study or learning or the places where I get the opportunity to learn, my family had given me full autonomy to decide it myself and go if required.”(Male, Aged 25, Kathmandu, Nepal)*

*“When we heard that even disabled can read, my mother started to search for the school. After knowing that school was in Dharan, she took me there and admitted to school.” (Female, Aged 35, Kathmandu, Nepal)*

*“People used to tease me with different names while walking in the road but my father used to tell me even Goddess Sita got so many problems, but she never lost hope so you should also continue working hard in life and get employed.” (Participant from FGD, Kathmandu, Nepal)*

*Participants with family support indicated motivation and a positive attitude to work. Others, (i.e. 3 interviewees) who responded that they had suffered psychological and/or emotional harm in matters related to privacy and family life showed diminished motivation. For instance, they commented:*

*“In village, a girl with disability is considered as the burden to the family just because of the culture that a girl has to be married, so she is not educated properly and they end up being unemployed and dependent upon others forever.” (Male, Aged 53, Kathmandu, Nepal)*

*“Our society is suffering from an old thinking and my family is not free from it. Whenever I show my interest to participate in any kind of program, I am directly denied by saying that, why should a person who cannot, go to program.” (Male, Aged 25, Kathmandu, Nepal)*

*“My father used to drink and used to scold me, abuse me, and badly beat my mother. Whenever, I tried to stop him, he used curse me saying -”Blind!”When will you die? I wish I could kill you. Also, there was no love/support from my step mother. I was never motivated to study or to do any work.” (Female, Aged 35, Kathmandu, Nepal)*

*“My husband ran away when I took him in women organization for marriage registration. I have done birth registration of my son from my citizenship. I don’t know where my husband is and it has become really difficult for me to look after my child and at the same time continue my job.” (Female, Aged 51, Kathmandu, Nepal)*

In many instances, persons with disabilities faced seclusion in their family and experienced distinction or restriction on the basis of disability denying their effective recognition, enjoyment or exercise of human rights and basic freedoms on an equal basis with others. Many of them clearly expressed their concern regarding the negative impact it had in their career.

It Nepal, article 28 of the Constitution of Nepal has made a provision that the privacy of any person, his or her residence, property, document, data, correspondence and matters relating to his or her character shall be inviolable. Also, in the Health Service Rules 2055 (1999), Section 97 it has provisioned for the formation of a committee to make recommendations on the allowance or gratuity to be granted to the family of any

employee who dies in an accident during government business or who becomes disabled for life. Similarly, according to section 98 (2), the Government of Nepal shall make and enforce a professional insurance action plan for any bodily injury likely to be sustained by the employees serving in the service during business.

Therefore, it is clear that the problem in this context is more concerned with the practical aspects of life such as the way people behave instead of the adequacy of laws. There are sufficient laws to safeguard this domain and the need to address implementation is significant. The letter of the law and the actual practice are not the same.

### **3.10. PRINCIPLE OF NON-DISCRIMINATION & CROSS-SECTIONAL DISCRIMINATION OF PERSONS WITH DISABILITIES**

The CRPD recognizes that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law<sup>32</sup>. The State shall prohibit all discrimination on the basis of disability and guarantee equal and effective legal protection against discrimination on all grounds.

It is constitutionally guaranteed that all citizens shall be equal before the law and no discrimination shall be made in the application of general laws on the grounds of a physical condition *inter alia* similar on other grounds. This guarantee allows for special provisions for the protection, empowerment or development of the citizens including persons with disabilities *inter alia* other categories<sup>33</sup>. No one can discriminate against a disabled person merely on the ground of his/her disability in appointing him/her to the government service or any other public service or deprive him or her of appointment to a particular post or promotion or improvement or equal treatment<sup>34</sup>.

Similarly, in the case of *Pro Public and Nepal Disabled Human Rights Centre v Office of Prime minister and Council of Ministers* (NKP 2065) it was held that in a legal context where the state under its directive principles and policies of the constitution provides for special measures to protect persons with physical and mentally disabilities, it is both arbitrary and contrary to the fundamental rights of citizen to accept the legal provision of Number 6 of Chapter on Treatment (Country Code 2020) which mentions that putting in jail or shed being nailed is permissible under certain circumstances, in case of persons with disability. Such provisions are contrary to the principles of human dignity so it is declared null and void.

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<sup>32</sup> Article 5, CRPD

<sup>33</sup> Constitution of Nepal 2072, (2015), Article 18

<sup>34</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 5

Under such circumstances, where the Constitution of Nepal has secured as a fundamental right, that no discrimination shall be made in the application of general laws on the grounds of physical condition it is clear that a situation which is otherwise should not prevail in the working conditions as well.

## I. GENDER AND DISABILITY

Women and girls with disabilities are subject to discrimination based on gender. Measures should be taken to protect the full and equal enjoyment of all human rights and fundamental freedoms. Under such circumstances, it is the duty of the state to take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms.

**Table 10: Number of Interviewees who Believed Gender Differences Increase Discrimination at the Workplace**

DISCRIMINATED AT WORKPLACE	TOTAL	PERCENTAGE
Yes	18	40
No	15	33
Did not answer	12	27

During interviews, an attempt was made to distinguish discrimination at work among women with disabilities. Out of a total of 45 interviewees, 40% (i.e. 18 interviewees), believed that gender is a compounding factor with regard to discrimination inflicted upon a person. Experiences of people who affirmed the proportional relation between gender and discrimination are noted below:

*“Self-esteem is decreasing by the behavior of the people at workplace towards the female. Moreover, if they are behaved in that way or given nicknames then their self-esteem totally decreases and they are never motivated to go out and work effectively.” (Male, Aged 25, Kathmandu, Nepal)*

*“The situation is that, 50 out of 100, wheelchair user males have married whereas it is difficult for female. Likewise in the time of menstruation period, health problems, there are more problems to females in comparison to males at their work place as well.” (Female, Aged 26, Kathmandu, Nepal)*

*“I have a sister who is also blind, my mother says that, she is the daughter, she can’t see, she hasn’t been married and there is no chance she can have a career or job. It will be better for her if she died.” (Male, Aged 50, Kathmandu, Nepal)*

