

Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2011



Government of Nepal
National Dalit Commission



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER
NEPAL

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Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2068

Act no 4 of the year 2068

Act made to provide for provisions on caste-based discrimination and untouchability offence and punishment

Preamble: Whereas, acknowledging the principle that each person is equal in terms of rights and human dignity, it is expedient to provide timely provisions to protect the right of each person to live with equality, freedom and human dignity by creating an environment where no untouchability and discrimination prevails on the ground of caste, ethnicity, descent, community or occupation in the name of custom, tradition, religion, culture, ritual or any other name, to make punishable the acts of untouchability, exclusion, restriction expulsion, contempt or any other discriminatory act that is against humanity, to provide restitution (compensation) to the victim of such acts, to keep intact the national unity by strengthening the relationship subsisting among members of the general public, and to create an egalitarian society.

Now, therefore, be it enacted by the Constituent Assembly in the capacity of the Legislature-Parliament pursuant to Article 83 of the Interim Constitution of Nepal, 2063.

1. Short title and Commencement:

- (1) This Act shall be called “Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2068”.
- (2) This Act shall be enforced throughout Nepal and also applicable to Nepalese citizens residing outside Nepal having committed an offence pursuant to this Act against Nepalese citizens.
- (3) This Act shall come in to force immediately.

2. Definition:

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

- (a) “Caste-based discrimination and untouchability” means the acts as referred to in Section 4.
- (b) “Offence” means acts as referred to in Section 3.
- (c) “Public place” means place used for public purpose such as governmental or non-governmental office, education or industrial institution, ancient monument, memorial, resting place, tap, well, pond, dais, road or passage way, vehicle of public transportation, graveyard, garden, religious site of any kind, and/or this term includes any other place where products or services are sold or distributed publicly.
- (d) “Public Service” means governmental or non-governmental office, public institution, transport, industrial or educational institute, company,

firm, shop, hotel, resort, lodge, restaurant, cafe, film hall or theatre, and this term also includes any service or facility to be provided by any government or non-government agency for public use or benefit.

- (e) 'Public occasion' means publicly organized feast or party, worship ceremony, religious offering, birth ceremony, naming ceremony, marriage ceremony, death ritual and religious, social or cultural ceremony of any kind.
- (f) "Individual holding a public post" means person holding the post where he/she is authorized by the constitution or other prevailing laws or the decision or order of the concerned body or authority, to exercise public authority or to fulfill public duty or obligation and this term also includes any incumbent official or employee holding any position in public organization.
- (g) "Prescribed or as prescribed" means prescribed or as prescribed in the rule framed under this Act.

3. Not to practice caste-based discrimination and untouchability:

- (1) No one shall commit or cause to commit caste-based discrimination and untouchability.
- (2) No one shall aid, abet or provoke anyone to commit caste-based discrimination or untouchability, or shall attempt to commit such acts.
- (3) If anyone commits an act pursuant to sub-sections (1) or (2), he/she shall be deemed to have committed an offence pursuant to this Act.

4. Shall be deemed to have committed caste-based discrimination and untouchability:

- (1) If anyone commits or causes to commit any act as referred to in this section on the ground of custom, tradition, religion, culture, rituals, caste, ethnicity, descent community or occupation, he/she shall be deemed to have committed caste-based discrimination and untouchability.
- (2) No one shall, on the ground of tradition, custom, religion, culture, cultural practices, caste, ethnicity, descent, community or occupation, commit or cause to commit any of the following acts in any public or private place against a person subjecting him or her to caste-based discrimination or untouchability:
 - (a) To prevent, control, restrict or prohibit anyone in any way from entering, attending or participating, or
 - (b) To expel anyone individually or collectively from public place or public occasion or to commit social exclusion or discrimination of any kind or to impose restriction on such act or to demonstrate any other kind of intolerant behavior.
- (3) No one shall, on the ground of caste, ethnicity, descent, community or occupation, deprive a person of using or enjoying public service.

