



The Current Legal Framework on Health Care Financing and Social Health Protection in Nepal



Health Sector Support Programme (HSSP)
Ministry of Health and Population (MoHP) - Nepal
Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)



Imprint

Published by
GTZ/GFA Consulting Group GmbH



Health Sector Support Programme
Department of Health Services
Teku, Kathmandu, Nepal
T +977 1 4261404
F +977 1 4261079

Author
Ramesh Badal

Edited by
Dr. Friedeger Stierle
Professor Dr. Konrad Obermann
Dr. Rajendra Kumar BC

Photo
GTZ Archive

Design
Kiirtistudio

Printed by
Hillside Press

Kathmandu, September 2009

Contents

- Abbreviations 6
- Acknowledgements 7
- Executive Summary 8
- 1 Introduction 10**
 - 1.1 Overview of the Study 10
 - 1.2 Objectives of the Study 11
 - 1.3 Methodology 11
- 2 The Legislative Procedure 12**
 - 2.1 Law Making Authority 12
 - 2.2 Process to Make a Rule 13
 - 2.3 Process to Make a Bylaw 13
 - 2.4 Collective Bargaining Agreement (CBA) 13
- 3 Defining Terminology Used in Legislation 14**
 - 3.1 Defining Social Security 14
 - 3.2 Terminology Used to Describe Medical Benefit 15
 - 3.3 Terminology Used Regarding Insurance 16
- 4 Legal Framework for Social Health Protection 18**
 - 4.1 Sick Leave 19
 - 4.2 Maternity Health Protection 22
 - 4.3 Occupational Health and Safety (OHS) 25
 - 4.4 Medical Expenses 27
 - 4.5 Disability Compensation 28
 - 4.6 Provision on Occupational Diseases 32
 - 4.7 Termination on Health Ground 32



Contents

4.8	Institutions and Services	32
4.9	Free Health Care Benefit Declared by Government	36
4.10	Taxation on Insurance	36
5	Remedies to Implementation of Laws	38
6	Impact and Implementation	41
6.1	Public Sector	41
6.2	Private Sector	42
6.3	Social Health Protection in Labour Law Reform Process	43
7	Conclusions and Issues to be Considered	44
Annex.1	List of Acts	46
Annex.2	List of Rules and Regulation	47
Annex.3	Constitution and ILO Instruments	48
	Bibliography	49

Tables

Box.1	Sick Leave and Benefits under Various Legislation	20
Box.2	Summary of Maternity Health Protection Convention 2000, ILO	22
Box.3	Comparative Provisions on Maternity Leave	24
Box.4	Medical Expenses under Various Laws	27
Box.5	Compensation and/or Insurance Granted under Various Laws	29
Box.6	Provision of Labour Rule on Occupational Diseases	32
Box.7	Terminations on Health Ground	33
Box.8	Non-life Insurance Companies in Nepal	34
Box.9	Comparative Benefit Chart	37

Abbreviations

CBA	Collective Bargaining Agreement
CDO	Chief District Officer
EPF	Employees' Provident Fund
FNCCI	Federation of Nepalese Chamber of Commerce and Industry
GDC	German Development Cooperation
GoN	Government of Nepal
GTZ	German Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit)
ILO	International Labour Organization
JTUCC	Joint Trade Union Coordination Center
MoHP	Ministry of Health and Population
NRB	Nepal Rastra Bank
NRS	Nepalese Rupees
OHS	Occupational Health and Safety
RTS	Remuneration Terms & Service and other benefits
SC	Supreme Court
SHI	Social Health Insurance
SHP	Social Health Protection
TU	Tribhuvan University
TUC-GEP	Trade Union Center for Gender Equality and Promotion
UN	United Nations



GOVERNMENT OF NEPAL
MINISTRY OF HEALTH
& POPULATION

Ramshahpath, Kathmandu, Nepal
Phone: 4262987, 4262590, 4262802,
4262706, 4262935, 4262862

4 October 2009



Health is an essential human right, a societal asset and a necessity in order to work and earn income. In developing countries like Nepal, ill health is one of the risks most likely to result in poverty. Considering this, policy of targeted free health care to poor, deprived and marginalized people, and senior citizens was implemented first at district hospitals and primary health care (PHC) centres. Later universal health care to all was implemented at sub health post and health post level. Now universal free health care has been extended to PHC centres, listed essential medicines are made free in district hospitals, and a nationwide free maternity care policy is introduced. A major issue, however, is the financial stability and sustainability of these programmes. At present, the government has limited fiscal space. In addition, out-of-pocket expenditures remain very high and are a major contributing factor in impoverishing people and threatening their economic basis.

For this reason, the MoHP intends to study in more depth innovative and equitable forms of financing health care in order to provide social health protection (SHP) consistent with the thrust of the present administration of providing free health care to all. With the technical support of German Development Cooperation (GTZ and GFA), MoHP has conducted a workshop on SHP which identified preparatory activities contributing to the capacities of the MoHP to lead the political and technical processes of moving the SHP agenda forward. Among these activities, MoHP has conducted the study entitled "The current legal framework on health care financing and social health

protection in Nepal" with the technical support from GTZ/GFA.

The present study reviewed and analysed the existing legislation and legal provision on various aspects of SHP with an aim to draw conclusions for its policy implications.

The MoHP would like to appreciate the technical and financial support provided by GTZ/GFA Consulting Group GmbH, and highly acknowledge the Thematic Task Team members (Dr. Baburam Marasini, Mr. Yogendra Gauchan, Mr. Giri Raj Subedi, Mr. Parashu Ram Shrestha, and Dr. Rajendra Kumar BC) to steer the whole process. The study greatly benefited from the guidance and cooperation of Dr. Friedeger Stierle, Professor Dr. Konrad Obermann, Mr. Christian Caspar, Dr. Susanne Grimm, Professor Dr. Detlef Schwefel, and Ms. Deborah Karmina Sarmiento.

The MoHP would like to recognise and appreciate the work of Mr. Ramesh Badal, National Consultant for his painstaking efforts to complete the study. Special thank goes to him. Last but not the least; MoHP would like to thank all those involved in these processes.

Dr. Y. V. Pradhan

Chief
Policy, Planning and
International Cooperation Division

Executive Summary

Social Protection and Health at a Glance

Social protection in health is a key instrument to address poverty, income security and access to health services. The aim is to provide access to health services at an affordable cost. Some degree of basic social protection in health is possible and affordable in any country, but to be effective, it requires political will and a strong legal framework. Specifically in low-income countries, domestic financial resources are seldom sufficient to finance approaches to include the poor.

In this regard, a statement on health or health care in the constitution of any country is important and it represents an explicit commitment regarding health and health care for the country's population. The Interim Constitution of Nepal 2063 (2007) has declared the state's commitment to and responsibility for people's health for the first time in the history of Nepal. The vision of an inclusive society, where people of all ethnic groups, gender, caste, religion, political belief, social and economic status live in peace and harmony, and enjoy equal rights without discrimination is outlined in the

Interim Constitution, which is the guiding principal for policies, plans and programmes of the Government of Nepal (GoN). Acts and Rules promote the concept that health protection of the people is a fundamental right. Therefore this study focuses on existing Acts and Rules related to both Public and Private sector employees and the general public. Furthermore, it explains implications and issues to be addressed from a legal perspective.

Objectives

1. To identify the terms “medical expenses”, “medical allowances”, “medical insurance”, “welfare fund” and related terms, used in pertinent laws, decrees, rules and regulations, e.g. Labour Act, Bonus Act, Trade Unions Act, Civil Service Act, Army Service Act, Armed Police Act, Health Service Act, etc.
2. To review the meaning of these terms in different situations or interpretations semantically and pragmatically, i.e. both legally in court and in common public understanding.
3. To assess implications and penalties, in cases of non-compliance of laws by private or public establishments.

4. To explore all legal and institutional provisions related to the establishment of health insurance and Social Health Protection (SHP) in Nepal.
5. To draw conclusions about the implications of the current legal status in Nepal for establishing some form of comprehensive SHP.

Methodology

Desk review method was adopted. During the process, various literatures, Acts, Rules and Constitutions including ILO instruments were reviewed and analysed.

Conclusions and Future Directions

Laws related to SHP have used different types of words to define the same meaning with different purpose. Such ambiguity causes confusion and weakens the rights of the individual. In Nepal, Acts and Rules related to SHP govern the Government sector and the Private sector. In the Government sector, Acts and Rules are also not sufficient and uniform to ensure the health of the employees. The lack of consistency means that SHP laws related to Army, Police and Civil servants and others have different and varied provisions and conditions on benefits and Insurance. The Private sector has similar inconsistencies and insufficiencies in laws. There are discrepancies and ambiguity in laws based on position, status (regular or contract), gender and vulnerability of employees in both the Government and Private sectors. Existing laws do not adequately protect workers in the informal sector.

The institutions involved in managing SHP are also ineffective for medical insurance. According to the existing Insurance Act, organisations have to obtain a licence from the Insurance Board to operate or implement an Insurance

Business. Currently, Insurance Companies have the right to operate business only in life, non-life and re-insurance categories of insurance. Therefore, the present insurance system covers only those who have paid premiums. The existing Insurance Act is not sufficient to support Social Health Insurance (SHI) schemes from a legal perspective.

To protect the health of the population, both employees and non-employees, Government must enact a basic law that should be applied to the formal sector, after consultation with all stakeholders. All informal sector workers should be covered by the targeted and /or universal health care programme. Informal sector workers should be registered by the local authority and should be provided with identity cards. All medical benefits, payments during sick leave, payments during maternity leave and other necessary components of a benefit package should be provided through the local authority. An integrated social security organisational entity must set operational standards, monitor compliance and ensure effective administration of SHP, along with other social security benefits.

Citizens have the right to get quality health care services which can be protected by clearly provisioning in specific laws and/or by designing specific health protection schemes such as SHI. The most effective mechanism to achieve this would be by a separate and new law on SHI, which is the most appropriate approach to ensure SHP for all in Nepal. Another approach could be by an amendment to the current Insurance Act along with other related laws, incorporating a provision for new SHI by the Parliament.