*“Male leader they never attempt to understand women’s problem. If they think this woman are beneficial for their organization then only they come near to us. I am not saying only about non-disability male even persons with disabilities male take us negatively. I used to think or persons with disabilities female, persons with disabilities male are the right person to live life happily because both of them have same problem and can understand each other. But this concept is totally wrong. How I knew is that of their behavior, way of speaking and perception towards us.” (Female, Aged 27, Kathmandu, Nepal)*

*“People will think that those generally will not marry the general people think that disabled people will not marry. So, the boys at work place will think that they have a little desire for sex and they will not ignore me. Thinking that girls will except, will touch the girls, attract with the small matter, I have seen listened that type of issues. Such situations are big hindrance towards the development in professional life.” (Female, Aged 26, Kathmandu, Nepal)*

However, some interviewees denied that discrimination towards people with disabilities is compounded by gender, as in the following example:

*“There was another male friend working with me. The one who couldn’t see, as I had told before, he was male. We were male and female disabled there. The way people behaved there were equal. Though he was male, we both were treated the same.” (Female, Aged 28, Kathmandu, Nepal)*

The Constitution of Nepal has safeguarded a wide range of rights of women which aim to eliminate gender based discrimination and violence. Additionally, the Constitution guarantees the right of access to special opportunities in education, health, employment and social security, on the basis of positive discrimination. This is in accordance with the principles incorporated under the CRPD. The provisions made are general, and apply equally in the case of women or men with disabilities, even though this is not explicitly mentioned. Similarly, the National Policy and Plan of Action on Disability aims to create an equitable society and make necessary amendments in laws to ensure participation and representation of women in the domain of education, training and employment. Furthermore, the Supreme Court in the case of Narayan Jha V. Tribhuvan University, NKP 2069, has recognized the need for reservations to secure the rights of women. The court has also recognized the rights of persons with disabilities, including women with disabilities, should be safeguarded with utmost priority. Therefore, the laws and policies in this context are theoretically in accordance with the principle of the CRPD and needs

more implementation with supportive mechanisms.

## II. TREATMENT BETWEEN PERSONS WITH DISABILITIES AND PERSONS WITHOUT DISABILITY

In this study an attempt has been made to do a comparative assessment of treatment towards persons with disabilities and persons without disabilities, the outcomes are presented in detail below:

**Table 11: Number of Interviewees who Experienced Discrimination Based on their Physical Ability**

DISCRIMINATED	TOTAL	PERCENTAGE
Yes	33	73
No	11	25
Did not answer	1	2

It was found that 73% of the interviewees experienced discrimination because of their disability, whereas persons without disabilities were not treated wrongly. Many participants believed that persons with disabilities are not treated the same as non-disabled people in situations related to employment.

For instance, some interviewees stated:

*“Male and female are equal and also rich and poor are equal but only in saying. It isn’t applied in the behavior.” (Male, Aged 53, Kathmandu, Nepal)*

*“They would not behave wrongly with the normal people; the behavior like that was only to the persons with disabilities.” (Female, Aged 26, Kathmandu, Nepal)*

These examples show that persons with disabilities are discriminated against on many occasions, contrary to the principles discussed earlier and the provisions of national as well as international laws. Therefore, a proper monitoring and implementation mechanism needs to be developed to better safeguard the rights of persons with disabilities.

## III. ETHNICITY AND DISABILITY

During interviews and focus groups, many people denied the connection/relation



between ethnicity and disability at the work place. Specifically, individuals claimed that ethnicity had no role in elevating the discrimination among persons with disabilities. However, one of the interviewees shared that:

*“The main thing is that they have influence of the caste. They will speak from their language; they will call their caste people to be their staffs. The main thing is that, what I feel about this (caste based discrimination at work place) is that it depends on the attitude of the people. It is difficult to change the attitude. It is the matter, behavior, habits that he/she has carried since birth. It is difficult to change that. The place, rites and rituals have given them that.” (Female, Aged 35, Kathmandu, Nepal)*

### 3.11 PERSONAL MOBILITY

The right to personal mobility means that persons with disabilities should have access to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost. Also, training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities should be ensured to ascertain that the personal mobility of persons with disability is upheld.

However, our study indicates that people were denied some fundamentally associated facilities. For instance, the following participants said:

*“Bus doesn’t stop for blind people; they stop only for other passengers and say the route in small voice. They should not do that so state should appeal to the drivers and assistant to support the blind and other people with disability to get in the bus because if it continues happen it will hinder us in our work.” (Female, Aged 26, Kathmandu, Nepal)*

*“When I have to take bus, I write and give it to drivers/conductors and then they say Oh she does not hear and talk? They tease me. One day I thought it would be easy and took my disabled identity card but one man seized it saying, what is it? Is it useful? Why should we give discount to such people?” I felt sad and disappointed.” (Female, Aged 30, Kathmandu, Nepal)*

The Constitution ensures that every citizen shall have the freedom to move and reside in any part of Nepal, as a fundamental right<sup>35</sup>. It has not made any restriction in the case of persons with disabilities. This is in line with the principle of dignity, inclusion and accessibility. Similarly, the Motor Vehicles and Transportation Management Act 2049 and Protection and Welfare of Disabled Persons Act have made a progressive provision

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<sup>35</sup> Constitution of Nepal 2072 (2015), Article 17.2(e)



whereby securing the Respect for Difference and furthering Non-discrimination & equality.

Furthermore, in the case of *National Deaf Association V. Office of Prime Minister and Council of Ministers*, NKP 2070, the court illustrating the examples of several developed countries such as Japan, where even deaf are allowed to get driving license with the fulfillment of various conditions such as the situation of the road, the type of mirror used in the vehicle came to the conclusion that deafness solely cannot be a scientific basis to deny any individual from acquiring a driving license. The court hence decided that persons with hearing impairments could also get a driving license. Access to a driver's license support access to employment opportunities of people with disabilities.

Similarly, other legislation mentioned above is important in securing the participation of persons in daily activities. However, procedurally a clear implementation mechanism has to be developed to assure that all principle is properly safeguarded.

