

**RIGHTS OF DISABLED PERSONS: A STUDY IN NEPALESE
PERSPECTIVE**



A

Dissertation

**Submitted to Central Department of Law, Trivuvan University
in Fulfillment of the requirement For the degree of L.L.M.**



Submitted By :

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NEPAL LAW CAMPUS

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LETTER OF RECOMMENDATION

The Head of the Department
Central Department of Law
Tribhuvan University

Dear Sir,

Tika Dhwoj Khadka, a student of L.L.M., Nepal Law Campus has completed his dissertation entitled "Rights of Disabled Persons: A study in Nepalese perspective" under my supervision as per requirement. I recommend the dissertation for evaluation to the department. I wish him all the best.

Prof. Dr. Rajit Bhakta Pradhananga
Faculty of Law, T.U.

Date : July 24, 2007

Preface

It is a great pleasure for me that the Central department of law has allowed to prepare the dissertation on the topic "Rights of the Disabled Persons a study in Nepalese Perspective" for the fulfillment of the requirement for the degree of L.L.M.

Rights of Disabled Persons is new topic on the Nepalese perspective so actually writing a dissertation in this topic is very interesting as well as hard also. Anyway, the author has tried to focus in this Dissertation who is the disabled persons and how is them condition and what is the legal provision to protect their right and its practice in Nepal who could not actively involved their daily activities because of their mentally and physically weakness has called disabled persons. Many Int'l Human Rights Treaty and domestic laws has guaranteed their educational rights, health rights, employment rights, Civil and Political rights so on. Nepal has party of the 16 Human Rights Treaty and those provision of Human Rights Treaty which Nepal has party is prevailed as a existing Nepalese law as per the Art. 9(2) of the Treaty Act, 2047 not only this Nepal has specific law to (The Disabled Persons protection and welfare) Act, 1982 to protect educational Right, Health facilities, employment rights of the disabled persons but those Int'l and domestic legal instrument is totally unsuccess to protect the rights of the disabled persons. Violation of the rights of disabled persons have given the challenge to human rights so The Author feel that it is most urgent and important to make comprehensive study regarding this topic to favour of disabled rights.

Finally, the author has tried to explain, finding, conclusion and suggestion on the dissertation.

Tika Dhwoj Khadka

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This dissertation could not have been a reality had it not been for these people whose help remained critical throughout I am grateful to the L.L.M. management committee, which gave me the opportunity to pursue L.L.M. My Supervisor and teacher, Dr.Rajit Bhakta Pradhananga's experience and advice in various phases of this research work count a lot.

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Thank you !

List of Cases

Mohini Jain Vs. State of Karnataka and others 1992 (2) SCALE 17(90) at 94

Uri Krishna, JP and others Vs. State of Andra Pradesh and others - 1993 (1) SCC 645

at 730, 731 Chameli Singh Vs. State of UP 1996 (2) SCC 594

Sudarshan Subedi Vs. HMG writ no. 3586 Decision date 2060-7-28

Babu Krishna Maharjan Vs. HMG writ no. 3666 Decision date 2061-10-15

List of Statutes

- The Constitution of Kingdom of Nepal 2047
- The interim constitution of Nepal 2063
- Child Right Act, 1992
- Civil Right Act,2012
- Disabled persons (protection and welfare) Act, 2039
- Education Act, 1971
- Legal Aid Act, 1997
- Local self Governance Act, 2055
- National Code, 2020
- Social Welfare Act,2049.
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- Disabled persons protection and welfare Rules, 1994
- Education Rules, 1992
- Legal Aid Rules, 1998
- Int'l Covenant on the Elimination of all Forms of Racial Discrimination, 1977
- The UN Declaration on the Rights of mentally Retarded peoples, 1971
- The Int'l Covenant on Civil and Political Rights, 1966
- The Int'l Covenant on Economic, Social and cultural Rights, 1966

- The Int'l Convention on the Elimination of all forms of Discrimination Against women 1979
- The Convention on the Rights of the Child, 1989
- The Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 1984
- Universal Declaration of Human Rights, 1948
- UN General Assembly Resolution 3447
- United Nations Organization, the Economic and social commission for Asia and the Pacific, Resolution 4813

List of Acronyms

Art.	- Article
B.S.	- Bikram Sambat
cons.	-Constution
E.tc.	- etcetera
Govt.	- Government
Int'l	- International
No.	- Number
P	- Page
PP	- Pages
Sec.	- Sector
Vs.	- Versus

List of Abbreviations

APROSC	-Agricultural Projects Service Center
AWMR	- Association for the welfare of the mentally Retarded
BPEP	- Basic Primary Education Project
BRINOS	-The Britain Nepal Otology Service
CAT	- The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, 1989
CBR	- Community Based Rehabilitation
CBS	- Central Bureau of Statistics
CEDAW	- Convention on the Elimination of the all forms of discrimination against women.
CERD	- Convention on the Elimination of the all forms of Racial Discrimination
CDO	- Chief District Officer
CRC	- Convention on the Rights of the Child
DANIDA	- Danis International Development Agency
DBDA	- Draft Bill to amend the Disabled Persons (Protection and welfare Act, 1982
DDC	- District Development Committee
DLFL	- Danish Federation of the Laryngectomnee Disabled Persons
DP	- Disabled Persons
DPWA	- Disabled Persons (protection and welfare) Act, 1982
DPWR	- Disabled Persons (protection and welfare) Rules, 1994
DRDP	- The Declaration on the Rights of disabled persons
DRF	- Disabled Relief Fund
DRMRP	- The Declaration on the Rights of Mentally Retarded People
ENT	- Ear, Nose and Throat

ESCAP	- Economic and Social Commission for Asia and the Pacific
FAO	- Food and Agriculture Organization
FLAS	- Free Legal Aid Service
GON	- Government of Nepal
HMG	- His Majesty's of Government
HRDC	- Hospital and Rehabilitation Centre for Disabled Children
ICCPR	- International Covenant on Civil and Political Rights
ICESCR	- International Covenant on Economic, Social and Cultural Rights.
ILO	- International Labour Organization
INGO	- International Non-governmental Organization
IOM	-Institute of Medicine
IYDP	- International Year of Disabled Persons
JICA	- Japanese International Co-operation Agency
KAD	- Kathmandu Association of Deaf
KNLC	- Khagendra New Life Centre
LAA	- Legal Aid Act, 1997
LBH	- The Denish Association of the Hard of Hearing
MECC	- Mobile Ear Care Clinic
MWCSW	- Ministry of women, children and social welfare
NADH	- Nepal Association of Deaf and Hard of Hearing
NAWB	- Nepal Association for the welfare of the Blind
NBA	- Nepal Bar Association
NC	- National Code
NCWDP	- National Committee on welfare for the disabled person
NDA	- Nepal Disabled Association
NDWS	- Nepal Disabled Women Society
NEF	- Nepal Ear Foundation
NFD	- National Federation of the Disabled Nepal

NFDH	- National Federation of the Deaf and Hard Hearing
NGO	- Non-governmental Organization
NLA	- Nepal laryngectomee Association
NNFD	- Nepal National Federation of Deaf
NNJS	- Nepal Netra Jyoti Sangha
SGCP	- Self-help Group for Central Palsy
SOS	- Save our Social
SSNCC	- Social Services National Co-ordination Council
SWC	- Social welfare Council
SWO	- Social welfare Officer
UDHR	- Universal Declaration of Human Rights
UN	- United Nations
UNDP	- United Nation Development Programme
UNICEF	- United Nations Children's Fund
VDC	- Village Development Committee
WHO	- World Health Organization
WPA	- World Programme of Action
WSHI	- Welfare Society for Hearing Impaired

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CHAPTER- I

INTRODUCTION

1.1.General Background: -

It has been felt time and again that statistics on disabled persons are essential for policy analysis, action and monitoring. A defining is complex and controversial and ranges from physical or intellectual impairment to social implication as well as health concerns,¹ it is difficult to derive the actual estimates. The prevalence of disability indicated in the studies worldwide ranges from as low as 0.2 percent to as high as 20.9 percent. This has been derived from 63 surveys in 55 countries.² The high degree of variability in disability rates is at least partly determined by the selection and use of impairment and sometimes-even disease such as eye infections. It has also been observed that the studies showing a low prevalence could indicate the high mortality rate among the disabled children, families being reluctant to express that they have disabled children in the family or even mild disabilities may not be identified with in the family. Moreover, the definition of disability may even exclude mild disabilities.

In 1976, WHO had estimated 10 percent disability prevalence among the total worldwide population. This global estimation was based on calculations on disability rates that included a high proportion of people with slight and reversible disability.

¹ . DFID, Disability, Poverty and Development report, DFID, London, February, 2000, p.45

² . Disability Statistics Compendium, statistics on special population Groups, series, No.4 New York: United Nations: 1990 p.15

Helander states in his recent publication that the estimates that 10 percent of the worldwide population was disabled needs to be reviewed.³ Helander calculates a global estimate of prevalence rate of moderate and severe disability of 5.5 percent. For the more developed regions the estimation is 8.5 percent and for less developed regions 4.8 percent of the moderately and severely disabled people in the world live in more developed regions and 70 percent in less developed ones.

The study on disabled situation Analysis of Nepal, 1998 by APROSC indicated a prevalence of 3.41 percent of the survey population being disabled. The disabilities included impairments like poor eyesight, single-eye blindness, night blindness, hearing impairment, ear disease, poor hearing and unclear speech, the highest prevalence being visual impairment and hearing impairment. Thus, the prevalence would be even below 3.41 percent if only the persons with disabilities were taken into account.⁴ Similarly, the 1991 Britain- Nepal otology service study estimated that about 16.6 percent of the population had hearing impairment, of which about 1.7 percent of the population had hearing disability.⁵ According to survey which had made by world Health organization in 1981 has mentioned 10 percent disabled people have lived in least developed countries as per this statement Nepal has 24 Lacs (2 million and 4 Lacs) disabled people. Some way, according to survey carried out by UNICEF Nepal in 1995 has mentioned 24.56% seeing disability, 24% physical

³ . Helander, E. Prejudice and Dignity. An Introduction to community- Based Rehabilitation. United Nations Development Program, 1999 (Second edition), p.21

⁴ . Survey of prevalence of Deafness and Ear Diseases in Nepal, 1991, The IOM/BRINOS study

⁵ . Unicef/ National Planning Commission, A situation Analysis of Disability in Nepal, xxii

disability, 22.61% hearing disability and 5.22% miscellaneous disability have lived in Nepal.

Various studies conducted in Nepal in the past gave varied information on the prevalence of disability in the country. The definition considered a person to be disabled if the person could not perform the daily activities of life considered normal for a human being with in the specified age and where the perform needed special care, support and some sort of rehabilitation service. This definition focused on the priority group for services, policy and program formulation. Accordingly, the study classified disabilities under four categories, namely, (a) Communication disability (b) locomotion disability (c) mentally related disabilities and (d) complex disabilities. Communication disability including seeing, hearing and speaking disabilities. Locomotion disability included mobility and manipulation disability. The mentally related disabilities included mental retardation, chronic mental illness and epilepsy. Complex disability included more than one rupee of disability, which was multiple disability and included cases of cerebral palsy.

Disabled persons are neither integrated into the Schools or in skill training or in employment development programs. Education and skill training has an impact on future occupation opportunities. The employment status of disabled performs has an impact on the economic situation of the households with disabled members. Disabled girls and women participate even less in education and employment than disabled boys and men.

There are many governmental as well as non-governmental organizations working in the field of disability in the country. The governs agencies working for disability are the National Planning Commission Secretariat, the Ministry of Women, Children and social welfare, the Ministry of Education, the Ministry of Finance, the Ministry of Local Development and the social Welfare council. Several non-governmental organizations are working in this field. A majority of the organizations were working for people with seeing disability, hearing disability and those with mental retardation. There were also quite a number of organizations working for people with all types of disabilities. However, there were few specialized organizations working for people with disabilities such as cerebral palsy, leprosy or epilepsy.

In the Universal Declaration on Human Rights (1948) the only explicit reference to disability is in article 25, which recognizes that everyone has "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control⁶." The International covenants on Civil and Political Rights (1996)⁷ and the International covenant on Economic, social and cultural Rights (1996)⁸ do not specifically target disabled people. However, it is assumed that all target documents apply equally to disabled persons as they apply to all human beings.

⁶ Art.25,UDHR,1948

⁷ Art.1,ICCPR,1966

⁸ Art.1,ICESCR,1966

The Disabled persons (protection and welfare) Act, 1982 (DPWA) for the first time in Nepal has expressly granted some rights and facilities to disabled people. DPWA defines the disabled persons as those Nepali citizens who due to physical or mental cause are incapable or unable to carry out their daily activities. It includes all those persons with speaking, hearing, seeing, manipulation and mobility disability and all mentally retarded persons.⁹ If a dispute is made regarding any persons as to whether he/she is a disabled person or not, the decision of a committee of experts constituted by the HMG will be authoritative.¹⁰ Some landmark decision of Indian Supreme Court regarding to education right of disabled persons as follow:

Mohini Jain VS. State of Karnataka and Others

"Right to life" is the compendious expression for all those rights, which the court must enforce because they are basis to the dignified enjoyment of life. It extends the full range of conduct, which the individual is free to pursue the right to life under Art. 21 of the Indian Constitution and the dignity of an individual can't be assured unless it is accompanied by the right to education. The state Government is under an obligation to make endeavourer to provide educational facilities at all levels to its citizens.

The fundamental rights has guaranteed under part (ii) of the constitution of India including the right to freedom of speech and expression and other rights under

⁹ . Id. Sec. 2 (a), Disabled Persons (protection and welfare) Act, 1982.

¹⁰ . Id. Sec. 3.

Art. I cannot be appreciated and fully enjoyed unless a citizen is educated and conscious of his individualistic dignity -1992(2) SCALE 17(90) at 94.

Uri Krishna, JP and others VS. state of Andhra Pradesh and others. The provisions of part (iii) and IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goals indicated in part IV. It is also held that the fundamental rights must be construed in the largest of that directive principle..... "The right to education which is impact in the right to life and personal liberty guaranteed art 21 must be construed in part in the right of the directive principle in part IV of the constitution.

Chameli singh Vo. state of UP: "In a civilized society, the right to life means. Right to life with dignity, right to food, right to decent environment, right to education, right to medical care and shelter etc. are right to life"

Besides this, in Nepalese context on the case filed by Babu Krishna Maharjan Vs. GON (Date 2061 write no.3666) supreme court has gave directive order to government to implement "The disabled persons (protection and welfare) Act,1982 as well as on the case of sudarshan Subedi Vs. HMG¹¹ court has decided to educational reservation without any payment.

Nepal has signed 16 Human Rights treaty has mentioned right to life, liberty and security of person as per the provision of Treaty Act, 1991 Sec. 9(2)¹² those

¹¹ 2056 writ no. 3586, The Supreme Court of Nepal

¹² Sec.9(2)Treaty Act,1991

Human Rights provision has prevailed as a existing Nepalese laws which Nepal has party.

Disabled persons had actively participated on the pro-democratic movement against the monarchy as a result democracy has established on the April, 2006. After the success of democracy movement Government of Nepal has declared "Interim Constitution of Nepal, 2007"¹³ Under the Article 12 of the constitution has mentioned right to freedom, everyone has right to dignity life, Art, 13, right to equality as well as special provision to make special law for excluding disabled persons.

Those Int'l and domestic legal provision court verdict which has mentioned above are limited only on the paper it has not implement on the practice proper way so It was found that most of the disabled persons had no education (68.2%) which was more than that of the general population. The literacy rate was considerably lower for females than males. However, while taking into account the age group of 6-20 years it was discovered that more than half of those in this age group was enrolled in school. ¹⁴ It was found that among those who were not enrolled school their parents did not think education was important. The parents do not find it easy to let the disabled children attend school. This is probably because they do not believe their disabled children can become productive members of society.

It is found that 22-2 percent of the disabled persons were economically active and mostly involved in agriculture. It can be clearly stated that the value of their work

¹³ Art,12,13,Interim Constution,2063

¹⁴ . Supra Note, 6 p. 132

is perceived as not less than that of others. Among those who had worked before becoming disabled, there were instances of job losses because of the disability. It is also evident that most of the disabled persons were economically dependent on their family (79.9%).¹⁵

Some legal provisions are so beauty to protect and promotion of rights of disabled persons but in practice their parent are not feeling role and responsibility towards their disabled member of the family. They were feeling load to their disabled persons. So the disabled persons have lost their dignity as being disabled. Similarly, they do not have access to health, education and employment.

Inclusive democracy is being generative theme of Nepal after successful of the pro-Democratic movement but the issues of the disabled persons have in shadow. How it is essential to take mainstream of politics and assure to present them on policy level to effectively protect their rights? It is not taken as a serious issue to discourse. Thus, all legal provision has limited only on the paper.

1.2. Statement of the problem

Legal provision has not enough protect the rights of disabled persons. Some provision and Act has limited only on the paper that is why there are much more problem towards disabled persons. The research shall be focused in the following issues.

¹⁵ . Id. p. 133

1. What are the rights of disabled persons to their access to health, education and employment under existing Nepalese laws and International laws?
2. What is the state Policy towards rights of disabled persons?
3. How far the state is responsible towards the rights of Disabled persons?
4. It is justifiable to violate rights of DPS against the Int'l and domestic legal measured?

1.3. **Objectives of the Study**

The objectives of the study are as follows: -

1. To make a comprehensive study about the rights of DPS in relation to their access to basis needs under existing Nepalese law.
2. To find out and analyze basis rights of DPS under int'l and domestic legal instruments and states responsibility towards them.
3. To know about conditions, causes and consequences of DPS.
4. To provide a generally acceptable definition and classification suitable to the Nepalese context, for all kinds of disabilities taking into account the international and national definitions.
5. To identify the existing services, programs and institutions (Go and NGO) concern with disabilities and their impact.
6. To find out and analysis the judicial decision towards DPS.

7. To provide constructive recommendations on the planning and development of social policies and programs to meet the needs of persons with disabilities and to improve their quality of life.

Thus, based on these objectives, the overall objective of the study will possible to make comprehensive study of the DPS.

1.4. **Significance of the Study**

The major significance of the study are as follow: -

1. The study will give detail information about conditions, causes and consequence of DPS.
2. The study will give acceptable definition and classification, suitable to the Nepalese context.
3. The study will bring out basic rights of DPS and state's responsibility under the Int'l and domestic legal instruments.
4. The study will give detail information about Gos and Naos which have made efforts towards DPS.
5. The study will be useful to policy makers, legislators and related peoples.

The study will be helpful to create awareness for DPS.

1.5. **Limitation of the Study**

Study will be limited to the relevant provision of legal and constitutional book as well as court verdict. Legal and constitutional theories and practice will comparatively be studied it its regards. Basing relevant articles, treaties, proposals,

declarations, precedents, written opinions of jurists and courts, resolutions passed by national or international conferences, researcher will concentrate his mind on the areas of rights of DPS in Nepal.

1.6. **Methodology**

The nature of the study is intended to adopt doctrinal method. Collecting materials from libraries like American Information centre, Gyaneswore; Indian library, New Road; supreme court library, Ramshahpath; centre for Nepal and Asia study (CNAS), Kiritipur; TU.central library, Kiritipur; Nepal law campus library, Exhibition Road; Central law library, Ranipokhari and the library of Nepal BAR ASSOCIATION, Ramshah path, the researcher will collect the relevant material regarding the condition and consequences of DPS will be collect from relevant GOs NGOs. Researcher will also adopt the non-doctrinal methods as and when it is required.

1.7. **Review of Literature**

This research may be the first comprehensive research on the realm of the rights of disabled persons so the enough material has not available on the research period even the researcher has observed the literatures:

- (1) Status of people with Disability in Nepal Dr. Lekshmi Narayan Prasad, October 2003, Rajesh Prasad Shrivastav
- (2) Srijana - National Disabled Federation, 2062 Kartik
- (3) Role and Responsibilities of the Gardrans for the Disabled Persons
- (4) A situation Analysis of Disability, Unicef, Feburary, 2001
- (5) A Introduction of Disabled Co-operation Fund and Act, Rules Regards the Disabled Persons Social welfare Council,

- (6) Access of the Disabled Persons on the water and sanitation, workshop Report, 2062, water Aid Nepal
- (7) Souvenir, 2052 Social Welfare Council
- (8) Disabled Empowerment, National monthly, Ashad 2062, Nepal Disabled Society
- (9) Equally Quarterly, 2062 National Federation of disability
- (10) Jana Sahaara Monthly, Shrawan, 2055, Jana Saharan Publication Group
- (11) Voice of Disable, National monthly, 2062 Falgun.

and other reports, journals, magazines, newspapers, daily, weekly, fortnightly, monthly and be monthly and other related materials related to the subject matters as enlisted at the end of the paper.

1.8. **Organization of the Study**

On the research, First Chapter deals with introduction of the study. Second chapter deals with conceptual framework under this chapter researcher has mentioned concept, meaning and causes and consequences of disabled persons. Chapter third deals with historical evolution of law relating to rights of disabled persons in international, regional and domestic legal sector. Chapter four deals with situation, classification and condition of DPs.. Chapter five deals with international and domestic legal measures as well as judicial trends and state policy towards DPs. Chapter six deals with non-governmental efforts and finally findings, conclusion and suggestion has mentioned in chapter seven.

CHAPTER - II

CONCEPTUAL FRAMEWORK OF THE RIGHT OF DISABLED PERSONS

2.1 Concept of Rights of Disabled Persons¹⁶

In the course of the last 300 years the concept of society towards disabled persons has gradually changed. It has developed from neglect and hatred to charity-based welfare work for persons with disabilities to right-based society for persons with disabilities.

The previous concept that disabled persons should change according to their environment is no longer valid. The new concept is that the environment should change in accordance with the needs of disabled persons. This is in line with the concept of equal opportunity for disabled persons in society.

In many ways, it reflects the general living conditions and social and economic status of the people at different times. There are many specific circumstances like ignorance, neglect, superstition and fear that, throughout the history of disability, have isolated persons with different abilities and delayed their development. The paradigm has now changed to inclusive, equality-based, barrier-free and right-based society for persons with disability.

Through education and rehabilitation, persons with different abilities have become more active and turned into a driving force in the future development of the disabled population. Organizations of persons with disabilities (self-help

¹⁶ Prashad Laxmi narayan, Status of People with Disability in Nepal, Rajesh Prashad Shrivastav, 2003 p.3

organizations) and of their parents, families and advocates have come to be formed, advocating better conditions for disabled persons.

The United Nations, in particular, has played an important role in society's change of concept towards disabled people.

Role of the United Nations

The United Nations, right from its establishment in 1945, has played a very important role in developing public opinion toward the status of people with disabilities, their rights and needs, and about providing equal opportunity in all spheres of society.

In the Charter of the United Nations, the reaffirmation of the principles of peace, faith in human rights and fundamental freedoms, the dignity and worth of humanity and the promotion of social justice, were given primary importance. This applied equally to people with disabilities.

The Universal Declaration of Human Rights adopted by the United Nations affirm the rights of all people, without distinction of any kind, to marriage, property ownership; equal access to public services, social security; and realization of economic, social and educational rights. The International Covenants of Human Rights, the Declaration on the Rights of the Child and the Convention on Elimination of All Forms of Discrimination against Women give specific expression to the principles constituted in the Universal Declaration of Human Rights.

With in the United Nations Secretariat, a number of offices carry out activities related to the above concept. The regional commissions have an equally important role to play, in the context of Nepal: the Economic and Social Commission for Asia and the Pacific (ESCAP) in Bangkok (Thailand) plays the main role in carrying out decisions made by United Nations General Assembly.

Specialized agencies of the United Nations like UNDP, UNICEF, WHO, UNESCO, ILO, FAO and others are involved in promoting, supporting and in carrying out field activities related to disability.

Declaration of the International Year of Disabled persons (IYDP) 1981 was an important step in the field of disability taken by the UN General Assembly under the theme "Full Participation and Equality." It was strongly urged that the UN system should make all facilities totally barrier-free, and encourage equality and full participation of disabled persons in all activities of the society. It also urged the member states of the United Nations to form National Committees or similar co-ordination bodies to deal with the problem of disability.

United Nations Decade of Disabled Persons 1983-1992

As a follow-up program of IYDP, the United Nations Decade of Disabled persons 1983-1992 was declared. The theme of the Decade was the same as that of the IYDP 1981. On the occasion of the IYDP 1981, several conferences, seminars, workshops and meetings were held in different parts of the world. Leaders and social workers involved in the services to the disabled expressed their views on the miserable

conditions of disabled persons, particularly in the poor and developing countries of the world. It was also felt that the education, vocational training, job placement and rehabilitation of disabled people were expensive, time consuming and extremely difficult. The disabled persons are poor and living in a miserable life; nor were they given equal opportunities in social and development activities. They were deprived of even the basic needs of life.