1 Introduction

1.1 Overview of the Study

Social protection in health is a key approach to address poverty, income security and access to health services at an affordable cost. It should not only protect health of the workers but should also contribute to achieving decent work. Some basic social protection in health is possible and affordable in any country, but it requires a strong political will and a strong legal framework. Specifically, in low-income countries, domestic financial resources might not be sufficient to include most needy groups. In this regard, depending on country-specific needs, a Social Health Insurance (SHI) scheme is essential to cover the entire population of the country. This would address not only the health of the individual, but is related to development, employment, productivity, prosperity and humanity.

In the context of Nepal, a series of interactions and workshops have been conducted to understand the concept of Social Health Protection (SHP), sharing experiences from other countries and exploring the sustainability of SHP in Nepal. In Nepal, around one third of the population lies below the poverty line. Accord-

ing to the International Labour Organization (ILO) report 2004, only 45 percent of households have access to basic health care. In relation to the size of the labour force, which is 11.2 million and has an annual growth rate of 2.4 percent, nearly 80 percent of the total labour force is engaged in the agriculture sector, 3 percent in manufacturing industries and 17 percent in service industries and government service.

The Government of Nepal (GoN) has taken the initiative to strengthen social inclusion in the health sector by implementing free essential health care to the poor and vulnerable at district hospitals and a free essential health services for all citizens at Sub-health Posts, Health Posts and Primary Health Care Centers. The government has a strong commitment to social inclusion in the health sector. It is hoped that the findings of this study would help to understand the existing legal framework, policies and practices of the government and non-government agencies.

1.2 Objectives of the Study

- To identify the terms “medical expenses”, “medical allowances”, “medical insurance”, “welfare fund” and related terms, used in pertinent laws, decrees, rules and regulations, e.g. Labour Act, Bonus Act, Trade Unions Act, Civil Service Act, Army Service Act, Armed Police Act, Health Service Act, etc.
 - To review the meaning of these terms in different situations or interpretations of these terms semantically and pragmatically, i.e. both legally in court and in common public understanding.
 - To assess implications and penalties, in cases of non-compliance of laws by private or public establishments.
 - To explore all legal and institutional provisions related to the establishment of health insurance and SHP in Nepal.
- To draw conclusions about the implications of the current legal status in Nepal for establishing some form of comprehensive SHP.

1.3 Methodology

Various literatures and documents were reviewed, specifically related to legislation and legal provision on a) Social Health Protection (SHP), b) Violation and remedy available to the employees concerned, c) Institutional arrangements for SHP, d) Policy and provision related to staff benefits such as leave, medical benefits, welfare fund etc., e) Interim Constitution of Nepal 2007, f) Acts and Regulations, different human-rights conventions and standards set by the ILO, and g) Inconsistencies in use and meaning of terminology in different legislation.

The list of Acts, Rules, and Constitutions & ILO instruments are given in Annex 1, 2, 3 respectively.

2 The Legislative Procedure

2.1 Law Making Authority

2.1.1 The Parliament

The Parliament is known as the legislative body of the State and is the source of law. Currently in Nepal, the Constituent Assembly also functions as the Legislature of Parliament. Acts are passed by the Parliament and after authorization of the President they come into force as laws of the land.

2.1.2 Ordinance

An Ordinance is a temporary measure to make a law when the House is not in session, and it is equivalent to an Act. An ordinance may be promulgated by the President on the recommendation of GoN, and can be repealed at any time by the President. If it is not repealed, then it should be tabled in the next session of Parliament. If it is not passed by the Parliament, it shall *ipso facto* cease to be effective. Similarly, an Ordinance shall *ipso facto* cease to have effect at the expiration of six months from its promulgation or sixty days from the commencement of the session of the House.

2.2 Process to Make a Rule

2.2.1 The Government

Normally a Rule is made by the Government and other authority to which the power is vested by the Act or Constitution. It is not necessary to consult with stakeholders while making a Rule. However, a Rule should not be inconsistent with the Act.

2.2.2 Delegated Legislation

Apart from the Government, other constitutional or legal authority may have right to make a Rule based on power delegated to them by the Constitution or an Act. Normally, this right can be exercised by the Supreme Court, the Election Commission, Commercial Bank, other statutory bodies, Universities and others.

According to the decision made by the Supreme Court on the service charge case, the agreement signed between Trade Union and the Employer or Employers' Organisation has the same status as a law. Therefore, regarding SHP and other benefits, a CBA is also a major source of laws.

2.3 Process to Make a Bylaw

Under various legislative provisions, the right to make laws is vested to the management of the enterprises. Usually, laws dealing with workers and employees are known as employees' service rules or standing orders. These types of laws can be made by the Board of Directors and the management. According to the Bank and Financial Companies Acts, 2063 (2006), Nepal Rastra Bank (Central Bank of Nepal) shall have right to approve the bylaws. Under the Labour Act, such bylaws should be registered in the labour office of the respective area and have binding effect on employees and workers of the enterprises.

2.4 Collective Bargaining Agreement (CBA)

A Collective Bargaining Agreement is signed between employers and trade unions. This also has binding effect as equivalent to the law.

3 Defining Terminology Used in Legislation

3.1 Defining Social Security

The Interim Constitution of Nepal 2063 (2007) has recognised social security as a fundamental right of the citizen. No previous constitutional document and/or legislation have mentioned social security in this way. However, the Constitution of the Kingdom of Nepal 2047 (1990), has recognized some elements of social security applicable only to orphaned children, helpless women and disabled persons. The Interim Constitution has mentioned a right to employment and social security. Similarly, the constitution has also provided the right to live in a healthy environment and every citizen shall have the right to get free basic health service from the state as provided by law. However, to date, no such Acts have been enacted by the Parliament. The Preamble of the Senior Citizen Act 2063 (2007) has mentioned that the Act is made to secure the social security of senior citizens, but no specific provisions have been mentioned for SHP.

There is no definition made by any legislation relating to social security and social protection. However, we may take reference from the ILO convention relating to social security even

though Nepal has not ratified it. There are different interpretations and definitions of the terms related to social protection. The term social protection is usually used to describe arrangements for those people and communities who encounter adverse contingencies. The purpose of these arrangements is to provide some form of maintenance of income and services to people to ensure that they are protected and cared for in times of need.

International Labour Organization (ILO), Social Security (Minimum Standards) Convention No. 102 sets out a framework of social security provisions categorized under nine contingencies and/or risks as follows:

1. Unemployment
2. Health care
3. Maternity
4. Incapacity for work due to illness
5. Disability
6. Invalidity
7. Old age
8. Child maintenance
9. Death of the wage earners or dependent benefits

Out of the above contingencies, only health care, maternity, inability to work due to illness, disability and the dependent benefit are mentioned in the coverage of SHP. Therefore, in fact the study does not cover all aspects of social protection.

3.2 Terminology Used to Describe Medical Benefit

In relation to the medical benefit, there are various terminologies used in different legislation. The literal meaning of medical benefit in English and the meaning under the legislative provisions are briefly described below.

3.2.1 Ausadhi Upachar

Literal meaning: Medical Treatment.

This term is used in different legislation in various ways;

- According to the provision of the Labour Rule, it is limited to providing first aid treatment only. It makes it obligatory to appoint a medical person in industrial establishments where 400 or more workers are employed and to appoint a doctor or health assistant where more than 1,000 workers are employed.
- Even though this term is used in the Labour Act and Income Tax Act, no definition is provided
- The phrase Medical Treatment is used in the chapter on the Poor (*Garib Kangal Ko*) of Civil Code 2020 (1963). This provision states that Chief District Officer (CDO) should send a person suffering from leprosy to the place where Medical Treatment facilities are available.
- The Working Journalist Rule has used the term in relation to Accident Insurance.
- In the Armed Police Rule, this term is used to determine the maximum limit of medical expenses during their entire service period.

3.2.2 Upachar Kharcha

Literal meaning: Treatment Expenses

- This term is used in legislation related to the Judges of the Court of Appeal, civil servants, public school teachers, police and army personnel, office bearers of constitutional bodies, local self government employees and employees working in the health service. In these laws, it is used to determine the maximum limit of medical expenditure during the entire service period.
- However, only the Rule relating to compensation of non-government persons includes

an upper limit to the medical expenses, along with travel expenses.

3.2.3 Ausadhi Upachar Kharcha

Literal meaning: Medical Treatment Expenses

- This term is also used to determine the upper limit of medical expenditure under Tribhuvan University (TU) Teachers & Employees Rule.

3.2.4 Ausadi Upachar Subidha

Literal meaning: Medical Treatment Benefit.

- This word is used only in Tea Plantation Labour Rule 2050 (1993). It has also determined the upper limit of medical expenses during the entire service period.

3.2.5 Upachar Ko Byabatha

Literal meaning: Provision of Treatment.

- This term is used in the Remuneration and Terms of Facility of Member and Office Bearer of Parliament Act 2052 (1996). According to the Act, the Parliament Secretariat provides the service of doctors to all office bearers and members of the parliament. It also clearly mentions that all medical expenses provided in a hospital on the recommendation of the doctor shall be paid by the GoN.
- A similar provision is also found in the Remuneration and Terms of Facility of Ministers Act 2049 (1993).

3.2.6 Swastha & Upachar

Literal meaning: Health & Treatment

Normal meaning: Medical Treatment

- This term is used in the Prison Act 2019 (1963). According to the Act, all prisoners should be checked up by the government doctor and permitted to send to *Ghat* in case of last stage. (*Ghat* means the place where funeral procession takes place after death. In

Pashupati Arya Ghat, service of dispensary is available.) A prisoner, unless deceased, shall be sent back to the prison after treatment.

3.2.7 Swasthopachar

Literal meaning: Health Treatment

Normal meaning: Medical Treatment

- This term is used in the Children Act 2048 (1992) but is not defined.
- The same term is used in the Protection and Welfare of Disabled Rule 2051(1994) to provide free treatment as a facility.
- The Retired Army Appointment (Special Provision) Rule also has a provision for a treatment facility at army hospitals to retired army officials.
- Similar provision also exists in the Nepal Army Pension, Gratuity and Other Facility Rule 2033 (1976). This provision for free treatment benefit applies to any individual in case of involvement together with army personnel.

3.2.8 Swastha Parikshan

Literal meaning: Health Checkup

- There is a provision in the Tea Plantation Rule to submit a health certificate before joining the enterprises.
- Provision for pre-employment health checkup before joining the service is mentioned in various legislation, including the Civil Service Rule.