# CHAPTER 3

## 4. MAJOR FINDINGS

### 4.1. RESPONSES TO ABUSE AND DISCRIMINATION

The interviewees shared a number of experiences related to the discrimination they face at work, and their responses to it. Concise and tabulated forms of the responses are presented below:

DISTANCING	<p>In many conditions the participants chose to avoid or distance her/himself from situations and contexts in which she/he has experienced abuse and discrimination:</p> <p><i>"How could I work at the same place by knowing that they were exploiting my labor and not giving me equal salary? I was totally alone to fight against them. Hence, I couldn't continue such work then I left that one."</i> (Female, Aged 36, Kathmandu, Nepal)</p>
RESISTING	<p>Many instances were seen where the interviewee chose to face the problem and tried to change the situation and context in which she/he has experienced abuse and discrimination.</p> <p><i>"I had filled the form for training but my name was deducted from the list because I was the person who can hear and there wasn't any facility of communication and media. Later I complained and told if they could deduct my name because of my disability. They told me sorry after the completion of the training. I told them, you cannot stop me because of my deafness that is your mistake. Because you didn't include me in the training, if you could have included in that training I could have done something. It is your official mistake to make me deprived from the training."</i> (Male, Aged 32, Kathmandu, Nepal)</p> <p><i>"We were isolated at the work place, so we raised our things to the higher level saying that, we have these kinds of problems and you should think about it and understand it. We haven't come here just for sitting and gossiping. Our work must be divided. After, I talked with the boss he ordered that, they should be employed in accordance to their skills and ability. And now the wheel chair user friends are still on the job. Some friends are there in telephone exchange, some are in pass section, taking their work ahead. Everyone has their job according to their capacity."</i> (Male, Aged 34, Kathmandu, Nepal)</p>
REPORT/ LEGAL ACTION	<p>When the interviewee chooses to report or complain about the situation or context in which she or he has experienced discrimination, there were a number of different reactions.</p> <p><i>"We felt that we were exploited by our office so we filed a case in Administration Office and representative from Labor Office came to us and we got justice. It's already four years when got victory. The Manager has filed the case again in Supreme Court and it has been 3 years but the case is pending. I don't know why the case is pending for so long."</i> (Female, Aged 51, Kathmandu, Nepal)</p> <p><i>"Once we had filed a complaint of a firm that denied giving us salary and we couldn't continue the legal proceedings as they used to repeatedly call us and it's not possible for us to run for such issues. Still our letter is there at Labor Department and they haven't called us."</i> (Male, Aged 35, Kathmandu, Nepal)</p>

## 4.2. COMPLAINTS LODGED

Persons with disabilities have the right to recognition everywhere as persons before the law and states should recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. However, as discussed above a number of instances were found where persons with disabilities were discriminated on some grounds at work place. A reflection of it and the complaints filed, if any, is presented below:

**Table 12: Number of Interviewees who complained while being discriminated against at the Workplace**

LOGED COMPLAINT	TOTAL	PERCENTAGE
Yes	8	18
No	27	60
Did not answer	10	22

More than half (60%) of the interviewees (i.e. 27 out of 45) did not complain to anyone when they encountered discrimination at their work place. Many experiences were shared during interviews as well the focus groups, a few excerpts of which are noted below:

*“One week before my contract was getting over, the line manager was not there, so I inquired with the country director saying that-”Sir, my contract is getting over. What will happen now? Then, country director had asked the line manager about the situation. After this, the line manager scolded me in different ways which I could not tolerate. He said, I made a disabled to be able to work in this office and now you humiliated me and I did not know where to lodge complaint for it.” (Female, Aged 35, Kathmandu, Nepal)*

Many instances of segregation and isolation on the grounds of disability, including lack of accessibility preventing participation in the system of justice had happened were revealed, as in the following cases:

*“I was deprived from the training and when I directly met my boss and shared my grievances he simply said me sorry by holding his ears and expressed his sadness. Then I didn’t have any kind of alternative to go elsewhere.” (Male, Aged 32, Kathmandu, Nepal)*

*“When police/traffic police call us, we can’t hear them and they think that we are ignoring and not them. Once I was caught by police and I got physical punishment just because there was communication and awareness problem. The police beat me up with his stick. I was unknown about what to do, where to go for complain.” (Male, Aged 44, Kathmandu, Nepal)*

However, interviewees also shared their experiences where they acted without fear to change such situations;

*“After being selected under the quota, they asked me to go to a Higher Secondary School. When I went to that school they constantly told me that there was no such quota. At last, the District Education Office called and recommended, and finally, after much trouble for a month, I had fixed employment at the school.” (Male, Aged 32, Kathmandu, Nepal)*

*“The manager pointed out that I could not do the job even when I did a better job among the people who had been doing the internship. Later I talked to the board of director and I said that, “He does a negative behavior towards me. He always says that I can’t do anything even though I have been responsibly doing the work that is allocated to me.” When I said such things to the CEO, he put me with the manager front to front and made a conversation. He said,*

*“Its fine that he cannot do physically, it is easier for you to walk on the stairs but he has been doing the work that has been given to him. So, even if he is a person with physical impairment, you should not say that he can’t to the job that can be done by sitting. You can’t dominate him.” He talked such things; he even gave a warning to the manager.” (Participant from FGD)*

Many laws and policies have been made in Nepal to provide security for people with disabilities and empower their employment rights. For instance, the Local-Self Governance Act 2055 (1999), Section 189.1(f) has made a provision for the functions,

duties and powers of the District Development Committee in relation to carrying out acts on the protection of disabled and incapacitated persons among others, as per the national policy. Nevertheless, a proper implementation mechanism and a monitoring mechanism is the need of the present time.

#### 4.3. REASONS FOR NOT REPORTING DISCRIMINATION

Participants highlighted several reasons for not reporting issues of discrimination. Reasons included a lack of access and self-blame inter alia other factors like no belief in the system, fear of losing the job while some were also convinced that reporting and taking legal action would not have had any significant consequences in terms of changing situations and contexts of discrimination, including because they do not trust authorities.

