

The Protection and Welfare of the Disabled Persons Act 2039 (1982)

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Act No. 13 of the Year 2039 (1982)

An Act made to provide for the protection and Welfare provisions of the disabled persons.

Preamble: Whereas, it is expedient to protect and promote the interest of the disabled persons: to prevent and abolish the circumstances leading one to be disabled ;and to make the disabled persons capable members as well as actively productive citizens of the society, by making necessary welfare provisions for the health, education, care,training of the disabled persons and their right to equality and employment as well.

Now, therefore, his Majesty the King Birendra Bir Bikram Shah Dev has, on the advice and with the consent of the national Panchayat, enacted this Act.

1.Short title and commencement:

1. This Act may be cited as “The Disabled Persons Protection and welfare Act 2039 (1982)”.
2. This Act shall commence at once.

2.Definitions:

Unless the subject or context otherwise requires, in this Act.

- a. “Disabled person” means a Nepalese citizen who is physically or mentally unable or handicapped to do normal daily lifework. The expression also include a blind ,one eyed, deaf, dumb ,dull, crippled, limb, lame handicapped with one leg broken, handicapped with one hand broken or a feeble minded person.
- b. “Helpless disabled persons ”means a disabled person who does not have any assets or any person to attend and serve him and who cannot earn his living by doing a job himself.
- c. “Disabled Person Home” means a house arranged also for the subsistence of the helpless disabled persons.
- d. “Social Welfare Officer” means an officer appointed or designated by His Majesty’s Government under Section 18.
- e. “Prescribed” or “as prescribed” means prescribed or as prescribed in the rules framed under this Act.

3.Determination of disability:

1. The definition of the disabled person set forth in clause (a) of section 2 and the determination of disability shall be on the basis of the generally accepted principles of the medicine and the criteria set in the context of the Kingdom of Nepal.
2. With regard to the matter whether any person is a disabled one or not under subsection 1, the decision of the doctor or committee designated or consulted by His Majesty's Government for this purpose shall be authentic.

Provided that nothing in this section shall be deemed to bar His Majesty's Government from making alternations to the decision made by such doctor or committee designated or consulted, through an order published in the Nepal Gazette, by taking into consideration of international practice and the context of the Kingdom of Nepal.

4. Protection of the interest of the disabled persons:

His Majesty's Government may make appropriate provisions as required to make available necessary medicines and health services to the disabled persons for the treatment of their disability, to make them have such accessories, equipment and tools as are required to minimize, to the maximum extent possible, the adversaries likely to occur due to their disability, and to have acquisition of capacity to work, to provide them with welfare assistance and services to rehabilitate them educationally, professionally, economically, physically, mentally, socially and to make them fully participate in the community on the basis of equality.

5. Right to Equality:

1. No disabled person shall solely on the basis of their disability, be denied entry into on the basis of their disability be denied entry into any association or club or community or function providing education or training or launching social or cultural programme within the Kingdom of Nepal.
2. No disabled persons shall be deprived of such political rights and the right to economic and social security, to spend life with dignity, employment to have humanitarian dignity to engage in any useful, productive and meaningful occupation as other are entitled thereto.
3. No discrimination shall be made against any disabled person in the appointment of Government service or any other public service, and there shall not be deprived the disabled persons of being appointed for any post or promoted or upgraded or having equal treatment, merely on the ground of their disability.

Provided that this section shall not be inappropriate the appointment, promotion or upgrading or equal treatment of the disabled person of any type for the work of any service of specific nature, according to the nature of the service or work.

6. Provision for education and training:

1. In case of any disabled person is to get admission to any educational institute to pursue education, he shall not be required to pay fees at such educational institute.
2. Necessary arrangements may be made for appropriate trainings to the teachers teaching the disabled persons.
3. There may be made special arrangements for the education to the blind, deaf and feeble minded persons.

7. Provision for health and medical treatment:

1. His Majesty's Government may make necessary arrangements to prevent and abolish the disability which is preventable or abolishable, and to find out the factors leading to disability and to prevent, abolish, control do away with and cure it.
2. His Majesty's Government may make necessary arrangements to provide health check up and health service so as to reduce different adverse impacts to be occurred from the disability, as much as possible.
3. In order to abolish, as far as possible, the conditions may also make necessary arrangements for the increase in nutritious food, the control or abolition of viral diseases and prevention of accidents.