3.3 Terminology Used Regarding Insurance

3.3.1 Bima Kharcha

Literal meaning: Insurance Expenses

- This term is used to provide premium and other expenses incurred for travel, to Judges

by the Remuneration, Terms of Service and Facility of Judge of Supreme Court Act, Remuneration and Terms of Service and Facility of Judge of District Court and Court of Appeal Act and Remuneration and Terms of Benefit of Attorney General Act.

- According to the Travel Expenses Rule 2064 (2008), all Ministers, the Chief Justice, Speaker and Deputy Speaker, and all level of permanent government employees are entitled to claim expenses incurred during travel up to NRS 700,000.00 (seven hundred thousand) within and outside Nepal. They are also entitled to claim the reimbursement of costs in case of medical insurance required during visits abroad.

3.3.2 Bima Subidha

Literal meaning: Insurance Benefit

- This term is used in Remuneration and Others Facilities of Minister & Remuneration Terms of Service and Facility of Office Bearer of Members of Constitutional Bodies Act. It has the same meaning as Insurance expenses mentioned above.
- According to the Civil Service Rule and Nepal Health Service Act, the employer should pay a fixed amount to the employee in case of death. There is no element of insurance and it is used only as compensation.

3.3.3 Bima ko Byabastha

Literal meaning: Provision of Insurance

- Under the Rule Relating to Marshall and Education Rule, the GoN may purchase an insurance policy. In case of failure to provide insurance, a family member of a teacher or Marshal is entitled to get a fixed amount as compensation in case of death.

3.3.4 Kalyankari Bima

Literal meaning: Welfare Insurance

- Under the National News Agency Rule, employees are entitled to receive a fixed amount from the employer. There is no element of insurance.

3.3.5 Durghatana Bima

Literal meaning: Accident Insurance

Most of the legislation used the provision of Accident Insurance.

- In the Rafting Rule, Working Journalist Rule, Vehicle & Transport Management Rule; *Durghatana Bima* is related to providing Accident Insurance by quoting a minimum level of compensation.
- In the Labour Act, such insurance should be provided for construction and tourism workers. However, the Labour Rule does not have a provision for compulsory insurance as well as insured amount. It only provides for the ability in case the employer fails to arrange insurance, he/she must pay compensation in lieu of insurance.

3.3.6 Sabadhik Jivan Bima

Literal meaning: Endowment Life Insurance

- The Civil Service Act and Nepal Health Service Act make a provision for an endowment life insurance policy. Under the provision, employees should contribute NRS 200.00 (two hundred) per month and the government should also contribute an equal amount. Such amount shall be paid to the employee's family members in case of death or paid to the employees concerned after retirement.

4 Legal Framework for Social Health Protection

The Interim Constitution of Nepal provides the right to health and environment as a fundamental right of the citizen of Nepal. The Constitution has clearly stated:

1. Every citizen shall have the right to get free basic health service from the State as provided by the law.
2. Every person shall have the right to live in a clean environment.

Similarly, the Constitution has also clearly mentioned that women, workers, the old aged, the disabled, as well as incapacitated and helpless citizens, shall have the right to social security as provided by the law. However, no Act of Parliament has defined social security and basic health service.

During the study, almost all legislation enacted by the Parliament and the Rules made by the Government have been reviewed. Most of the provisions relating to SHP have been mentioned in the Rule made under the Act. Very few Acts have provisions on SHP. According to the existing legislative provisions, SHP is an absolute responsibility of employers.

The study also found that paid sick leave and maternity leave are major components of SHP. Similarly, social protection during work injury, disability and in case of death also exists. On the other hand, such provisions differ by legislation.

4.1 Sick Leave

In the existing legal context, sick leave is a major means of social protection to the employees and workers of all sectors. Usually, various legislation provide income security during sick leave. After reviewing all major legislative provisions, there is inconsistency in different laws in this regard.

- Employees working in the additional post office are entitled to use 6 days sick leave with full pay in a year.
- Employees and teachers of TU obtain 15 days full pay or 30 days half paid sick leave.
- Civil service, police, armed police, army, working journalist, employees under local government, public school teachers, are entitled to get 12 days' full pay leave.
- However, workers in formal sector may use 15 days sick leave with half pay.
- Similarly, 15 days' leave with half pay is also applied to those enterprises where less than 10 workers are employed according to the notification of Ministry of Labour on 2049/12/17 (March 30, 1993).

Some of the legislation allow extending or utilizing sick leave in advance in various sectors.

- Employees under civil service, armed police, police, army, health employee, public school teacher and local government are entitled to obtain 12 days additional sick leave in advance.
- Advance sick leave granted to teachers of TU up to 45 days in case of serious sickness.

- Unpaid extraordinary leave or extraordinary sick leave may be granted to civil servants, police, army, armed police, and public school teachers.

However, such leave benefits do not cover all employees and workers. The majority of workers are excluded from receiving such benefits. All workers under the informal economy are excluded from the ambit of the law. Similarly, employees under contractual basis in the civil service do not have guarantee of this benefit. In such cases, these employees may use such leave as mentioned in their contract. Clause 7.5 of the Civil Service Act which was amended by the Government in 2063 (2006), clearly mentions that civil servants on subordinate level should be hired by providing minimum remuneration only.

In relation to extension of sick leave, such kind of benefit is not granted to workers governed under the Labour Rule, Tea Plantation Labour Rule, Working Journalist Rule and employees governed by Additional Post Office Rule. In terms of accumulation of sick leave, the Labour Rule, Tea Plantation Labour Rule, Additional Post Office and Child Labour (Prohibition and Regulation) Rule have no provision for accumulation of sick leave. Civil servants, armed police, police, army, public school teachers, (where the government itself is the employer) and working journalists have the right to accumulate sick leave without maximum limitation. A balance of remaining sick leave will be paid in case of retirement or in case of death.

Box.1 Sick Leave and Benefits under Various Legislation

Name of Acts/Rules	Sick Leave	Payment Status	Leave accumulation and in casement
Additional Post Office Rule 2034 (1977)	6 days	Full Pay	None
Armed Police Rule 2057 (2001)	12 days	Full Pay	No limitation for accumulation and it may be in cash after retirement or death
Army Leave Rules 2019 (1962)	12 days	Full Pay	No limitation for accumulation and it may be in cash after retirement or death
Civil Service Rule 2049 (1993) Nepal Health Service Rule 2055 (1998) Parliament Secretariat Employees Administration Rule 2059 (1999) Rule Relating to Employees of Department of Auditor General 2050 (1993) Rules Regarding to Marshall 2059 (2003)	12 days	Full Pay	No limitation for accumulation and it may be in cash after retirement or death
Education Rule 2049 (1994)	12 days	-	No limitation for accumulation and it may be in cash after retirement or death
Labour Rules 2050 (1993) Tea Plantation Labour Rule 2050 (1993)	15 days	Half Pay	None
Local Self Government Rule 2056 (1999)	12 days	Full Pay	No limitation for accumulation and it may be in cash after retirement or death
Police Rules 2049 (1993)	12 days	Full Pay	No limitation for accumulation and it may be in cash after retirement or death
Retired Army Appointment (Special Provision) Rule 2059 (2003)	12 days	None	None
TU Teachers and Employee Service Rule 2050 (1993)	15 or 30 days	Full Pay Half Pay	No limitation for accumulation and it may be in cash after retirement or death
Working Journalist Rule 2053 (1997)	12 days	Full Pay	No limitation for accumulation and it may be in cash after retirement or death
Child Labour (Prohibition and Regulation) Rule 2062 (2005)	24 days	Full Pay	None

Extension of Sick Leave and other provision

None

Twelve days' advance sick leave may be granted in case of serious sickness. Next 30 days advance annual leave may be granted and will be deducted from next year's annual leave. In case such period is insufficient for recovery, maximum one year special sick leave may be granted for a one year period, on the basis of full salary for the first 3 months, half salary for the next 6 months and no salary for the remaining 3 months. For illness or injury arising from employment, the police will get full salary until the date of recovery.

Twelve days' advance sick leave may be granted in case of serious sickness. Next 30 days advance annual leave may be granted and will be deducted from the next year's annual leave. In case such period is insufficient for recovery, a maximum of 2 years' special sick leave may be taken. For a one year period, there will be full salary for the first 3 months, half salary for the next six months and no salary for the remaining period. For illness or injury arising from employment, army personnel will get full salary until the date of recovery.

Additional maximum 12 days' advance sick leave may be obtained in case of serious sickness. It can be extended up to 45 days which may be adjusted in annual leave or sick leave. In case such a period is insufficient for recovery, one year extraordinary leave may be taken on the recommendation of a Medical Board, during the entire service period.

Additional 12 days' advance sick leave may be obtained in case of serious sickness on the recommendation of a prescribed physician.

After permanency only such sick leave is granted.

Additional maximum 12 days' advance sick leave may be obtained in case of serious sickness. It can be extended up to 45 days which may be adjusted in annual leave or sick leave. In case such period is insufficient for recovery, extraordinary leave may be taken on the recommendation of a Medical Board or District Hospital.

Twelve days' advance sick leave may be granted in case of serious sickness. Additional 45 days sick leave may also be granted, which is deducted from earned or advance annual leave (2 days annual leave = 1 day sick leave) for illness or injury arising from employment, the police will get full salary until the date of recovery

None

Additional maximum 1 year annual leave and 45 days' advance sick leave may be obtained in case of serious sickness, which may be adjusted from annual leave and sick leave respectively.

Sick leave may be extended as required in case earned sick leave is insufficient for treatment if illness or injury occurs while on duty.

Applicable to the workers aged between 14 to 16. Before employing such workers, employers must obtain a health certificate from a physician. However, the Rule has never been implemented in practice.

4.2 Maternity Health Protection

Existing laws are focused on maternity leave as a means of maternity protection and this is one of the key areas of social security. Because of the lack of an integrated social security system, existing legislative provision does not cover all aspect of maternity protection. Considering the seriousness of the matter relating to this, ILO has adopted convention 3, 103 and most recently 183. The latest convention on Maternity protection, 183 deals with following areas:

- A. Health Protection
- B. Leave
 - a) Maternity
 - b) Paternity
- C. Benefits
- D. Employment Protection and Non-discrimination
- E. Breast-feeding

Box.2 Summary of Maternity Health Protection Convention 2000, ILO

Health Protection

To ensure that pregnant or breastfeeding women are not obliged to perform work which may affect or risk the mother's health or that of her child.

Maternity Leave

Woman shall be entitled to a period of maternity leave of not less than 14 weeks. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth.