Some of the experiences shared by the interviewees are as follows:

*“I was looted at night while returning from work and when I went to seek help from organizations working for disable persons, I couldn’t discern why they did not help me. They were our organizations for disability. All the organizations were well informed what had happened because we are small especially in the blind sector. When one friend is in the trouble others will come to know about it. But my friends were only sad for me.”*  
(Male, Aged 41, Kathmandu, Nepal)

*“I never complained about discrimination done with me during the training session because I hadn’t known about the organization and the next was due to the strict rules and regulation I was not able to go out understand about the organization.”* (Male, Aged 25, Kathmandu, Nepal)

*“I used to feel that I am a born with disability due to my sin in the past. I worshiped god for those sin. I didn’t feel any sorrow because I used to think I am already theft by god itself. So I blamed myself for everything and did not complain anywhere.”* (Female, Aged 51, Kathmandu, Nepal)

## 4.4. SYSTEMIC ROOTS OF DISCRIMINATION

Many issues were raised during interviews and focus groups whereby significant reasons/ roots of discrimination were identified and are presented below:

ECONOMIC ROOTS	<p>There were findings that the acts of exclusion and discrimination against persons with disabilities were related to the ways in which economic (production) activities are organized and delivered;</p> <p><i>"In today's context, people who have power and relatives can get job in any type of offices. Those who have skills, experiences are often neglected. Some able people are also deprived of facilities because they don't have access to the upper level."</i>(Male, Aged 47, Kathmandu, Nepal)</p> <p><i>"No matter how much educated we are education is always overshadowed by the economic condition of an individual. Many of us are masters' degree holders but since there's no economic prosperity we will not be valued."</i> (Participant from FGD)</p>
SOCIAL ROOTS	<p>Similarly, in many cases the acts of exclusion and discrimination against people with disabilities were related to the ways in which social relationships operate and are organized</p> <p><i>"Mostly illiterate old grandpa and grandma don't know how to behave and ways to use the words with persons with disabilities. They have no concept of persons with disabilities so they use traditional words which really make us feel bad."</i>(Female, Aged 27, Kathmandu, Nepal)</p> <p><i>"The owner often threatens us like saying he will keep next man in place of me. He will replace me. Sometimes, I feel that I face such problems due to my literacy level and lack of qualifications."</i>(Participant from FGD)</p>
LEGISLATIVE ROOTS	<p>Many participants expressed that the acts of exclusion and discrimination against people with disabilities are related to the lack of adequate laws or policies to protect their rights and/or to the way existing laws and policies operate.</p> <p><i>"In workplace, the road was quite good, there was ramp. But for the purpose of extending the road, the ramp has been ruined. So, there are some problems. There were employees with disability too. Ramp has also ruined, those employees too resigned the job and the government does nothing. Even though there is sufficient budget to build proper roads, the budget is not utilized and it freezes each year. The government does not care about such happening and keep on being corrupt without developing proper mechanisms to address our needs."</i> (Male, Aged 32, Kathmandu, Nepal)</p>

## 4.5. OTHER IMPORTANT FINDINGS AND APPRAISAL

After a deliberative discussion with many interviewees and participants of focus groups some critical issues were raised:

- The roads of Nepal are not disability friendly. This is a challenge for people with disabilities to reach the work place and return safely. There are many places where changes

in the physical infrastructure are necessary because they are not disability-friendly and are in very poor condition due to never ending construction processes. This problem is exacerbated by the misbehavior and lack of courtesy and respect shown by bus drivers and conductors, as one of the interviewees explained:

*“I travel in vehicle daily and I am lied that the vehicle is not going in a particular direction even if it is actually going in the same place. And in such situation, I have to wait for vehicle for long time which has a direct impact on my work performance.” (Male, Aged 25, Kathmandu, Nepal)*

Similarly, interviewees frequently complained about the inability of the government and other authorities to observe the accessibility of public vehicles. In addition, some interviewees, as in the following example, also brought forward the issues of traffic police negligence:

*“Sometimes I feel even traffic police ignore us thinking we are blind or disabled. They should not do like that because traffic is the main person who can support us. But when traffic are not supportive and do careless to the blind people, than it feels really sad.” (Female, Aged 26, Kathmandu, Nepal)*

Motor Vehicles and Transportation Management Act 2049, (1993) under section 107 provisions for the reservation of seats in public transportation: it shall be the duty of the owner or manager of a passenger heavy motor vehicle operating the transport service on a local route to reserve four seats for disabled passengers in that vehicle and reserve two seats for disabled passengers in case of a long route. However, such obligations were not fulfilled in many cases; thereby making it difficult for people with disabilities to get to their job. Everyone should be made aware that there should not be any obstacles in the capacity building of a person with disabilities. Persons with disabilities have obvious hopes and it is traffic police’s duty to help them. The state must ensure it as well so that it can help persons with disabilities exercise other related rights like the right to employment, which is very much dependent on their ability to freely move to and from the work place.

- Many people with disabilities are judged on the basis of their physical or intellectual

characteristics rather than their work skills. It creates a situation where they are denied the job or are given lesser salary compared to the other people even for the same nature of work, as one interviewee stated:

*“Even NGOs and INGOs who are getting funds to carry out activities in our favor do not carry out effective programmes; their funds are not properly utilized. So it should be utilized for the actual purpose it had been given for”. (Male, Aged 50, Kathmandu, Nepal*

*“Those persons with disabilities who are begging for money, while showing their talent like singing, playing instrument, painting, etc also have their self- esteem. But no government authority or organization does advocacy for their rights. Neither Children, Women & Social Welfare Commission nor Public audit committee have kept any record to monitor their whereabouts.” (Male, Aged 28, Kathmandu, Nepal)*

Frustrations towards such NGOs and INGOs could be seen in few participants when they said:

*“NGOs and INGOs that are working for disabled people should recruit more than 95% disabled staffs so that disabled people can be uplifted. These organizations should be solely owned and run by disabled themselves so that disability problems can be focused”. (Female, Aged 42, Kathmandu, Nepal)*

People with disabilities should speak out about the problems they face. They should fight for their rights. No one else is going to speak out about the problems faced by people with disabilities. So, people with disabilities themselves need to advocate for their rights in accordance with the existing laws and demands new legislation if required. To address such problems, many interviewees suggested:

*“They have the different way of seeing the persons with disabilities and think that they can’t do anything at all. So persons with disabilities must themselves be able to change the thinking of people and for that purpose, no matter wherever we are, we should work properly and efficiently thereby removing any kind of negative thinking of people towards*



*the disabled.” (Male, Aged 35, Kathmandu, Nepal)*

*“We should move forward as a team instead of pulling each other’s leg and playing politics. There’s no denial that the society has also become very positive as compared to that of years before which shows the positive side of the given problem but still there are some problems faced by persons with disabilities and if we are able to take our concerns forward in a strict manner, then there wouldn’t be such problems. It’s high time that we move forward as a team and take our voice forward. It will certainly help to make things better for people with disability.” (Male, Aged 28, Kathmandu, Nepal)*

- Often, persons with disabilities face discrimination from others with disabilities. Many believed that violence is prevalent in any office - including organizations of women or organizations of people with disabilities. According to an interviewee (Female, Aged 27, Kathmandu, Nepal) *“There is a certain type of ego problem among disabled people. One disabled can’t see the betterment of the other.”*

In the view of one of the interviewees, “People often say that I am disabled, weak, and lethargic and have only one hand and can’t do any work; some so called educated women also behaved badly with me.” (Female, Aged 51, Kathmandu, Nepal).