8.Provision for Training and Employment:

1. Necessary arrangements may be made for appropriate trainings and employment for making the disabled persons economically independent .Arrangements may be made to provide them with such type of training as may enable them have proper reward of labor in an environment commensurable to their condition.
2. Arrangements may be made to engage the disabled persons by way of labor supply system, in labor or employment scheme such as open and self-help industry or rural employment.
3. Arrangements may be made to provide the disabled labors with additional facilities needed at least for the maintaining of normal livelihood.
4. A factory which appoints more than 25 labors may be so required that it should appoint the disabled persons in a number not less than five person of the total number of the labors to the appropriate works, to the extent available, on the basis of their physical capability, training, qualifications and experience. Such labor shall receive such remuneration as is equal to that payable to other labors. Their terms of service and career development opportunities shall also be the same, as are of the labors. Provided that where any factory, having shown the fact that in appointing a disabled person by the factory there exists a possibility of injury to his health of other condition, has obtained prior approval of the Social Welfare Office, such factory may be granted exemption from the mandatory provision of this sub-section.
5. Arrangements maybe made to provide basic facilities, availability of raw materials, loans, market management etc. and protection so as to operate cottage and rural small scale industry for providing private employment to the disabled persons only.
6. Arrangements shall be made to do study or cause to be done study as to employment and ways and means of livelihood for the disabled persons, only and the feasibility of the facilities and concessions, which may be granted and ought to be granted thereto.
7. Arrangements may be made to require the use of such security equipments as is to secure a disabled person while engaging him in work with any equipment.

9.Priority of disabled person:

In providing the facilities and concessions, which are provided for in this act and other available ones, such facilities and concessions may be provided in consideration of the condition of those who are more disabled than other disabled persons.

10. Facilities and concessions:

1. In case of any disabled person who is homeless needs land to build his house or any disabled person needs land to engage him in agricultural occupation, his Majesty's Government may subject to the terms and restrictions prescribed make available the land to be distributed or granted for cultivation at present under the prevailing law.
2. In case any disabled person desires to take part in sports, entertainment or cultural exhibition/show etc. she may be given priority in regard to the provision of appropriate training, teaching and the making of arrangements for the act in the concerned organization.
3. While traveling by bus, train, plane, any disabled person and in case he shall be in need of continuous help of any other person, such one other person as well as may be granted concession of half of the passenger fare.
4. His Majesty's Government may wholly or partly exempt accessories, equipment or tolls to be used by the disabled persons and goods, machinery parts and raw materials to be used for the training of the disabled persons or the custom, excise duties, sales-tax, local taxes surcharge and other levies as well.
Provided that such employment shall exclusively be the employment of the disabled persons.
5. His Majesty's Government may exempt the disabled persons or the organizations established for their rehabilitation of disabled persons or used for the execution of that work, from income tax and all other types of taxes. After the disabled persons and such organizations so exempted have submitted a certificate showing their engagement in the service of their own disability and in that service respectively, they shall not be required to submit the returns of income.
6. His Majesty's Government may exempt a factory which provides employment to the disabled persons from income tax by the rate as prescribed in proportion to the disabled persons appointed by that factory. The expenses incurred for the special replacement in the equipment of own factory or the spare parts equipped therewith so as to appoint the disabled persons may be permitted to be added to the sum exemptible from income tax, in such a quantum as prescribed.
7. Arrangements may be made to make available loans on normal interest from banks and financial institutions to social associations, trade or industrial enterprise which provides training or employment or makes arrangements for employment to the disabled persons only.
8. Arrangements may be made for the disabled person homes for the aged disabled and helpless disabled persons to live in and for instruments for entertainment and spending time with comfort in such disabled person homes.
9. Such unemployment allowances, living allowances, aged persons pension as prescribed for the disabled persons and special allowance for the disabled persons unable to earn and maintain themselves may be arranged.
10. Arrangements may be made to have reservations of some seats in the mean of public transportation for the disabled persons.

11. Maintenance of the disabled persons:

The family member, guardians of or heir to a disabled person shall take care of and maintain him.

12. Duty of guardians and doctor:

It shall be the duty of the guardian of and the doctor examining any person, who, in their opinion, has become disabled or been in a position to become disabled, to notify or take such person to the nearby hospital or the place prescribed by His Majesty's Government as soon as possible. It shall be the duty of such hospital or doctor to treat such person on the priority basis and to commend and send him to the place where his treatment can be done in case his treatment cannot be done there.

13. Organ may be donated:

In case any person desires to donate any organ of his body, after death, to any institution, he may donate it by making a deal.

14. To set aside funds:

The factories or industries, enterprises or religious associations shall in order to protect and promote the disabled persons set aside the funds, in the prescribed percentage, of their incomes.