- (4) No one shall, on the ground of caste, ethnicity, descent, community or occupation, deprive a person of organizing a public event or carrying out any activity organized publicly.
- (5) No one shall instigate or provoke a person to commit an act that causes caste-based discrimination or untouchability or abet a person to commit such acts, or knowingly participate in such acts.
- (6) No one shall, on the ground of caste, ethnicity, descent, community or occupation, prohibit or prevent a person from taking up any profession or business or compel a person to take on any occupation or business.
- (7) No one shall, on the ground of caste, ethnicity, descent, community or occupation, deprive or cause to deprive a person from performing any religious acts.
- (8) No one shall, on the ground of caste, ethnicity, descent, community or occupation, prevent or cause to prevent a person from producing, selling or distributing any goods, services or facilities.
- (9) No one shall, while producing, selling or distributing any goods, services or facility, produce sell or distribute any goods, services or facility only for a particular caste or ethnicity.
- (10) No one shall, on the ground of caste or ethnicity, exclude any member of family or prevent him/her from entering the house or evict him/her from the house or village, or compel him/her to leave the house or village.
- (11) No one shall, on the ground of caste ethnicity, descent or community, prevent a person of marriageable age pursuant to prevailing law from an inter-caste marriage to which they consent or prevent the naming ceremony of a child born from such marriage, or compel or cause to compel the divorce of persons in an inter-caste marriage.
- (12) No one shall, by dissemination, publication or exhibition of audio visual materials, articles, pictures, figures, cartoons, posters, books or literature or by any other means, denote hierarchical supremacy of a person belonging to a particular caste or ethnicity or commit an act that justifies social discrimination on the ground of caste or ethnicity or transmit the views based on caste supremacy or hatred or use derogatory words or indicate thereof, by his/her conduct gesture or behavior, or instigate or abet or cause to do so in any way that promotes caste-based discrimination.
- (13) No one shall on the ground of caste, ethnicity, decent or community, deny a person work or dismiss a person from employment or discriminate in remuneration or cause to do so.

5. Complaint:

- (1) A person who finds that someone has committed or is going to commit an offence as referred to in section 4, may lodge a complaint in nearby police office as prescribed.

- (2) Notwithstanding anything contained in sub-section (1), if a person commits an offence as referred to in section 4 outside Nepal, the complaint has to be lodged with the nearest police office of the district where the plaintiff resides or where the defendant resides.
- (3) If the concerned police office fails to register the complaint submitted pursuant to sub-section (1) or (2) or fails to precede with the complaint as per prevailing law, the concerned person may complain, in prescribed manner to the National Dalit Commission or local body.
- (4) The National Dalit Commission or local body shall forward the complaint received pursuant to sub-section (3) to the concerned police office in prescribed manner.
- (5) After receiving the complaint pursuant to sub-section (4), the concerned police office shall make an inquiry into the complaint and shall initiate necessary proceeding on such complaint as per prevailing law.

6. Cooperation may be sought in the investigation of the case:

While making investigation of any case under this Act, the investigating authority may seek cooperation as per necessity from Dalit community, local leaders, civil society or representative of organization working for the rights and empowerment of victims of caste-based discrimination and untouchability.

7. Penalty:

- (1) The following penalty shall be imposed on the person who commits the following offence:
 - (a) Whosoever commits an offence pursuant to sub-section (2), (3), (4), (5), (6) or (7) of section 4 shall be liable to the punishment of imprisonment for a term ranging from three months to three years, or a fine ranging from one thousand rupees to twenty-five thousand, or both.
 - (b) Whosoever commits an offence pursuant to sub-section (8), (9), (10), (11), (12) or (13) of section 4 shall be liable to imprisonment for a term ranging from one month to one year, or to a fine ranging from five hundred rupees to ten thousand rupees, or both.
 - (c) Whosoever aids, abets or instigates a person to commit caste-based discrimination or untouchability or to attempt such act shall be liable to half of the punishment prescribed to the principal offender.
- (2) If a person holding a public post commits an offence pursuant to sub-section (1) he/she shall be liable to the punishment of an additional fifty percent in addition to the punishment as mentioned in that sub-section.

8. Penalty to person causing hindrance or obstruction:

If a person hinders or obstructs the inquiry or investigation of an offence punishable under this Act, the court may, on the basis of the report of the investigating authority impose on him/her half of the punishment prescribed to the offender.

9. Restitution:

(1) If a person is convicted of the offence pursuant to this Act, the court may order the offender to provide restitution to the victim of a sum ranging from twenty-five thousand to one hundred thousand rupees.

(2) Besides the restitution pursuant to sub-section (1), if the offender is found to have made harm or loss to the victim, the court may, on the basis of such harm or loss, order the offender to provide for the medical treatment costs or reasonable costs of additional damage or harm caused to the victim.

10. Limitation to file case:

A case shall have to be filed for the offence pursuant to this Act within three months from the commission of the offence.

11. Government of Nepal to be plaintiff:

The Government of Nepal shall be plaintiff in the case filed pursuant to this Act and such case shall be deemed to be included in the schedule 1 of the Government Cases Act, 2049.

12. Summary procedure to be followed:

Any case pursuant to this Act shall be proceeded with and disposed of by following the procedure as provided in Summary Procedure Act, 2028.