Similarly, another interviewee puts forward the view that:

*“Even though the in-charge of the department is woman, she misbehaves with us. She being a woman must have understood the problems of a women but still when they are in authority and they forget about everything and feel that they can do whatever they want.” (Female, Aged 35, Kathmandu, Nepal)*

In the words of one of the interviewees,

*“Even though you are physically disabled and I am visually but at the end we can better understand the pain of each other when compared to people without disability.” Hence, persons with disabilities should not misuse their power against another disabled person and help them work in a better environment.” (Male, Aged 37, Kathmandu, Nepal)*

- The motivation of some interviewees shows that the existence of disability does not inherently undermine their capacity to do well in life. Specifically, 58% of the total interviewees had been rejected from earlier jobs/trainings but they did not lose hope and continued to seek employment. According to one of the interviewees,

*“After being rejected from the earlier job, I raised my confidence and thought that if not here, I will surely get job in some other places and I looked for the job in other places and finally I am here doing this job.”(Male, Aged 35, Kathmandu, Nepal).*

Similarly, another interviewee shared an equally inspiring experience,

*“I might have lost my legs but mentally I have not lost anything. I have studied so much that I can all works that a non-disabled person does by sitting”.(Female, Aged 27, Kathmandu, Nepal)*

## 5. ANALYSIS AND CONCLUSION

### 5.1. GENERAL OBLIGATION

It is important to know that, Section 9 (1) of Treaty Act 2047 (1990), provides “In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws”.

Similarly, Section 9 (2) of the same Act provides an obligation to the Nepal government to initiate action as soon as possible to enact laws for the enforcement of ratified or acceded treaties when such treaty or treaties impose any additional obligation or burden upon Nepal, or the Government of Nepal, when any legal arrangements are needed to be made.

Therefore, it obliges Nepal, which has ratified the CRPD, to develop laws in accordance

with it to protect and promote the rights of people with disability. However, the provisions of the Act are silent on the consequence when Nepal ratifies a convention or accedes to it but the required legislation is not enacted or there is absence of legislation to give effect to the ratified treaty. It is necessary to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability and for that purpose appropriate legislative, administrative and other measure for the implementation of the rights of persons with disability should be ensured.

## **5.2. INTERNATIONAL COOPERATION**

As per article 32 of the CRPD, State Parties should recognize the importance of international cooperation and its promotion and undertake appropriate and effective measures in this regard, between and among States and, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. So it is the duty of the States to guarantee that international cooperation is ensured through exchange and sharing of information, experiences, training programmes and best practices.

The Protection and Welfare of the Disabled Persons Act<sup>36</sup> ensures that international cooperation can be sought in case of any function relating to disabled persons. Similarly, the Special Education Policy, 2053 (1996)<sup>37</sup> and the National Policy and Plan of Action on Disability, 2063 (2006)<sup>38</sup> have paved the way for facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programmes and best practices. Since these are soft laws they do not have a very strong abidingness so it is necessary to make adjustments in laws to fulfill the standards set under the convention.

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<sup>36</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 21(3)

<sup>37</sup> Special Education Policy, 2053 (1996), Number 27

<sup>38</sup> National Policy and Plan of Action on Disability, 2063 (2006), Brief Summary (15)

### 5.3. STATISTICS AND DATA COLLECTION

As per article 31 of the CRPD, State Parties should undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies. Therefore, it is the duty of the member states to comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities.

The Protection and Welfare of the Disabled Persons Act has stipulated that every five years data on disability shall be collected and published in coordination with the agencies relating to disabled persons<sup>39</sup>. The purpose behind it is to provide more facilities to the persons with disability and make them self-reliant which is in accordance with the principle of the CRPD, that is, to identify and address the barriers faced by persons with disabilities in exercising their rights. Similarly, the National Policy and Plan of Action on Disability, 2063 (2006)<sup>40</sup> and Special Education Policy, 2053 (1996)<sup>41</sup> reflect the concept of integrated information system which will be helpful in the dissemination of these statistics and in ensuring their accessibility to persons with disabilities and others.

## 6. RECOMMENDATIONS

- In Nepal, people with disabilities are behind in obtaining administrative work, government work, in the private sector or in the educational field, even if they have skills and abilities to go forward. Many interviewees responded that they thought that the Government should focus on making disability-friendly infrastructures so that it can address the need of peoples with disability. Similarly, many participants of the interviews as well as FGD presented their view that persons with disabilities should improve their skills, attitudes and self-reliance.

*“To avoid such situation programmes should be organized inviting disabled people. Seminar should be conducted and employee as well as employer should also be invited. This might help to change the negative thinking of employers’ that we can*

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<sup>39</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 18

<sup>40</sup> National Policy and Plan of Action on Disability, 2063 (2006), Number 3.3

<sup>41</sup> Special Education Policy, 2053 (1996), Number 2

*also work and we are also capable.” (Female, Aged 30, Kathmandu, Nepal)*

- Many problems regarding education were highlighted during the study. For instance, many participants agreed that they had severe problems in getting quality education and this affected their career prospects. That is why education should be disability-friendly and inclusive. There should be facilities for Braille, sign languages, etc that will facilitate learning. This is the responsibility of the government from the central policy making level. Similar problems were experienced in the employment sector, as in the words of one of the interviewees:

*“The most important thing for the employment of people with disability especially people with deafness are that if there are organizations who can understand the sign languages, have translators and have managed for the medium through which they can communicate then it would create a supportive environment for the persons with disabilities to work as efficiently as the normal person.” (Male, Aged 31, Kathmandu, Nepal)*

- It is important to provide information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost. This means accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions is the fundamental idea incorporated under article 21 of CRPD and article 27 of our constitution which ensures that every citizen shall have the right to demand and receive information on any matter of his or her interest or of public interest.
- Another major issue discussed was the condition of reservation or quota system in Nepal. The application of the quota system needs more detailed scrutiny because even within disability there are several types and severity of disabilities and the quota should be equally provided without discrimination. In such circumstances, many crucial suggestions were made by participants to improve the condition of persons with disabilities. For instance, one participant suggested that in recent years, disability has been categorized as ‘A’, ‘B’, ‘C’, ‘D’ based upon the kind of disability. Similar categorization should also be made in the kinds of work so that it becomes

easy to identify the skills that people with disabilities have and to match those skills with the employers' job needs.