It was realized that many disabilities were avoidable and preventable by the creation of public awareness and by means of early detection and timely intervention. This was far less expensive than the education, vocational training and actual rehabilitation of disabled persons. So, in order to prevent avoid-able disabilities, to provide full participation and equality, and to rehabilitate the disabled in society, the UN Decade of Disabled Persons, the UN General Assembly adopted 1983-1992. All the member nations were request-ed to plan a policy and to develop programs with a view to meeting the above-mentioned objectives of the UN Decade of Disabled Persons.

A World Program of Action Concerning Disabled Persons was adopted by the UN General Assembly, in 1982. The purpose of the World Program of Action was to promote effective measures for the Prevention of Disability, the rehabilitation and realization of the goals of "Full Participation" during UN Decade of Disabled Persons 1983-1992.

World Program of Action Concerning Disabled Persons

The objective of the World Program of Action Concerning Disabled persons was to provide guidelines to different countries; particularly developing ones, for preparing action plans to meet the aims of the UN Decade of Disabled Persons 1983-1992.

The United Nations General Assembly adopted the World Program of Action Concerning Disabled Persons at its 37th regular session on December 3, 1982, by the resolution 37/52. This resolution is contained in United Nations document A/37/51.

The purpose of the World Program of Action Concerning Disabled Persons is to promote effective measures for the prevention of disability, rehabilitation and realization of the goals of "full participation" of disabled persons in social life and development, and of equality. These concepts should be applied with the same scope and with the same urgency in all countries, regardless of their development status.

The exact situation of disabled people varies from country to country, depending on the levels of economic and social development and different cultures. In the majority of situations, however, the ultimate responsibility for remedying the conditions that led to impairment and for dealing with the consequences of disability, often rests with the government; but this does not weaken the responsibility of society in general, or of individuals, or of various organizations in any way. Governments must ensure that people who are made dependent by severe disability have an opportunity to achieve a standard of living equal to that of their fellow citizens. Non-Government Organizations (NGO'S) can, in a variety of ways, assist the governments by formulating needs, suggesting suitable solutions and making available services

complementary to those provided by the government. All sections of the population must be served, without any omission of the rural areas of developing countries.

A major breakthrough can be achieved by taking suitable steps against malnutrition, environmental pollution, poor hygienic conditions, inadequate ante-natal, natal and post-natal care, water-borne diseases and accidents of all types. By means of expansion of the programs of immunization, poliomyelitis, tetanus, whooping cough, diphtheria, tuberculosis can be eradicated or controlled and the resultant disabilities prevented.

The "World Program of Action Concerning Disabled Persons" places great emphasis on the equalization of opportunities for persons with disabilities.

The World Program of Action Concerning Disabled Persons is very important for developing countries in particular. Both the government and NGOs should try to implement the suggestions given in the booklet and help in the prevention and rehabilitation of those who are disabled. During the UN Decade of Disabled Persons, the World Program of Actions should have been implemented in Nepal, but due to the apathetic attitude of the then government and also to the political instability then prevailing in the country, nothing significant was achieved. Though the UN Decade of Disabled Persons 1983-1992 is well behind us, attempts should still have been made to implement the World Program of Action in the country.

However, a number of NGOs for disabled persons came to established during this period. They launched their activities in the field of education, vocational

training, job placement and social rehabilitation. They were also able to work effective contributions in the field of disability prevention.

Asia Pacific Decade of Disabled Persons

The UN Decade of Disabled persons was followed by Asia Pacific Decade of Disabled Persons 1993-2002, which was declared by ESCAP in 1992. The theme of the decade was the same as that of the UN Decade of Disabled persons. To help achieve the objectives of the Decade, the *UN General Assembly adopted the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disability*, in December 1993. At the same time, the UN General Assembly requested all member states to implement the Standard Rules. The UN Standard Rules are divided into 4 Chapters and contain 22 rules. If these rules are implemented sincerely, disabled persons can achieve equal opportunities for education, vocational training, job placement and social rehabilitation.

Another significant step taken by the United Nations was to declare December 3 as International Disability Day. This day is observed throughout the world with activity-oriented programs to arouse public opinion towards the status of disabled persons. Nepal too has observed International Disability Day every year since 1992.

ESCAP organized a regional conference of High-level Inter-governmental Meeting of Asia Pacific countries in Japan to conclude, and at the same time to review, the achievements made in Asia Pacific Decade of Disabled Persons 1993-2002, and to discuss post decade follow-up activities. In this meeting, it was decided

to observe another Asia Pacific Decade of Disabled Persons 2003-2012. The Meeting welcomed the paradigm shift, from the charity-based approach to a human rights approach to the whole concept of disability. They reviewed the achievements of the past decade and adopted "Biwako Millennium Framework of Actions" towards an inclusive, barrier-free and right-based society for disabled persons in the Asia Pacific region. It emphasized that more could be, and needed to be, done in terms of enacting and implementing relevant legislation, extending inclusive education for all, improving training and employment, addressing poverty, ensuring early intervention and creating a truly barrier-free and right-based society.

The seven priority areas identified in the Biwako Millennium Framework were:

- i. Self-help organizations of persons with disabilities.
- ii. Women with disabilities.
- iii. Early intervention and education,
- iv. Training and employment including self-employment,
- v. Access to build environment and public transport,
- vi. Access to information and communication, including information and communication technology,
- vii. Poverty alleviation through capacity building, social security and sustainable livelihood programs.

Let us hope, the above-mentioned programs in the "Biwako Millennium Framework" will be implemented in Nepal as well. The present government seems to be sincere and committed to implementing the programs.

DISABILITY CONCEPT IN NEPAL¹⁷

Early Period

In spite of the best possible efforts, no documents or evidence, such as stone inscriptions etc. have yet been found to authenticate the policies or programs relating to the welfare of the disabled undertaken by any government in Nepal prior to 1968 A.D., when the Nepal Disabled and Blind Association was established. Nor were any fruitful results achieved from consultations with a number of eminent historians, archaeologists, teachers and social workers. Almost all the books, historical documents and stone or other inscriptions, available so far, mention about only the political or religious activities undertaken.

In spite of this, we need not necessarily conclude that no such welfare works were rendered in that period.

Human beings are, by nature, humane and therefore kind and generous. They prefer to live in groups and communities helping each other. From the very beginning of time, they have been known to be aiding, according to their capacity, the poor, destitute, orphaned, disabled, sick and other needy people. Although the world has now become very materialistic and self-centered, there are still generous and

¹⁷. Id 14

kindhearted persons who are inclined to help the needy in their communities. Their respective religions have also provided the much needed motivation and inspiration for them.

The people of the kingdom of Nepal, too, are fortunate to obtain such inspiration from the respective religions they follow, such as Hinduism, Buddhism, Jainism and several others, which propagate teachings that philanthropic and charitable works lead them to salvation or *moksha*. It is generally believed that you will be a recipient of a happy or better life in your future birth in return for rendering social services for the benefit of the poor, sick, destitute, disabled, downtrodden and underprivileged or neglected members of the community. People are, therefore, known to set up, from very early days, public wells (kuwa), stone taps (dhunge dhara), resting places (chautara), and guest houses (pati, paiwa, sattal and dharmashala) for the common use of pilgrims and travellers. They are known to establish charitable trusts called guthis for the proper upkeep and maintenance of foundations or services, such as dispensing medical treatments, managed under a unit called aushadhalayas (dispensaries): providing homes for children, managed under a unit known as orphanages (anathalaya): providing for the elderly citizens: managed under a unit called briddhashram (home for senior citizens): providing food and other essential items to the needy like pilgrims, mendicants, ascetics, disabled etc. managed under an arrangement known as sadabarta (charity); managing charitable hostels like Sanskrit prakshala (hostel for Sanskrit students offering free food and lodging): and

imparting education to children under the management of village schools (like pathashalas).

Institutionalised Social Service

Similarly, several types of organizations or provisions are found to have been made for many co-operative or welfare activities since time immemorial, and it is often difficult to trace dates or periods when such establishments or organizations came into being.

Such co-operative or welfare activities are in a way the institutionalized social services carried out under the foundations known as *guthis* or trusts supported by land grants made by the government or the people or groups involved.

These activities are aimed at supporting various kinds of social traditions or customs related to birth, marriage, death etc. or to community services such as religious functions, maintenance of public utility services or structures such as those mentioned above.

The *guthis* or trusts under which these activities are managed are found to be of three types. They are *raj guthi*, *chhuti guthi* and *niji guthi*. The *raj guthi* is a national or official trust supported wholly by the state generally meant to carry out religious functions. It is autonomous and managed under the strict supervision of the government. The *chhut guthi* is a semi-autonomous or semi-official trust, managed under the rules laid down by the government. The *niji guthi* is a voluntary trust formed with an endowment made by the private individuals, strictly for carrying out

social activities, such as those mentioned above or for the care of shrines, temples, bridges, roads or utility structures.

The proceeds, mainly savings, go to providing services to the poor, the destitute and the disabled.

Social Work for the Disabled People Before 1951 (Before the advent of democracy B.S.2007)

In the early years of the Shah dynasty, political stability was the concern of kings, the establishment of peace and security in the country were the priority of the government. Little was done to help the disabled. But various types of *Guthis- Raj Guthi, Chhut Guthi* and *Niji Guthi* were already in existence as mentioned earlier. In addition to providing social and community services, they also provided welfare services to disabled people.

During the 104 years of the Rana regime (which ended in 1951 after the advent of democracy during the reign of His Majesty King Tribhuvan Bir Bikram Shah Dev) all the powers of government were in the hands of Rana prime ministers. They were afraid of losing their powers, so an autocratic rule came to be established. They were scared of providing people with education for fear that the people, once educated, would become increasingly aware of their rights and responsibilities which might start a revolution. They were not in favour of allowing even social or religious organizations to be established in the country for fear that they might be instrumental in causing political awareness and mass agitation. Equally, they did not allow any

meeting or gathering of people or even the founding of libraries and reading rooms. In 1931, a group of 46 people, including the poet laureate Laxmi Prasad Devkota, submitted a request for permission to open a library in Kathmandu for the use of the general public. All members of the group were penalized and made to pay a fine of Rs. 100 each.¹⁸

However, during the reign of His Majesty King Tribhuvan Bir Bikram Shah Dev, two organizations for social services were established by two social workers, one in 1926 during the prime ministership of Chandra Shumsher Rana, by Tulasi Mehar Shrestha and later, the second by Daya Bir Singh Kansakar. Sri Tulasi Mehar, a staunch follower of Mahatma Gandhi of India, established a social organization called "*Shree Chandra Kamdhenu Charkha Pracharak Mahaguthi*." The aim of these organizations was to train people to make hand-spun thread and hand-woven cotton clothes, to make themselves self-dependent and also to reduce the import of cloth from other countries. The Rana rulers considered this, as the beginning of a social organization which might lead to a mass movement of the people. Tulasi Mehar was arrested in 1942 and sent to prison. Later, after his release, he went to India. On his return from India, he established "*Nepal Gandhi Ashram Nidhi*"² in 1951, soon after the dawn of democracy in Nepal. The main purpose of establishing this institution was to provide help to destitute people in their home and community based trade (Community Based Rehabilitation, CBR).

¹⁸ . Development through non-governmental organizations, page 17, by Diwakar Chand, 1991

Later in 1972, the two above-mentioned institutions were merged into one which came to be called "*Nepal Charkha Pracharak Gandhi Smarak Mahaguthi*". This institution has today large assets, which are being used to operate various community development programs, especially schools for needy and downtrodden children and for institutions for socially exploited and destitute women.

These two serious attempts to initiate social services for the benefit of the people were suppressed and thwarted during the Rana regime. As a consequence, it became increasingly difficult for anyone to organize and establish even social institutions to help deliver welfare services to members of society. Those who dared to do so were made to suffer bitter consequences during the autocratic rule of the *Ranas*.

In 1947, a group of five people led by Daya Bir singh kansakar was fortunate to be permitted to establish an institution called "*Paropakar Aushadhalaya*" (Charitable Medical Trust). They were allowed to raise funds by installing donation boxes in appropriate public places. These donations were used for the purchase of medicines for the treatment of those who were sick but unable to afford the cost of medical treatment. This institution was registered under the Company Act of 1947.

Civil Code (Muluki Ain)¹⁹

The first important step taken in Nepal, by any government, for the services of the disabled was a Civil Code (Muluki Ain) promulgated in 1853 (B.S.1910) by the

¹⁹ Chapter,5,Sec,8,National Code,2020

government of His Majesty King Surendra Bikram Shah, and the then Prime Minister, Jung Bahadur, the first Rana Prime Minister. One of the articles of the Act was "*GARIB KANGAL*", which means *Poor and Destitute*, and disabled persons were placed under this category. According to this article, disabled people who were not able to work and earn their livelihood were entitled to receive shelter, food and two pairs of garments every year.

Change in the Concept in Nepalese Society towards Disabled People

The appreciable change in the concept in Nepalese society towards disabled persons took place only in 1977 after the formation of the Social Service National Co-ordination Council (SSNCC), which was headed by Her Majesty *Queen Aishwarya Rajya Laxmi Devi Shah*. Since then, several changes have come about in the country, such as the establishment of a full ministry, the Ministry for Social Welfare, the enactment of legislations for the Rights and Welfare of the Disabled, the formation of several non-governmental organizations for and of disabled persons, the founding of the Federation of Disabled Persons, expansion of special education, the establishment of Social Welfare Council etc.

DISABILITY AND THE DEVELOPMENT OF THE COUNTRY

It used to be believed that the poverty of a country was mainly responsible for the large number of disabled persons in the country. Today, there is a radical change in thinking. It is now felt that the presence of a large number of disabled persons is, conversely, responsible for the poverty of the country. This change in thinking has

emerged because disabled persons cannot make their contributions to the development and economic activities of the country, leading to poor economic growth. Due to disability, not only the disabled persons themselves but also other members of their families are adversely affected and are unable to contribute effectively to the developmental activities of the nation. It is, therefore, important that a good national policy should be formulated for person with disability. The policy should lay emphasis on health services with a view to preventing and correcting disabilities.

There should be appropriate programs for providing good education, vocational training for skill development, job placement and social rehabilitation. In this way, persons with different abilities will be empowered to work in the same manner as any other citizen, so that they can make their own contributions to the economic growth of the country.

Prevention of Disabilities

Prevention of disability and its containment and relief must receive the priority it deserves in the overall program designed for tackling disabilities. The prevention and control of disability are much less expensive and less time consuming than the expenses involved in the actual rehabilitation of disabled persons. For the prevention of disabilities, in addition to a national immunization program to reduce vaccine-preventable diseases, public awareness programmes should be developed to make the general public aware of the causes of disabilities, their early clinical features, the

importance of early detection and timely intervention to cure or prevent progress of diseases, which, if neglected, may lead to disability. All the medical personnel right down to the health post level must be trained to enable them to identify conditions prevailing today which can lead to disability tomorrow. All the NGOs working for the welfare of the disabled should not only work for their rehabilitation, but also for the prevention of disabilities with effective and result-oriented programs. IMPACT Nepal is the only organization in the country, which is working full time for the prevention and control of disabilities. There are other organizations, such as Nepal Netra Jyoti Sangha and others, who, in addition do rehabilitative services, are also working for the prevention of disabilities.

Approximately 50 percent of all disabilities are in fact preventable; hence the Ministry of Health and all other NGOs and INGOs must make every effort to develop programmes for their prevention. This will ultimately help in making positive contributions to the economic development of Nepal.

EXPECTATIONS OF PERSONS WITH DISABILITY

In Nepal, a very large majority of disabled persons is drawn from economically weak communities who have not been so fortunate as to acquire education. Their contact with the outside world being limited, their aspirations are not high. Gradually, over the last two decades or so, mainly due to the growth of information technology, the availability of television, computers, radios and other means of mass communication, the disabled persons in Nepal are becoming acquainted with the facilities available to

their counter-parts in other countries. Due to financial and educational constraints their aspirations are very often limited. Even then, they still expect to receive better education, job opportunities and better living conditions. Because they hail from poor families, most of them desire to be economically rehabilitated in the society. They expect to get following facilities made available in Nepal.

Education: They want to receive good education, for which they expect the government to make arrangements for free education and to provide educational materials free of cost, to open more schools, either integrated/ inclusive or special, for higher education.

For deaf students, at the present moment, there is no arrangement for higher education at college or university level. More than 20 students have so far passed S.L.C. (secondary school) examination but none of them have been able to join higher secondary schools for sheer lack of facilities for such education.²⁰

Vocational Training: Persons with disabilities expect to obtain vocational training for skill development, which can help them in securing profitable jobs. They would like at least one centre for vocational training for the disabled to be established in each of the five development regions of the country. It is important that after the completion of training, the government should recognize their qualifications, so that they may be able to get jobs in the government or private sector, or in starting self-

²⁰ .Social Service in Nepal (in Nepali language), page 92, by Savitri Thapa (Jungam), B.S. 2033

employed jobs. Later, one such vocational training centre in each district will help them to acquire skills and enable them to get settled in the society.

Preferably, all NGOs working for disabled persons must have vocational training program specially designed for them, and the certificates awarded need to be recognized by the Council for Technical Education and Vocational Training (CTEVT).

Legislation: The legislation for disabled persons, which was enacted in 1982 (B.S. 2039) but never implemented, has now become out of date. This should be amended or a new legislation be enacted. Persons with disabilities would like to have a new legislation, which will assure them of the rights and benefits that are enjoyed by disabled persons in other countries. This legislation could easily be made by the Ministry of Women, Children and Social Welfare (MoWCSW), because the amended one is already in the hands of the Ministry.

Job Reservation: By means of legislation, a certain percentage of jobs in the country must be reserved for persons with disability. Some of the blind and other disabled persons are employed as teachers, but in many cases, even after working for more than 12 years, they have not been made permanent. The associations *of* and *for* the disabled have been demanding that the government make these teachers jobs permanent, but as yet this has not been achieved.

Job Placement: The persons with disability feel that HMG/N has not taken in interest in creating jobs for them. They expect the Social Welfare Council and also

the Ministry to have a job placement cell with trained staff to arrange jobs for qualified and trained disabled persons. This cell should be result-oriented and the personnel working there must possess either education or, at least, some experience of Public Relations (PR) in job placement. If this program is sincerely implemented, many of the disabled persons will be able to obtain profitable jobs.

Loan for rehabilitation: The majority of trained persons, who have developed skills for employment, are unable to start self-employment trades due to lack of finance. They expect HMG/N to arrange to provide loans, at a nominal rate of interest of 5 percent, to enable them to launch their own trade or business.

Equalization of Opportunities: Disabled persons expect to have equal opportunities in all spheres of life, like any other person in the country. They expect that governmental and non-governmental agencies do not discriminate against them only on the basis of their disability. In education, vocational training, employment, social and political activities, membership of organizations, medical treatment, transport and traveling, physical access to public places, access to information and communication, social security, family life, cultural activities, recreation and sport activities and religious functions, they would like to have barrier-free and equal opportunities. They also expect to be involved in policy-making and planning. They also desire to participate in national development and economic activities. They expect that in committees or commissions formed for their services, disabled persons should be in the majority.

The UN General Assembly adopted the UN Standard Rules on the Equalization of opportunities for persons with Disabilities in 1994. The UN Standard rules are expected to be implemented by all member States of the United Nations, but even after a lapse of nine years, they have not been implemented in Nepal. Disabled persons have reasons to be frustrated because even after several attempts and repeated requests, the HMG/N has so far not taken any initiative to implement the UN Standard Rules. They hope that the government will now take urgent steps in this direction. A four-day workshop was organized by the Ministry of Education and Sports, Department of Education in Kathmandu at the initiative and financial support of the Danish International Development Agency (DANIDA) with Hon'ble Bengt Lindqvist, special UN Rapporteur, as chief participant. In the workshop, government officials and representatives from conclusion of the workshop the disabled persons have now pinned high hopes on the Standard Rules being implemented in Nepal.

Home for Disabled Persons: There are hundreds of disabled persons in the country who are profoundly disabled and who need constant help of another person for their activities. They need help even for taking food, sitting, walking and for using a toilet. For such persons a *Home for the Disabled* is required in the country. In the legislation of 1982 for disabled persons, it is mentioned that one home for disabled persons may be established in each development region. But so far no action in this direction has been taken.

Disability allowance: Persons with severe disabilities are often neglected both by the society and the families, because most of them hail from the lower economic strata. They face serious problems from the point of view of daily living. They must, in fairness, receive a disability allowance not only at the age of 16 but almost as soon as they become severely disabled.

2.2. Meaning of Rights of DPS.

First of all, when we want to know meaning of rights of DPS then it will better to know what is the meaning of rights. So that, According to Austrian- "A person has a right when another or other are bound or obliged by law to do or for bear toward or in regard of him: ²¹ According to Holland, "Legal rights is a capacity residing in one man of controlling, with the assent and assistance of the state the actions of others."²² According to Salmond, 'A right is an interest recognized and protected by a rule of right. It is any interest, respect for which is a duty, and the disregard for which is a wrong.' According to Jhering- "Rights are legally protected interests." According to above mentioned definitions right is kinds of claims and interest of persons, which is legally protected and guaranteed. If one has right another party has duty which is must to obey. After the knowing of the definition of rights, it is most essential to know the definition of DPS to know the rights of disabled persons. So, According to oxford Dictionary- one who has unable to work is called disabled.²³ According to The

²¹ . Lamsal Narayan Prashad, Jurisprudence, Ratna Pustak Bhandar, 2054, p.302

²² . I bid p. 303

²³ . I bid p. 304

Disabled persons (protection and welfare) Act, 1982, The Nepalese citizen who cannot involve their daily activities physically or mentally called disabled. According to Blacks Law Dictionary Disables means-

1. To deprive (someone or something) of the ability to function; to weaken the capability of (someone or something).
2. To impair, to diminish,
3. To legally disability (someone); to render (someone) legally incapable.²⁴

Various studies conducted in Nepal in the past gave varied information on the prevalence of disability in the country. This variation reflects the methods and definitions used the surveys. The studies with high incidence include mild disability and sometimes also impairment and diseases like eye infections. The initial task of the study was to develop a working definition of disability for the survey. A team of experts comprising of technical experts in the field of medical science, social science and experts in the community based rehabilitation program met several times to discuss the definition based on the scope of the study, which was intended to be carried out by semi-skilled interviewers. Accordingly, the definition of disability was adopted for the purpose of this survey.²⁵

1.1. The definition considered a person to be disabled of the person could not perform the daily activities of life considered normal for a human being within the

²⁴. I bid

²⁵. Oxford Dictionary, Oxford University Press, 1968 p.346

²⁶. I bid 16

specified age and where the person needed, special care, support and some sort of rehabilitation services. This definition focused on the priority group for services, policy and program formulation.²⁶

1.2. Accordingly, the study classified disabilities under four broad categories, namely, (a) communication disability (b) locomotion disability (c) mentally related disabilities and (d) complex disability. Communication disability included seeing, hearing and speaking disabilities. Locomotion disability included mobility and manipulation disability. The mentally related disabilities included mental retardation, chronic mental illness and epilepsy, complex disability included more than one type of disability, which was termed multiple disability and included cases of cerebral palsy.²⁷

1.3. Seeing Disability

A person who, even after treatment, could not count fingers with improved eye-sight (both) from a distance of ten feet (3 meters), who said to have seeing disability and was considered functionally blind.²⁸

1.4. Hearing Disability

A person who could not hear ordinary voices with both ears from a distance of one meter was said to have hearing disability.²⁹

1.5. Speaking Disability

27. A Situation Analysis on Disability in Nepal, UNICEF, 2001, p.xxii

28. I bid 18

29. I bid

30. I bid

A person who could not speak at all or a person who could not be understood outside the family was said to have speaking disability.³⁰

1.6. Mobility Disability

A person who was unable to perform the daily activities of life due to a physical deficiency, defect or deformity in the lower limbs was said to have mobility or walking disability.³¹

1.7. Manipulation Disability

A person who was unable to perform the daily activities of life due to a physical deficiency, defect or deformity in the upper limbs was said to have working or manipulation disability.³²

1.8. Mental Retardation

A person who was unable to perform activities or to learn new tasks as per the age and environment due to delayed mental development prior to the age of 18 years are said to be mentally retarded. Under their classification, two categories were included.