On production of a medical certificate, additional leave shall be provided before or after the maternity leave period in the case of illness, or risk of complications arising out of pregnancy or childbirth.

Benefits

Cash benefits shall be provided to women who are absent from work on leave. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.

Medical benefits shall be provided for the woman and her child. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.

Employment Protection & Non-Discrimination

It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave. A woman who utilizes the maternity leave is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

Each Member shall adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment.

Breast-feeding Mothers

A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breast-feed her child.

4.2.1 Health Protection

According to the TUC-GEP Report of 2001, after being informed about pregnancy, management should assign easier work to the woman and no night work should be assigned. She should not be assigned to work at places where she has to be directly exposed to dust, smoke, chemical substances etc, which have potential adverse effects on her and her fetus. There should be arrangements for regular health check-ups for pregnant women. However, there is nothing mentioned in any law about the protection of the health of pregnant women as recommended by the report or the provision of ILO convention in this respect.

4.2.2 Maternity Leave

Our legislative provision basically deals with the leave benefit only. These benefits are not consistent among different sectors.

- As per the Labour Rule, workers in the industrial sector are entitled to get only 52 days' paid leave before and after delivery.
- The Rule relating to Tea Plantation has only provision for 45 days paid maternity leave.
- Employees of the Civil Service, army, armed police, police, local government, public school teacher and others are entitled to utilize 60 days maternity leave with pay.
- Teachers in TU are entitled to use 75 days maternity leave.
- A Judge of District Court or Appellate Court is entitled to use 98 days paid maternity leave.

According to ILO Convention 183, at least 98 days leave should be granted to pregnant employees. All of the legislation, except only one, does not meet the ILO standard. Similarly, there is no rationale to provide less leave benefit to workers involved in a hardship job and more leave to the employees with normal and / or soft jobs. A pregnant civil servant is also entitled to obtain additional 6 months unpaid maternity

leave after completion of such leave. Such kind of provision does not exist in other legislation.

Maternity leave is not available to employees in establishments that employ less than 10 workers. This effectively excludes the entire informal sector from maternity leave.

However, as per the Labour Rule and Tea Plantation Labour Rule, maternity leave is applicable to all pregnant women, irrespective of permanent or other kind of employment relationship.

Unfortunately, as mentioned above, employees under a contractual basis in the civil service are also excluded from maternity leave. This discriminatory provision also exists between temporary and contractual employees of TU. The TU Teachers and Employees Rule clearly mentions that 60 days' full pay maternity leave is granted to those who complete 2 years of service and half pay to those who served less than 2 years. On other hand, permanent staffs are entitled to 75 days leave with full pay. Similarly, Judges of the Supreme Court and Office bearers of Constitutional Bodies are not entitled to maternity leave. The Additional Post Office Rule has stipulated only three types of leave – annual leave, sick leave and casual leave – thereby excluding maternity leave.

Most of the legislation governing civil servants, armed police, public school teachers and university teachers provide maternity leave only twice during the entire service period. According to the Labour Rules, in case of death of child and re-pregnancy, maternity leave can be taken until having two living children. There is nothing mentioned about the limitation of utilization of maternity leave in the Army Leave Rules 2019 (1962). In cases in which maternity leave is required more than twice for pregnant police personnel, an adjustment may be made to the annual or sick leave. Such limitations are not mentioned in the Army Leave Rules. However, no legislation mentions leave in case of miscarriage.

Box.3 Comparative Provisions on Maternity Leave

Name of Acts/Rules	Leave	Payment Status	Paternity Leave	Remarks
Armed Police Rule 2057 (2001)	60 days	Full Pay	None	Maximum of 2 times
Army Leave Rules 2019 (1962)	60 days	Full Pay	None	Nothing mentioned about time limit
Civil Service Rules 2049 (1993)	60 days	Full Pay	15 days	Maximum of 2 times. Additional 6 months leave without pay
Education Rule 2049 (1993)	60 days	Full Pay	None	Maximum of 2 times
Labour Rules 2050 (1993)	52 days	Half Pay	None	Maximum of 2 times
Local Self Government Rule 2056 (1999)	60 days	Full Pay	None	Maximum of 2 times
Nepal Health Service Rule 2055 (1998)	60 days	Full Pay	None	Maximum of 2 times
Parliament Secretariat Employees Administration Rule 2056 (1999)	60 days	Full Pay	None	Maximum of 2 times
Police Rules 2049 (1993)	60 days	Full Pay	None	Maximum of 2 times. If more than 2 times required may be adjusted in earned annual or sick leave
Rule Relating to Employees of Department of Auditor General 2050 (1993)	60 days	Full Pay	None	Maximum of 2 times
Remuneration Terms of Service of Judge of Court of Appeal and District Court Act 2048 (1992)	98 days	Full pay	15 days for 2 Children	Maximum of 2 times
Rules Regarding to Marshall 2059 (2003)	60 days	Full Pay	None	Maximum of 2 times
Tea State Labour Rule 2050 (1993)	45 days	Half Pay	None	Maximum of 2 times
TU Teachers and Employee Service Rule 2050 (1993)	75 days	Full Pay	7 days one time only	Maximum of 2 times. Before delivery 30 days & after 45 days. Temporary/contractual persons who have more than 2 years of service are entitled to 60 days full pay and half pay if less than 2 years
Working Journalist Rule 2053 (1997)	60 days	Full Pay	15 days for two child	Maximum of 2 times, Additional 6 months leave without pay may be granted

4.2.3 Paternity Leave

The Paternity leave provision is a new concept to Nepal. Fifteen years ago, there was no such legal provision in this respect. This provision was firstly introduced by TU Teachers and Employees Service Rule 2050 (1993). In 2001, TUC-GEP published a report to introduce paternity leave. This report said “Provision should be made to provide leave (child-birth-leave) of 2 weeks to a male worker during the delivery of his wife. In case of death of wife after child-birth and illness to the extent of inability to look after the baby, the provision should be made such that the husband shall also get full paternity leave equal to the entitlement of female workers. This would discourage the trend of depriving the women from employment opportunity for the reason of providing the maternity leave.”

The latest amendment of Civil Service Rule has been made on December 2007. The Rule introduced maternity care leave as well as paternity leave. Fifteen days’ paternity leave with full pay shall be granted to the male employees in case of delivery of his wife. It may be utilized before or after delivery. A similar provision is incorporated in the latest amendment of remuneration, Terms and Service of Judges of District Court and Appellate Court. Such leave may be granted only for maximum two times in the entire service period. According to the TU Teachers and Employees Rule, such leave may be granted maximum one time in the entire service period and which is 7 days only. Beside these, no other legislation mentions paternity leave.

4.2.4 Benefits

As mentioned above, employers are obliged to pay salary during the period of maternity leave. Besides that pregnant civil servants are entitled to get NRS 5,000.00 (five thousand) cash as a child care benefit for a maximum of two children. Those who are not entitled to use

maternity benefit are excluded from such benefits. There is no another legislation that provides such types of additional cash benefits. Under the Prison Rule 2019, during delivery, women prisoners are entitled to get NRS 1,000.00 (one thousand) cash and additional 10 metres of clothes.

4.2.5 Employment Protection and Non-discrimination

There is legislation which explicitly mentions employment protection and non-discrimination during motherhood. Normally such kind of provision is not clearly mentioned in any of our legislation. However, under legal practice of Nepal, no pregnant woman can be terminated from service due to utilization of maternity leave.

Nepal has already ratified ILO convention 100 and 111 and which clearly prevents discrimination against pregnant women.

4.2.6 Breast-feeding

According to Labour Act, employers are obliged to provide time for breast-feeding as and when required by women workers. Those who employ more than 50 workers are also obliged to establish child care rooms. However, such provision does not exist in any other legislation.

4.3 Occupational Health and Safety (OHS)

“Prevention is better than cure”: this is the widely known phrase in the health sector; however our legislative system basically depends on mechanisms for cure. Very little legislation mention preventive measures. Labour Acts and Rule is one legislation which tries to control industrial accidents and make few OHS provisions.

4.3.1 Provisions on Health and Safety mentioned in Labour Act and Rules

According to the Labour Act and Rule, management shall make the arrangements in the enterprise as mentioned below:

- To keep each enterprise clean and tidy,
- To make adequate supply of fresh air and light and keep proper temperature in the work place,
- To make arrangements for removal and disposal of solid waste and sewage,
- To manage dust, fumes, vapour and other materials which might affect health adversely,
- To make arrangements for necessary preventive personal devices for protection of health from adverse effects of noise and take necessary steps to reduce noise,
- To provide adequate working space and avoid any congestion in the work place that could cause injuries to workers considering the nature of work generally fifteen cubic metres per person in which calculation height should not be considered to be more than four metres,
- To supply drinking water in the work place and sufficient water in the enterprise where chemical substances are used which may cause hazards to the health,
- To make arrangements for separate toilets for male and female workers, and at convenient locations,
- To declare a non-smoking zone in all or some parts of the enterprise, and
- To make compulsory health check-up of the workers at least once a year in the enterprises where the nature of work is likely to affect health adversely.

4.3.2 Protection of Eyes

Necessary protective equipment shall be arranged for the protection of eyes of workers and employees from possible injuries likely to be caused by dust or pieces while working in the enterprise where glass, lead, mercury, magnet, plates, iron, concrete, cement, limestone and explosive substances are used.

4.3.3 Arrangement for Safety against Fire

The establishment shall make arrangements for necessary modern equipment for safety against fire in each enterprise.

4.3.4 Hazardous Machines to be Fenced

Strong fences or bars shall be placed around every part of hazardous machines, instruments and equipments to be operated by energy. In the case of maintenance functions, such as inspecting, lubricating or adjusting any part of hazardous machines during their operation, only experienced and well-trained adult workers or employees shall be engaged to perform such activities.

4.3.5 Lifting of Heavy-weight

No worker or employee shall be engaged in the activity of lifting, loading or transporting any load likely to cause physical injury or harm to the health.

4.3.6 Safety Measures and Equipment

Employers of tea plantation, construction, trekking and rafting should provide safety equipment and measures for their employees and workers in their duty.

4.4 Medical Expenses

Despite preventive measures, sometimes accidents are inevitable. Employees may suffer from an occupational disease or an accident. Therefore, Labour Law provides some legal provision for work injury compensation and medical expenses as well.