- Further, participants who took part in trainings were observed to have better chances of getting a job than the ones who had not. As such, it is comparatively beneficial for persons with disabilities to take part in trainings and the government should organize trainings such as gender related training, human rights defender, computer training, knitting, office management and weaving. The government should also work with employers to make sure they do not discriminate and to help them to recognize the skills that people have. While training provides for people with disabilities, there is little evidence that training results in jobs unless the employers are willing and ready to hire persons with disabilities. It has to be considered that there are legal provisions ensuring protection and welfare of persons with disability<sup>42</sup>. In the case of *Prakash Mani Sharma V. Office of Prime Minister and Council of Ministers* it has already been established that, as provided for in the constitution and other laws, in order to safeguard the interest of persons with disability a committee constituting the representatives of social organization, expert and government representative should be formed and based on certain parameters, programmes and policies should be made to ensure such rights as well as secure the facilities provided, as guaranteed under the Constitution. The SC held that the committee shall report to the SC about the activities done in this regard every six months. Therefore, it is quintessential that a proper and efficient execution of such provisions/decisions is carried out.
- Finally, we must eliminate superstitious beliefs and orthodoxy about disability. There is a need for more awareness programmes to promote employment of people with disabilities. Article 8 of the CRPD stipulates that State Parties shall undertake to adopt immediate, effective and appropriate measures to raise awareness throughout society, including at the family level, regarding persons with disabilities, and to foster respect for the rights and dignity of persons with disabilities to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life.

Necessary measures to effectively combat such problems must be taken and well

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<sup>42</sup> Protection and Welfare of the Disabled Persons Act, 2039 (1982), Section 4

executed. In the context of Nepal, it has been provided that the people's awareness raising program will be carried out in issues related to disability in order to raise public awareness, through media like radio, television, print and Internet. Also, sign language and Braille will be developed for the communication of people with blindness and people with hearing loss, and legal recognition will be provided<sup>43</sup>. Additionally, Special Education Policy, 2053 (1996) has been enacted with an aim to conduct programmes of public awareness through common media so as to bring change to the erroneous concept of disability, prevalent among general population<sup>44</sup>. Number 32, of this policy, have also mentioned to conduct a consultative programme so as to give psychological motivation and sensitization to guardians and teachers of children with disability to make an environment of providing educational opportunities to them and to socialize them in community. Therefore, these should be well executed and efficiently utilized to create awareness and safeguard the rights of persons with disabilities.

Persons with disabilities should be provided with the opportunity to work. Awareness should be raised among people, and especially among employers of all kinds. Recognizing the skills of persons with disabilities is a first step. The benefits of incorporating people with disabilities in the labour force needs to be clear to employers. For that purpose, we need to make people aware of the legal rights of persons with disabilities and make employers behave in a respectful manner towards persons with disability. In the course of doing so, we can use newspapers, FM and other social media to create awareness. To make it even more effective there must be simplification of the accessibility of the workplace, equality in behavior and regular inspection from governing bodies to ensure improvements. The measure of how effective any movement forward is the number of persons with disabilities who are working in non-precarious jobs in working conditions that mirror those of persons without disabilities. Monitoring must be on going to ensure that government policy and programs and international programs are having an impact to enable people with disabilities to be engaged in the labour force of Nepal. This is a crucial time to make sure that the exclusion of people with disabilities in the labour force be addressed and corrected.

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<sup>43</sup> National Policy and Plan of Action on Disability, 2063 (2006), Brief Summary Number 8

<sup>44</sup> Special Education Policy, 2053 (1996), Number 31

## CHAPTER 4

After the report was finalized, the following legislations were passed by the parliament of Nepal. So, due to time constraints; an attempt has been made to discuss thematically upon the major provisions separately under this Chapter.

### 7. Highlights of Rights of Persons with Disabilities Act 2074

#### 7.1 Definition of Person with Disability

- The draft bill for the Rights of Persons with Disabilities has been passed and published in the Nepal Gazette i.e. the earlier Disabled Persons Welfare Act (1982) is now replaced. Rights of Persons with Disabilities Act 2074 (“The Act”), is progressive in terms of replacing the earlier derogatory terms used in the definition of disability. New definition (Section 2): Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, functional impairment or which in interaction with various barriers may hinder their full and effective participation in social life on an equal basis with others. It is in line with the definition incorporated under CRPD.

#### 7.2 Issuance of Disability Identity Cards

- Under Sec 4 (1), the act provides the procedure for the application of ‘the disability identity card’. It states that the person with disability (‘the person’) to get the disability identity card can apply to the Office of Women and Children himself or his/her family member or guardian can apply on his/her behalf along with the recommendation of the local level.
- In case ‘the person’ or his family member or guardian is unable to apply for the



‘identity card’, the ward president of the local level would apply on behalf of ‘the person’. The office after receiving of application shall access and scrutinized the application. In this process in case of ‘the person’ whose disability is clearly visible; the identity card shall be provided mentioning the category of the disability.

- In case where the disability is not clearly visible or the category of the disability cannot be determined or there is doubt in person being disabled, the office shall present such application before the coordination committee formed under sec 42 of the act in each VDC and municipality. ‘The identity card’ shall be provided based on the recommendation made by the Committee. The committee if feels the necessity for the physical examination of ‘the person’ can do so in nearest government hospital and the expense of such examination shall be incurred by ‘the office’.
- Section 5 provides the actions that shall be taken when the identity card are misused or abused.