- a) Persons who could manage the daily activities of life with the help of training and
- b) persons who could not manage daily activities like eating, dressing, speaking and going to the toilet even with training.³³

1.9. Epilepsy

31. I bid

32 I bid

33. I bid,32

A person who had frequent attacks of unconsciousness and showed a symptom of tongue bathing, frothing from the mouth, shivering and incontinence was said to be an epileptic.³⁴

1.10. Chronic mental illness

A person who, after 18 years of age, some kind of mental instability with symptoms of unprovoked anger or elation, crying without reason and seeking isolation was said to have some kind of mental illness.³⁵

1.11. Multiple Disabilities

A person having more than one type of disability was said to be having multiple disability.³⁶

1.12. Cerebral Palsy

A person who had some damage in the immature brain leading to physical incapacity who said to have cerebral palsy. Some cases could have mental retardation.³⁷

To sum up, who due to physical or method cause and incapable or unable to carry out their daily activities. It include all those persons with speaking, hearing, seeing, manipulation and mobility disability and all mentally retarded persons have called disabled persons and rights of disabled persons means that those kinds of right namely, Educational rights, Health facilities, Travelling Facilities, Free legal Aid services which has guaranteed by the Int'l and domestic law called rights of disabled

34. I bid

35. I bid

36. I bid

37. I bid

persons. It means that that kind of interest, basic needs, claims of disabled persons which has guaranteed by the law is called rights of disabled persons.

2.3. Causes and consequences of Disabled persons³⁸

Different kinds of disabilities have different causes and consequences. According to 'A situation Analysis of Disability on Nepal' published by UNICEF and HMG Nepal National Planning Commission on February 2001 has mentioned causes and consequences of disability as given below 2.3.1. Communication Disability

Communication Disability includes seeing disability hearing disability and speaking disability.

Seeing Disability

Seeing disability has been defined as the inability to count fingers from a distance of 10 feet people with this disability cannot see at all with either eye and are functionally blind. Further, among those who could not tested for perception of light. This was done with the help of a flashlight. Main cause of seeing disability was disease like high fever, measles typhoid as well as various untreated infection that led to loss of eyesight. Most of the seeing disability has felt that while going out of the house for performing various tasks.

Hearing Disability

A person who could not hear ordinary voices with both ears from a distance of one meter was said to have hearing disabilities. By birth, Disease and Accident are main

³⁸ Supra Note 5 p.53

causes of hearing disability and hearing disabled persons are facing so many problems on their daily activities. They do not understand view of the caretaker and they felt difficult to work outside of the house because they had problems communicating. Among school -going children it was at school where they faced the most difficulties.

Speaking Disability

A person who could not speak at all or a person who could not be understood outside the family was said to have speaking disability. By birth, diseases and accident are man cause of speaking disability. A person with speaking disability cannot express their views to other people so they cannot share their problem to their family too that is why they faced so many problems in their daily activities.

2.3.2. Locomotion Disability

Locomotion disability concerns the defect or deformity in the limbs, which make a person unable to perform the daily activities of life. Locomotion disability includes the mobility and manipulation disability concerning the lower limbs and the upper limbs, respectively. Thus, however, does not hamper the daily activity of life. For example, the loss of a small toe or finger may not make a person disabled as long as the person can perform the daily activities of life. If this deficiency, defect or deformity hampers the person's daily activities, then that perform is considered to be disabled.

Mobility (Moving) Disability

A person who was unable to perform the daily activities of life due to a physical deficiency defect or deformity in the lower limbs was said to have mobility or walking disability. Born with disability, disease and accidents are main causes of mobility (moving) disability.

Manipulation (working) Disability

Those having difficulty in conducting daily activities with their hands and arms were considered as having manipulation disability. The activities were eating, cooking, grinding, dressing collecting water, bathing, combing hair, sharing, buttoning and writing. The major causes of manipulation disability were accidents, followed by disease and the people born with the disability. In most of the cases it has been reported that the disability caused moderate difficulty in the daily life of the people.

Mentally

Mentally related disability was also assessed in the present study. The broad classification of mental function disability was considered as mental retardation and disabilities as a result of neuropsychiatry conditions. The disabilities related to neuropsychiatric conditions were mental illness and epilepsy.

Mental Retardation

A person who was unable to perform activities or to learn new tasks per the age and environment due to delayed mental development prior to the age of 18 years was said to be mentally retarded. By birth, disease and accident were main cause of mental retardation.

Epilepsy

A person who had frequent attacks of unconsciousness and showed symptoms of tongue biting, frothing from the mouth, shivering and incontinence was said to be an epileptic.

The report on epilepsy, 1998 of Nature Nepal estimates that about one third of the cases of epilepsy is due to damage done to the brain. It also states that there has been evidence that those children suffering from cerebral palsy tend to get epileptic attacks. The reasons for such attacks were reported in this article to be meningitis, malaria, brain tumors and also cysts of tapeworm.

Chronic Mental Illness

Chronic Mental illness is related to the neuropsychological disorders. People with this type of problem are referred to as mad people and their family members do not look upon them well. This problem minders the person's performance of daily activities. As mental illness mostly occurs at an adult stage, the questionnaires were administered to the caretakers of those cases over the age of 18. The following symptom were dealt with to get the incidence of chronic mental illness.

- Remains alone most of the time
- Talks to self
- Smiles, laughs and/or cries without any obvious reason
- Has difficulty in taking care of self
- Because angry and aggressive easily without any adequate reason.

Complex Disabilities

There are cases where a person may have more than one type of disability. The discussion in the above section has dealt with all types of disabilities, which includes the disabilities of people with multiple disability. This section deals with the multiple type of disability under two broad categories, namely, a general type of multiple disability and cerebral palsy. It can be noted here that the details on all the possible types of disabilities have been discussed above.

CHAPTER - III

HISTORICAL EVOLUTION OF LAW RELATING TO RIGHTS OF DISABLED PERSONS

3.1. Historical Evolution of Law Relating to Rights of Disabled Persons

Every state has recognized the fundamental interest and rights of the people and citizen of the state to protect their political, social, economical and cultural interest as well as their own human dignity. Those above-mentioned interests are most essential to human being and their gradual development rights of the people is backbone of democracy and human rights.

In the very beginning there were not specific Law related to disabled persons to protect their social, economical, cultural and political rights as well as educational rights but some provision had mentioned on the various human rights treaties as a rights of person. We can mentioned historical evolution of law relating to rights of disabled persons as follows :

3.2. International Legal Sector :

In the Universal Declaration on Human Rights³⁹ (1948) the only explicit reference to disability is in article 25, which recognizes that everyone has "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." The International Covenant on civil

39.Supra note,6

and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) do not specifically target disabled people. However, it is assumed that all three documents apply equally to disabled persons as they apply to all human beings.

In recent years a clear trend that has emerged in policies for disabled persons is the recognition of the human rights of people with disabilities. The Declaration on the Rights of Mentally Retarded people⁴⁰ (1971) recognized the rights of mentally retarded persons. In 1975 the General Assembly proclaimed the Declaration on the Rights of Disabled persons⁴¹. In two documents the United Nations expressly stated the entitlement of disabled people to exercise Civil and Political rights so those two documents were the first international documents to acknowledge that disability is a human rights issue. Other International treaties, which address disability issue include : The convention on the Elimination of all Forms of Discrimination against women and the convention against Torture and other cruel, Inhuman and Degrading Treatment or punishment. There are some of her important international instruments that have been produced by United Nations agencies :

With regards to education, the UNESCO convention against Discrimination in Education 1960 states that special education should provide similar standards as regular provisions. The Sandburg Declaration 1981 proclaims that every disabled

40 www.un.org/esa/socdev/disabled

41 Basic Fact About UN, Department of Information Center UN, 2004, p.246

person must be able to exercise his or her fundamental right to full access to education, training, culture and information.

3.3. Regional Legal Sector

In 1992 the United Nations Organization, the Economic and Social Commission for Asia and the Pacific (ESCAP) passed Resolution 4813 that proclaimed the Asian and Pacific Decade of Disabled Persons, 1993-2002. ESCAP decided that this second decade was needed because the situation of people with disabilities in the Asian and Pacific Region had not changed significantly during the United Nations Decade 1983-1992. The goals of the Asian and Pacific Decade are "full participation and equality."

The Agenda for Action for the Asian and Pacific Decade of Disabled persons⁴² called for using community Based Rehabilitation CBR as a specific strategy for implementation activities in communities, based on the wide acceptance of the concept during the United Nations Decade.

On December 7, 1997 The Dhaka Declaration⁴³ was adopted. This Declaration stated "that all governmental and non-governmental organizations working in this region recognize that handicap and disability are development issue."

3.4 Domestic Legal Sector

42. Adopted on 29 April 1993 by the Economic and Social Commission for Asia and the Pacific at its forty-ninth session, through its Resolution 49/6

43. Adopted and signed at the Second South Asian Conference of the CBR Network; Dhaka, Bangladesh, 36 December 1997

Nepal is party to 16 international conventions, though not all directly related to the issue of disability. As per the Treaty Act, 2047 those int'l convention Nepal has ratified is like Nepalese existing laws. So development of the rights of disabled people is no more old in Nepal.

The Disabled Persons (protection and welfare) Act, 1982 and The Disabled persons (protection and welfare) Rules, 1994 are first specific law regarding rights of disabled persons.

After the establishment of the democracy in Nepal 1990, Nepal has adopted new Constitution 1990 there were two provision Art.11(3) and 26 (9) had mentioned positive discrimination to enlistment the disabled persons.

In 1991 Nepal had ratified some human rights treaty including ICCPR, CEDAW and ICESCR on those treaty has mentioned the rights of disabled persons. Those int'l human rights treaty which Nepal has party is same the existing Nepalese law according to Treaty Act, 2047 B.S. Article 11(3) of the Constitution of the Kingdom of Nepal, 1990 has said that special laws shall be made for the protection and advancement of the interests of women, children, the aged and those who are physically and mentally incapacitated .

A part from this National code 1964, Education Act, 1971, Social welfare Act, 1992, Child Act, 1992 and local self-government Act, 1999 have mentioned the rights of disabled persons but those above mentioned Act. are not specific law regarding disabled persons. Article 13(3) of the Interim Constitution of Nepal 2063 which had

made after seccessed of the Jana Andolan II has mentioned positive discrimination to make special laws including disabled persons. Similarly Art. 21 of the Interim Constitution of Nepal 2063 has mentioned under the Right to Social Justice disabled persons shall have right to participate on the state organs.

In this way rights of disabled persons has developed in Nepalese Context.

CHAPTER-IV

SITUATION OF DISABLED PERSONS IN NEPAL

4.1 Disabled Persons in Nepal

In 1976, WHO estimated 10 percent disability prevalence among the total worldwide population. This global estimation was based on calculations on disability rates that included a high proportion of people with slight and reversible disability. Helander states in his recent publication that the estimates that 10 percent of the worldwide population was disabled needs to be reviewed.⁴⁴ Helander calculates a global estimates of prevalence rate of moderate and severe disability of 5.5 percent. For the more developed regions the estimation is 8.5 percent and for less developed regions 4.8 percent of the moderately and severely disabled people in the world live in more developed regions and 70 percent in less developed ones.

The⁴⁵ study on disabled situation Analysis of Nepal, 1998 by APROSC indicated a prevalence of 3.41 percent of the survey population being disabled. The disabilities included impairments like poor eyesight, single-eye blindness, night blindness, hearing impairment, ear disease, poor hearing and unclear speech, the highest prevalence being visual impairment and hearing impairment. Thus, the prevalence would be even below 3.41 percent if only the persons with disabilities were taken into

⁴⁴. Helander, E. Prejudice and Dignity. An Introduction to community- Based Rehabilitation. United Nations Development Program, 1999 (Second edition), p.21

⁴⁵ . Disabled situation Analysis of Nepal 1998, Poudel, M.M. and Dr. K.K. Poudel, APROSC

account.⁴⁶ Similarly, the 1991 Britain- Nepal otology service study estimated that about 16.6 percent of the population had hearing impairment, of which about 1.7 percent of the population had hearing disability.⁴⁷ According to survey which had made by world Health organization in 1981 has mentioned 10 percent disabled people have lived in leaset developed countries as per this statement Nepal has 24 Lakh (2 million and 4 lakh) disabled people. Some way, according to survey carried out by UNICEF Nepal in 1995 has mentioned 24.56% seeing disability, 24% physical disability, 22.61% hearing disability and 5.22% miscellaneous disability have lived in Nepal.

Various studies conducted in Nepal in the past gave varied information on the prevalence of disability in the country. The definition considered a person to be disabled if the person could not perform the daily activities of life considered normal for a human being with in the specified age and where the perform needed special care, support and some sort of rehabilitation service. This definition focused on the priority group for services, policy and program formulation. Accordingly, the study classified disabilities under four categories, namely, (a) Communication disability (b) locomotion disability (c) mentally related disabilities and (d) complex disabilities. Communication disability including seeing, hearing and speaking disabilities. Locomotion disability included mobility and manipulation disability. The mentally related disabilities included mental retardation, chronic mental illness and epilepsy.

⁴⁶ . Survey of prevalence of Deafness and Ear Diseases in Nepal, 1991, The IOM/BRINOS study

⁴⁷ . Unicef/ National Planning Commission, A situation Analysis of Disability in Nepal, xxii

Complex disability included more than one rupee of disability, which was multiple disability and included cases of cerebral palsy.⁴⁸

Disabled persons are neither integrated into the Schools or in skill training or in employment development programs. Education and skill training has an impact on future occupation opportunities. The employment status of disabled performs has an impact on the economic situation of the households with disabled members. Disabled girls and women participate even less in education and employment than disabled boys and men.

4.2 Classification of Disabled Persons

A. Communication Disability

The communication disability basically meant a disability concerning seeing, hearing and speaking. A review of the previous definition was done. It was suggested that the detection of visual disability at the field level was a difficult task. It was mentioned that the chances of detecting the visual impairment were even tougher. The cut-off point in demarcating the level of impairment was quite unclear and, furthermore, it would create complications at the field level. It would not be possible to detect the level of impairment without a medical examination, which was not feasible for a nationwide study with the given manpower. Thus, those who really require some sort of rehabilitation and could not perform their daily activities were included in the study. The visual acuity of less than 3/60 (Snellen) or its equivalent in both eyes was

⁴⁸ .Supra Note,5 p.5

determined as the cut-off point to identify seeing disability. However, as the Snellen chart could not be used among the illiterate population it was decided to use the finger count in daylight at a distance of 3 meters, or 10 feet. This cut-off mark of 3 metres indicated that those persons included in the study were functionally blind.

Once the persons with seeing disability were identified it was proposed to move a step forward and detect their perception of light with the help of the standardized method of light examination. This would detect the number of cases that could be cured and those that could not be cured. It would be important to assess the degree of seeing disability from this broad perspective.

The hearing disability was also defined on the same lines whereby the disability had hampered the daily activity of the person. Communication is a vital aspect of life and not being able to conduct daily activities due to this would lead to disability. It was made clear that there should be a clear demarcation between hearing impairment and disability. The cases of impaired hearing due to some wound or infection was not necessarily a disability that hamper daily activities. The loss of hearing ability required for daily activities was incorporated in this category.

The people with hearing disability were identified at the field level with the help of different ranges of the normal human voice. The human voice was classified as normal and loud. There was the need to standardize the voice of the enumerators where there was a likelihood of variation, especially among male and female voices. However, it was decided that two categories of normal voice and loud voice would

not show much variation. The test was to be conducted at a distance of one meter. Similarly, the sound of a bell was standardized for detecting hearing, disability among children under 5 years of age.

Speaking disability comes in most cases with hearing disability. In order to detect speaking disability it was perceived that a person would become disabled when he/she cannot communicate outside the house with the people outside the family. The cases of stammering and unclear speech had to be assessed carefully. After an in-depth discussion it was decided that a person with such speech defect could be well understood in the family but not necessarily outside the family. Those who had difficulty in this case was the ability to communicate with the people outside the family. Those who had difficulty in communicating outside the family were considered as having speaking disability.

B. Locomotion Disability

Locomotion disability concerns the defect or deformity in the limbs, which make a person unable to perform the daily activities of life. Locomotion disability includes the mobility and manipulation disability concerning the lower limbs and the upper limbs, respectively. This, however, does not include just a loss of any part of the limbs that does not hamper the daily activity of life. For example, the loss of a small toe or a finger may not make a person disabled as long as the person can perform the daily activities of life. If this deficiency, defect or deformity hampers the person's daily activity, then that person is considered to be disabled.

C. Mentally Related Disability

The task of identifying mentally related disability was another major concern. First of all there was a need to define the types of mental function disabilities. The classification was done as follows :

a. Mental retardation

The failure to acquire the ability to perform activities or to learn new tasks as per the person's age and environment, due to delayed mental development prior to the age of 18 years was classified as mental retardation. All mentally retarded persons are not fully dependent on others for their daily activities. Two categories could be differentiated.

1. Persons who can manage their daily activities, like eating, dressing with the help of training
2. Persons, who cannot manage their daily activities, like eating, dressing, speaking, going to the toilet

b. Disabilities as a result of neuro-psychiatric conditions

Disabilities due to neuro-psychiatric conditions can be classified as epilepsy and chronic mental illness.

Epileptic symptoms were noted, such as frequent attacks of being unconsciousness, tongue biting, frothing at the mouth, shivering and incontinence, all of which make it difficult to lead a normal life.

Chronic mental illness is a kind of mental instability, the symptoms being unprovoked anger or elation and/ or crying without reason and a tendency to seek isolation. Chronic mental illness usually starts over the age of 18, so it was proposed to assess for chronic mental illness among those above the age of 18.

D. Multiple/ Complex Disabilities

Those who had more than type of disability were considered to have multiple/complex disabilities. These included a combination of any types, like both hearing disability and speaking disability, mental retardation with speaking disability or even manipulation with mobility disability. As it would be difficult in the field to identify the causal relationship, or which disability caused the other, it was decided to term all those having more than one type of disability as having multiple disabilities.

A more complex type of multiple disability was cerebral palsy, where damage in the immature brain leads to physical incapacity. This has been classified under complex disability, which prevents one from carrying out the normal activities of daily life.

4.3 Condition of Disabled Persons in Nepal

Socio- Economic Characteristics⁴⁹

The socio-economic characteristics of households with disabled persons and those without disabled persons were assessed. The economic parameters like landholding size, occupation and income of the survey population were taken into account. The household characteristics (literacy, sex, religion and caste) and the housing

⁴⁹ Supra Note,5,pxxiii

characteristics were assessed to analyze the conditions of the households with disabled persons in relation to the households without disabled persons.

2.1 There was slight difference in the economic level of the households with disabled persons and those without disabled persons, though statistically the difference was not significant, at a 5 percent level of significance. The households with disabled persons were found to be slightly worse off than those without disabled persons.

2.2 There was, however, a significant difference in the literacy status of the household heads with disabled persons and those without disabled persons, at a 5 percent level of significance. This is confirmed by a clear difference in the highest level of education attained by the household heads. The study found that 57.6 percent of the household heads in households with disabled members had no education, while 50.7 percent of the household heads of households without disabled members had no education. As the persons who are not literate usually have fewer opportunities to improve their economic status, the households with disabled persons were more likely to be in a less advantageous position than those households without disabled members. It is known that poverty creates a greater risk of disability due to malnutrition and inadequate access to medical care.

2.3 A higher proportion of disabled persons were found among the Sherpa/Tamang, Magar, Tharu and occupational caste groups. There can be different possible explanations for this. The higher incidence of disability among these groups could be

due to their poverty, hardship and social disadvantage. It could even be because their proper caring of the disabled persons resulted in a higher survival rate.

Status of Disability

3.1 Based on the definition adopted for this study, the prevalence of disability was estimated to be 1.63 percent in the total population, with estimates of 1.65 percent in the rural areas and 1.43 percent in urban areas. In the case of the ecological belts, the prevalence of disability was highest in the mountains (1.88 percent), followed by the hills (1.64 percent) and the Terai (1.45 percent). Likewise, in case of the development regions it was the western development region that had the highest prevalence of disability, with 1.81 percent in the population of that region being disabled.

3.2 It was found that most of the disabled people had multiple disabilities, which accounted for 31.0 percent of the total disabled persons in the country. This indicated that the prevalence of multiple disabilities in the total population was 0.51 percent. Combined disabilities such as speaking and hearing disabilities were found to be as high as 48.3 percent of those having multiple disabilities.

3.3 It was found that 17.4 percent of the disabled persons, including those with multiple disabilities, had mobility disability. Epilepsy accounted for 13.3 percent of the disabled persons. Disabilities such as mental retardation, speaking disability and chronic mental illness as single disabilities were found to be less prevalent.

3.4 Among the different types of disabilities in the disabled population, including multiple disabilities, it was mobility disability that was found to be the most common type, accounting for 19.5 percent.

3.5 Disabilities were seen more prevalent among males than females. The difference could be due to the lack of proper care and early treatment for the female. The result of sex differentiation reduces the chance of survival among females. The reason for the lower prevalence of disabilities in women could be because their disabilities were not identified. Girls and women are often able to perform certain activities, albeit at enormous personal cost (pain and/or effort), to hide their disabilities.

3.6 Age specific disabilities in the population indicate that the prevalence of disability among the working age group (15-59 years) was 1.99 percent, which accounted for 64.3 percent of the total number of disabled persons.

3.7 It was found that 50 percent of different types of disabilities occurred before the age of five years. This suggests that most of these disabilities could be attributed to childhood disease and accidents.

3.8 The reported causes of disability varied according on the types of disabilities. Disabilities such as hearing, speaking and mental retardation were reported to occur from birth in most of the cases. As the respondents did not find obvious causes such as episodes of disease or accidents for the disabilities, the cause was reported as "being born with disability".

3.9 Disease played an important role in contributing towards all types of disabilities, with about 30.3 percent of the causes attributed to disease. Disease has been the most prevalent cause for seeing disability (62.5 percent) and mobility disability (36.0 percent), and it plays an important role in hearing disability, manipulation disability and mental retardation. Accident has been predominant in the case of manipulation disability (40.3 percent) and plays an important role in mobility disability (25.5percent). In general, 15.4 percent of the cases of disability were reportedly due to accidents.

3.10 The high incidence of onset of disability under the age of five years and the high incidence of disease indicate an urgent need for prevention initiatives. The high incidence of accidents as the cause of mobility disability and manipulation disability indicates neglected traumas or, in other words, the lack of appropriate medical treatment following the accident.

Attitude and Perception

4.1 People still believe that having disabled members in the house is the result of their fate (28.4 percent). Some have superstitious beliefs and even give magical explanations for the cause of disability. These findings show that few people are aware about the medical causes of disability.

4.2 The household members encouraged the participation of disabled persons in different activities (going to school, playing with others and going to work) though they still do not encourage the marriage of disabled persons.

4.3 Many of the disabled persons (49.3 percent) took care of themselves. However, in those cases where the disabled persons were not able to take care of themselves it was usually the task of the female household members to take care of them.

4.4 Most of the disabled persons (69.3 percent) received support from their family members. However, giving stimulation and exercise to the disabled persons to improve their condition was found to be negligible. The attempts made by the households to make household adjustments for the disabled persons by modifying the furniture and facilities were negligible in general.

4.5 Having a disabled person posed problems in most (90.5percent) of the households. The difficulties they faced were mostly related to the inability of the disabled persons to work and taking care of the disabled persons, like teaching new tasks or having to leave the disabled persons alone.

4.6 All together 31.4 percent of the households felt that the disabled persons in the household had posed a huge economic burden, and these were mostly people with mental retardation, mobility, seeing and manipulation disabilities. The females were seen as imposing less of an economic burden, probably because they had fewer demands and expectations than the males.

4.7 In most of the cases (68.8 percent) expenditures were made for treatment. Most of the families (71.5 percent) took their disabled members for treatment. The disabled persons were mostly taken to the doctors or health post for treatment (40.9 percent).

A considered number of households took the disabled persons to the faith healers for treatment (30.3 percent).

4.8 Still, nearly 30 percent of the disabled persons did not get any kind of treatment. This could be due to the lack of knowledge and awareness that disabilities can be treated. It could also be because the family does not have the resources, or because the health facilities do not function properly and staff does not know about disability. The assumed problem with health facilities is supported by the findings that there are very few specialized referral services available in the rural areas.

4.9 In nearly half of the cases, the household members had to face humiliation with in the community because of their disabled family members. It was also noticed in the focus group discussion sessions with the local leaders that the community outlook towards the disabled person varied according to the type and severity of disability. Persons with mild disability could be more easily accommodated in the society than those with severe types of disabilities.

4.10 It was started by 7.0 percent of the disabled persons that it was difficult to live in the community with self-respect.

4.11 Though most of them (82.9 percent) knew that they did have rights with in the framework of human rights for disabled persons, they said that they were not able to take advantage of them.

4.12 The participation of the disabled persons in the local organizations working for the disabled persons has been negligible.