There are two types of medical expenses mentioned in the various laws:

1. Medical expenses due to accident while on duty, and
2. Medical expenses in general.

4.4.1 Medical Expenses Related to Accident while on Duty

According to the Labour Rules 2050 (1993), in the event that any worker sustains any physical injury while discharging duties assigned by the establishment, management must pay, in the form of compensation, the entire expenses required for treatment according to the recommendation made by a physician who is recog-

nized by the Government. If the worker or employee is unable to resume work immediately and is required to undergo treatment at a hospital, the management must pay full remuneration for the period of the stay in the hospital. Only half of the remuneration should be paid in case of treatment at home. However, in case of treatment for a period exceeding one year, management need not pay any remuneration for the excess period. Except for the Labour Rule, all legislation mention medical expenses in general without differentiation between an accident while on duty or in the normal course of life.

4.4.2 Medical Expenses in General

In case of illness or injury to army personnel, the individual may be admitted to any hospital and undergo treatment with any doctor, and reimbursement will be made according to the doctor's bill and prescription. Similarly, such kind of medical expenses shall be provided to the civil servant, TU Teacher and employees, public school teacher, health worker, but with some limitations, as mentioned below:

Box.4 Medical Expenses under Various Laws

Name of Acts/Rules	Reimbursement of Maximum Limit of Medical Expenses during Entire Service Period
Armed Police Rule 2057 (2001) Police Rules 2049 (1993)	Twelve months' salary for all gazetted officers, 18 months' salary for non-gazetted first class and equivalent, 21 months' salary for other non-gazetted and others. All medical expenditure shall be reimbursed in case of injury due to terrorist attack.
Nepal Army (Pension, Gratuity and Other Facility) Rules 2033 (1976)	Twelve months' salary for all gazetted officers, 16 months' salary for honorary captain and honorary lieutenants, 18 months' salary for Subedar, and 21 months' salary for others.
Civil Service Rules 2049 (1993)	Twelve months' salary for all gazetted officers, 18 months' salary for non-gazetted first class and equivalent, 21 months' salary for other non-gazetted and others. Contractual employees are deprived from the benefit. Additional benefit may be granted on the discretion of government. In case of disease relating to heart, kidney and cancer, on the recommendation of Medical Board, up to NRS 500,000.00 (five hundred thousand) expenses may be reimbursed.

Name of Acts/Rules	Reimbursement of Maximum Limit of Medical Expenses during Entire Service Period
Education Rule 2049 (1993)	Twelve months' salary for all permanent secondary school teacher, 18 months' salary for permanent lower secondary school teacher, and 21 months' salary for permanent primary school teacher. In case of less than 20 years of service, the benefit shall be calculated on a prorated basis.
Tea State Labour Rule 2050 (1993)	Two months' salary for entire service period.
Local Self Government Rule 2056 (1999)	Twelve months' salary for officer level, and 18 months' salary for subordinate.
Nepal Health Service Rule 2055 (1998)	Twelve months' salary for officer level, 18 months' salary for non-subordinate level. In case of less than 20 years of service, the benefit shall be calculated on a prorated basis. Additional benefit may be granted on the discretion of government.
Remuneration, Terms of Service and Facility of Constitutional Bodies Act 2053 (1996)	Twelve months' salary.
TU Teachers and Employee Service Rule 2050 (1993)	Twelve months' salary for Lecturer and Assistant Administrator and above, 18 months' salary for Assistant Trainer, Head Assistant and equivalent position holder, 21 months' salary for Driver, Typist and below. In case a non-employed person is appointed as office bearer of TU, the reimbursement is 2 months' salary for each year of service.
Remuneration, Terms of Service and Facility of SC Judge Act 2026 (1996) Remuneration, Terms & Service for Judge of District Court and Appellate Court Act 2048 (1992)	Twelve months' salary.
Working Journalist Rule 2053 (1997)	One month's salary for each year of service.

4.4.3 Medical Benefit

All army, police and armed police are entitled to the medical benefit. These institutions have their own hospital facilities. In case any civil servant working under the Nepal Army is injured in an accident while on duty, free medical benefit is provided by admitting the person in the army hospital on the recommendation of chief of army staff. However, such a medical benefit including hospitalization is under the welfare fund and not according to the legislation.

All medical expenses of Members and Office Bearers of Parliament shall be reimbursed by the Parliament Secretariat.

4.5 Disability Compensation

Labour Rule: In case of physical disability due to an accident while on duty, the management must pay a lump sum amount equal to five years of remuneration calculated at the rate of remuneration being drawn, if the physical

disability is found to be 100 percent as defined in the schedule relating to physical disabilities. As mentioned in the schedule, the basis of this benefit is full remuneration payable for 100 percent disability, with prorated amounts for lower levels of disability.

Compensation in the event of death is equal to three years' remuneration calculated at the worker's rate of remuneration and paid in a lump sum to the nearest heir as compensation. However, workers or employees are not entitled

to receive such disability compensation or medical care for work injury if such expenses are not related to the work assigned by the employer. Similarly, no compensation or medical expenses may be granted to those who are suffering from an occupational disease in addition to a mental disability. There is a provision on occupational disease in the Labour Act and Rule and it is entirely insufficient and not able to resolve the problems. No other legislation mentions occupational diseases.

Box.5 Compensation and/or Insurance Granted under Various Laws

Name of Acts/Rules	Compensation in Case of Disability & Death
Education Rule 2059 (1994)	<p>In case of Death due to accident while on duty Life time additional 50 percent pension to the husband or wife Educational Allowance and additional progeny allowance for 2 children up to 18 years.</p> <p>Insurance: GoN should provide insurance for all teachers and if not, should pay in case of death NRS 30,000.00 (thirty thousand) for a secondary teacher and NRS 20,000.00 (twenty thousand) for a teacher of another level.</p>
Industrial Apprentice Act 2039 (1982)	As prescribed by law but not implemented to date.
Remuneration, Terms & Service for Judges of District Court and Appellate Court Act, 2048 (1992)	<p>Disability benefit while on duty If capacity loss – Maximum NRS 100,000.00 (one hundred thousand) compensation. Additional full pay sick leave (not deducted from any sick or other leave). Reimburse all medical expenses (not deducted from medical benefit).</p> <p>In case of disability due to accident while on duty and inability to perform duties Life time additional pension and additional disability benefit. Additional NRS 10,000.00 (ten thousand) financial support. Reimburse all medical expenses. Educational Allowance NRS 900.00 (nine hundred) per year until 18 years. Progeny allowance NRS 75.00 (seventy five) per month up to 21 years.</p> <p>Insurance: Government of Nepal should provide insurance of NRS 200,000.00 (two hundred thousand).</p>
Remuneration, Terms & Service of Judges of Supreme Court 2026 (1969)	<p>Disability benefit while on duty If capacity loss – Maximum NRS 100,000.00 (one hundred thousand) compensation. Additional full pay sick leave (not deducted from any sick or other leave). Reimburse all medical expenses (not deducted from medical benefit).</p>



Name of Acts/Rules	Compensation in Case of Disability & Death
<p>▶▶</p>	<p>In case of disability due to accident while on duty and inability to perform duties Life time additional pension and disability benefit. Additional NRS 10,000.00 (ten thousand) financial support. Reimbursement of all medical expenses. Educational Allowance NRS 900.00 (nine hundred) per year until 18 years. Progeny allowance NRS 75.00 (seventy five) per month up to 21 years.</p> <p>Insurance: Government of Nepal should provide insurance of NRS 300,000.00 (three hundred thousand).</p>
<p>Nepal Army (Pension, Gratuity and Other Facility) Rule 2033 (1976)</p>	<p>In case of Death due to accident while on duty Life time 50 percent pension to legal heir and in addition to that the gratuity is also provided. Additional progeny allowance shall be provided up to 21 years. Educational allowance shall be provided up to 18 years. However, no such allowance is granted for an employed progeny or married daughter.</p> <p>In case of Disability due to accident while on duty In case any army personal is unable to perform duties because of 100 percent disability, 100 percent of salary is payable as pension, and the pension shall be prorated depending on the percentage of disability.</p>
<p>Armed Police Rule 2060 (2003)</p>	<p>In case of Death due to accident while on duty Life time 50 percent pension to nearest family member and in addition to that the gratuity is also provided. Additional progeny allowance shall be provided up to 21 years. Educational allowance shall be provided up to 18 years. However, no such allowance is granted in case of an employed progeny or married daughter.</p> <p>In case of Disability due to accident while on duty In case any armed police is unable to perform duties and retires from the service, life time pension shall be granted with additional 20 percent disability allowance. For 100 percent disability, the entitlement is to get 100 percent of salary as pension. This shall be prorated depending on the percentage of disability.</p>
<p>Police Rule 2049 (1993)</p>	<p>In case of Death due to accident while on duty A life time 50 percent pension is payable to the nearest family member and in addition to that the gratuity also provided. Additional progeny allowance shall be provided up to 21 years. Educational allowance shall be provided up to 18 years. However, no such allowance is granted in case of an employed progeny or a married daughter.</p> <p>In case of Disability due to accident while on duty In the case of any armed police unable to perform duties and who retires from the service, a life time pension shall be granted with additional disability allowance. Such allowance is based on 100 percent of salary for 100 percent of disability, prorated for less disability.</p>
<p>Civil Service Rule 2049 (1993)</p>	<p>Disability benefit while on duty If capacity loss – maximum NRS 100,000.00 (one hundred thousand) compensation. Additional full pay sick leave (not deducted from any sick or others leave). Reimburse all medical expenses (not deducted from medical benefit).</p>