15. Additional provision via-a-vis leprosy disabled persons:

Nobody shall reject any disabled person suffering from leprosy on the grounds that he is untouchable or on similar other reasons. In case any person rejects him in any way on the ground or so abuses or defames him as to destroy his mental disposition, such person and other persons, too, responsible for the act may be punished as prescribed in this act.

16. Additional provision for disabled persons having mental disorder:

1. Arrangements may be made to keep and treat the disabled persons of mental disorder at a hospital or treatment home.
2. No disabled persons suffering from mental disease, save those against whom proceedings are being taken or who have been punished in a criminal offence under the prevailing law, shall notwithstanding anything mentioned in the prevailing law, be kept in a jail except for treatment or security arrangements.

17. Crime relating to disabled persons and punishment:

1. No person shall intentionally so carry on transaction or prepare documents on behalf of any disabled person as is against his interests.
2. No person shall make any person or attempt to make a disabled one with or without his consent with a view to using him in begging or doing any immoral act or similar other Act.
3. No person shall engage any disabled person in begging or doing immoral act or similar other dealing.
4. No disabled person shall be entitled to earn living by doing immoral profession or occupation.
5. Any person who commits or attempts to commit or order to commit or aids to commit any act prohibited under this act any punishable, in addition to the punishment, is not awardable, according to this Act, with imprisonment for a term in maximum of one year or with a fine of up to five thousand

Rupees or both.

6. In cases where by virtue of the commission of any act prohibited under this act or omission to do any other act required to be done, an healthy person has become disabled one, there shall be provided in addition to the punishment awardable under sub-section 5, a reasonable compensation for medical treatment of the matter that in case such person has to become virtually incapable of earning livelihood in a normal manner.

18. Administrative provisions in regard to the disabled persons:

1. His Majesty's Government shall make arrangements regarding the administration for the disabled persons through the Ministry of Labor and Social Welfare (hereinafter referred to as the Ministry).
2. For the purpose of sub-section 1, His Majesty's Government may if it seems necessary appoint the Social welfare Officer in a district or designate any officer to that effect.
3. The ministry shall register the name of the disabled person in the Kingdom of Nepal and maintain an inventory according to their nature. The Ministry may collect and publish the data relating thereto in every five years.
4. The Ministry may do or cause to be done the research of various techniques in such matters as are to provide more facilities to the disabled persons and make them self-dependent.

19. Government to be the plaintiff:

In the cases under this act. His Majesty's Government shall be the plaintiff and the case shall be deemed to be included in Annex-1 of the Government Cases Act. 2017 (1961)

20. Policy on disabled persons and scheme of programs:

1. His Majesty's Government shall in consultation with the Social Service National Coordination Council formulate necessary policies and programs in order to provide for the interests, treatment and facilities concession to the disabled persons under this Act as well to provide for such other arrangements as are deemed necessary. His Majesty's Government may also seek opinion of other bodies and social associations, so as to formulate such plan. Social Organizations/associations shall be encouraged to implement such plan.
2. It shall be the responsibility of the concerned body of His Majesty's Government to implement or cause to be implemented the plan formulated under sub-section 1; and it shall be the responsibility of the ministry to supervise it.

21. Relation with the Helpless Service Coordination committee:

1. While implementing the plan in regard to the disabled persons under section 20, the Ministry shall act, in close contact with the Helpless Service Coordination Committee.
2. The Ministry may in case it shall in consultation with the Helpless Service Coordination committee deem it proper entrust some acts out of those mentioned in the Plan to, and get them implemented through, the Local Panchayat or to social

welfare associations or the organizations established in regard to the interest of the disabled persons.

3. The Ministry shall make necessary arrangements and efforts to coordinate and collect national and international sources, which are required or may be available for the acts relating to the disabled persons. The Ministry shall as per necessary make available the funds or goods or services received from such sources to the Helpless Service Coordination Committee or the concerned association or office.

22. Delegation of Power:

His Majesty's Government may delegate any of the powers conferred on it under this Act to the Social Welfare Officer or other personnel or any office or association, subject to the exercise of such delegated powers under the prescribed terms and restrictions.

23. His Majesty's Government may give order to directions:

His Majesty's Government may, for the protection of the disabled persons and the welfare provisions under this Act, may give necessary orders or directions to the Social Welfare Officer or other personnel or any office or association; and it shall be the duty of all the concerned to abide by such orders and directions.

24. Powers to frame Rules:

His Majesty's Government may in order to carry out the objectives of this Act frame the Rules.

25. Saving:

This Act or the Rules framed under this act or the orders or directions under section 23 shall apply to the matters set forth therein, and the prevailing law shall apply to the other matters.