Economic and Social Participation

5.1 Most of the disabled persons had no education (68.2 percent) as compared to the general population, where 4.8 percent had no education. The literacy rate was considerably lower for females than males, with 77.7 percent of the females and 59.9 percent of the males having no education.

5.2 While taking into account the age group of 6-20 years, it was discovered that half of the disabled persons in this age group were enrolled in school. Though nearly 95 percent of the household heads wanted their disabled children to go to school, only 56.3 percent of the age group 6-20 years were enrolled in school, indicating that there were different physical and social barriers for schooling. Disability was a powerful reason for not attending school for all, but it figured more for girls than for boys.

5.3 The findings show that most of the disabled children were attending regular classes, most probably because there was no special school. It can be noted that special units may be appropriate in some cases, but the majority still valued going to school (81.0 percent) as they benefited from attending the classes. Note all those who had enrolled were currently attending school. For most of the dropouts (36.5 percent), the reason was their not being able to perform like others in the class, indicating a lack of support in school.

5.4 There were also some disabled children who did not actually benefit from school, indicating that some had difficulty in coping in the ordinary classes. The 67.6 percent

who could not grasp what was taught require some special provisions or some sort of support within regular classes. There is a general lack of support for the disabled persons in schools as indicated by the high dropout rate.

5.5 The distance to school and the need to be there on time poses problems in general in the rural areas, but it has particular significance for all the disabled children.

5.6 It can be noted that once at school, those with locomotion disabilities and those with epilepsy performed well at school. These children in particular would clearly benefit from assistance to get to the school. The need for the teacher to be more sensitive and supportive is vital.

5.7 The non-formal education sector did not seem to be very productive for the disabled persons and requires better materials and specially trained teachers.

5.8 The participation of disabled persons in skill training was negligible, with only 27 disabled persons out of 917 disabled persons over the age of 14 getting some training. Among these, more than half did not benefit from such training even though they had acquired the skills. Some of the reasons given for this were the lack of materials, tools and market access.

5.9 Some of the economically active disabled persons (22.2 percent) were involved in agriculture. There were those who had worked before becoming disabled and lost of their jobs due to their disabilities. However, most of the disabled persons were economically dependent on their family (79.9 percent).

5.10 Quite a large number of disabled persons had difficulties in joining social events, where most (84.6 percent) found it difficult to participate in the weekly market.

5.11 In general, it was also found that disability presented obstacles to getting married.

5.12 Few (only four) disabled persons participated in the organizations working for the cause of disability, and even those who participated were of the opinion that they were not benefiting.

5.13 Disabled persons are neither integrated into the schools or in skill training or in employment development programs. Education and skill training has an impact on future occupation opportunities. The employment status of disabled persons has an impact on the economic situation of the households with disabled members. Disabled girls and women participate even less in education and employment than disabled boys and men.

CHAPTER-V

LEGAL FRAMEWORK OF DISABLED PERSONS

5.1 International Legal Measures

In the Universal Declaration on Human Rights⁵⁰ (1948) the only explicit reference to disability is in article 25, which recognizes that everyone has "the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." The International Covenants on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights) do not specially target disabled people. However, it is assumed that all three documents apply equally to disabled persons as they apply to all human beings.

These documents promote a traditional view of disabled people as objects of welfare and service provision rather than people whose rights need to be defined and upheld. In recent years a clear trend that has emerged in policies for disabled persons is the recognition of the human rights of people with disabilities. The Declaration on the Rights of Mentally Retarded people⁵¹ (1971) recognized the rights of mentally retarded persons. In 1975 the General Assembly proclaimed the Declaration on the Rights of Disabled Persons⁵². In these two Declarations the United Nations expressly

⁵⁰ .Supra Note,7

⁵¹ . www.unhchr.ch/disability/index.htm.

⁵² .www.uno.org

started the entitlement of disabled people to exercise civil and political rights. That went further than the ICCPR 1966 that prohibited discrimination in the exercise of civil and political rights. These two Declarations from 1971 and 1975 were the first international documents to specially acknowledge that disability is a human rights issue.

To raise the awareness to ensure these newly defined rights, the United Nations declared 1981 the International Year of Disabled Persons. The year's objective was the "full and equal participation of disabled persons in society."⁵³ To give member states recommendations on how to implement the right to full and equal participation, in 1982, The World Program of Action concerning Disabled Persons was adopted by the General Assembly⁵⁴. In that resolution, the Assembly formally recognized the rights of disabled persons to equal opportunities, full participation in economic and social activities, and equal access to health, education and rehabilitation services. The World Program of Action states that disabled persons should be consulted about all policies and programs that directly affect them. It highlights the need for promotional measures to realize the goals of full participation of disabled persons in social life and development and for their equality⁵⁵. The right to development is a new concept of the international human rights law. It stresses the need to have the right to develop

⁵³ . Art,54,CRC,1889

⁵⁴ . Supra Note,41

⁵⁵ . Economic and Social Commission for Asia and the Pacific (ed.): Legislation on Equal Opportunities and Full Participation in Development for Disabled Persons : A Regional Review. United Nations New York 1995, p.1.

individually as well as collectively. Equal, fair, just and reasonable treatment in every aspect of life is the right of all disabled people in the world.

Nepal is party to both the Convention from 1966. These international treaties are formally binding on all states, which are party to it. The states have an obligation to abide by the terms of that treaty and to behave accordingly. In Nepal a new legislation is required to give effect in national law to the obligation undertaken at the international level.

The adoption of the mentioned Declarations as well as the World Program of Action is a motivation for nations and communities throughout the world to include disability in their agendas for socio-economic development and to provide improvements in the quality of life of disabled persons. Un Declarations, however, have no formal binding authority on individual sovereign states. International "Years" as well as "Decades" are aimed to raise awareness but have no legal force.

As a result of the World program of Action, the United Nations declared the Decade of Disabled persons, 1983-1992. They called for effective implementation and follow up of the objectives of the international Year of Disabled Persons and for creation of equal opportunities for the full participation of people with disabilities in their families, communities and countries. Progress during the Decade was slow but saw considerable development of disabled people's organizations at all levels and a growth in understanding of the rights element to disability.

Other International treaties, which address disability issues include⁵⁶ : The Convention on the Elimination of all Forms of Discrimination against Women⁵⁷ and the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment⁵⁸. There are some other important international instruments that have been produced by United Nations agencies⁵⁹.

With regard to education, the UNESCO Convention against Discrimination in Education 1960 states that special education should provide similar standards as regular provisions. The Sundberg Declaration 1981 proclaims that every disabled person must be able to exercise his or her fundamental right to full access to education, training, and culture information.

The Framework for Action of the World Conference on Education for all (Jomtien, Thailand, 1990) has been endorsed by many countries. In order to further the objectives of Education for All, the World Conference on Special Needs Education was held in Salamanca, Spain in June 1994. The Conference adopted the Salamanca Statement on Principles, Policy and practice in Special Needs Education and a Framework for Action with the objective of full equality and inclusion of disabled children⁶⁰.

⁵⁶ . Overview of International Legal Framework for Disability Legislation, 1998 United Nations Division of Social Policy and Development. World Wide Web, Internet.

⁵⁷ . Art,12,13,14,CEDAW,1979

⁵⁸ . Art,5,CAT,1984

⁵⁹ . Political Action Overcoming Obstacles to the Integration of Disabled People. UNESCO sponsored report as a contribution to The World Summit on Social Development Copenhagen, Denmark, March 1995, p.35.

⁶⁰ . UNICEF Regional Office for south Asia : Policy, Planning and Organization of Special Needs Education. UNIESCO/UNICEF Sub-regional Seminar Kathmandu Nepal 1-5. August 1995. Report No 5, 1995, p.1

The WHO Declaration of Alma Ata 1978 recognized the right to health for all the importance of the promotion of community-based projects.

The ILO Convention Concerning Vocational Rehabilitation and Employment (disabled persons) 1983, and ILO Recommendation Number 168 Concerning Vocational Rehabilitation and Employment (disabled persons) (1983) were the first instruments to expressly stress the right to equal opportunity to work for all disabled people. Other treaties produced by ILO which address disability issues are the Convention concerning Discrimination in Respect of Employment and Occupation, International Labor Organization Convention No. 111⁶¹ and the Convention concerning Vocational Guidance and Vocational Training in the Development of Human Resources, International Labor Organization No.142⁶².

UN Conventions like the ILO Convention or UNESCO Convention are binding on all UN members who have ratified it. UNICEF pushed forward the Convention on the Rights of the Child⁶³ 1989, which makes reference to the rights of disabled children. Under Article 2, disability is included as a specific ground for protection against discrimination. In Article 23, the Convention includes a specific article on the rights of the disabled child. It provides guidance on realizing the rights of disabled children. Article 23 emphasizes the importance of respecting the disabled child as a subject of rights who should be provided with conditions for living that "promote self-reliance"

⁶¹ .www.ilo.org

⁶² Id,61

⁶³ .Art,2,23,CRC,1989

and facilitate "active participation in the community". Paragraphs 2 and 3 set out the right of the disabled child to "special care", stressing that assistance should be designed to ensure "effective access" to various services "in a manner conducive to the child's achieving the fullest possible social integration and individual development". Paragraph 4 promotes international cooperation to improve the capabilities and skill of States Parties⁶⁴. States, which are party to this international treaty, have to ensure and respect all the rights set forth in the Convention on the Rights of the Child to disabled children. Nepal is party to the Convention on the Rights of the Child. The Convention is an international treaty and is formally binding on Nepal.

The United Nations Standard Rules on the Equalization of opportunities for Persons with Disabilities⁶⁵ (1993) provide a basis for international co-operation and an instrument for policy-making and actions for persons with disabilities. These rules are based on the experience of the Decade (1982-1993). The moral and the political foundation for the rules are the Universal Declaration of Human Rights (1948), the Convention on the Rights of the Child (1989), the Convention on the Elimination of All Forms of Discrimination against Women (1979)⁶⁶ and the World Program for Action (1982). The rules uphold the principles of equal rights and stress that the needs of each and every individual "must be made the basis for the planning of

⁶⁴ . Implementation Handbook for the Convention on the Rights of the Child, UNICEF 1998, p.294.

⁶⁵ .Id,41

⁶⁶ . Supra Note 57

society and that all resources must be employed in such a way as to ensure that every individual has equal opportunity for participation". The rules have the same legal status as other UN Declarations. The rules provide states with policy guidelines towards the development and strengthening of legislation in support of full participation and equality and they imply a moral commitment to take action for the equalization of opportunities. The rules have no formal binding authority.

Other disability specific international instruments⁶⁷ are the Tallinn Guidelines for Action on Human Resources Development in the Field of Disability⁶⁸ and the principles for the Protection of Persons with Mental Illness⁶⁹.

5.1.1 Regional Initiatives In 1992 the United Nations Organization, the Economic and Social Commission for Asia and the Pacific (ESCAP) passed Resolution 48/3 that proclaimed the Asian and Pacific Decade of Disabled Persons, 1993-2002. ESCAP decided that this second decade was needed because the situations of people with disabilities in the Asian and Pacific Region had not changed significantly during the United Nations Decade 1983-1992. The goals of the Asian and Pacific Decade are "full participation and equality."

The Agenda for Action for the Asian and Pacific Decade of Disabled Persons⁷⁰ called for using Community Based Rehabilitation CBR as a specific strategy for

⁶⁷ . Overview of International Legal Frameworks for Disability Legislation, 1998 United Nations Division of Social Policy and Development, World Wide Web, Internet.

⁶⁸ . General Assembly Resolution 44/70 of 15 March 1990,p 25.

⁶⁹ . General Assembly Resolution 48/96 of 20 December 1993,p.270.

⁷⁰ . Adopted on 29 April 1993 by the Economic and Social Commission for Asia and the Pacific at its forty-ninth session, through its Resolution 49/6.

implementation of rehabilitation activities in communities, based on the wide acceptance of the concept during the United National Decade. In 1994 "Community-Based Rehabilitation for and with People with Disabilities" was published. This document enlarged the concept of CBR by defining it as being a strategy. The CBR concept was further expanded and defined when ESCAP published "Understanding Community-Based Rehabilitation"⁷¹.

On December 7, 1997 The Dhaka Declaration⁷² was adopted. This Declaration stated "that all government and non-governmental organizations working in this region recognize that handicap and disability are development planning, budgeting, implementation of the Agenda for Action for the Asian and Pacific Decade of Disabled Persons requires planned, coordinated action in the communities where people with disabilities live out their lives. The declaration was agreed and seconded by the National Coordinator of the CBR Network of Nepal. These regional instruments follow the same pattern concerning the legal validity of the broad-based international instruments. Decades, Agenda for Action and Declaration raise awareness and give guidelines but have to formal binding authority.

As mentioned in the text above, the different international instruments have different legal validity⁷³. International treaties like The Convention on the Rights on the Child (1989) are formally binding on all States which are party to it. But the treaties do not

⁷¹ . ESCAP: Understanding Community- Based Rehabilitation. United Nations, New York 1997, Document Number - ST/ESCAP/1761.

⁷² . Adopted and signed at the Second South Asian Conference of the CBR Network; Dhaka, Bangladesh, 3-6 December 1997.

⁷³ . This information has been provided by Chris Murgatroyd.

create binding rights for individual citizens unless a state incorporates it into national law. In Nepal, legislation is required to give effect to national law. UN conventions are binding on the UN members which ratify them. UN Declarations, Resolutions and Action Plans adopted at international conferences and International 'Years' or 'Decades' have no formal binding authority but raise awareness and call for commitment as well as action.

5.2 Domestic Legal Measures

Nepal has only recently started to define definite policy for the concern of with specific reference to disability. International institutions have contributed toward enhancing the country's concern in this field. International human rights treaties, which are binding on states parties, have their own influence. Similarly, international instruments that are non-binding, such as declarations, resolutions, principles, and guidelines have guided the domestic legislation. The legal provisions for the welfare and protection of disabled persons in Nepal are therefore based on several international instruments.

5.2.1 Ratification of International Conventions Pertaining to Disability in Nepal

Nepal is party to 16 international conventions, though not all directly related to the issue of disability. Nepal participated in the ESCAP sponsored policy makers meeting on disability in Beijing in December 1992, in which a proclamation declaring the "Asian and Pacific Decade for Disabled persons: 1993-2002 was adopted. Nepal

signed the proclamation in 1993. In same spirit, SAARC declared the SAARC Decade for the Disabled Persons 1993-2002.

These conventions focus on equality and non-discrimination. These conventions are not focused on disability per se; rather, reference to disability must be inferred. The conventions, which are not specifically for disabled people and of which Nepal is, parties are listed below;

▫ **Convention on the Prevention and Punishment of the Crime of Genocide, 1948**

The only relevant reference to disability is in Article 2, which mentions that it is prohibited to harm anyone physically or mentally.

▫ **Convention on the Political Rights of Women, 1952**

There is a statement that men and women have equal rights and that all are equal. This statement implies that the men and women who are disabled also have equal rights.

▫ **Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, 1956**

Article 5 prohibits any act of causing disability. It also states that anyone who attempts to make a person disabled will be punished.

▫ **International Convention on the Elimination of All Forms of Racial Discrimination, 1965**

The Article 5 mentions that the states should protect people from crime and physical destruction.

Article 6 mentions that anyone who discriminates against another on any grounds (race, religion or caste) will be punished by law and will provide compensation to the person discriminated against.

▫ **International Convention on Economic, Social and Cultural Rights, 1966**

Article 1 states that all people have the right of self-decision. It is not directly related to any right itself but it guarantees the right of self-decision. Self-decision on matters of common interest implicitly is a right even for the disabled persons for their wellbeing in an organized manner.

▫ **Convention on the Elimination of all Forms of Discrimination against Women, 1979**

Article 11 mentions that the states should protect all the people from illness and disability.

5.2.2. Legislation in Nepal⁷⁴

Laws relating to the welfare of the disabled persons in Nepal are found in many legal instruments.

1. Constitution of the Kingdom of Nepal, 2047/1990⁷⁵

Article 11(3) says that special laws shall be made for the protection and advancement of the interests of women, children, the aged and those who are physically and mentally incapacitated.

⁷⁴ . Section 8.2.2 is a contribution of Mr. Mihir Kumar Thakur, Pro Public, Kathmandu

⁷⁵ Art.11(3), Constitution of the Kingdom of Nepal, 1990S

Article 26(9) imposes duty on the state to pursue such policies in matters of education, health and social security of orphans and disabled and incapacitated persons for their protection and welfare.

2. The Disabled Persons (Protection and Welfare) Act, 1982 and The Disabled Persons (Protection and Welfare) Rules, 1994

This is the first comprehensive legislation for the disabled persons in Nepal. It was enacted by the legislature in 1982 after the declaration of the United Nations to celebrate the year 1981 as 'The International Year of Disabled Persons'. The Disabled Persons (Protection and Welfare) Act, 1982 (DPWA) for the first time in Nepal has expressly granted some rights and facilities to disabled people. DPWA defines the disabled persons as those Nepali citizens who due to physical or mental cause are incapable or unable to carry out their daily activities. It includes all those persons with speaking, hearing, seeing, manipulation and mobility disability and all mentally retarded persons⁷⁶. If a dispute is made regarding any person as to whether he/she is a disabled person or not, the decision of a committee of experts constituted by the HMG will be authoritative⁷⁷.

Twelve years after DPWA came into force, the government made the Disabled Persons (Protection and Welfare) Rules (DPWR); 1994. The DPWR is a delegated legislation made by His Majesty's Government (HMG) to implement the objectives of

⁷⁶ . Sec. 2 (a); Disabled Persons (Protection and Welfare) Act, 1982.

⁷⁷ . Id. Sec.3.

the parent Act, DPWA⁷⁸. DPWR is as binding as DPWA. The difference between them is only a technical matter. DPWA can only be amended or repealed by Parliament, whereas DPWA can be amended or repealed by the Cabinet. The rights and facilities granted under DPWA and DPWR are briefly explained under the following headings:

- a. Educational Rigts
- b. Health Facilities
- c. Employment Opportunities
- d. Self-Employment Facilities
- e. Tax-Exemption Facilities
- f. Travelling Facilities
- g. Free Legal Aid Services

a. Educational Rights

No fee will be charged to the disabled persons by any educational institution⁷⁹. The word 'educational institutions' as used in the Act actually denotes all the schools funded by the government. Every government or semi-government institution having technical and vocational training programs must reserve five percent of the total seats to the disabled persons without charging any fee provided that the training will be useful for the disabled persons⁸⁰. The government shall also provide free education up to a specified level (not fixed yet) to the children of disabled persons, applicable for only two children. Similarly, special educational facilities shall be arranged for the persons with seeing, hearing and speaking disability and those who are mentally

⁷⁸ . Id. Sec. 24.

⁷⁹ . Id. Sec. 6 (1).

⁸⁰ . Rule 15 (5); Disabled Persons (Protection and welfare) Rules, 1994.

retarded. Any non-governmental or private institution that provides education and training facilities for disabled persons has the right to ask for assistance from the government as directed under DPWR⁸¹.

The government established a Disabled Relief Fund (DRF) in 1982 in order to provide education, training, and maintenance and facilities rehabilitation programs for the disabled persons. Nearly, 8 million rupees have been deposited in the DRF till now and DRF distributes scholarships of Rs. 100/- to Rs. 250/- to the disabled children of the economically disadvantaged disabled children for their education.

Demands to reform DPWA have been raised from many quarters, and particularly the Disabled People's Organizations. A Draft Bill to amend the Disabled Persons (protection and Welfare) Act, 1982 (DBDA) has recently been drafted by the Ministry of Women, Child and Social Welfare (MWCSW)/HMG and it is likely to be presented in Parliament in the near future. DBDA proposes more educational facilities for disabled people, of which at least two such benefits directly target the disabled people. The first such benefit relates to the reservation of one percent of the seats for disabled persons in the higher education scholarship program to be granted either by HMG or foreign governments or international institutions. The next measure according to this proposed Bill empowers the government to grant permission to run private educational institutions only to those educational institutions that provide free education and residential facilities to disabled persons. If this Bill passes, it will be a

⁸¹ . Id. Rule 15 (1).

very bold step toward the provision of free education to the disabled persons in private educational institutions.

b. Health Facilities

The law provides some special health facilities for the disabled as prescribed under DPWA and DPWR. Free medical examination shall be rendered in all the hospitals of the kingdom. The DPWR clearly directs the reservation of at least two free beds for the treatment of disabled persons in any government hospital of the kingdom having more than fifty beds⁸². Free treatment is to be provided in every government hospital to helpless disabled people sixty-five years or older. Similarly, the government may provide essential assistance to those non-governmental hospitals, which imposes responsibility on the government to investigate the general and specific causes of disability and make essential arrangement for the treatment⁸³.

c. Employment Facilities

Every government or semi-government organizations must give priority to the disabled persons in employment according to their education, training and physical position⁸⁴. No discrimination shall be made among disabled employees and other employees in remuneration, facilities and service conditions⁸⁵. Industrial enterprises with more than 25 employees shall allocate a reservation of at least five percent of the positions to disabled people according to their physical capacity, training,

⁸² . Id. Rule 16 (2).

⁸³ . Sec.7, Disabled Persons (Protection and Welfare) Act, 1982.

⁸⁴ . Rule 17 (1), Disabled Persons (Protection and Welfare) Rules, 1994.

⁸⁵ . Ibid., Rule 17 (2).

qualifications and experience. At least a five percent reservation in appropriate work for the disabled persons according to their physical capacity, training, qualification and experience may be allocated in an industrial enterprise having more than 25 employees⁸⁶. The remuneration, conditions of services and opportunities for professional development shall be the same for such employees as for others. For the purpose of securing employment rights, suitable arrangements are to be made by the government to provide appropriate training to the disabled persons⁸⁷. Income tax exemption shall be granted by the government to the industrial enterprise providing employment to the disabled persons on the basis of the salary, allowances and other facilities given to the disabled employees. Similarly, the government shall exempt all custom, excise, and other duties on any machinery or other equipment necessary to be placed or replaced for the benefit of disabled employees⁸⁸. However, the law on this point is contradictory. Whereas the DPWA authorizes discretionary power to the government to exempt all duties completely or partially, the DPWR gives no discretion to the government but directs the government to exempt the duty on all such machinery and other equipment. Clearly, the DPWA is more clear and liberal in this regard⁸⁹.

⁸⁶ . Sec. 8(4); Disabled Persons (Protection and Welfare) Act, 1982.

⁸⁷ . Id. Sec.8 (1) (2).

⁸⁸ . Sec. 10 (4and 6) DPWA; Rule 18 (2) DPWR.

⁸⁹ . DPWR law shall prevail and HMG must exempt all duties completely.

The proposed DBDA⁹⁰ has specific provisions relating to the employment of disabled persons in the civil service as well as in other government corporations either fully or partially owned. Five percent of the posts in such services have been proposed to be reserved for the disabled candidates. This five percent quota shall be reserved only for the disabled and the selection shall be made among them on a competitive basis. The proposed Bill (DBDA), however, permits the selection of other candidates if there is no application from a disabled person for the available post or if the disabled candidates is not qualified for the post. But in such cases, the relatives of the disabled persons who look after him/her shall get priority in job selection.

d. Self-Employment Facilities

The DPWA directs the government to initiate appropriate programs for the disabled persons in order to make them economically self-dependent⁹¹ under these statutory directives; the government through its concerned agencies has launched some self-employment opportunity schemes for the disabled. The Social Welfare Council (SWC) has started to provide loans of Rs.5000/- to 20,000/- without collateral to any disabled persons who have no means or resources to conduct a business despite of his/her skill and efficiency. This scheme, which was initiated by the SWC last year, is a regular program aimed at improving the economic condition of disabled people. This year, some 300 disabled persons in different parts of the Kingdom have received loans distributed by the Agriculture Development Bank on the recommendation and

⁹⁰ . A Draft Bill prepared by the Ministry of Women, Children and Social Welfare to amend DPWA.

⁹¹ . Sec. 8 (1&2) DPWA

guarantee of SWC⁹². If this loan facility is distributed to skilled disabled persons and utilized properly, the program will be successful. For this purpose, skill development program should be launched simultaneously. This loan scheme is actually based on DPWA⁹³ that instructs to provide loans to the disabled persons at a simple interest rate through banks and financial institutions.

Similarly, the Disabled Relief Fund (DRF) has providing some training programs, like free computer training and sewing training, for disabled persons in order to make them economically self-dependent. Appropriate training may be arranged for disabled persons willing to participate in sports, recreational or cultural shows.⁹⁴

e. Tax Exemption Facilities

The government may except disabled persons from income tax and all other taxes as provided under DPWA⁹⁵. These tax exemption facilities may be granted to any organization established for the rehabilitation program of disabled persons⁹⁶. Any equipment to be used essentially by disabled persons due to disability may be completely or partially exempted from custom, excise and other duties.