13. Penalty to be imposed as per prevailing law:

If an act considered as an offence pursuant to this Act is also an offence pursuant to other prevailing laws, nothing written in this Act shall be deemed to restrict in taking action as per prevailing laws for such offences.

14. To be in accordance with this law:

For the matters mentioned in this Act, this Act shall prevail while other matters shall be governed by other prevailing laws.

15. Duty to extend cooperation:

It shall be the duty of all concerned to cooperate in the investigation of the case under this Act.

16. Power to frame rules:

The Government of Nepal may frame necessary rules to implement the objectives of this Act.

17. Repeal:

Number 10a of the chapter of Decency (Adal) of general country code (Muluki Ain) is hereby repealed.

Date of Authentication: 2068.2.18

Annex - 1

Format of the First Information Report (FIR)

Submitted to.....

(Name and address of the Police Office)

to be filled by police office

Registration no:

Date of Registration:

Application

1. Name, family name and address of the applicant or informant:
2. Type of case to which the crime being informed or reported is related:.....
3. Name, family name and physical features of the person who committed crime:
4. Place, date and time of the crime committed, being committed or likely to be committed:
5. Details of the application or information:
6. Proof or evidence related to the crime, if any:
7. Other details related to the crime:
8. The details in this application are true and accurate. If found incorrect, (I am) ready to face (action) in accordance with the law. If informed, (I) will be present (in a court) at the time of investigation by police or during the proceedings in a court.

Applicant or Informant's signature:

Date:

Annex - 2
Government of Nepal
National Dalit Commission
Complaint Form (Template)

1. Details of the victim:

- a) Name:
- b) Father's Name:
- c) Mother's Name:
- d) Address:
Permanent address (District, Municipality/VDC, Ward no., Village/Tole)
Telephone no Mobile no.
Present address(District, Municipality/VDC, Ward no., Village/Tole)
Telephone no. Mobile no. Email
- e) Sex: Male Female Third gender
- f) Marital status: Married Unmarried Widowed
Divorced Separated
- g) Nationality:
- h) Age:
- i) Profession:
- j) Caste:
- k) Language of communication:
- l) Religion:
- m) Education:
- n) Disability: Yes No (If yes, give details)
- o) Membership of association/institute/organization (optional):
.....

2. Details of the complainant(in case the complainant is not the victim):

- a) Name /association/ institute/organization:
- b) Detailed Address:
- c) Telephone:Email:.....
- d) Relation to the victim:
- e) Language of Communication:

3. Details of the alleged perpetrators (if you recognize him/her):

-
- a) Name of the alleged perpetrator:
 - b) Organisation/ Institute/Association/ Office:
 - c) Designation:
 - d) Contact address:
 - e) Telephone: Email:
 - f) In case you do not know the perpetrator, give the details of identification (e.g. clothes, appearance, type of weapon etc)
-

4. Detailed description of the complaint:

- a) Date and time of Incident:
 - b) Place of Incident:
 - c) Type of Incident:
 - d) Please write in detail how it occurred and what was the effect of the incident.(You may include additional page if the space provided here is not enough.)
-
- e) Have you been displaced as a result of the incident? (Tick mark any one)
- Yes No
- f) Have you complained to any association/ institute/ organization, court, Police, Armed Police Force, Government of Nepal, Red Cross, Non Government Organizations etc?
- Yes No
- (If you have made a complaint, specify where, and what is the progress)

5. Other evidences related to the complaint:

- a) Are there any witnesses to this incident?
- Yes No
- (Please include additional page if there are more than one witness)
- Name of the Witness:

Address:

Name of the Witness:

Address:

What type of possible information could the witness give? Specify.

.....

b) What are the documents or physical evidences, if any, to support the complaint?

1) 2)

3) 4)

c) What are the evidences attached with the complaint?

1) 2)

3) 4)

6. Remedy sought:

a) What type of remedy do you seek from the Commission?

.....

7. To the extent of my knowledge, the details given here are correct and true.

Signature:

Name:

Date:

Address for submitting the form	Important Information
<p>Address: National Dalit Commission Mid Baneshwar, Kathamandu, Nepal. Post Box No. 13758 Tel: 01-4473317, 4479828, 4479827 Fax: 977-01-4475989 Email: info@ndc.gov.np Website: www.ndc.gov.np</p>	<ul style="list-style-type: none"> - Please check that you have responded to all the questions in the form. - Please ensure that all the relevant evidences are included. - If you happen to find new piece of information, please contact the National Dalit Commission. - Please inform the National Dalit Commission in case your address is changed. - Get the complaint registration number and keep it safe.

Annex - 3

Key Steps of Criminal Proceedings in relation to Caste-based Discrimination and Untouchability Crimes in Nepal