### **7.3 Related to Reasonable Accommodation**

- Sec 8(1) ensures that the denial of reasonable accommodation is acknowledged as a form of discrimination.
- In cases of any forms of discrimination at work place owing to the disability of a person, complain may be filed to the Manager of that institution as per section 27 of the Act. Additionally in order to ensure an effective implementation of the Act i.e. to prevent discriminations of any kind against the Person with Disability, section 51 of the Act has stated that the Person with Disability himself/herself or their family members can file an application to the Chief District Officer (CDO) for an effective implementation of their rights and to ensure its compliance. However, if any party is not satisfied with the decision rendered by the CDO s/he can file an appeal to the High Court within 35 days so such decision.

## 7.4 Related to Full and Equal Participation

- Section 12 of the Act has explicitly provisioned that the Person with Disability shall have the right to participate, either directly or through their federation or organizations, in policy development processes affecting them in any way and their views & opinions expressed shall be reasonably given due importance.

## 7.5 Equality and Non-Discrimination

- The preamble of the Act has explicitly aimed at prohibiting any form discrimination against Person with Disability to empower them by securing their civil, political, economic and cultural rights. In relation to it several provisions have been set out. For instance, section 7 provisions that in addition to the rights secured under the Act, persons with disability shall have the right to enjoy all other rights provided to other persons, in an equal footing.
- Section 8(1) Secures human rights in political, economic, social and cultural sectors and fundamental freedom of the persons with disabilities, it also incorporates the denial of reasonable accommodation as a form of discrimination. Section 8(2) prevents discrimination of any kind in using any form of publicly provided facilities such as admission in educational institution, borrowing loan or any undertaking any form of financial transaction in bank and financial institution, employment selection processes. Section 8(3) prevents discrimination of any kind from family members in issues of partition; care to be provided and so on. Section 8(4) no form of discrimination in entering public places/ buildings.
- Section 21(5) provisions that educational institutions should not discriminate Person with Disability in extra-curricular activities, access and distribution of education materials. Similarly, section 24(3) holds that no institution shall discriminate Person with Disability in matters of employment of any related matters.
- In relation to the monitoring body, section 38 of the Act has envisioned of a Disability National Direction Committee which will be responsible for monitoring rights & facilities of the Person with Disability as well as for

carrying out protection and promotional activities (section 39) to effectively ensure the rights of Person with Disability.

- Similarly, section 42 has envisioned for the Coordination Committee (समन्वय समिति) in each VDCs and Municipality to protect the rights of Person with Disability. The role of such committee shall be (section 43) to coordinate in between local levels for developing disabled friendly programmes and frameworks.
- Additionally, section 45(4) duty of all three tiers of government to secure a dignified life of Person with Disability.

## 7.6 Women with Disabilities

- Sec 19(1) of the Act deals with the specific rights of the women with disabilities and provisions that Government of Nepal shall provide an environment for the maximum utilization of the knowledge, skill and ability of women with disability so as to protect their rights. Similarly, sec 19(2) recognizes the duty of Nepal government, to secure the protection of health and reproductive right of women with disabilities.

However, there are no specific provisions under the Act to address the issues of intersectional discrimination in particular reference to girls and women.

## 7.7 Children with Disabilities

- There are no specific provisions under the Act that states for the support services to be provided to the families of girls and boys disabilities.
- However, Section 20 of the Act has ensured that the dignity, reputation, self reliance, active social participation of the children with disability shall be encouraged. Similarly, other rights of children section 20(2) such as education, training, health, rehabilitation, recreation among others shall be guaranteed.

Also, for ensuring the best interest of a child s/he cannot be separated from the family unless otherwise ordered by the court. (Section 20(4))

Similarly, Section 32(kha) states that helpless children and children with disabilities who have been left out by their family shall be provided with accommodation.

- With regard to the opinions and views of children with disabilities, section 20(3) of the Act has provisioned that such children shall have the right to express their views in matters concerning them and their views shall be respected in accordance to their age and maturity level.

## 7.8 Awareness-Raising

- Systemic inclusion of senior public officials, politicians, policies, members of legal profession, teachers, etc. in the training and awareness raising is very limited in the Act. Nevertheless, such a notion can be implied from section Section 10.3(5) which envisions raising public awareness and consultation to prevent all forms of exploitation, violence and abuse against persons with disabilities.

Similarly, such awareness raising responsibility may come under broad gamut of roles of National Direction Committee set in Section 39 and Coordination Committee set in Section 43.

## 7.9 Accessibility

- Section 15 provisions that the Person with Disability shall an access to the educational institutions, housing, work place, buildings, road, transportation, etc that are open to other people.

Likewise, the issue of accessibility can be traced in several provisions like 28(3) which ensure accessibility of Person with Disability to the hospital. Also, Section 39(10) which states that necessary policies shall be made to ensure that physical infrastructures that are accessible to the Person with Disability are made.

## **7.10 Situations of Risk and Humanitarian Emergencies**

- As per Section 10(2) of the new Act Person with Disability shall have the right to guaranteed security and protection during the period of armed conflict, period of emergency and crisis.

## **7.11 Equal Recognition before the Law**

- Section 12(1) of the Act provisions that the Person with Disability shall have the right to participate, either directly or through their federation or organizations, in policy development processes affecting them in any way and their views & opinions expressed shall be reasonably given due importance (section 12(2)).
- Similarly, section 20(3) of the Act states that children with disabilities shall have the right to express their views in matters concerning them and their views shall be respected in accordance to their age and maturity level.

## **7.12 Access to Justice**

- New Act under section 15(2) has guaranteed access to justice by securing free legal aid to Person with Disability.

## **7.13 Liberty and Security of the Person**

- So as to secure the liberty of the Person with Disability the Act under section 36(1) has mentioned that any person suffering from mental or any form of psycho-social disability shall not be kept in prison in the name of treatment.

## **7.14 Freedom from Exploitation, Violence and Abuse**

- Section 10(1) of the new Act has provisioned that gender violence and any other forms of exploitation, violence and abuse against persons with disabilities shall be prohibited. Procedures have been set to prevent it (section 10(3)):
- Take information and keep record of such abuse and exploitation.
- Take necessary actions as per the existing laws to provide security, protect and rehabilitate such victims and act so to prevent any possible incidents of such kind.

## **7.15 Protecting the Integrity of the Person**

- The preamble of the new Act has set the objective of securing the integrity of the Person with Disability and essence of it can be found in many provisions of the new Act which primarily aims to create a respectful living for the Person with Disability.