The existing law does not make it mandatory for the government to exempt disabled persons from all taxes. The proposed DBDA has a clear mandatory provision of income tax exemption for the disabled person. It also allows exemption of custom duties on the vehicles to be used by disabled person for his/her personal use.

⁹² . SWC News Vol.11, Social Welfare Council, No.39, 2000

⁹³ . Sec. 10(7), DPWA

⁹⁴ . Sec.10(2), DPWA

⁹⁵ . Id., Sec.10(5)

⁹⁶ . Ibid

f. Traveling Facilities

The DPWA calls for the provision of half-concession to the disabled person and one of his/her caretakers for bus, train and airplane travel. This provision is not mandatory, and therefore it depends upon whether or not the concerned transport agents and companies want to provide such facilities to the disabled persons. Even the government-owned transport agencies like Royal Nepal Airlines, Sajha Yatayat, Janakpur Railways and Trolley Bus services, have not yet given such concessions to the disabled persons. It can be noted here that the Transport Business Federation has recently decided to give one seeing disabled person free traveling facilities on all long- and short-distance buses. The proposed DBDA does not have any provision that calls for free or concession travel; rather, it insists only on the priority and reservation of seats on public transportation for the disabled persons.

g. Free Legal Aid Services

The statement of basic human rights in the Constitution and Laws does not go far enough in ensuring equal rights for all citizens. People belonging to underprivileged, social and economically disadvantaged communities and disabled persons need special facilities and protection from the State to enable them to enjoy the rights guaranteed by the Constitution and Laws. Therefore, the Constitution, through its Directives Principles, Clearly commands that in order to secure justice for all, the state shall pursue a policy of providing free legal aid to indigent persons.

The Free Legal Aid Service (FLAS) was initiated in Nepal by the judges. In 1995, the Supreme Court decided to provide free pleading services in poor people's cases pending before the court through two lawyers appointed and remunerated by the court itself. The FLAS was further expanded to other courts in many phases, with lawyers appointed and remunerated by the respective courts. Since its formation in 1962, the Nepal Bar Association (NBA) has always been vocal in advocating free legal aid to the needful. It initiated the 'Legal Aid Project' with financial aid from the Norwegian Bar Association. Through its 68 entrusted Bar Units, the NBA has been executing FLAS for the last twelve years.

The legal framework of FLAS got legislative sanction for the time in December 1997 when the Parliament enacted the Legal Aid Act, 1997 (LAA), after long and continuous demands made by the legal community.

The LAA has no special provisions for the disabled persons to seek free legal aid. The benefit of free-legal aid under LAA only goes to those persons with an income of less than 40,000 per annum⁹⁷. Therefore, only those disabled persons having an annual income of less than Rs. 40,000/- annual have the right to receive free-legal aid.

The DPWA has given legal counseling to the disabled person if s/he demands so in a case pending before the court through a lawyer appointed by the government⁹⁸. This legal facility is only limited to counseling and pleading procedures. Therefore, it is

⁹⁷ . Sec.3, Legal Aid Act 1997; Rule 6, Legal Aid Rules, 1998.

⁹⁸ . Rule 20, DPWR.

desirable to have free legal aid service to be provided under LAA to the disabled persons to enforce their rights as guaranteed by the law.

1. National Code 1964 (Muluki Ain 2020)

The National Code (NC) was originally enacted 145 years ago and it is now a revised version promulgated in 1964 (2020 B.S.). There are some provision for the disabled persons in the NC, though they are not very detailed.

The NC Chapter on Court Proceeding says that those with seeing, hearing and speaking disabilities have the right to use their guardian to fight for their legal rights⁹⁹. The Chapter on Court Proceedings further states that priority should be given to the cases of physically incapacitated clients in the courts¹⁰⁰.

The NC Chapter on the Destitute (garib kangal) imposes duty on the government to provide food, shelter and two sets clothes per year to the poor and people who cannot work¹⁰¹. While providing such facilities, priority should be given to the people suffering from leprosy, blindness, and other disabilities¹⁰².

The NC Chapter on Marriage permits a man to take a second wife if the first wife becomes blind or lame¹⁰³. A woman, however, cannot remarry in the same circumstances. A woman can only remarry if she is fraudulently married to a blind,

⁹⁹ . Sec.83, Chapter on Court Proceedings, National Code 1964.

¹⁰⁰ . Id. Sec.11(3).

¹⁰¹ . Sec.5, Chapter on Garib Kangal, National Code, 1964.

¹⁰² . Id. Sec.8.

¹⁰³ . Sec.9, Chapter on Marriage, National Code.

lame or other physically disabled person¹⁰⁴. The family law concerning marriage is discriminatory and gender bias is clearly seen on this point.

2. Education Act 2028/1971

The Education Act provides special education to the children with seeing, hearing or speaking disabilities or those who are physically or mentally retarded. The Act authorizes the government to make proper arrangements for these disabled children¹⁰⁵. The Education Rules 1992 promise that those schools which provide special education for children with seeing, hearing or speaking disabilities or are mentally retarded shall have the right to receive special facilities from the government¹⁰⁶.

3. Money Order Regulations 2031/1974

Under these regulations, the parents or guardian of a mentally retarded person are allowed to sign for the disabled person's money order if she disabled person is living with them.

4. Social Welfare Act 2049/1992

This Act empowers the government to undertake special programs of social welfare activities aimed at different classes of people. It aims to serve the interests and ensure the welfare of children, the old, helpless or disabled people. It works to increase people's participation in development activities, and to protect and promote the rights

¹⁰⁴ . Id., Sec.4.

¹⁰⁵ . Sec.19(2), Education Act, 2028.

¹⁰⁶ . Rule 1, Education Rules, 1992.

and interests of women. It also works to ensure a respectable life for the unemployed, poor and illiterate people, and to make the necessary arrangements for the welfare of disadvantaged classes and communities¹⁰⁷.

The Act is a major piece of social welfare legislation. The Social Welfare Council (SWC) is a creation of this Act, which is authorized to execute this law¹⁰⁸.

5. Child Act, 2049/1992

The Child Act provides some rights to disabled and orphaned children. Such children should be kept in a government children's welfare home until the disabled person reaches the age of 16. The duration may be extended to 18 years if the disabled person has nowhere to go. But this age bar does not apply to disabled children¹⁰⁹.

The Act also imposes duty on government to establish homes for orphan disabled children and provide them necessary education¹¹⁰.

6. Local Self-government Act 2056/1999

This Act authorizes the village Development Committee (VDC) and VDC Ward Committee to help in activities relating to the protection and livelihood of disadvantaged communities, as well as orphans and the helpless and disabled people of the village¹¹¹. It also imposes duty on the VDC to maintain records on the helpless, disabled and physically handicapped children within the VDC and to make

¹⁰⁷ . Sec. 4, Social Welfare Act, 1992.

¹⁰⁸ . Id. Sec. 9(1).

¹⁰⁹ . Sec.36, Child Act, 1992.

¹¹⁰ . Id. Sec.43.

¹¹¹ . Sec.25(i), Local Self-Government Act, 2056.

arrangements for their appropriate accommodation¹¹². Similarly, it also directs the VDC to work for the protection of orphans, helpless women, and disabled people according to the national policy, eradicate social ills¹¹³. The same responsibilities have been given to the Municipality and its Ward Committee under this Act¹¹⁴. The District Development Committee (DDC) also has a legal duty to perform function relating to the protection of orphans, helpless women, and disabled people according to the national policy¹¹⁵.

6. Constitution of the Kingdom of Nepal, 1990¹¹⁶

Article 11(3) of the Constitution of the Kingdom of Nepal, 1990 has said that special laws shall be made for the protection and advancement of the interests of women, children, the aged and those who are physically and mentally incapacitated.

7. Interim Constitution of Nepal, 2063¹¹⁷

Article 13 (3) of the Interim Constitution of Nepal 2063 which had made after successes of the Jana Andolan II has mentioned positive discrimination to make special laws including disabled persons. Similarly, Art. 21 of the Interim Constitution of Nepal 2063 have mentioned under the Right to Social Justice disabled persons shall have right to participate on the state organs.

5.3Judicial Trends

¹¹² . Id., Sec.28(1)(k), (6).

¹¹³ . Id., Sec.28(1)(K),(8).

¹¹⁴ . Id., Sec.93 (5); 96(1)(j), (10).

¹¹⁵ . Id., Sec.189(1)(f), (2).

¹¹⁶.Id,55

¹¹⁷ Art,13,21,Interim Constution of Nepal,2063 B.S.

Some Landmark decision of Indian Supreme Court regarding the education rights of disabled persons which are as follows :

Mohini Jain VS. State of Karnataka and Others

"Right to life" is the compendious expression for all those rights that the Court must enforce because they are basic to the dignified enjoyment of life. It extends the full range of conduct, which the individual is free to pursue the right to life under Art.21 and the **dignity of an individual can't be assured unless it is accompanied by the right to education. The state government is under an obligation to make endeavourer to provide educational facilities at all levels to its citizens.**

The fundamental rights guaranteed under part III of India including the right to freedom of speech and expression and other rights under Art. I cannot be appreciated and fully enjoyed unless a citizen is educated and conscious of his individualistic dignity" - 1992 (2) SCALE 17 (90) at 94

Uri Krishna, JP and Others V. State of Andhra Pradesh and Others :

"The provision of part III and IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve the goals indicated in part IV. It is also held that the fundamental rights must be construed in the light of the directive principles..... **The right to education which is implicit in the right to life and personal liberty guaranteed by Art.21 must be construed in part in the light of the directive principles in part IV of the Constitution"** - 1993(1) Sec. 645 at 730, 731

Chameli Singh VS. State of UP : "In a civilized Society the right to life means. Right to life with dignity, right to food, right to decent environment, right to education, right to medical case and shelter etc. right to"-1996 (2) sec.549

5.3.1. Supreme Court of Nepal

Some Landmark decision of Supreme Court of Nepal regarding the Rights of Disabled Persons has given below :

(1) In the case which had fielded by **Babu Krishna Maharjan VS. HMG at all** date of 2061 B.S. and writ no.3666 the Court had given directive orders to government to effective implementation of The Disabled Persons (protection and welfare) Act.1982.¹¹⁸

(2) On the case which had fielded by **Sudarshan Subedi at all VS. HMG** date of 2057 B.S. writ no. 3586 The Supreme Court has gave directive order to the HMG to provide free education to disabled persons who want to study governmental college and govt. school as well as teaching center.¹¹⁹

5.4.State Policy

The Tenth Plan Target¹²⁰ :

i. Objective :

- Making the life of disabled persons easy and respectful.
- Increase the participation of disabled persons in right based programs.

¹¹⁸ Decision Date 2061-10-5 B.S Supreme court of Nepal

¹¹⁹ Decision Date 2060-10-28 B.S Supreme court of Nepal

¹²⁰ Tenth Plan,2059-2064, National Planning Commission, p.453

ii. Major Quantative Targets :

- To making special legal and policy arrangements to provide equal opportunity to persons with disability.
- To providing equal opportunities in education, training, health, employment and other services.
- To creating conducive environment for disabled to participate in policy making, evaluation and monitoring.

i. Plan and Work Policy :

- To making relevant amendments in the existing laws.
- To making provision for free health care at all levels, free education and community based rehabilitation.
- To making arrangements for physical and mental development, skill development and their employment.
- To creating positive public awareness towards disabled persons.
- Increasing participation of disabled persons in all programs related to them
- To establishing of a "National Level Handicap Conservation fund" For Social security and economic development of persons with disability.

ii. Programs :

- To providing free education, training, health services, employment and other sevices.

- To providing equal opportunity to disabled persons, their access will be increased, and attempts will be made to provide different services either free or at concessionary rate.
- To making efforts to increase participation of disabled persons in formulation of policy, plans monitoring and evaluation.
- Statistics on disability will be periodically updated. Distribution of Identity Cards to disabled will be continued.
- Strengthening of institutions working for the disabled persons and prepare necessary manpower.
- Preventive, curative and public awareness programs will be conducted.

The total budget for various programs for disability in the Tenth plan period is Rs.378, 250,000.

(Tenth Plan 2059 B.S.-2064 B.S. HMG National Planning Commission, Nepal, 2059 Falgun P.454).

- Policy and program of Government of Nepal.

Analysis of Legal Provisions

The legal basis of the programs and policies for the welfare of the disabled persons directly emanates from the Constitution. The Constitution of the Kingdom of Nepal, 1990 has a separate part on 'Directive Principles and Policies of State' which contains several principles of a welfare state that are to be implemented through laws a within the limits of the resources and the means available in the country. The principles and

policies contained in this Part cannot be enforceable in any court; however, they shall be fundamental to the activities and governance of the state¹²¹. The Constitution through the "Directive Principles" inter alia directs the state to pursue such policies in matters of education, health and social security of the disabled persons, incapacitated persons and others as will ensure their protection and welfare¹²². Similarly, the Constitution also allows making special provision by law for the protection and advancement of the interests of those who are physically or mentally incapacitated¹²³. The Constitution makes it clear that such special provision is not be considered as violative to the 'Right to Equality'.

All of the legislative programs and policies for the welfare of the disabled persons are based on these two constitutional provisions. The Constitution is sensitive to the problems of disabled persons, and therefore it directs state to conduct special welfare programs. But at the same time, realizing the limits of the resources and the means available in the country, it only commands the state to implement the welfare measures in various stages. This is the gist of constitutional mandate to be followed and implemented by the state for the welfare of the disabled persons. Under these constitutional mandates and limitations inherent therein, the programs and policies for the welfare of disabled persons are embodied in two Disabled Persons (Protection and Welfare) Rules 1994 (DPWR). The rights and other facilities provided by these

¹²¹ . Article 24, The Constitution of the Kingdom of Nepal, 1990.

¹²² . Id., Article 26 (9).

¹²³ . Id., Article 11(3).

two legal instruments have been discussed above. The other laws as discussed above are mostly related to implementing authorities whose duty it is to conduct welfare measures for the disabled persons. The whole body of law that relates to the disabled persons may be analyzed under two headings: (1) Nature of Rights and (2) Role of Implementing Authorities.

. Nature of the Rights

The rights and facilities provided by the legal instruments are of two kinds. (1) Specific rights and (2) general rights. Specific rights are the real rights or primary rights of the disabled persons. It is the duty of the government or concerned institutions to respect and enforce these rights as a legal responsibility. A violation or breach of these responsibilities by anyone can be enforced in the courts. Specific rights are enforceable in a court of law and therefore have binding force. There are a few rights and facilities for disabled persons under DPWA and DPWR which can be specific rights, and they are mostly related to educational rights and health facilities as mentioned below :

- Exemption on fee by educational institutions¹²⁴.
- Free education for two children of each disabled person¹²⁵.
- A five percent reservation of seats with free education in technical and vocational training programs run by government or semi-government institutions¹²⁶.

¹²⁴ . Sec.6 (1), Disabled Persons (Protection and Welfare) Act, 1982.

¹²⁵ . Rule 15(2); Disabled Persons (Protection and Welfare) Rules, 1994.

¹²⁶ . Id., Rule 15(5).

- Free medical checkups in hospitals (governmental)¹²⁷.
- At least two free beds reserved for treatment in every government hospital having more than fifty beds¹²⁸.
- Priority in government or semi-government jobs¹²⁹.
- Free legal aid¹³⁰.
- Right to equality in all matters and right to live with dignity¹³¹.

General rights are those which originally are not mandatory and can be enjoyed only on the administrative decision of the government or concerned institutions. In other words, they are binding when administrative decision is taken under statutory authority and obligation. Most of the rights for the disabled persons come under this category. Due to its limited resources and means, the State is not able to make all the rights as mentioned in the law mandatory. Adequate resources are essential to make any general rights binding. The State can only provide maximum benefits and facilities for the needful according to her economic capacity. A poor country like Nepal cannot manage to provide all the facilities for disabled persons at once. Therefore, the law directs the government to provide the benefits and facilities phase-wise, according to her economic capacity. The administrative agency has a legal obligation to make decisions on the general rights to be enjoyed by the disabled

¹²⁷ . Id.,Rule 16(1).

¹²⁸ . Id., Rule 16(2).

¹²⁹ . Id., Rule 17 (1).

¹³⁰ . Id., Rule 20.

¹³¹ . Sec.5, Disabled Persons (Protection and Welfare) Act, 1982.

persons. The law for this purpose is to be taken as the guideline. To make this case, the following example is given :

The DPWA empowers the government to provide disability allowance to the disabled persons whenever it is demand appropriate¹³². The law itself does not fix the amount of the disability allowance but authorizes the government to do so. All decisions with regards to such allowances for disabled persons are up to the discretion of the government. The concerned ministry, particularly the Ministry of Women, Children and Social Welfare, has to make the decision based on the available resources. The decision to provide the disability allowance is thus an administrative decision and the decision taken by the government concerned body is the administrative agency for this purpose.

Past experience shows that even the mandatory provisions of the legal instruments are not fully enjoyed by the majority of disabled persons¹³³. Therefore, the specific rights that apply to disabled persons for their well being should be appropriately disseminated. This should be done through media and other sources by the government and concerned institutions working for the welfare of disabled persons so that the disabled persons living in even the most remote parts of the country may become aware of rights. Other concerned agencies, like schools and local government units, must also be informed of these rights of the disabled persons.

¹³² . Id. Sec.10 (9)

¹³³ . Dr. Laxmi Narayan Prasad, Disabled Persons Deprived of Facilities Despite laws, in Srijana, a quarterly magazine of National Federation of Disabled - Nepal, No.1 2057 p.8

The proposed draft to amend the DPWA was prepared in order to expand the specific rights for the welfare of the disabled persons. The purpose of this proposed draft is to broaden the area of specific rights to make them binding.

Role of Implementing Authorities

At the central level, it is the Ministry of Women, Children and Social Welfare (MWCSW) which is primarily responsible for implementing the laws pertaining to the welfare of disabled people. It derives its authority directly from DPWA to executive laws and formulate policies and programs as directed by legal instruments. The Ministry of Education and Sports, Ministry of Finance, Ministry of Local Development and Ministry of Health are also responsible to some extent for implementing the laws related to the rights of disabled persons.

The welfare of disabled people also comes under the jurisdiction of the Social Welfare Council (SWC). The SWC, being the apex body to coordinate, promote, and facilitate the social service sector, has a legal responsibility to conduct welfare programs for the disabled persons. The SWC has facilitated disabled persons with access to loans and credit up to Rs.20,000/- without collateral so as to run small scale entrepreneurship on their own. The SWC, on behalf of HMG, has started taking some measures towards mitigating the problems of disabled people. The Disabled Relief Fund (DRF), constituted by the government, has been providing services to disabled people for the last 18 years.

At the local level, the Chief District Officer (CDO), Asst. Chief District Officer (ACDO), District Development Committee (DDC), Village Development Committee (VDC) and Municipality are also legally responsible to implement laws relating to disabled people. The National Code Chapter on Destitute imposes duty on the CDO to provide food, shelter and two sets clothes per year to the poor and people who cannot work, on the recommendation of the VDC or Municipality. The ACDO of each district has recently been given the responsibility to perform the duty of Social Welfare Officer (SWO) in his district. The SWO is mandated by the DPWR to issue identity cards so that disabled persons may be able to enjoy their rights. The VDCs or Municipalities are under legal obligation to keep records of disabled persons in their respective areas and provide them with the necessary services as required.

Implementation of legal instruments in Nepal is often very weak. The Constitution through its preamble envisages a transformation of the concept of Rule of Law into a living reality. The cardinal principle of Rule of Law is to maintain absolute supremacy of the law. Unfortunately, supremacy of law is found only in theory, not in practice. Implementation of the laws is subject to the mood and whim of executive authorities. However, when pressure comes in the form of mass protests and agitation, the concerned authorities under compulsion will usually perform their legal duty. This is the general trend of execution of most of the laws in this country.

As with other social legislation in this country, implementation of the legal instruments made for the welfare of disabled persons has been inadequately executed.

It is not irrelevant to illustrate a few examples of the non-implementation or very weak execution of the laws in this regard.

DPWA came into force in 1982, but the rules to be made under it were only framed twelve years later. The DPWA clearly directs the government, particularly the Ministry of Women, Children and Social Welfare to register the types of disability and the names of disabled persons living in different parts of the country¹³⁴. However, the government has still not recorded the names and number of disabled persons. The DPWR framed in 1994 imposes duty on the government to distribute identity cards to the disabled persons so that they may enjoy the rights conferred on them by law. The government has still not implemented this legal duty. The above-mentioned examples of non-implementation or weak-execution of the laws are related to central level, particularly the MWSW.

There is no proper or effective implementation of the legal instruments pertaining to disabled persons due to a lack of commitment on the part of the concerned authorities. They claim insufficient resources as the prime factor of the non-implementation of the laws. Insufficient resources and means is definitely a barrier, but certainly not a major hurdle. A real commitment can make many things possible.

There are two categories of legal Duties to be performed by the implementing authorities, namely mandatory and recommendatory according to the law. Mandatory duty involves the performance of a specific duty in respect of which there is no

¹³⁴ . Sec.18 (3), Disabled Persons (Protection and Welfare) Act, 1982.

choice. All the rights specific or general as provided to the disabled persons are the mandatory duty of the government or concerned institutions. Specific rights of disabled persons have binding force and can be enforceable by a court of law. If an administrative decision or instruction is issued to that effect under the statutory obligation, it possesses binding force and must be enforced by the court. In case of absence of administrative decision or instruction to this enforce the general rights of the disabled persons. The recent judicial activism of the court, of Nepal, particularly the Supreme Court, is slowly moving towards establishing the norms and values of social justice. This factor may lead the court to direct the government to provide those rights to the disabled persons even though they are not of a mandatory nature.

To make it clear, here is one illustration:

The DPWA¹³⁵ and DPWR¹³⁶ direct the government to establish homes in different parts of the country for the old and helpless disabled persons. If the government has not established any homes for the disabled persons, the court may order the government to make such homes. The court may give the order to do so because there is law, which directs the government to make such homes.

The second category of duty of the government or concerned institutions in this regard may be called recommendatory duty. The recommendatory duty may or not relate to specific or general rights as conferred to disabled persons. It largely depends upon the discretion of the government to decide according to her means and resources

¹³⁵ . Id. Sec. 10(8)

¹³⁶ . Rule-8; Disabled Persons (Protection and Welfare) Rules, 1994

as to how much can be done for the disabled persons apart from the mandatory duty. DPWA directs the government in consultation with the SWC and NGOs to make comprehensive policies and programs for the welfare of disabled persons¹³⁷. Under this statutory obligation, the government constituted a National Committee on Welfare for the Disabled Persons (NCWDP) in 1992 (2051B.S.) headed by the Minister of Social Welfare. NCWDP further set up a three-member sub-committee in 1996(2053) headed by former secretary to HMG Mr. Sachidanand Shrivastava to draft comprehensive programs and policies for the welfare of disabled persons. The sub-committee submitted its report immediately to the government through NCWDP. The recommendations made to the government through such Committees are the recommendatory duty to be performed. The government (Cabinet) decided to accept the report and preparations are underway for making an action plan. The action plan is based on the recommendations of the Sub-Committee of NCWDP, which relates to education, health, rehabilitation, and employment policies to be followed for the welfare of the disabled persons. The recommendations made to the government are comprehensive and principally support those matters already found in legal instruments. It is hoped that when the Cabinet approves the action plan, there will be a real commitment on the part of the government to improve the lives of disabled persons.

¹³⁷ . Id. Sec. 20

While discussing the implementation aspect of the legal instruments on disabled persons, it is very important to note the role of the National Federation of Disabled Nepal (NFD). Founded in 1993, NFD represents more than 70 member organizations working for the cause of persons with disability and it has been playing an effective role in pressurizing the government and concerned institution to be more sensitive, dedicated and liberal in their policies/work for the welfare of disabled persons.

The Role of the Court

The role of the Court is very significant in the implementation of the rights of the disabled persons. As much as national courts can serve as an effective mechanism for the protection and extension of the rights of citizens, courts can play a major role in applying international standards to domestic issues of disability. Legal remedies for the disabled persons to enjoy their rights can be available in Nepal through the courts in two ways.

- i. Through the Supreme Court
- ii. Through the other Courts

The extra-ordinary jurisdiction of the Supreme Court may be invoked for the cause of disabled persons. The rights and facilities conferred to disabled persons by law can be enforceable by the Supreme Court. A writ petition can be filed by any disabled person or disabled people's organization pleading with the Court for the enforcement of their legal rights for which no other remedy has been provided or for which the remedy even though provided appears to be inadequate or ineffective. The Supreme

Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs for the enforcement of the rights of disabled persons¹³⁸.