Name of Acts/Rules	Compensation in Case of Disability & Death
	<p>In case of disability due to accident while on duty and inability to perform duties Life time additional pension additional disability benefit. Additional NRS 10,000.00 (ten thousand) financial support. Reimburse all medical expenses Educational Allowance up to 18 years. Progeny allowance NRS 75.00 (seventy five) per month up to 21 years (maximum 2 children).</p>
<p>Nepal Health Service Rule 2055 (1998)</p>	<p>Disability benefit while on duty If capacity loss – maximum NRS 100,000.00 (one hundred thousand) compensation. Additional full pay sick leave (not deducted from any sick or others leave). Reimburse all medical expenses (not deducted from medical benefit).</p> <p>In case of disability due to accident while on duty and inability to perform duties Life time additional pension and additional disability benefit. Additional NRS 25,000.00 (twenty five thousand) financial support. Reimburse all medical expenses. Educational Allowance up to 18 years. Progeny allowance NRS 75.00 (seventy five) per month up to 21 years (maximum 2 children).</p>
<p>Labour Rule 2050 (1993)</p>	<p>In case of Death Lump sum compensation equal to 3 years of basic salary to legal heir.</p> <p>Disability benefit while on duty Maximum compensation in case of 100 percent physical disability equivalent to 5 years of basic salary and prorated compensation in other cases according to the percentage of disability. Reimburse all medical expenses. Paid sick leave up to 1 year.</p>
<p>Tea Plantation Labour Rule 2050 (1993)</p>	<p>In case of Death Lump sum compensation equal to 3 years of basic salary to legal heir.</p> <p>Disability benefit while on duty Maximum compensation in case of 100 percent physical disability equivalent to 4 years of basic salary and prorated compensation in other cases according to the percentage of disability. Reimburse all medical expenses. Paid sick leave up to 1 year.</p>
<p>Vehicle & Transport Management Rule 2054 (1997)</p>	<p>In case of Death Driver NRS 150,000.00 (one hundred fifty thousand) Helper NRS 100,000.00 (one hundred thousand) Passenger NRS 50,000.00 (fifty thousand)</p>
<p>Working Journalist Act 2053 (1997)</p>	<p>Disability benefit while on duty In case of physical and mental disability, fifty percent of salary should be paid by the employer for life time.</p>
<p>Child Labour (Prohibition and Regulation) Act 2062 (2005)</p>	<p>In case of a skill development problem due to accident, lump sum NRS 15,000.00 (fifteen thousand) will be paid as compensation.</p>
<p>Travel Expenses Rule 2064 (2008)</p>	<p>Premium cost for up to NRS 7,00,000.00 (seven hundred thousand) travel insurance and medical insurance.</p>

4.6 Provision on Occupational Diseases

There is very little provision on this matter in the Labour Laws. Nothing is mentioned in other legislation dealing with medical expenses and compensation for occupational diseases. The Labour Act and Rule is only concerned with the fact finding report.

Box.6 Provision of Labour Rule on Occupational Diseases

On receipt of a notice regarding an occupation-related disease or accident, the labour office may appoint an investigating officer if it becomes necessary to conduct relevant investigations.

The investigating officer may obtain necessary details from the site of the incident, or the persons concerned, collect necessary evidence, have necessary documents submitted, record statements, etc. and submit a report to the labour office within the time-limit prescribed by it.

In case it is found that the use of any material required in the manufacturing process of the establishment is likely to harm the health of workers or employees, the official designated by the labour department or the labour office may collect a sample of such material, bottle or pack it properly, and have it tested by an expert. If it is proved that the material is likely to harm the health of workers or employees, GoN may issue necessary directives to the employer of the establishment.

4.7 Termination on Health Ground

There should be a provision for the exit of an employee who is unable to perform duties due to mental and physical health. Most of the legislation provides for the exit in case of the employee who has an accident while on duty and is then unable to perform duties. The law is silent on the case of an employee who is unable to work due to long illness or accident which is not caused by a work-related accident. Because of lack of clear provisions, employers are compelled to dismiss such employees through disciplinary action, usually on the charge of long-time unauthorized absenteeism.

4.8 Institutions and Services

4.8.1 Insurance Companies

There are 25 Insurance Companies operating as businesses in Nepal, under the Insurance Act 2049 (1991). These companies are regulated by the Insurance Board. The Board is a regulatory authority of all insurance companies operating in Nepal. According to the provision of the Act, no one can operate an insurance business without obtaining a licence from the Board.

Under the guidelines of the Board, the same company cannot operate a life insurance as well as a non-life insurance business. Only those Insurance companies having licences to operate non-life insurance businesses are permitted to provide health care insurance. However, one government owned company called *Rastriya Beema Sasthan* has right to operate both types of services. It is only one composite insurance company. There are 17 such private insurance companies which provide the health care benefits. Under this scheme, the following types of insurance are available:

Box.7 Terminations on Health Ground

Name of Acts/Rules	Legal Provision
Education Rule 2059 (1996)	Any teacher unable to perform duties due to ill health may be terminated from the job on the recommendation of the Medical Board constituted by the GoN by providing an additional 5 years of service.
Army Leave Rule 2019 (1962)	<p>In case of injury while on duty: Army personnel unable to perform duties after treatment as required shall be terminated from the service.</p> <p>In case of serious illness: Army personnel unable to perform duties after utilizing additional two years of special sick leave shall be terminated from the service.</p>
Armed Police Rule 2060 (2003)	<p>In case of injury while on duty: Armed police unable to perform duties after treatment as required shall be terminated from the service.</p> <p>In case of serious illness: Armed police unable to perform duties after utilizing additional one year of special sick leave shall be terminated from the service.</p>
Police Rule 2049 (1993)	Service of Police personnel may be terminated if the Medical Board declares that the person is unfit to perform duties physically.
Civil Service Act 2049 (1993) Legislative Parliament Secretariat Act 2064 (2007) Rule Regarding to Marshall 2059 (2003)	Any employees unable to perform duties due to mental or physical disease may be terminated from the job on the recommendation of the Medical Board constituted by the GoN, and shall be provided up to 7 years of additional service.
Labour Rule 2050 and Tea Plantation Labour Rule 2050 (1993)	<p>In case of injury while on duty: Any workers unable to perform duties after one year long treatment shall be terminated from the service by providing gratuity, compensation and treatment expenses.</p> <p>In case of illness: No such provision is mentioned in the Labour Laws. Employers using the disciplinary action of unauthorized absenteeism to terminate their service.</p>

4.8.1.1 Travel Insurance

Under this insurance policy, travel related accident and emergency sickness is covered.

4.8.1.2 Personal Group Accident Insurance

Two types of benefits are covered under this insurance policy;

a. Work injury insurance, and

b. Other 24 hour coverage whether the injury relates to work or not.

4.8.1.3 Medical Insurance

Normally, insurance companies provide policies for medical insurance. However, they are reluctant to do such insurance on a person-to-person basis. They provide a benefit for personal medical insurance as a package of services

Box.8 Non-life Insurance Companies in Nepal

1. Rastriya Beema Sansthan (a composite Insurance Company)
2. Nepal Insurance Company Ltd.
3. The Oriental Insurance Company Ltd.
4. National Insurance Company Ltd.
5. Himalayan General Insurance Company Ltd.
6. United Insurance Company (Nepal) Ltd.
7. Premier Insurance Company (Nepal) Ltd.
8. Everest Insurance Company Ltd.
9. Neco Insurance Company Ltd.
10. Sagarmatha Insurance Company Ltd.
11. Alliance Insurance Company Ltd.
12. N.B. Insurance Company Ltd.
13. Prudential Insurance Company Ltd.
14. Shikhar Insurance Company Ltd.
15. Lumbini General Insurance Company Ltd.
16. N.L.G Insurance Company Ltd.
17. Siddhartha Insurance Company Ltd.

along with accident insurance or group medical insurance schemes. Under the medical insurance, insurance companies pay only direct costs such as medicare, hospital charges and costs for operations and doctors' fees. They do not cover indirect costs that may arise during the treatment.

4.8.2 Welfare Fund under Labour Act and Bonus Act

The rule made under the Labour Act and Bonus Act have a provision for a welfare fund. According to these Acts, there are two types of welfare fund:

4.8.2.1 Enterprise level Welfare Fund

Very few companies have a welfare fund at the enterprise level. The fund may be constituted in those enterprises where the profit level is high. According to the legislative provision, in case there is any surplus amount after allocating the bonus as per the upper limit of the Bonus Act, 70 percent of that surplus shall be sent to the enterprise level welfare fund. The fund may be used in various welfare initiatives including providing financial assistance to the worker or the family of the worker in case of sickness or accident.

In case such fund is constituted at the enterprise level, the fund is operated by the Labour Relations Committee formed according to the Labour Rule where there is equal representation from the union & the employer's side.

Some of those companies that have a welfare fund at the enterprise level are Spade Trading Pvt. Ltd, Uniliver, Hotel Soaltee, Nabil Bank, and other commercial banks.

4.8.2.2 National level Welfare Fund

The Bonus Rule 2039 (1982), which was amended in 2000, incorporated a provision for a National Level Welfare Fund. There should be a Welfare Board to operate the Fund. The Board has tripartite representation from the government, employer organisation and trade union organisation.

After allocating 70 percent of the fund to enterprises, the remaining 30 percent, after disbursement of Bonus as per the maximum limitation, should be sent to the National Level Welfare Fund. That Fund is also used in various welfare matters including establishment and operation of health care centers, to provide financial assistance on the recommendation of the Medical Board to the workers or their family members in case of serious illness. The Fund also may be used to provide financial assistance for victims of accidents and natural disasters and to establish and operate child care centers.

To date, about NRS 100 million has been collected and deposited in various Banks. However, it has never been spent on the welfare of the workers. Only few employees are hired to maintain its account and offices. In 2003, the Board decided to use the funds to establish an Occupational Health and Safety Hospital in Nepal and started to find an appropriate location. However, the decision has never been implemented.

4.8.3 Welfare Fund under the Working Journalist Rule

According to the Working Journalist Rule, employers must allocate 5 percent of total profit for a Welfare Fund for working journalists. Five percent of the salary should also be deducted from the monthly payroll and deposited in the Fund. This fund may be used to provide financial assistance in case of sickness, accident and during disability.

4.8.4 Army Welfare Fund

According to the Army Act 2062 (2006), the Army Welfare Fund is established to provide a welfare benefit to the army or retired army personnel and their family members. The nature of this Fund is quite different from others. The Fund is operated by the remuneration paid by the United Nations (UN) Peacekeeping force. According to the Rule, 22 percent of the salary shall be deducted by those persons sent to the UN Peacekeeping Force and shall be deposited to the Fund. The interest income and the profit received from the investment of the fund is an additional source of income for the Fund. There is a seven member Fund Management Committee under the chairpersonship of the Commander in Chief. The Fund is also utilised for the health care of existing and retired army personnel and their family members, along with other welfare activities.

4.8.5 Welfare Fund under Civil Service Act

The Civil Service Act mentions that a Welfare Fund may be established and operated to provide a welfare benefit for civil servant and their family members according to the Rule. However, the Rule made after amendment of the Act is silent on this matter.