## **7.16 Living independently and being included in the Community:**

- Section 9 of the Act secures the right of the Person with Disability to live in a community and also safeguards their autonomy to live in the place of their choice without being subject to any form of coercion.
- Similarly, under explanation clause of section 8 of the Act, which aims to prevent any form of discrimination against Person with Disability, it sets that the fundamental freedom of such persons shall be secured and secluding such persons from the community is prohibited.
- Also, section 18 of Act is relatable which mentions that the Person with Disability shall have the right of movement with their accomplice or with their aid material in an equal footing with the other persons.

## 7.17 Freedom of Expression and Opinion and Access to Information

- Section 17 has stated that the Person with Disability shall have the right to information through public communication via disabled friendly and accessible means (which means persons with any form of disabilities). And it shall be the duty of such public communication to present news and other necessary programmes through sign languages (aimed at deaf persons) (section 17(2)).
- Furthermore, no additional charges shall be incurred while providing public information to Person with Disability in accessible mediums and technologies (section 17(3)). Also, Telephone and Internet Communications shall be responsible to provide Person with Disability with facilities provided to general public, in the formats and modes accessible and easy to use by the Person with Disability.

## 7.18 Education

- Section 20.5 secures that the children with disabilities receive a proper education through a well addressed syllabus and resource materials.

Section 21 states that the government of Nepal shall make necessary arrangements to provide free education to Person with Disability up to higher level

Section 21(6) provisions that in order to secure the Person with Disability' right to education; arrangements shall be made for other alternative means including Braille script, sign language, information & technological mediums.

Additionally, the government can manage residence for the Person with Disability from geographically remote places or Person with Disability with serious nature of disabilities so as to provide them with proper education (Section 21(8)).

Also the Person with Disability' accessibility to the school building and other physical infrastructures shall be guaranteed (Section 20(12)).

## 7.19 Health

- Section 28 of the Act has made wide range of provisions to secure the health of Person with Disability. For instance, Person with Disability with lower annual income then prescribed shall be provided with free health services, speech therapy, among others. Also necessary measures shall be taken to ensure that the hospitals are accessible to Person with Disability and also in hospitals with more than 25 beds, 2 beds shall be secured for Person with Disability.
- The new Act has provisioned for additional services for people with mental or psycho-social disabilities according to which all necessary measures shall be taken to treat such persons in public hospitals or health centres, free of cost.

## 7.20 Habitation and Rehabilitation

- Government of Nepal shall rehabilitate the persons with intellectual disability, mental disability, psycho-social disability and other fully or partially incapable people. Rehabilitation of such kind includes medical services, vocational & professional trainings, aid materials, educational & financial facilities among others. (section 29(1))
- Similarly, Rehabilitation Centre can be established by the government as per the requirement so as to empower and rehabilitate the Person with Disability. (section 29(2))

## 7.21 Work and Employment

- As per section 24 of the new Act necessary trainings shall be provided for skills and professional development so as to create opportunities of self-employment for Person with Disability. Similarly, measures shall be taken to provide loan at lower interest so that the Person with Disability are encouraged to carry on their occupation and develop professionally. Moreover, discrimination against Person with Disability at work place is strictly prohibited.



- Also the Person with Disability should be appointed at a given institution based on their capacity, training, qualification and experience. (section 25)

## **7.22 Adequate Standard of Living and Social Protection**

- As per Section 16 of the Act the Person with Disability shall have the right to financial aid and social security from Nepal Government. Additionally Person with Disability should be made capable enough in order to secure their independence and liberty; it includes range of activities such as life, health & accident insurance, old-age allowance, unemployment allowance, etc (Section 32).

## **7.23 Participation in Political and Public Life**

- Section 11 provides the Person with Disability with the right to participate in political life like other people. The person with disability shall have right to participate fearlessly in election as a candidate and shall have right to vote with or without the help. Nepal Government shall also ensure voting procedure and facilities accessible to the person with disability.
- Section 9 (1) states the person with disability shall have right to live with their family or guardian or in any place they choose to live and shall not be compelled to live in certain place. Section 9(2) the person with disability have right to get the aid materials and social aid service to live a dignified life.

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## **7.25 Participation in Cultural Life, Recreation, Leisure and Sport**

- Sec. 14 The person with disability shall have right to participate in television program, films, drama, cinema hall, library, tourism service, art, music, cultural program or services and entertainment that are in accessible form , like other people.

They have right to develop and utilize creativity, artistic, intelligent, commercial, service oriented and intrinsic talents. Linguistic and cultural identity shall be guaranteed to the sign language, and culture of deaf.

- Section 33 secures the recreational rights of Person with Disability and for that purpose government shall provide necessary scholarships, facilities and necessary help.
- Section 34 secures participation of Person with Disability in sports activities and for that purpose accessible infrastructures shall be built.

## 8. Highlights from the Labour Act 2074 (2017)

The Labor Act, 2017 (2074) (“New Labor Act”) was passed by the Parliament on August 11, 2017 (Shrawan 27, 2074) and accorded the assent by the President on Sept. 04, 2017 (2074-05-19).

- Disability Compensation: If disability is caused by accident while on duty to any employee or worker, he/she is entitled to disability compensation from insurance amount on the basis of degree of disability.
- Termination due to Health Reason: In case any employee is physically or mentally disabled or injured rendering him/her unable to work or requiring a long period for medical treatment effecting in the work of the entity, the employer, on recommendation of a medical practitioner may terminate his/her employment. However, if the worker suffers injury due to accident in the workplace or due to workplace hazard and is undergoing the treatment, the employment cannot be terminated until a year from the date of starting of such treatment. The employment of a worker undergoing the treatment cannot be terminated until 6 months unless it is certified by a medical practitioner that he/she won't be able to return to work.

# ANNEX I

## DETAILS OF THE INTERVIEWEES

Following presented are the details of the interviewees in the tabulated form;

**Sample distribution according to age group:**

AGE GROUP	TOTAL
18-25	1
26-40	35
41-55	9

**Sample distribution according to sex:**

SEX	TOTAL
Male	23
female	22

**Sample distribution according to kind of disability:**

KIND OF DISABILITY	TOTAL
Physical Disability	18
Vision Impairment	18
Hearing Impairment	6
Psycho Social Disability	2
Intellectual Disability	1

Sample distribution according to employment status:

EMPLOYMENT	TOTAL	PERCENTAGE
Employed	37	82
Unemployed	8	18