The subordinate courts may be invoked for this purpose. The National Code (Muluki Ain) Chapter on Court Proceedings empowers the courts (Appellate Court and District Court) to enforce the general rights of any community¹³⁹. The disabled persons come under this clause to get remedies from the subordinate courts. Therefore, enforcement of legal rights of disabled persons may be possible through courts at local levels. The disabled person's organizations and NGOs can file public interest litigation in courts to have legal remedies and enforcement of the rights and facilities.

General Assessment of the Laws and Policies

Under the commands of the Constitution and the laws, it is the legal responsibility of the government to implement special programs for the welfare of the disabled persons. The laws (DPWA/DPWR) are very clear and faithful execution of these laws is essential. Though there are provisions of policies at various levels, there has been gap in the implementation of these policies.

Though there has been an attempt to secure two beds in the hospitals for the disabled persons it has not been widely practiced. The distribution of the disability allowance

¹³⁸ . Art. 88(2), The Constitution of the Kingdom of Nepal, 1990

¹³⁹ . Sec.10, Chapter on Court Proceedings, National Code.

is not mandatory. HMG has provided loans for the disabled persons through the Social Welfare Council but the procedural system is very complicated.

There are no jobs for the disabled persons in the factories as mentioned in the law. Legally there can be no discrimination for the disabled persons in government jobs, but in practice there is no reservation policy nor are there facilities for the disabled persons.

It can be assessed from the above that the most critical stage has been the implementation of the laws and policies in the country. Though there are legal provisions for disabled people, the lack of proper implementation has prevented the beneficiary group from enjoying their rights.

Although one cannot ignore the fact that some effort has been made by the government to implement the legal instruments, much remains to be done. The National Planning Commission does not yet have a specific unit to deal with the issue of disability. For the first time, the 8th plan had taken disability as a development issue to a certain extent. This was done on the recommendation made by the National Education Committee 1992(2049 B.S.).

There is a section on disabled persons in the 9th plan. It makes provisions for those with mental and physical health problems in areas of sports, education and employment. Emphasis has been given to rehabilitation programs. Provisions for the shelter for the needy has also been emphasized.

Similarly, the budget for 1994/95 allocated an allowance of Rs. 100 for 50 person per district for those who are physically or mentally handicapped. In the 1995/96 Budget, a provision was made for the gradual establishment of regional schools in five development regions for disabled children.

In December 1993 the National Committee for the Welfare of the Disabled Person was formed. The committee recommended the establishment of a comprehensive national policy to protect the rights of disabled persons. The action plan is still pending.

It can be noted here that the National Education Council was formed in 1973 to give direction to educational programs. The Special Education Council was established to co-ordinate special education programs in Nepal. The objectives of the council were to make education program policies, draw up the curricula, arrange for textbooks and educational materials, provide funding and supervise the programs.

CHAPTER - VI

NON-GOVERNMENTAL EFFORTS

6.1.Efforts of the National No-governmental Organizations

After the restoration of multi-party democracy in Nepal in 1990, there has been a wave in establishing Non-Governmental Organizations for social work in different fields including disability. Thousand of organizations have been registered in the country but approximately only 15,000 NGOs are affiliated with Social Welfare Council, and it is assumed that almost an equal number of NGOs, though registered in District Administrative Offices, are not affiliated.

NGOs have been playing a very important role in providing services to disabled persons. Without the help provided by the NGOs it would have been extremely difficult for HMG/N alone to provide enough services to disabled persons.

A large number of the NGOs exist only in paper. They have either got no program or ceased to have any programs after a few years due to financial constraints.

6.1.1 Nepal Disabled Association (NDA)¹⁴⁰

This Association was initially called *Nepal Disabled and Blind Association*. This was the first non-governmental social organization established in Nepal working in the field of disability in 1966, but officially registered in 1969, which provided services to all types of people with disability.

¹⁴⁰ <http://www.nepaldisabled.com/>

Before the Nepal Disabled and Blind Association was started, about two years earlier, the Nepal Red Cross Society, under the dynamic leadership of HRH Princess *Princep Shah*, had formed a sub-committee, called committee for the Welfare of the Blind under the convenorship of the author. After the author came in contact with *Khagendra Bahadur Basnyat*, he found Basnyat very intelligent and a person with dynamic personality. The author talked with him on several occasions and tried to convince and persuade him to form the first association for the services to the disabled and take on the leadership. He was reluctant to take up the leadership because of the severe disability and inability to move from one place to another. Finally, HRH Princess Princep Shah, Prof. *Ganesh Raj Singh*, his elder brother, *Narendra Bahadur Basnyat*, some of the friends and well wishers of *Khagendra B. Basnyat* and the author were able to convince him to take up the leadership. The initial expenses for the Nepal Disabled and Blind Association came from Nepal Red Cross Society. The word blind was included in the name because the Sub-committee for the Welfare of the Blind of the Red Cross was amalgamated into the Association.

The Founder Chairman of the association was *Khagendra Bahadur Basnyat*, a profoundly physically disabled person, who was confined to bed because of ankylosing spondylitis resulting in fixation of all the joints of his body; and was carried in stretcher/ambulance to make him move from one place to another. The association was started with an office in Dillibazaar and home for the disabled in Baneshwar. Later it was moved to Jorpati.

Basnyat was highly intelligent, honest, sincere and devoted leader of disabled persons. He was far sighted and prepared the infrastructure for the future development of the association. He is considered the Father of the disability movement in Nepal.

He convinced the members of the executive committee to purchase land for the construction of a building in Jorpati, then considered a remote area. A plot of land covering an area of 22 ropanies was bought, which was later expanded to 75 ropanies (3.3 hectares). A cluster of buildings has been constructed there for various activities of the Association. After the death of Khagendra Bahadur Basnyat, to commemorate his contribution, the Centre was called of *Khagendra New Life Centre (KNLC)*. Important personalities visiting Nepal, who are interested in social activities for disabled persons, pay visit to this Centre. He denoted all his properties to the association. Recognizing the contribution of Khagendra Bahadur Basnyat in the field of disability, HMG/N Ministry of Women, Children and Social Welfare has established *Khagendra National Disabled Service Fund* from 2000. From the interest generated from the fund, an award of Rs. 25,000 is given to a social worker every year.

The office of the association was situated in the beginning at his home at Dilli Bazaar and the rehabilitation services were provided from a rented house in new Baneshwar. They were shifted to Jorpati after the construction of a new building. The word "Blind" from the name of the association was dropped in 1984, after blind

persons were sent to the Nepal Association for the Welfare of the Blind (NAWB), and was called the *Nepal Disabled Association*.

6.1.1.1 Activities and Facilities at Khagendra New Life Centre (KNLC)

KNLC is a unified training cum rehabilitation centre for handicapped persons. The centre provides general education up to Class Eight (lower secondary). Vocational training is given in various trades like carpet weaving, cane and bamboo works, handloom, hosiery and embroidery, tailoring, typing etc. The Centre provides medical care, physiotherapy, prosthetic and orthopaedic services.

The following specialized facilities are also available:

i. SOS Children's Village

This is a special program dedicated to the care of disabled orphan children. The objective is to provide comprehensive care to children until they become self-reliant. There are 55 children at present in the Village under KNLC.

ii. Ryder Cheshire Home

This is an institution-based rehabilitation centre for people with severe disabilities aged 15 to 30 years. It focuses sharply on their rehabilitation with physiotherapy and vocational training services. There are at present 32 persons in the Home.

iii. Orthopaedic Hospital

Funds for the construction of 16 beds in hospital was provided by the Rotary International District 7090, through the Rotary Club of Patan. In this hospital,

qualified orthopaedic surgeons give treatment to orthopaedic patients; physiotherapy, artificial limbs and prosthesis are also provided here.

iv. Community Based Rehabilitation Program (CBR)¹⁴¹

CBR Programs are run for the prevention of disability and for the rehabilitation of Disabled persons. It emphasizes active participation of the community and family members in providing necessary services for the welfare of disabled persons. It also trains and rehabilitates them in economic activities in the community. The CBR programs are popular and are successfully running in several places.

Nepal Disabled Association has branches in several districts: i. Jhapan, ii. Dhankuta, iii. Kathmandu, iv. Kailali, v. Banke and vi. Kaski. All district branches are running CBR programs in addition to other vocational and rehabilitation programs.

The present chairman of the Association is *Surendra Bahadur Basnet*.

6.1.2. Nepal Netra Jyoti Sangh (NNJS)¹⁴²

This NGO was started by *Dr. Ram Prasad Poklhre*, an ophthalmologist, with aims to prevent blindness and to develop and extend services to the patients suffering from eye diseases. It was established in 1978 in Tripureshwar and is still located there. The NNJS has been able to expand the services throughout the country. With the support of MoH and INGOs it has been able to establish Eye Hospitals in 12 out of 14 Zones of the country, prepare 90 ophthalmologists, 185 ophthalmic assistants and establish

¹⁴¹ www.crb.com

¹⁴² <http://www.anmf.net/hospitals.htm>

about 1,500 hospital beds for eye patients in the country. NNJS is actively involved in making Vision 2020- Right to See a success.

NNJS is involved in the following activities: establish eye hospitals in different parts of the country, organize mobile eye camps, arrange necessary training of eye surgeons and paramedical personnel, create public awareness about eye diseases, co-ordinate methods and prevention of blindness.

6.1.3. Association for the Welfare of the Mentally Retarded (AWMR)¹⁴³

On the occasion of the IYDP 1981, AWMR was established under the chairmanship of *Dr. Mohan Man Sainju*, the then vice chairman of the National Planning Commission. It was officially registered only in the year 1985. Initially, programs were started with 12 children suffering from mental retardation, and the Centre was located in *Nirmal Bal Bikash Kendra* in Chhauni, which was later shifted to Tahachal. In the year 1984, it was moved to the present building in Baneshwar located in an area of 2 ropanis, donated by Chandra Rajya Laxmi Devi Rana. The building was renovated and the present Nirmal Bal Bikash Kendra (Centre) is located there. The head office of the AWMR is located at present in a rented modern building situated in Hattisar. Recently, the foundation stone has been laid down in a plot of land in Sinamangal, for the construction of a building of AWMR.

In 1987, *Dr. Mohan Man Sainju*, the Chairman of the association, was succeeded, by *Dr. Mahendra Prasad*, a paediatrician, and former Vice-Chancellor of

¹⁴³ www.pravidhik.com.org

Tribhuvan University. He has been elected Chairman three times during the period. Even at the age of 88 he re attends office and participates in the activities of the association.

AWMR has branches in 21 districts of the country. The main programs conducted by the association are: family counseling, day care centres, workshops for vocational training and income generation programs like making paper bags, envelopes, candles, chalk, incense sticks, peanut butter, etc. The programs also include home-based rehabilitation activities like animal husbandry, agro-based income generating programs, Special Olympic activities, regular meetings of parents and organizations to create public awareness and education of the mentally retarded people based on the philosophy of inclusive education. Due to financial constraints the association is not been able to do much even with their earnest and sincere efforts.

The association was able to organize the 14th Asian Conference on Mental Retardation in November- December 1999 under the auspices of the Asian Federation for the Mentally Retarded (AFMR). Dr. *Mahendra Prasad* happened to be the Chairman of AFMR at that time. A Kathmandu Declaration was adopted by the General Body Meeting of the conference, which emphasized on the strategies for equalization of opportunities for people with Mental Retardation and on Implementation of UN Standard Rules for people with Disabilities.

6.1.4. Disabled Relief Fund (DRF)¹⁴⁴

¹⁴⁴ www.enbalemart.com

This fund was established in 1982 by Social Service National Co-ordination Council (SSNCC) with the view to provide education, vocational training and help in the rehabilitation of the people with disability. Rs. 550,000 was made available for fixed bank deposit, this amount, through internal resources, has been increased to Rs. 9,429,000 in the year 2001-2002. Approximately, 16,000 persons have benefited from various programs conducted by the organization.

The Disabled Relief Fund (DRF) is conducting regularly the following activities for disabled persons from all over the country :

- a. Scholarship to disabled persons,
- b. Manufacture and supply of artificial limbs and orthopaedic appliances,
- c. Manufacture and supply of wheel chairs and tricycles,
- d. Computer training,
- e. Tailoring, Knitting, etc,
- f. Awards to brilliant disabled persons,
- g. Awards to teachers with disabilities,
- h. *Chandra Kumar Bhattarai* Award to talented blind persons,
- i. Financial contribution for medical treatment,
- j. Management of Nepal Orthopaedic Appliance Centre and
- k. Management of a petrol pump for income generation and other such activities.

The Chairman, *Tara Nath Koirala*, an amputee, with the help of a committee consisting of nine members is conducting the programs very efficiently.

6.1.5. Nepal Association for the Welfare of the Blind (NAWB)¹⁴⁵

It was originally started as a *Centre for the Welfare of the Blind* in Kalmochan, Kathmandu in 1983, in a dilapidated house, donated by Guthi Sansthan. After renovations, the office was established there and welfare activities were started. In 1985, it was named NAWB and was registered with the government and affiliated to SSNCC.

Soon after the vocational training programs were started by NAWB, it was found that jobs were not available for the blind. It was difficult to find jobs even after satisfactory completion of vocational training. So the Association decided to start Community Based Rehabilitation (CBR) programs in rural areas for the blind in addition to the vocational training programs started in Kathmandu.

6.1.5.1 Community Based Rehabilitation (CBR) Programs

About 90 percent of the population lived at that time in rural areas hence, it was presumed that 90 percent of the blind also lived there. The CBR program was started for the first time in Nepal by NAWB. It was first started in one district, Rautahat, and soon it became very successful and popular. Gradually, CBR programs were started in other districts and are now operative in twelve districts. Approximately, 4,000 blind persons have benefited and have been rehabilitated in their own community. To start self-employed income generating programs, interest free loans were given. Loans for income generating programs were given to 720

¹⁴⁵ www.nawb.org

persons. For the implementation of the program several INGOs are supporting it financially.

Under CBR program, regular eye check-up is done and treatment is given. Vitamin A is distributed and so far, 166,814 people have received Vitamin A. Cataract operations have been performed in approximately 4,500 patients.

NAWB from the beginning of its establishment is giving special emphasis in the education of the blind. The education is mainly integrated education. The education for the blind is now given in 78 schools in 20 districts.

Stipend for the education of the blind : 11 blind students get stipend every year for education in higher secondary schools. These stipends are given from Ramola Devi Shah (Chinnalata) fixed deposit fund and from the financial support of German Nepal Help Association.

6.1.5.2. Braille Press¹⁴⁶

To provide books to blind students, with the help of Tokyo Helen Keller Association, Japan, a Braille Press was established in 1987, so far about 4,500 copies of Braille books have been produced. Every year several hundred Braille calendars are produced, several Braille News Bulletins are printed and distributed free. In 1995, DANIDA supplied one Braille Embosser (Braillo 200). An electronic Braille Embosser and computers have recently been supplied by Japan International Co-operation Agency (JICA) to increase the efficiency of the existing Braille Press.

¹⁴⁶ www.brailleplus.net

In addition to the above several other programs for the blind are conducted by NAWB. "*On the Job Training*" program is also run successfully.

The founder Chairman, *Dr. L.N. Prasad*, was succeeded by Prof. *Madan P.Upadhyay*, and Prof. Upadhyay was later succeeded by *Kamal Rupakheti*. Recently, Rupakheti has been succeeded by *Rajan Bahadur Raut*.

In addition to the programs mentioned above the association provides several other services to the blind like orientation and mobility training, leadership training, teacher training, regular publication of bulletins, cultural programs, etc.

6.1.6. Welfare Society for the Hearing Impaired (WSHI)¹⁴⁷

The WSHI was founded in 1985 with the following objectives:

- i. To offer education, vocational training and employment opportunities to the deaf and hearing impaired children.
- ii. To rehabilitate deaf persons in the family and to empower them to find means of livelihood.
- iii. To help in early diagnosis, treatment and in control and prevention of deafness.

The main emphasis of the Association was the education of deaf children. The Association took up the management of school of deaf children, which was started in Bal Mandir, Naxal, in 1967. Now in addition to the school in Kathmandu, the WSHI is managing five other schools in different parts of the country. WSHI receives

¹⁴⁷ Supra Note, 143

financial support from the Special Education Council of the Ministry of Education and from some INGOs for various programs run by the Association.

The school for the deaf in Naxal is functioning as a "National Centre for Total Communication" from 1995. This Centre has got several programs like training programs for teachers and CBR Workers, refresher training for teachers of the deaf, four months sign language training program, technical support and the training of manpower for the Special Education Unit of BPEP of the MOE. The Centre also helps in development of teaching and educational materials for Special Education Unit of BPEP. The programs are run in several districts of the country. A Nepal Sign Language Vocabularies (dictionary) has been developed and printed.

The first Chairman of the WSHI was *Satya Narayan Jha*. Mr. Jha was succeeded by *Narayan Prasad Rajbhandari*.

6.1.7. Self-Help Group For Cerebral Palsy (SGCP) Nepal¹⁴⁸

SGCP was established in October 1987 with a desire to improve the quality of life of people with cerebral palsy (CP). It is an associate organization of the International Cerebral Palsy Society, London.

In 1987, the Group started its activities with sex cerebral palsy children with home visit program. By 2002, it has already helped more than 2,000 cases on a long-term basis through its on-going programs.

The on-going programs are :

¹⁴⁸ www.healthboards.com

- Home visit programs, since 1987.
- Running of Central Palsy Rehabilitation Centre, since 1993.
- Special Education Program for children with cerebral palsy, since 1993.
- Out-reach program for cerebral palsy cases in different districts, since 1996.

The Cerebral Palsy Rehabilitation Centre aims to provide counseling emotional support and practical advice to parents for rehabilitation of the child on a long-term basis. Parents are taught how to carry out exercises in order to keep the child's body flexible and prevent secondary disabilities.

Since 1993, small special education programs for CP children with multiple disabilities were started. Weightage is given to cognitive activities, individual work, group work, communication, daily living skills, creative activities, photography and play.

The Out-Reach programs have been started in the districts outside the Kathmandu Valley. It is essentially a home-based program and is currently implemented in 16 districts.

DANIDA is financing the Cerebral Palsy Afflicted Children Project since 1996 and has helped more than 2,000 persons in rehabilitation through various programs.

The Chairman of SGCP is Prof. *Batuk Prasad Rajbhandari*

6.1.8. Rainbow Club Nepal for the Blind (RCNB)

This club was established in 1989 with the help of Japan Asia Association for the Nepali Blind (JANB). Initially, owing to a lack of physical facility of its own, the

work was carried out from Namuna Macchindra Boarding High School in Lagankhel. Later, the office shifted to its own building in Thaiba, Lalitpur.

The objectives of the Club are to help blind persons all over the country in their education, to collect data of blind persons, to conduct parent counseling, to find sponsors for the poor and blind students for their studies, to prepare text and other essential books in Braille, to send Braille Books to schools and to establish a Braille library.

The Rainbow Club is trying hard to fulfil its objectives even with limited financial support.

The founder president of this club is *A.M. Baidya*.

6.1.9. Kathmandu Association of Deaf (KAD)¹⁴⁹

The activities of the association were started in 1980 (B.S. 2037) but it was registered only in 1990 and soon became very active and started several programs for the upliftment of the deaf and hard of hearing persons. *Nirmal Kumar Devkota, Sarayu Prasad Sherchan, Raghav Bir Joshi, Deepak Kumar Shakya, Gokul Rijal* and others, all deaf, were very active in KAD.

In 1993, the KAD entered into an agreement with the Swedish Organizations of Handicapped International Aid Foundation (SHIA) to help support the activities and programs and help them in strengthening and expansion of their activities. With their help the programs were expanded extensively.

¹⁴⁹ www.apcdproject.org/countryprofile/nepal

In 1994, an understanding was reached between Social Welfare Council (SWC) and LBH of Denmark to help in the programs for the deaf. Following this, in 1995, an agreement was signed between the Danish Association of the Hard of Hearing (LBH) of Denmark and SWC, KAD, Nepal Ear Foundation (NEF) and Welfare Society of Hearing Impairment (WSHI) to provide help for four years in the activities and programs run by the above organizations.

With the help from LBH, KAD expanded its activities further but above-mentioned agreement between LBH and KAD was terminated after two years in October 1997 because it was Hard of Hearing (NADH) would be formed, LBH support would be transferred from KAD to NADH. NADH was formed and registered in 1996 so the LBH agreement with KAD was terminated and the help was transferred to NADH.

As the activities of the associations for the deaf increased, the differences in opinion among the leaders of the deaf also widened. In increasing the differences in deaf persons, some unscrupulous, politically motivated, non-deaf activists played a vital role and succeeded in dividing the leaders of the deaf. This has greatly hampered the progress and development of deaf persons.

In 1988, some of deaf persons who had established KAD conceived an idea to form a Federation of the Deaf Associations and tried to get the Federation registered but due to unsympathetic attitude of the then Government, the concept could not be materialized. After the restoration of democracy, the Government became liberal and

registration of societies became easy. The above mentioned political activists were able to convince some deaf persons, other than those who had conceived the idea to form a federation of the deaf, and motivated them secretly to form a federation. A Constitution for the formation of National Federation of the Deaf and Hard of Hearing (NFDH) was drafted and was registered in Kathmandu.

Several associations of the deaf were gradually established in different parts of the country, and were working for the welfare of the deaf. The biggest of the associations was Kathmandu Association of Deaf. In 1994, an agreement was signed with Danish Deaf Federation (LBH) to help in the welfare activities of the deaf. With financial support from LBH, the Nepal National Federation of the Deaf and Hard of Hearing (NFDH) started several activities and programs for the deaf. Later they also got financial support from SHIA of Sweden.

When NFDH was formed there were several associations of the deaf in different districts but only eight associations were taken up for affiliation with the NFDH. This created dissatisfaction in district associations those were not affiliated. The cause of dissatisfaction was non-availability of funds received from SHIA and LBH to these associations. Somehow the NDFH was able to convince the then office bearers of KAD to join the Federation and KAD became affiliated. This was done primarily with the motive to get funds, which were made available to KAD from SHIA. In this Manoeuvre, they became successful and started several programs with funds made available from KAD.

6.1.10. Nepal Laryngectomee Association (NLA)

This Association was started, in the beginning, as Laryngectomee Club in 1990. The author, as a member of the Standing Committee of Asian Federation of Laryngectomees Association, was able to motivate people whose larynx were removed, to form a club, with a view to teach them oesophageal speech.

A person whose larynx (voice box) has been removed because of cancer or due to any other disease is called a laryngectomee. Such persons are not able to speak due to absence of a voice box. But, if such a person is given speech training, the person is able to speak and communicate with other persons. The speech is produced by collecting air in the upper part of oesophagus (food passage in throat) and then slowly releasing it. The speech thus produced is called oesophageal speech. This needs training before a person can produce speech from esophagus. Larangectomees in many countries have formed clubs or associations where training (Speech Therapy) is given to relieve speech disability. With the idea of starting speech therapy for esophageal speech the Laryngectomee club was started in Nepal.

In the beginning two persons were sent to Japan to learn speech therapy. After their return, with the help of trainers from Japan, the esophageal speech therapy was started. Soon it became popular and several persons became members.

In 1992, the name of the club was changed and was called Laryngectomee Association. In 1996, an agreement was reached with the Laryngectomee Association of Denmark to support the programs of the Nepal Laryngectomee Association.

Thereafter, the Laryngectomee Association of Denmark (DLFL) gave financial support for one year. Later, the agreement was extended by another four years.

In the meantime, eight persons from Nepal have received oesophageal speech therapy in Japan, some of them have received higher training (Trainers' Training). Now regular speech therapy in esophageal speech is conducted in Nepal. Many of the Laryngectomees are now able to communicate easily with their friends, relatives and others.

The Chairman is *Shekhar Lal Shrestha*.

6.1.11. Nepal Ear Foundation (NEF)

This was founded in 1992 under the chairmanship of *Rajesh Prasad Shrivastav*. The objectives of the Foundation are :

- iii. Prevention, early detection and treatment of hearing impairment and ear diseases in all regions of Nepal, particularly in rural areas.
- iv. Rehabilitation of hearing impaired persons, particularly children. In order to carry out the above objectives NEF performs the following activities.
 - a. Provide ear care services at all levels, specially at the primary care level in the community,
 - b. Train different levels of manpower for prevention, early detection and treatment of ear disease,
 - c. Conduct epidemiological survey and research related to hearing impairment.

- d. Provide health education and create awareness,
- e. Provide hearing aids to hearing impaired children and
- f. Conduct mobile ear camps.