4.8.6 Karmachari Sanchaya Kosh (Employees' Provident Fund)

The Employees' Provident Fund (EPF) is an autonomous institution which was created by a separate Act of Parliament. Normally this institution operates an old age benefit called a Provident Fund. However, it also operates one extended accident benefit for its depositors. Up to now, there are 425,000 depositors who have made a contribution. Out of that number, only 25,000 depositors are from private establishments. The EPF covers all civil servants, army, armed police force, police & public school teachers. Besides that, it also covers employees of private sector and public sector organisations which are established as autonomous corporations.

On July 1962, The EPF was established as an autonomous body. There are seven members as Board of Directors of the fund. It has its own office in Katmandu and other branches are in Pokhara, Dhankuta, Biratnagar, Hetauda, Bhairawha, Dhanagadi and Surkhet.

It has its own social protection unit which deals with the accident linked benefit. Under the existing benefit package NRS 65,000.00 (sixty five thousand) shall be paid to employees who suffer from 100 percent disability or to their legal heir in case of death. For an employee having temporary disability, the benefit package may grant a benefit based on categories of disability as follows:

Class A: NRS 25,000.00 (twenty five thousand)

Class B: NRS 15,000.00 (fifteen thousand)

Class C: NRS 10,000.00 (ten thousand)

Beside that, in case of death, additional NRS 8,000.00 (eight thousand) is provided to the legal heir as funeral expenses. According to the EPF authority, in the second week of January 2009, EPF introduced a five year strategic plan. It is planning to introduce an endowment health insurance scheme to its depositors. For this purpose, a committee has been set up to plan implementation process.

4.9 Free Health Care Benefit Declared by Government

On the basis of Interim Constitution 2063 (2007), the GoN declared two ambitious programmes. One is a programme of free essential health care service targeted to poor and vulnerable people at the district hospitals. The second is a universal programme of free essential health service for all citizens at health posts, sub health posts & primary health care centers which commence in January 2008 & 2009 respectively. Most probably in 2010, the government intends to expand universal free care up to district hospital level. However, except in the chapter on the fundamental right of the citizen under the Interim Constitution, no supporting legislative arrangement has been made.

4.10 Taxation on Insurance

According to the Income Tax Act 2058 (2001) and Financial Act 2008, limited premium (yearly 7 percent of insured amount or NRS 20,000.00 (twenty thousand) whichever is less) expenses during the life insurance may be deducted from the calculation of yearly remuneration tax. However, there is no such benefit provided to a person in case of medical insurance. The premium paid by the company or the establishment may be adjusted as an expenditure of the company for the purpose of income tax calculation.

In any case, medical expenses up to NRS 750.00 (seven hundred fifty) per year may be adjusted for the calculation of personal yearly income and more than that amount may be carry forwarded for the following year.

Box.9 Comparative Benefit Chart

Name of Acts/Rules	Sick Leave	Sick Leave Accumulation	Maternity Leave	Other Maternity Benefit	Paternity Leave	Additional Medical Expenses	General Medical Expenses	Compensation in Case of Death	Disability Compensation	Welfare Fund Related Provision	Termination on Health Ground
Additional Post Office Rule	●										
Armed Police Rule	●	●	●			●	●	●	●		●
Nepal Army (Pension, Gratuity and other Benefit Rule)	●	●	●			●	●	●	●	●	●
Civil Service Rule	●	●	●	●	●	●	●	●	●	●	●
Nepal Health Service Rule	●	●	●	●	●	●	●	●	●		
Parliament Secretariat Employees Administration Rule	●	●	●						●		
Rule Relating to Employees of Department of Auditor General	●	●	●								
Rules Regarding to Marshall	●	●	●								
Education Rule	●	●	●			●	●	●			●
Labour Rules	●		●			●		●	●	●	●
Tea Plantation Labour Rule	●		●			●	●	●	●	●	●
Local self Government Rule	●	●	●								
Police Rules	●	●	●			●	●				●
Retired Army Appointment (Special Provision) Rule	●										
TU Teachers and Employee Service Rule	●	●	●		●	●	●	●			
Working Journalist Rule	●	●	●			●	●		●	●	
Child Labour (Prohibition and Regulation) Rule	●										
RTS of Judges of SC	●	●				●	●	●	●		
RTS of Judges of Court of Appeal and District Court	●	●	●	●	●	●	●	●	●		
Prisoners' Rule				●							
RTS of Constitutional Bodies Act	●					●	●				
Vehicle and Transport Management Rule								●			

5 Remedies to Implementation of Laws

A law has been implemented which is related to the SHP applicable to employees where government itself is the employer. Sometimes, due to lack of budget or other circumstances, some problems may arise. In the public sector, the Government does not provide such a benefit to daily waged employees even though such employees are engaged in the job for years and years. On the other hand, in the private sector, various establishments are not ready to provide health benefits to their workers.

There is no single idea behind such bad practices. Some of the employers employ workers on a daily wage basis. Daily waged workers may not be entitled to get various benefits such as sick leave. Employers do not like to upgrade them into permanent status and thereby exploit them from job security and social security as well. According to the legal provision, after completion of 240 days, workers have a right to be a permanent. Some of the employers try to avoid applicability of Labour Act by only hiring maximum nine staffs. In case they require more than 9 workers, they register more than one company and divide workers into a different company to circumvent the law, even though

workers from both (or many) companies are working in the same work place.

Even after being made permanent, some employers do not like to obey the legal provision until workers make it an issue. Most of the collective bargaining disputes in Nepal concern the implementation of the provision of the law. Employers are saving a certain amount for the time being. Some employers' organisations have themselves declared that they will not abide by the provisions of the law. Currently FNCCI has a stand, if there is no flexibility for them, they are not bound to obey Labour Act until such time as the law is changed in their favour. Similarly, some of the private school entrepreneurs said that the Labour Act does not cover them. They collectively violate the Labour Acts and have never implemented applicable Acts to date.

Where provisions of the law are violated by the employer and employees are deprived from any benefits under the law applicable to Civil Servants, Armed Police, Army and Police and Public School teacher, a complain may be made on behalf of the employees in normal jurisdiction of the Court. According to the constitutional provision of Nepal, in such case those who are deprived from the benefit or right vested to them by the law may file a written petition before the SC. Where the Government itself is the employer, such petition is normally entertained by the SC under extraordinary jurisdiction.

These laws have no provision dealing with grievance procedures for individual cases. However, currently the Civil Service Act provides a procedure for the settlement of collective disputes. On the other hand, where private enterprises and even in autonomous bodies under the public sector, where workers are also employed along with employees, the Labour Act and Labour Rule made there under apply. In case any provision of the SHP is

violated, the workers may seek remedy under normal jurisdiction.

According to the Labour Laws, workers and employees have right to seek remedy as follows:

1. The deprived person should make an application to the management of the company. If no justice is made within 15 days by bipartite discussion with management, the person may file an application to the labour office. The Labour Officer has right to mediate a compromise between the two disputing parties within 15 days. If that fails, the Chief of the Labour Office may make a decision within 7 days from the date of deadlock between two parties. Any party that disagrees with the decision made by the Labour Officer may appeal before the Labour Court. The decision of the Court is final and binding, except it may be challenged under the extraordinary jurisdiction of the SC.
2. In case management of the company denies or delays the payment of the treatment compensation or compensation in case of death or disability due to accident or deduct any amount from such compensation, an application may be filed directly before the Labour Office within 6 months. The Labour Office provides the opportunity to be heard to the employer and may then make a decision on the matter. Under this provision, the Labour Office has right to order a maximum of 3 times additional penalty if the allegation has been proven. Anyone who disagrees with the decision may also file the appeal before the Labour Court. The decision of the court is final and binding, except it may be challenged the under extraordinary jurisdiction of the SC. Under this provision, the Labour Officer may use the right to make an order to ban or sell the movable or immovable property of the employer or place a restriction on export or import or may seize

any facility vested to the enterprise by any authority or the government.

3. The deprived workers or their trade union may file an application to the Labour Office complaining that the manager of the enterprise is guilty of misconduct and has violated the provision of the Labour Act & the Rule made there under. Under this provision, Labour Office may impose a fine up to NRS 10,000.00 (ten thousand). Anyone who disagrees with the decision may also file the appeal before the Labour Court. The decision of the Court is final and binding, except it may be challenged under the extraordinary jurisdiction of the SC.
4. In case all or a majority of the workers are deprived of any benefit provided by the law, they may submit a Charter of Demand before the employer. In case, the employer fails to fulfill the demand, workers or their union may file an application to the Labour Office. If the negotiation between employer and the union fails to reach an agreement, workers may go on strike. Any agreement during the course of collective bargaining is binding on both parties.

Under the Working Journalist Act, the person deprived from the provisions of the Act & the Rule may file application before the Registrar. The Registrar has right to fine the employer concerned up to NRS 25,000.00 (twenty five thousand) and require compliance with the law. If the employer violates the order, the Registrar may issue an order restricting the media enterprise from publication of the newspaper or deny government aid or prevent export or import of the paper.

Under the Tourism Act 2035, in case of violation of the Rafting Rule or Mountaineering Rule or Travel and Trekking Agency Regulation, the person deprived from the protection of the law may file an application to the GoN. In such case, the GoN may issue an order to prohibit the operation of the business for up to 5 years

or impose a fine of up to NRS 10,000.00 (ten thousand) or both.

Under the Child Labour (Prohibition and Regulation) Act, in case of violation of the provision on leave benefit and the protection of the health of the child, the victim may file an application to the Labour Office either individually or through the family or the police or trade union or others. If such an allegation is proved, the Labour Office may impose a sentence of up to 2 months' imprisonment or fine up to NRS 5,000.00 (five thousand) or both.

6 Impact and Implementation

6.1 Public Sector

Most of the laws reviewed during this study relate to the public sector. Out of that more than two thirds of the legislative provisions cover sectors where government itself is an employer. After analysing the laws even in the public sector, there are different categories of workers and or employees.

6.1.1 Permanent Employees under Government Service

All civil servants, armed police, army personnel, persons under the health service, post office, public school teachers, TU teachers and employees are protected by the laws. The legal provisions mentioned in the law are fully implemented in practice. In case of non-implementation of the SHP provision, employees have the right to file a writ before the SC.

6.1.2 Contractual, Daily wages and Non-permanent Employees under Government Service

These categories of employees are deprived from legally accessing benefits, including health protection. Only through the kindness of their employer, they could get leave or other benefits.