Prevention of Deafness Program : was carried out in Kavre-Palanchowk district, for which training and refresher courses were provided to all health workers in the district.

Ear Clinic in Sheer Memorial Hospital, Banepa : Ear clinics were held twice a week in the hospital by qualified ENT surgeons from TU Teaching Hospital, and ear surgeries were performed once a week.

Distribution of diagnostic ENT instruments : NEF trained all the health workers of Kavre district and provided diagnostic instruments to all the ten health posts and health centres of Kavre district to detect ear diseases.

Hearing aid distribution : The Mobile Ear Care Clinic (MECC) team examined children studying in deaf schools run by BPEP of the MoE in different places in the country, and also organized MECC in various parts of the country and provided children suffering from hearing impairment with hearing aid.

Mobile Ear Surgery Camps : NEF has been co-operating in Ear Camps organized by BRINOs, IMPACT Nepal, Lions Club and other charitable organizations.

Support to Tribhuvan University Teaching Hospital (TUTH) : Ear mould laboratory in TUTH has been upgraded with modern equipment and has provided ear mould materials, hearing aids, batteries, etc. for ear mobile camps.

Coverage areas : MECC programs have been organized in 30 districts.

Beneficiaries : 27,100 persons including children have benefited with the MECC program and 3,438 children have been fitted with hearing aids.

6.1.12. Friends of the Disabled (FOD)¹⁵⁰

This was established in September 1992 to provide services for treatment and rehabilitation to the poor and physically disabled people, to empower them to live a dignified and independent life in society. It has got several programs, which are carried out from Hospital and Rehabilitation Centre for Disabled Children (HRDC) located in Adhikari Gaun, Banepa, Kavre.

HRDC was initially established in 1985 by Terre des homes (Tdh), a Swiss INGO, in Khagendra New Life Centre in Jorpati to provide treatment to children with physical disability. In 1992, Tdh handed over the program to the Friends of Disabled, headed by Dr. Ashok K. Banskota. FoD established the HRDC in Dhobighat, Lalitpur and started providing services to disabled children. In 1992, the hospital was moved to the present complex in Adhikari Gaun, Banepa. The hospital with modern facilities occupies nine acres (74 ropanis) of land on a ridge overlooking beautiful terraced fields and forest hills surrounding Banepa Valley. The hospital has got 68 beds with residential quarters for key staff. The main focus of the hospital is on children, especially poor, who are under 16 years of age.

¹⁵⁰ www.fodac.org

The hospital is providing reconstructive and rehabilitative services to physically disabled children, train medical and paramedical professionals, provide personalized care to patients, provide physiotherapy services, provide CBR programs through CBR department in 28 districts by conducting home visit programs and mobile camps, manufactures assistive devices for the patients in Prosthetic Workshop.

The financial support to HRDC comes regularly from Terre des homes, Christoffel Blindenmission, American Himalyan Foundation, and several other INGOs, NGOs and individual donors.

Friends of the Disabled, has a board to guide and advise in its activities. The Board members are very active representing legal, administrative, social services and business fields.

The president is *Dr. Ashok K. Banskota*.

6.1.13. National Federation of Disabled Persons, Nepal (NFDN)

After 1990, disabled persons who were neglected and isolated for long time became suddenly very active with several demands for their rights and respectful living in the society.

An Organization of the Deaf and Hard of Hearing Persons was established even before 1990. A group of blind persons (Netrahin Samuh) and National Disabled Association were also established before 1990. They all became active and vocal, they put up several demands for their welfare activities and for their right-based

programs. They took out several processions and even organized hunger strike. Gradually, the Government realized the importance of their demand and in due course some of their demands were met.

UNICEF Nepal, played an important role in the initial phase, and organized meetings of various groups of disabled persons in UNICEF office and helped them in co-ordinating their activities. As a result of the attempts of UNICEF, disabled persons decided unanimously in April, 1993 (Falgun 17, 2049 B.S.) to form National Federation of Disabled Persons, Nepal. An *ad hoc* committee was formed under the chairmanship of *Nirmal Kumar Devkota*. The *ad hoc* committee was given the responsibility of drafting a constitution for the Federation and to make arrangements for the election of the executive committee members on the basis of the Constitution.

The *ad hoc* committee drafted a constitution of the Federation and in August, 1993 (B.S. 2050 Bhadra). The *National Federation of the Disabled Persons, Nepal* was registered in the District Administrative Office, Kathmandu. In December 1993 (Marga, 2050 B.S.) the first General Assembly of the Federation was held and under the chairmanship of Nirmal Kumar Devkota and an 11-member Executive Committee was formed.

It was established with the purpose of forming a confederation of all the NGOs *of and for* disabled persons working for the protection and rights of disabled persons and for providing services to them.

The objectives and activities as mentioned in the Constitution of the Federation are :

- i. To co-ordinate and co-operate the activities of the organizations formed in the country to provide services to the disabled,
- ii. To help create feelings of unity, co-operation and fraternity among the organizations,
- iii. To create public awareness among the people to remove feeling of hatred and neglect towards disabled persons,
- iv. To do study and research, and arrange meetings, seminars, etc. on the problems related to disabled persons,
- v. To collect statistics of disabled persons,
- vi. To make arrangements for educations, leadership seminars, and arrange games and sports for the physical and mental upliftment of disabled persons,
- vii. To work for the protection of the rights of disabled persons and to help in the implementation of the national and international laws related to disabled persons and
- viii. To exchange experiences and to extend co-operation between national and international organizations.

The founder chairman of National Federation of Disabled Persons, Nepal, *Nirmal Kumar Devkota*, was a profoundly deaf person. Only after two years, in the general

body meeting of the Federation, due to misunderstanding between the executive committee and the other members, *Nirmal Kumar Devkota* and the entire executive committee resigned from the posts. *Susheela Poudel*, an amputee (one of the lower limbs) was elected chair-person and a new executive committee was also elected in the meeting. She was quite active but due to opposition from the Executive members and other disabled persons she was suspended from the post only after one year. In the general body meeting of the Federation in November 1998 (Kartik, 2054 B.S.), the Chairpersonship. The general body decided that *Deepak Koirala*, a blind person should take over as acting Chairman of the Federation.

In May, 1999 (Jestha 13, 2054 B.S.), *Munishwar Pandey*, a hunchbacked person, was elected Chairman, by the general body of the Federation. He is very active and is trying his best to improve the status of the disabled persons but he has attained only limited success in his attempts due to political instability in the country and the resultant non-performing government.

A room was initially provided by Social Welfare Council in Bhrikuti Mandap in 1994 (BS 2050) where an office of the Federation was established and it started working from there. The office was small and was insufficient to work from, and so with the co-operation of UNICEF and LBH of Denmark an office was established in a rented house in Baneshwar in July 1995, after which the activities of the Federation increased rapidly.

Association of disabled persons in different places in the country became active and started several programs for vocational training, public awareness, development of leadership, etc. The office of the Federation is located in Bhrikuti Mandap.

However, due to joint efforts of the Federation of Disabled Persons, social workers and NGOs, the *National Committee for the Welfare of Disabled Persons*, was formed under the Ministry of Women, Children and Social Welfare. The committee did a lot for the welfare of disabled persons. This has been mentioned earlier in the Chapter on Ministry of Women, Children and Social Welfare.

6.1.14. Impact Nepal

IMPACT Nepal was established in 1993 with the sole objective of prevention of all types of avoidable disabilities. Since then, it has been organizing several programs throughout the year for the prevention of disabilities.

Programs

Important programs are: a. mobile surgical camps: Ear camps to provide hearing, orthopaedic camps to provide mobility and eye camps to provide sight, b. micronutrient supplementation programs to relieve hidden hunger caused by malnutrition, c. safe motherhood and child health care programs to provide safe maternity care and prevent illness and mortality of children particularly up to the age of 5 years, d. public awareness programs about causes of disabilities and their prevention and e. capacity building, particularly human resource development by providing education, training and facilities for skill development.

i. **Mobile surgical camps** : The specialized services by HMG/N, particularly ear surgeries and orthopaedic surgeries are limited to central and some of the regional or Zonal hospitals. A large number of patients in rural and remote areas of the country are not able to get treatment in time, especially surgical treatment for ear diseases, resulting in permanent hearing impairment; facilities for orthopaedic surgeries are also not available in these areas resulting in locomotor disabilities. Until recently, eye patients were facing the same problems but several eye hospitals have been started in many parts of the country, which, to some extent, have helped in providing relief to eye patients and has helped in preventing blindness.

Impact Nepal organizes ten ear and orthopaedic camps every year in different parts of rural and remote areas. Tent Operation Theatre is used, for last three years, in remote areas, for mobile surgical camps, where operation theatre is not available. The Tent Operation Theatre is fully furnished with modern equipment required for major surgeries. To a great extent, this has helped in providing safe and clean area for surgical operations in remote areas.

The mobile surgical camps have become very popular and there is a growing demand for more such camps, but due to financial and manpower constraints, more camps cannot be arranged. In last two years, Impact Nepal, at the invitation of Impact Foundation, Bangladesh, has been able to

arrange two teams of doctors, nurses and paramedics to visit Bangladesh. The team has successfully performed ear surgeries in 2001 and 2002 for one week every year in Jivan Tari, a floating hospital located on a motorboat. The ear camps are organized through Primary Ear Care Centre in Tribhuvan University Teaching Hospital (TUTH).

The orthopaedic camps are also getting more and more popular in rural areas. The orthopaedic camps are arranged through the Orthopaedic Department of Nepal Medical College, Atarkhel, Kathmandu, where a National Centre for Rehabilitation Surgery is in the process of establishment. British team of senior orthopaedic consultants, anaesthetists and nurses also participate in orthopaedic camps.

- ii. **Micronutrient Supplementation Project** : Malnutrition is extremely prevalent in rural areas throughout the country. To help reduce malnutrition, the micronutrient supplementation project was started in Sindhuli District, a hilly area, in 1999, where one municipality and five VDCs were taken up for the project. This program cover distribution of Iron tablets to all the pregnant and lactating women up to six weeks after delivery, distribution of iodised salt and also of Vitamin A capsules to all pregnant women and children. The program also includes encouragement for kitchen garden. These programs have been very successful, and from January 2003 the entire Sindhuli district has been taken up for the micronutrient

supplementation program. At the same time income generating programs to reduce poverty, which is the main reason for malnutrition, will be taken up, approximately ten percent of the total household will benefit by this program. The programs will be implemented for next five years, by the time it is hopeful, the government will take up the program. The program is financially supported with Kadoori Charitable Foundation of HongKong.

- iii. **Safe Motherhood and Child Health Project** : This project has been started, with an objective to reduce material and child mortality rate, in Rautahat district in Terai area. For the project, Gaur municipality and eight VDCs have been taken up for the purpose. In near future, the project area is likely to be expanded and cover another ten VDCs.

Programs at grassroots level

For the safe motherhood programs the services in the health posts and sub-health posts of the VDCs have been improved, the health workers have been given orientation and refresher training, and supervisors have been employed to help health workers in implementing the programs.

The programs for distribution of Iron tablets, Iodized salt, Vitamin A capsules, deforming and immunization against tetanus and other communicable diseases are implemented effectively. The Iron tablets are supplied in a plastic vial to prevent loss or deterioration of tablets due to exposure to dust and moisture. Kitchen garden program has also been

started. The micronutrient programs similar to the ones in Sindhuli District have also been started here.

Improvement of Services at district hospital

The district hospital is situated in Gaur Municipality. This is a 25-bed hospital. In order to provide good maternity care, and if required, to perform Caesarian section in case of obstructed Labor, the Operation Theatre has been renovated, services have been upgraded, air conditioner has been installed, all necessary surgical instruments, equipment and surgical supplies including electricity generator have been supplied. Several Caesarian sections have been successfully performed. Very soon arrangements for blood transfusion will be made.

- iv. **Public Toilet** : The local people are in the habit of using open field as toilets, which is responsible for many facial-borne diseases and for pollution of environment. To encourage people to develop the habit of using toilets, IMPACT Nepal is constructing one public toilet in Gaur Municipality. It is hoped that this will help in encouraging people to use toilet and motivate them to construct family toilets in their homes. For the latter purpose, IMPACT Nepal is helping to build toilets in individual homes as well. It is hoped that over 40 household toilets will be built in several homes in 2003.
- v. **Kitchen Garden (Home Garden)** : To reduce malnutrition people are regularly motivated to start kitchen gardens. For this purpose vegetable

seeds and plants are supplied free of charge. Some families have already started this program. The target is that 15 percent of households should grow vegetables.

vi. **Capacity Building** : For human resource development scholarship are given to medical graduates for postgraduate study, M.S. in ENT diseases, to nurses for B.Sc. nursing and to audiometrician for higher studies. To develop skill in microscopic ear surgery a temporal bone laboratory has been established in Ganesh Man Singh Memorial Academy of ENT and Head and Neck Studies where training courses are regularly conducted.

vii. **Community Based Prevention of Disability** : This program has been started in two districts: Siraha and Dhunusha. For this purpose *Impact Nepal* has trained government and local health workers.

Impact Nepal, from the day of its establishment, is getting financial and material support from *Impact Foundation*, UK.

The Chairman is Dr. *Lakshmi Narayan Prasad*.

6.1.15. Nepal Association of The Blind (NAB) ¹⁵¹

Nepal Association of the Blind (NAB) was first started as Nepal Blind Group (samuh) in Bhaktapur in 1986, and started working for the employment of the blind and to create public awareness about the capabilities of blind persons. In 1993, Nepal Blind Group changed its name to Nepal Association of the Blind, and was registered

¹⁵¹ www.pravidhik.com/org/dir/n

with CDO office and started expanding its activities. From the beginning, even with limited resources, financial and manpower, NAB became engaged sincerely in providing services for education, employment, training and rehabilitation, etc. to people with visual impairment.

Not only for the blind but the Association started working also for people with other types of disability. NAB started the advocacy for a National Policy for the disabled, for framing rules for the implementation of the Disability Act of 1982, for classification and definition of disabled persons. It became involved in arousing public awareness towards the fate of the blind and other disabled persons in the country, and towards the capabilities of these persons. Their slogan was: "Blind persons need opportunities, not mercy."

NAB has been able to establish its branches in 21 districts: all branches are active and conduct different programs for the services of the blind. The Association has started income generating programs like production of Braille books, Braille board, stylus, etc., printing calendars, manufacturing Nepali handicrafts and souvenirs. The Association is exporting as well as selling these products in the local market. NAB is also involved actively in teachers' training, music training, computer training and providing been able to establish a Braille library and hostel for women. NAB is involved in vocational training for development of various skills in several districts through its branches. They also arrange programs for job placement or self-

employment for trained and skilled blind persons. NAB has been able to install a modern Braille Press in the Association.

NAB has been able to provide Identity Cards to blind persons from the Federation of Transport Organizations for free travel by buses. It organizes regular workshops, seminars, etc. for leadership development for visually impaired persons.

In short, it may be said that in a very short time NAB has been able to demonstrate its existence and has proved that it is working very sincerely for the upliftment of blind persons.

The Chairman is *Nar Bahadur Limbu*.

6.1.16. Nepal Disabled Women Society (NDWS)

This society was established in 1994, and was the first organization for the women with disability. The goals and objectives of the Society are: to protect the rights and interest, to remove negative attitude towards disabled women, to empower disabled women by providing education, and to help in economic social rehabilitation.

The activities conducted are: leadership training at regional level, training in tailoring, embroidery and handicraft, secretarial and offices management training, also training in Computer and English language, and regular publication of a magazine - *Disabled Women*.

The Society is actively engaged in providing services to women with disability, particularly physically disabled.

Susheela Paudel, an amputee (lower limb) is the founder chairman of the organization. She is young and active.

6.1.17. Nepal Para Olympic Committee

Nepal Para Olympic Committee was established on December 15, 1995 (Mangsir 29, 2052 B.S.). The main objective of the Committee is to organize sports and games for all types of disabled persons in the country.

The founder Chairman of the committee was *Yubaraj Khati* and General Secretary was *Narendra Kumar Gurung* and they are continuing till date.

Since its establishment the Para Olympic Committee is organizing programs for sports and games every year either independently or in collaboration with social organizations. It is active almost throughout the year.

6.1.18. Special Olympics Nepal (SON)

Special Olympics Nepal (SON) is the national voluntary non-governmental organizations established in Nepal in 1987 to provide year-round sports training to and organize competitions for children and adults with mental retardation. SON is governed by a nine-member executive committee, under the National Council, and works mainly as an advisory body. SON is the only organization in the country to cater to sports training and competition needs of athletes with mental retardation.

Currently, it is serving about 5,000 athletes with mental retardation scattered all over the country. From service delivery and access point of view, SON has divided the country into four regions, the mid-western and far-western development regions

forming one of the four SON regions. SON is the national Chapter of Special Olympics International, which has its headquarters in the USA, the country being the creator of Special Olympics for the cause of people with mental retardation.

The Special Olympians meet at an interval of every four years for the World Summer Games, which was held this year (2003) in Dublin, Ireland, for the first time outside the USA.

In Nepal, grass-root level area games and sports training are held regularly in schools and clubs; regional games and trainings are held at an interval of every two years and the central level national games are held at a time difference of three years to fit the schedule of world summer games. Nepal has been participating regularly in the world summer games since 1987.

6.1.19. Nepal National Federation Deaf and Hard of Hearing (NFDH)

There has been a popular wave of formation of organizations in the country after the restoration of democracy. In this process several organizations of persons with deafness and hearing impairment were established and registered in the District Administrative Offices, not only in Kathmandu valley but also in several places outside the valley.

It will be worth mentioning here that in all the surveys for disability deafness and hard of hearing was found to be the commonest disability in the country. In the *Survey of the Prevalence of Deafness and Ear Diseases in Nepal, 1990-91*, conducted by Tribhuvan University Teaching Hospital, Kathmandu, and Britain Nepal Otology

Service (BRINOS, England), deafness and hearing impairment was found to be 16.60 percent among the persons above the age of five years.

It was felt that in order to co-ordinate and facilitate the activities of various deaf associations and to help them plan and develop their activities and to find out financial resources for them, a Federation of the Associations was required. With this view in mind *Nepal National Federation of the Deaf & Hard of Hearing* (NFDH) was established in 1995 (2052 B.S.) in Pokhara where the first national conference of the deaf was held, which was organized by Gandaki Deaf Association. An executive committee of the Federation was elected for three years with Deepak Kumar Shakya as its chairman. In January 1997, the Federation became affiliated to the World Federation of Deaf (WFD).

In October 1998, NFDH organized a two-day conference of the Asia Pacific Region of the World Federation of Deaf in which the then Chairman of WFD and representatives of 12 countries of the Asia Pacific Region participated. On this occasion a workshop on the *UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities* was also organized.

In 1998, when NFDH was established, only eight associations of the deaf were affiliated with the Federation, but by 2001, 15 district associations of the deaf were members.

To help in the execution of the activities of NFDH several committees were formed like Women Development Committee, Sign language national development

committee, youth games, sports and cultural development committee, etc. In 15 districts, classes for teaching sign language have been conducted by the Federation with the help of district Deaf Associations.

The Chairman of the Federation is *Raghav Bir Joshi*

NFDH has also helped in establishing Associations of the Guardians of the Deaf Children in several places. One such organization (the first organization) was established in Pokhara.

6.1.20. Nepal Integrated Blind Development Association (NIBDA)

This was established in 1996 (B.S.2052) with a view to provide vocational education and training, health facilities, employment opportunities and to include blind persons as partners in the national development of the country.

The Association has been organizing, with the help of various societies, programs like chalk making, candle making, Braille writing, weaving, basket making, mobility training, leadership training and public awareness very successfully.

The president is *Sop Bahadur G.C.*

6.1.21. Nepal Hard of Hearing Association, Kritipur

This Association was established in 1996 (B.S.2053). This is an Association of hard of hearing persons. It was established with the view to protect the rights of hearing impaired persons, to create public awareness, to make them productive, capable and self-sufficient, to work for the prevention of hearing impairment.

The Association has conducted several programs like meeting of parents and guardians, collection of data, organized medical camps, mobile surgical camps, distributed hearing aids and published posters, pamphlets, and handouts for prevention of deafness and for public awareness.

The Chairman is Macha Bhai Maharjan

6.1.22. Ankur Foundation for Inclusive Education (AFINED)

The Association was established in 1997 to work for children with deaf, blind and other multiple disabilities. This was the first organization in the country, and other multiple disabilities. This was the first organization in the country, which started services for persons with multiple-disability. The objectives of the association are:

- I. To provide inclusive education;
- II. To train teachers for inclusive education;
- III. To do research and other activities;
- IV. To prevent disabilities;
- V. To rehabilitate multiple disabled persons, and
- VI. To create public awareness.

Different programs have been started to achieve the above objectives. The association is in touch with 20 persons with multiple disabilities and is providing basic and primary services at homes through CBR approach. Several children with multiple disabilities have benefited from the program. Financial constraint is mainly responsible to limit the program in Kathmandu valley only.

The Chairman of the association is Pushpa Lal Shrestha.

6.1.23. CBR National Network Nepal (CBR-N NEPAL)

This was established in 1997 as an autonomous NGO with the purpose of co-ordinating various activities like prevention, rehabilitation and economic development of persons with disability.

The objectives are to: i. Empower Persons with disability to make positive difference in the quality of their lives by facilitating experience sharing, effective flow of information, knowledge and skill among organizations, stakeholders and focal population, ii. Conduct functional teaching- learning platform for continuing education to all in awareness, disability and rehabilitation issues, iii. Advocate for human right issues of persons with disability, iv. Assist concerned organizations to establish simple service accessibility structure to reach persons with disability.

The activities are: i. Regular national conference, ii. Publication of CBR News Bulletin, iii. Conduct different activities to empower persons with disability in economic and social rehabilitation and national development activities.

CBR-N Nepal is regularly conducting different programs to meet its objectives in collaboration with various government agencies, NGOs and INGOs. It organized the Third South East Asian Regional Conference of CBR Network in Kathmandu in 2000.

The founder National Co-ordinator was *Krishna Prasad Bhattarai*, who was succeeded by *Krishna Prasad Acharya*.

6.1.24. Community Based Rehabilitation Organization (CBR), Bhaktapur

At the initiative of Bhaktapur Jaycees, a day care centre for mentally retarded children was started in 1985 in Bhaktapur Municipality in which 11 children were taken up for rehabilitation. The organization was initially supported by UNICEF Nepal, and, since 1990, Save the Children, Norway, is supporting the programs.

The CBR Organization Bhaktapur was registered in District Administration Office in 1999. The target is to provide rehabilitation services to all the disabled persons in two municipalities and 16 VDCs of Bhaktapur District and beyond. The mission is to facilitate comprehensive community based disability prevention and rehabilitation services for the realization of the rights of children and people with disability.

The activities are: early identification and prevention of disability, home based programs, creation of educational opportunities for multiple disabled, school for deaf, provision of assistive devices, vocational training, loan for self-employment, job placement, counseling, and prevention activities like: health education, health check-up, ear clinic, immunization, family planning, HIV/AIDS awareness, etc.

Approximately, 12,000 children with disabilities have benefited by various programs, about 6,000 children have been examined for ear discharge and ear surgeries have been performed on some them.

The President is *Surya Bhakta Prajapati*.

6.1.25. Nepal National Federation of the Deaf (NNFD)

A large number of associations of the deaf who could not get affiliated with NFDH started organizing themselves and decided to form a separate Federation. In July 1999 (Asar, 2056 B.S.), another Federation of Deaf called Nepal National Federation of the Deaf (NNFD) was registered in the district administrative office of Kathmandu. Soon, this was affiliated to the Social Welfare Council (SWC). Now 19 district deaf associations are affiliated with NNFD.

NFDH has got several programs in many districts because they have got financial support from several sources whereas NNFD has got only a few programs due to financial constraints. NNFD, however, has been able to publish four dictionaries of sign language words. They are conducting sign language classes for deaf persons as well as for normal persons and also for interpreters in many districts through their branches.

It was felt by deaf persons, social workers, HMG/N and INGOs that there should be only one Federation of the Deaf in the country so that programs can be effectively implemented and financial resources from various sources could be channelised to one place. Both NFDH and NNFD have got their branches in the same districts so deaf persons are also demanding that there should only be one branch in each district and only one Federation in the country. But the leaders with ulterior motives do not like to join together and merge into one Federation.

The Ministry of Women, Children and Social Welfare, Social Welfare Council, some social workers and political leaders have tried to mediate to clear the

differences between the leaders of the two Federations and to bring them to one forum but they have failed. Some of the INGOs who are eager to help in programs for their development are reluctant to extend help unless they from one Federation.