6.1.3 Employees under Governmental Autonomous Body

Employers working under autonomous bodies are governed by various different laws. Employees working in Nepal Television, Radio Nepal, *Gorkha Patra Sansthan* are governed by the Working Journalist Act. Permanent employees of these bodies are covered by the laws and bylaws. However, non-permanent employees are treated differently on a case-to-case basis.

Similarly, employees of Nepal Airlines Corporation, Insurance Board and similar type of corporation are governed by their own bylaws. However, non-permanent staffs have no protection in this respect.

6.2 Private Sector

Labour Act, Labour Rule, Tea Plantation Labour Rule, Working Journalist Act & Rule, Bonus Act and Rule basically deal with private enterprises. In the private sector also, there are two categories:

6.2.1 Formal Sector

Companies, institutions or organisations where more than 10 workers are employed are collectively known as formal sector. In the formal sector, all permanent workers are entitled to get sick leave, maternity leave and other kind of accident benefits as mentioned in the previous chapter. However, probationary and non-permanent employees are entitled to get only maternity leave and the accident benefit. They are deprived from obtaining sick leave.

Even in the formal sector, employees of some establishments get better benefits than prescribed by law. By collective agreements between the employer & trade unions such benefits may be enhanced. For example, by CBA pregnant female workers at the Hotel Annapurna get 90 days maternity leave and Hotel Soaltee 72 days. Similarly, the CBA

between tea plantation enterprises and the Tea Plantation Union provides an additional 7 days paid maternity leave in the tea plantation sector. In the same way, sick leave and accident & medical benefits are also increased in various organisations. In the case of banking & financial Institutions, the right to formulate bylaws for the employees is vested in the Board after obtaining approval from the Nepal Rastra Bank (NRB). These bylaws also vary from one institution to another.

By CBA, various private sector organisations such as Uniliver Nepal, Nabil Bank and Hotel Yak & Yeti have introduced medical insurance and group insurance policies. In these organisations, sick leave and other benefits are also enhanced. By collective bargaining, non-permanent employees also obtain sick leave and other benefits in some of the industries. However, most non-permanent employees in the formal sector are deprived of the health protection benefit.

6.2.2 Informal Sector

There are very few laws that deal with the informal sector. According to the notification of Ministry of Labour dated 2049/12/17 (30 March 1993), sick leave and treatment during work injury benefit is extended to those establishments that employ less than 10 workers. Transport workers who work in the informal sector are entitled to get the accident benefit. Workers in rafting, adventure, mountaineering, travel and trekking agencies should be protected by the accident benefit. These are some laws that deal with the informal economy, but there are no laws that deal with the 46 percent unemployed population. Similarly, 76 percent of the total workforce in the agriculture sector are not covered by legislation. However, these workers are covered by the universal health care protection declared by the government.

6.3 Social Health Protection in Labour Law Reform Process

Normally, during the time of drafting a bill, stakeholders such as the employer and trade unions are not invited to take part in consultations. They can lobby in case such a bill is introduced before the Parliament. This kind of opportunity is not available in the drafting of rules and ordinances.

In the law making process, the GoN violates the ILO Convention No. 144 on Tripartite Consultation. However, the Labour Law reform process is continuing with the support of ILO. In this process, the Government, FNCCI and Trade Unions are involved. Social Health Protection is also a major component in this debate.

Employers' organisations are basically emphasizing work flexibility, while the trade unions want to introduce an integrated social security system. In the opinion of trade unions, sick leave should be with full pay, maternity leave should be enhanced according to ILO convention No. 183 and all sectors of work should be covered by the legislation. According to JTUCC, the Labour Law should cover all formal and informal sectors and should include all types of workers from daily waged to permanent. On the other hand, FNCCI argues that they are ready to enhance everything, but without any increment in social security cost.

7 Conclusions and Issues to be Considered

Laws related to SHP have used different types of words to define the same meaning with a different purpose. Such ambiguity causes confusion and weakens the rights of the individual. In Nepal, Acts and Rules related to SHP govern the Government sector and the Private sector. Even in the Government sector, Acts and Rules are not sufficient and uniform to ensure the social health of the employees. Social Health Protection laws related to Army, Police and Civil servants and others have different provisions and conditions relating to benefits and insurance. The private sector has similar insufficiencies in existing laws. There are insufficiencies, discrepancies and ambiguities in laws based on position, status (regular or contract), gender and vulnerability of employees in both the Government and Private sectors. The laws are entirely insufficient to protect the workers of informal sectors.

The institutions involved in managing SHP are also ineffective for medical insurance. According to the existing Insurance Act, one has to obtain a licence from the Insurance Board to operate or implement an Insurance Business. Currently, Insurance Companies have the right to operate business only in life insurance, non-

life insurance and reinsurance areas. Therefore, the present insurance system covers only those who have paid premiums. The existing Insurance Act is not sufficient to endorse SHI schemes to all from a legal perspective.

To protect the health of employees and non-employees, Government must enact a basic law that should be applied to the entire formal sector after consultation with all stakeholders. All informal sector workers should be covered by the targeted and /or universal health care programme. Informal sector workers should be registered by the local authority and provided with identity cards. All medical benefits, payment during sick leave & maternity leave and other benefits package should be provided through the local authority. An integrated social security system must monitor and ensure administrative issues of SHP along with other social security benefits. People have right to get quality health care services which can be protected by clearly provisioning in specific laws and/or by designing specific health protection schemes such as SHI. For this purpose, there should be a separate and new law on SHI, which is the most appropriate approach to ensure SHP for all in Nepal. Another approach could be an amendment of the Insurance Act along with other related laws, incorporating provisions on new SHI by the Parliament.

Annex 1: List of Acts

1. Bank and Financial Institution Act 2063 (2006)
2. Children Act 2048 (1992)
3. Civil Code 2020 (1963)
4. Civil Service Act 2049 (1993)
5. Child Labour (Prohibition and Regulation) Act 2056 (1999)
6. Education Act 2028 (1971)
7. Income Tax Act 2058 (2001)
8. Industrial Apprentice Act 2039 (1982)
9. Labour Act 2048 (1992)
10. Legislative Parliament Secretariat Act 2064 (2007)
11. Nepal Health Service Act 2053 (1996)
12. Prison Act 2019 (1963)
13. Remuneration, Terms & Service and Facilities of Judges of District Court and Appellate Court 2048 (1992)
14. Remuneration, Terms of service & Facilities of Supreme Court Judge Act 2026 (1969)
15. Remuneration and Facilities of Minister Act 2049 (1993)
16. Remuneration, Terms of Service & Facilities of Attorney General 2052 (1996)
17. Remuneration, Terms of Service & Facilities of Office Bearer of Constitutional Body Act 2053 (1996)
18. Remuneration and Facilities of Member and Office Bearers of Parliament Act 2052 (1996)
19. Senior Citizen Act 2063 (2006)
20. Tourism Act 2035 (1978)
21. Vehicle and Transport Management Act 2049 (1993)
22. Working Journalist Act 2051 (1995)

Annex 2: List of Rules and Regulation

1. Additional Post Office Rule 2034 (1977)
2. Armed Police Rule 2057 (2001)
3. Army Leave Rules 2019 (1962)
4. Bonus Rule 2039 (1982)
5. Child Labour (Prohibition & Regulation) Rule 2062 (2005)
6. Civil Service Rules 2049 (1993)
7. Compensation for Non-Government Person Rules 2024 (1967)
8. Education Rule 2049 (1994)
9. Income Tax Rule 2059 (2003)
10. Labour Rules 2050 (1993)
11. Local Self Government Rule 2056 (1999)
12. Mountaineering Rule 2059 (2003)
13. National News Agency Rule 2041 (1984)
14. Nepal Army (Daily & Travel Allowances) Rule 2033 (1976)
15. Nepal Army (Pension, Gratuity & Other Facility) Rule 2033 (1976)
16. Nepal Health Service Rule 2055 (1998)
17. Parliament Secretariat Employees Administration Rule 2056 (1999)
18. Police Rules 2049 (1993)
19. Prisoners' Rule 2019 (1963)
20. Protection and Welfare of Disable Rule 2051 (1994)
21. Rafting Rule 2063 (2006)
22. Retired Army Appointment (Special Provision) Rule 2059 (2003)
23. Rule Relating to Employees of Department of Auditor General 2050 (1993)
24. Rules Relating to Marshall 2059 (2003)
25. Rule Relating to Borrowing to Employees 2020 (1964)
26. Tea Plantation Labour Rule 2050 (1993)
27. Travel and Trekking Agency Regulation 2062 (2005)
28. Travel Expenses Rules 2064 (2008)
29. TU Teachers and Employee Service Rule 2050 (1993)
30. Vehicle and Transport Management Rule 2054 (1997)
31. Working Journalist Rule 2053 (1997)
32. Welfare of Disable Rule 2051 (1994)

Annex 3: Constitution and ILO Instruments

1. The Constitution of Kingdom of Nepal, 2047 (1990)
2. The Interim Constitution of Nepal, 2063 (2006)
3. ILO Convention on Social Security No. 102
4. ILO Convention on Tripartite Consultation No. 144
5. ILO Convention on Maternity Protection No. 183

Bibliography

Badal R. Legislative System in Nepal. unpublished report submitted to ILO/ Katmandu, 2001.

Flening BN. Assessment of OHS Training Needs in Various Industrial Sectors. A Study of OHS Legislation and Enforcement in Nepal, A Draft report to LO/FTF Council, 2003.


ILO. Summaries of Industrial Labour Standards. ILO, 1990.

Kinney ED and Clark BA. Provisions for Health and Health Care in the Constitutions of the Countries of the World. Cornell Int'l L. J 37: 285-305, 2004.

Rimal B and Badal R. Enhancing Decent Work. A report on collective bargaining submitted to ILO, 2006.

Sharma S and Upadhyay U. Social Protection for People in the Informal Economy of Nepal. ILO, 2004.

TUCGEP. A Study on Labour Related Legislations through Gender Perspective. unpublished report submitted to ILO/SAVPOT, 2001.



Deutsche Gesellschaft für
Technische Zusammenarbeit (GTZ) GmbH

- German Technical Cooperation -

Health Sector Support Programme
Department of Health Services
Teku, Kathmandu, Nepal

T +977 1 4261404
F +977 1 4261079
E hssp@gtz.org.np
I www.gtz.de/nepal