6.1.25.1. Employment for deaf persons

Both the Federation, NFDH and NNFD have been able to procure jobs for deaf persons in several places. In the Bakery Cafe to New Baneshwar, Jawalakhel and Teku about 25 deaf persons are working as waiters and the Cafe is running efficiently and profitably. Shyam Kakshpati, proprietor of The Bakery Café deserves thanks and gratitude for conceiving the idea of employing deaf persons as waiters in the Cafe.

The deaf associations and Federations together have been able to procure jobs in different places for over 125 deaf persons. In addition to this, several hundred persons are self-employed after getting training in different trades organized by the above groups in different districts of the country.

6.1.25.2. Sign Language

Braille letters are essential for language of the Bling. Similarly, sign language is essential for communications of the deaf. When human beings were created, there was no language or speech. They communicated with each other by movements of the head, hands, body and by different gestures- sign language. Only much later, language and speech developed.

Deaf persons cannot hear any sound so it is almost impossible for them to imitate and produce sounds or speech spoken by others. It was found that deaf persons

could communicate with each other by producing signs by moving hands. It was in France that sign language was first developed for the deaf. Later USA, Britain and other countries developed their own sign language. This method of communication (sign language) varies from country to country. In some of the western countries, sign language has been approved as one of the national languages.

Communication with sign language started in Nepal in late 1960s. In Nepal, a vital role in development of sign language was played by Suryu Prasad Sherchan and Binod Kumar Jain, who had received education in sign language from India.

From 1988, deaf persons from different parts of the country and from various deaf schools started developing the Nepali sign language depending on the variation in cultural and local ways of expression in different parts of the country. For the first time in Nepal, in 1989, the first sign language dictionary was prepared and published by the school for the deaf in Naxal, Kathmandu, run by the Welfare Society of the Hearing Impairment (WSHI). In this dictionary, there were some grammatical mistakes, so they were corrected and in 1990, Cards and Charts for sign language was published by the Kathmandu Deaf Association with the financial support of UNICEF.

Now, the Nepali sign language dictionaries have been published in four parts. This has helped in providing uniformity in sign language in the country. The responsibility of preparing and publishing a standard sign language dictionary has now, been given to Tribhuvan University. It is hoped that the University will study

various signs and movements of hands used in expressing the language in different parts of the country and produce a good dictionary of sign language.

In the last four years, several students have passed secondary school (SLC) examination and they are eager to join higher secondary schools. For teaching deaf students for higher education, good and efficient sign language interpreters are needed. The sign language dictionary will be very useful in preparing interpreters for higher education. At present training of sign language interpreters is of three-four months duration and is given in 15 places regularly. It is not sufficient. It should be of a least one year duration, if not more.

6.1.25.3. National Sign Language Development Centre

The Nepali Sign Language (NSL) research and development centre was established at the Faculty of Education, Tribhuvan University under the Chairpersonship of the Dean in June 2002 with a fifteen-member NSL research and development committee as its apex body. The aim of this Centre is to carry out research into NSL, validate the signs and provide approval to the collected signs for their wider use by both the hearing and deaf people. Currently, it has sought collaboration with deaf organizations in carrying out research into basic signs and to publish the collected signs into one dictionary form by seeking approval from the deaf community.

Recently, a seven-member working committee has been set up at the Centre under the Committee to expedite the activities set forth by the Centre. The committee

is working towards bringing out the publication of the already compiled signs by the deaf organizations in order to pave the way for further research into the signs. It is expected that the NSL Centre will bridge the gap between the deaf community and the hearing community by bringing them closer to share the common concerns. By the end of the year 2003, the expected publication of the NSL dictionary will be made public.

6.1.26. Nepal Disabled Human Rights Centre

This Centre was established in 1999 (B.S.2056) with the view to work actively in the field of human rights of persons with disability. It works for the betterment of livelihood and self-respect of persons with disability in the society. Major programs conducted are: advocacy on human rights, awareness programs, education, cultural disability prevention, information dissemination and CBR programs. It regularly publishes a monthly magazine, Voice of Disabled in Nepali with articles on different aspects of disability in Nepal. It has been organizing 15-minutes weekly broadcast on national level Radio Nepal every Sunday in the morning on public awareness programs on disability related issues. This program has become very popular.

The President is *Sudarshan Subedi*.

6.1.27. Nepal Disabled Women Association (NDWA)

This association was set-up in 2001 with aims to empower and uplift the economic and social status of disabled women in the society. The programs and activities conducted by the Association are : i. to create opportunities and conduct programs to

empower disabled women to become self-reliant, ii. to organize skill oriented training programs, iii. to conduct advocacy and awareness development programs for the promotion of the rights of women and children with disability, iv. to facilitate implementation health rehabilitation programs, v. to conduct CBR programs, vi. to arrange/provide education facilities and vii. to collect and disseminate information on the issues of women and children with disability.

The founder president of the Association was *Rama Dhakal*, and was succeeded by *Rita Mukherjee*.

6.1.28. Nepal Association of the Partially Sighted (NAP)

It was founded in 2001 with the view to protect and promote the rights of the partially sighted, to create awareness, to generate capacity building and to work for their rehabilitation. The executive members are sincere, devoted and enthusiastic. In a short span of time they have organized a workshop for information sharing, and public awareness.

President is *Raju Humagain*.

6.2. Efforts of the International Non-governmental Organization

There are several external agencies working in the field of disability in Nepal. They are: i. International Non-governmental Organizations (INGOs). ii. Bilateral Agencies, iii. Multilateral Agencies.

INGOs: There are 97 INGOs registered with Social Welfare Council and are working in social welfare sectors. Out of this only 26 INGOs are working in the field

of disability either in collaboration with NGOs or through concerned Ministries. The list of the INGOs is given in Annex- 5. Most of the INGOs have an established office in Nepal and some do not have offices in Nepal but provide support to NGOs in the field of disability.

Bilateral Agencies : There are several bilateral agencies, which support the activities for the people with disability. They provide help by bilateral agreement between HMG/N and the donor countries. The agencies are JICA, USAID, NORAD, DANIDA, CIDA and others.

Multilateral Agencies : There are some multilateral agencies like UNDP, WHO, UNICEF, UNESCO, FAO, World Bank, ADB, etc. who help in activities in the field of disability.

6.3. ROLE OF THE UN AGENCIES

Different UN Agencies like UNDP, UNICEF, WHO, FAO, UNESCO, ILO, ICAO and others, have been trying to implement various programs related to disability like prevention, education, vocational training, rehabilitation and similar activities.

UNDP : For the implementation of the UN Resolutions related to disability, UNDP mainly plays the role of co-ordinator between different UN agencies in Nepal working in the field of disability.

WHO¹⁵² : From the very beginning of its establishment WHO has been helping the Ministry of Health in prevention, control and eradication of infectious

¹⁵² www.who.org/nepal

diseases in the country. Ministry of Health has started several programs for prevention of disability in joint collaboration with WHO. Joint programs have been launched in the following fields:

- i. Prevention of blindness,
- ii. Prevention of Deafness and Hearing impairment,
- iii. Prevention of infectious diseases like :
 - a. Malaria,
 - b. Tuberculosis,
 - c. Kala-Azar,
 - d. Japanese Encephalitis,
 - e. Leprosy,
 - f. HIV/AIDS,
 - g. Hepatitis-B (WHO and UNICEF).
- iv. Non- Communicable diseases like:
 - a. Cancer,
 - b. Hypertension,
 - c. Cardiovascular diseases,
 - d. Diabetes.
- v. Prevention of vaccine preventable diseases like:
 - a. Polio- the target is to eradicate polio by 2005 (No case of Polio has been reported in Nepal since 2000).

- b. Small pox - this has been totally eradicated.
- c. Expanded Immunisation for DPT (in collaboration with UNICEF),
- d. Health Education,
- e. Safe Motherhood,
- f. Nutrition: micronutrient initiative (in collaboration with JICA, USAID, UNICEF, etc.) and
- g. Safe Water and sanitation.

UNICEF¹⁵³: This was set up after the Second World War to provide emergency relief to children affected by conflict. Later, its focus of attention shifted to the needs of children in the newly independent countries in the south.

UNICEF began its operation in Nepal in 1964 from their New Delhi office. An office in Nepal was opened in 1972 to support government efforts to provide much needed basic services to children at a time when Nepal's child survival rate was dismally low. Initial work concentrated on safe drinking water supply and immunization.

UNICEF's current focus is to help HMG/N to fulfil its obligation to ensure that the rights of Women and Children are safeguard. The largest expenditure of UNICEF has been on health, education, nutrition, child protection and decentralization. The institutions helping UNICEF in its activities, particularly towards health section's

¹⁵³ www.unicef.org

expanded immunization are NORAD, CIDA, USA Centre for Disease Control (CDC) and Rotary International.

UNICEF helped in 1979-1980 (on occasion of IYDP 1981) in Sample Survey of Disability in Nepal, conducted by the National Committee constituted on the occasion by HMG/N SSNCC. Again it has helped the National Planning Commission in a research study "A Situation Analysis of Disability in Nepal" conducted in 1999-2000 and the report published in 2001.

UNESCO (United Nations Educational, Scientific and Cultural Organization)¹⁵⁴ : It is helping Nepal in education, social and cultural activities since it opened office here in 1953 (B.S. 2011). It had a liaison office in the Ministry of Foreign Affairs. In 1998, a country office was established in Nepal. The concept of adapted education recommended by an expert group on education of disabled persons has been reinforced by two guiding principles of Sundberg Declaration: Disabled persons shall receive from the communities services adapted to their specific personal needs; through decentralization and sectorization of services, the needs of disabled persons shall be taken into account and satisfied within the framework of the community to which they belong.

UNESCO is helping Nepal in eradicating illiteracy. It helps also in training programs for teachers, arranges seminar and workshops at national and local level. It

¹⁵⁴ www.unesco.org

provides support for technical and vocational training programs. It extends help in establishing libraries and in their development and progress.

ILO¹⁵⁵: It has been helping Mo Labor in accident prevention of workers working in factories and industries and also providing compensation to the Labors meeting death or accidents during working hour.

¹⁵⁵ www.ilo.org

CHAPTER-VII

FINDINGS, CONCLUSION AND SUGGESTION

Findings

(1) The disabled persons and their family as well as a society has unaware about the rights of DPs. which has guaranteed by Int'l and domestic legal instruments so disabled persons has lost their dignity, opportunity and they do not get equal chance to enjoy their rights. Their parents and society has taken them as a load.

(1) Disabled Persons do not have to get chance to go to school if some get chance they discontinue their study because of cruel and difficult environment of the school.

(2) Law is not enough to protect the rights of DPs. Some specific law like DPWA has not implement proper way and state could not feel the effective role and responsibility to solve the problem of the disabled persons as per the commitment on the Int'l Human Rights Law

(3) The policy makers and the local government agencies are unaware to fulfill their responsibility to protect the interest of the disabled persons.

(4) Directive order of the Supreme Court do not have follow by Governmental Agency.

(5) Disabled Persons do not get adequate Aid by the governmental sector and govt. and not-government sector are not effect Co-ordination to contribute service towards disabled persons.

(6) It was found that the majority of the disabled persons who had ever enrolled in school had to attend ordinary schools with no special teachers as there was no alternative.

(7) There is no encourage the social, economic and political participation of the disabled persons.

- (8) The participation of disabled persons in the organizations for the disabled persons has been negligible.
- (9) The family member and Society has done discriminate between male and female disabled.
- (10) There is not strong institutional mechanism for proper implementation of Law, policy and programmes for the disabled persons.

7.2 **Conclusion**

By virtue of being member of the United Nations, Nepal recognized the human rights of persons with disability in the year 1981 when Nepal, along with the world community, celebrated The International Year of Disabled Persons. Accordingly, it enacted a special law known as the Disabled Persons (Protection and Welfare) Act, 1982 (DPWA), but even after 18 years of existence, persons with disability are often excluded from the mainstream of society and denied their human rights. The DPWA and other laws give certain rights and privileges to the disabled persons, but most of these rights remain in the law books and have not been translated into reality. The disabled people have yet to enjoy the rights that are theirs.

Law is accepted as a best tool for social change in a civilized society. It is regarded as one of the most powerful and effective instruments of change, progress and development in society. Unfortunately, many development laws in Nepal, including DPWA, have remained a paper tiger without tooth or claw. The DPWA imposes one-year imprisonment or a fine of Rs.5000. or both to any person who intentionally

harms disabled persons¹⁵⁶. The law, which was made in 1982 by the legislature¹⁵⁷ of the time for the welfare and protection of persons with disability, promised much but has delivered little over the last 18 years. The country's lack of resources may be blamed for the slow execution of the law, but the real cause is the lack of commitment on the part of the government authorities to implement the laws. The implementation of the laws essentially requires good governance, and a powerful, progressive and committed administration. It requires strong efforts of progressive state power to implement the laws honestly and provide the legal rights and facilities to the disabled persons as granted by the law.

There are many organizations working for persons with disability in Nepal. Their role in the execution of the existing laws (DPWA/DPWR) is very important. Since the restoration of democracy in 1990, the persons with disability through their organizations have been continuously demanding that the government implement the laws and provide them all facilities as postulated by the law. For this purpose, they went on a hunger strike, cornered the Prime Minister (who is also the Minister for women, Children and Social Welfare), and submitted a memorandum to him. Of late, the government, under pressure from the Disabled Persons Organizations, has shown its commitment to implement the law faithfully and even to amend the law, if necessary.

¹⁵⁶ . Sec.17, Disabled Persons (Protection and Welfare) Act, 1982.

¹⁵⁷ . The National Panchayat was functioning as the legislature at that time.

There has been growing recognition in contemporary international law that all States should incorporate human rights standard in their national legislation. The UN Declaration on the Rights of the Disabled Persons 1975 was used as a guideline while enacting Nepal legislation concerning persons with disability in the year 1982. Nepal, as a member of the UN, has always shown her respect for international human rights instruments. The first legislation (DPWA) was enacted in 1982 on the basis of international instruments, and few countries in Asia had such special laws for disabled persons at the time. Most of the international conventions, standards and norms concerning persons with disability are incorporated in the domestic laws of Nepal, but their local implementation is slow and complex. The national efforts made in consonance with international norms for the last two decades is positive but not very satisfactory. There is still much to be done for persons with disability in Nepal. Reform of the existing laws must also be considered. The laws made some 18 years ago should be revised and reformed for two reasons. The first is domestic and the second is global. With regards to the domestic cause, these laws are outdated and limited. They must be reformed because the area of rights and facilities provided by the law should be increased in the present context and should be of a mandatory nature. The second point in this regard is setting common standards for disability legislation on the basis of international norms as developed by the United Nations. The Global Social Development Program of UN (1999) has included a project on National Disability Legislation which will be very helpful for all the member States,

including Nepal. This will help to increase awareness of internationally accepted norms and standards aimed at promoting equalization of opportunities for persons with disability and facilitating their full and effective integration in social life and the development process.

The two major legal instruments for the protection of disabled people are the DPWA and the DPWR. Two methods are available to reform the law. The first method is legislative amendment. This amendment in DPWA can only be made by the Parliament. This process is lengthy and cumbersome. The second method is administrative amendment. The government (Cabinet) can do it alone and does not need parliamentary approval. This is an easy way to reform the existing laws. The laws can be reformed to international standards even through administrative amendment. HMG has broad powers under DPWA to frame rules¹⁵⁸. Under these powers, the government framed DPWR in 1994. The binding force in both the legal instruments (DPWA and DPWR) is the same. The DPWA is the parent Act, whereas DPWR holds legislative power. Because the DPWA gives vast power to the government to frame policy, rules and regulations, it is easy and practical to enumerate in the DPWR the list of maximum facilities to be given to the disabled persons. The DPWR can be made comprehensive to include maximum facilities. The government, through DPWR, can provide the necessary rights and facilities of a mandatory nature according to her available resources. The Ministry of Women,

¹⁵⁸ . Sec.24; Disabled Persons (Protection and Welfare) Act, 1982.

Children and Social Welfare (MWCSW) must be aware of the fact that the second method may be easy as well as effective.

The Draft Bill to amend DPWA that was prepared by the MWCSW in consultation with disabled persons and their organizations is likely to be presented in the next session of Parliament. Whatever is proposed in DPWA through the amendment Bill can also be proposed in DPWR through the MWCSW in the Cabinet to make it into law without sending it to the Parliament. The proposed Draft Bill is basically prepared with the view to expand the mandatory provisions of rights and facilities to the persons with disability. The best way of reform is therefore suggested to incorporate maximum mandatory provisions in DPWR.

7.3 Suggestions

This study made an attempt to highlight the situation of disabled persons in Nepal. The following suggestions are based on the findings of the study.

Awareness Raising

1. The prevalence of disability as indicated by the present by the present study could be influenced firstly by the definition, which included only those cases where the persons needed some rehabilitation services indicating severe disability. Secondly, it could be due to the lack of awareness about disability whereby people tend to hide disabled persons or do not even not identify the disabled person as being disabled. Though earnest effort was made to capture all the disabled persons in the household it cannot be denied that there could

have been attempts to hide such members due to social stigma. If awareness campaigns are launched, more disabled persons could be identified and appropriate steps could be taken. These awareness programs should be linked with support programs.

2. The study indicates that people still do not have an understanding of basic health issues and many tend to believe that disability is caused by the supernatural and not by the lack of proper attention to health. There is a need to raise awareness about basic health issues and the medical causes of disability, which can help prevent the incidence of being disabled and reduce discrimination and social stigma. An awareness of health matters can help in the early detection of disability and diseases in children.
3. There is a need for awareness raising among the community as well as family about the disabled persons and the importance of getting them involved in the activities at household as well as community level. The local leaders must be made aware that they can work for the disabled persons in their locality and do not have to wait for some outsiders to come and help. They must be made aware that the disabled persons in most cases can participate in regular schools or skill training with little special effort. For example, a slight modification of the ground structure would facilitate their movement in the classroom, and giving oral examinations or extra time to those who have difficulty in writing would encourage their participation.

4. It is important to raise awareness about disability, that even though it may not be curable, the difficulties associated with it can be reduced to some extent and the condition may be improved with rehabilitation measures. This would increase the knowledge about what can be done.
5. It was found that most of the families went for some kind of treatment, which indicates that they wanted to get services. There is a need to disseminate information about the available services, even though they are quite limited.
6. There is a need to raise awareness among the policy makers and the local government agencies about the existing policies and their responsibilities.
7. The inclusion of information on disability in the school curriculum could raise awareness among children about disability so that they will understand the importance of including their disabled relatives, neighbors and classmates in their activities.

8. **Services**

Preventive Measures

9. While assessing the age at onset of disability it was found that more than 50 percent of the cases of disability started before the age of 5 years. For instance, 75 percent of hearing loss occurred before the age of 5. Thus, there is an urgent need to launch preventive initiatives in primary health care for the children under 5 in order to reduce the incidence of disability.

10. The preventable causes of disability, like diseases and accidents, were reported in many cases. This indicates an urgent need to address preventive measures for disability in the health sector as well as the traffic sector and safety measures in the work place.

11. As there were cases of inappropriate treatment, or even a lack of treatment, it is highly recommended that the existing health services be improved and reinforced with supplies, referral services and well-trained staff. Accessible and quality health services are essential to prevent disabilities and also to give proper advice to those with disabilities.

Rehabilitation

12. It was found that only 39 disabled persons, or 3.1 percent of total number of disabled persons, received any special aids for their disability. There is an urgent need for government and private initiatives in this matter.

Service Providers

13. It is also essential to strengthen the networking of organizations working in the field of disability, which includes the government, non-government as well as private organizations.

14. It was found that the people were aware of the government health facilities. It is recommended that the existing service providers be made more qualified to deal with the needs of the disabled persons.

Education, Training and Opportunity

15. More disabled people were found in the households where the household heads were illiterate and the general literacy rate was low. As a close association between disability and illiteracy has been revealed, there is a need to rethink the mechanism for reaching these people so that they will have an understanding of disability and how it can be prevented. It is essential to have appropriate approaches, like role-play, street dramas and health campaigns, especially in the remote areas where other media are not of much use.
16. It was found that the majority of the disabled persons who had ever enrolled in school had to attend ordinary schools with no special teachers as there was no alternative. There were a considerable number of dropouts due to the problems they faced, like not being able to cope in the classes. Therefore, either there should be special classes for the disabled persons or there should be integration with special support for the disabled children.
17. Only 27 disabled persons or 2.9 percent of the disabled persons over the age of 14 had received any skill training. There is a need of include the disabled persons in the regular skill training offered in the community.
18. Among those who had received skill training most of them reported that they could not benefit from such training. Training for its own sake is not enough. It is important to develop strategic planning where the skill training actually helps the person to earn a living.

19. Efforts must be made to provide the disabled persons with job opportunities so that they will become economically empowered. One of the ways to reduce the level of discrimination faced by the disabled persons would be to strengthen their economic value. Once these people start earning and have control over their income, they are seen as productive members of the family and community. Thus, economic empowerment could play a key role in developing self-confidence among the disabled persons and, at the same time, help to eliminate the discriminatory attitude towards them.

Participation and Integration

20. It was found in the study that the families of the disabled persons wanted their disabled members to participate in school and work but there was a lack of support. It is recommended that adequate support like access to schools, specially trained teachers in the schools, skill training, and avenues for income generating activities and group savings be provided for such participation.

21. There is the need to encourage the social and economic participation of the disabled persons so that they become integrated into society.

22. The participation of disabled persons in the organizations for the disabled persons has been negligible. Efforts must be made to encourage their involvement in such organizations.

23. The disabled persons should be integrated into the existing programs and their participation should be encouraged.

Government Policies and Programs

24. The study indicated that there is need for a comprehensive national policy for the wellbeing of the disabled persons in the country. There must be clearly spelt out policy for initiating preventive measures for disability, for strengthening the referral services, and for the economic integration of disabled persons. Provisions must also be made in the banking sector so that the disabled persons will have easy access to loans.
25. Although provisions for disabled people exist on paper, the implementation of these provisions has been weak and there is a need to fill in the gaps and develop a proper implementation strategy. The implementation strategies should be reinforced at the regional level, the district level and the village level. There should be cooperation at these various levels to develop a village-level mechanism where the local leaders will be able to take the appropriate initiatives for the betterment of the disabled people in their community.
26. As nearly two-thirds of the disabled persons were found to be in the 15-59 age group, which is the prime working age, necessary steps should be taken to involve these persons in productive work.
27. It was found in the interview with the key informants as well as during the focus group discussion sessions that inappropriate allocation of budget had hindered the programs and activities for the disabled persons. Therefore, there

is a need for proper allocation of budget for the disabled persons at the VDC level.

28. As the government is responsible for the health facilities in the country, it should focus on the prevention, detection, treatment and rehabilitation of the disabled persons. The government should take the necessary measures to improve the access to quality of basic services throughout the country. This should include health, education and special services.

29. Efforts must be made to include disabled persons in all projects and programs as a matter of principle and the government must see to this. In this regard, initiatives from the local government are needed and not just central government initiatives.

30. There must be a special 'disability policy unit' in the National Planning Commission. All ministers, especially the Ministry of Health, The Ministry of Women, Children and Social Welfare, the Ministry of Education and the Ministry of Local Development, should have special policies on disability issues. Each of these ministries should also set up a special unit or task force to ensure the implementation of these policies.

Miscellaneous

31. The survival and care of the disabled persons depends on the family. At times the caretakers do not have special knowledge on the particular disability of their wards. As they are the main persons who look after the wellbeing of the

disabled persons they should get support on how to take care of their disabled family members. There must be special programs for the caretakers. The special needs of the caretakers have to be taken into account. The resources of the family, and especially the mothers and wives, have to be considered when training programs for the disabled persons are developed.

32. During the focus group discussion sessions it was revealed that there was a difference in attitude and behaviour of the family members as well as the community when the disabled persons were male and when they were female. The male disabled persons were given much more attention and care than the female disabled persons. Therefore, the situation of disabled girls and women has to be considered carefully.

33. Though the study does not clearly reveal the households with disabled persons being worse off than those without disabled persons, there were various indicators that showed a slight difference. Thus, special efforts must be made to alleviate poverty through income generating activities. It can be noted here that the Social Welfare Council has launched its loan program for promoting income-generating activities. However, there is a need to make this program effective throughout the country. The disabled persons in poor families are more in need of support than the disabled persons in families that is better off, and therefore attention must be directed towards them.

34. Though there are certain fixed quotas for the disabled persons in the field of teaching there is a need to make it mandatory to provide employment opportunities to the disabled persons in the government as well as the private sectors.
35. There is a need to build strong institutional mechanism at the private as well as the public sectors for proper implementation of programs for the disabled persons.
36. It is recommended that regular studies and research be carried out to derive further information in different avenues of disability.

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