

The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2068 (2011)

Date of Authentication and Publication

2068.2.18 (1 June, 2011)

Amending Acts:

1.	The Act Amending Some Nepal Acts, 2072 (2016)	2072.11.13 (25 February, 2016)
2.	The Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075 (2018)	2075.6.2 (18 September, 2018)
3.	The Act Amending Some Nepal Acts Relating to National Code, 2075 (2018)	2076.1.2 (15 April, 2019)

Act Number 4 of the year 2068 (2011)

An Act Made to Make Provisions Relating to Caste-based Discrimination and Untouchability

Preamble: Whereas, it is expedient to make timely provisions to protect the right of every person to equality, freedom and to live with human dignity, by creating a situation where there exists no untouchability and discrimination, on the ground of origin, caste, race, descent, community, occupation or business or physical condition,¹ in the name of custom, tradition, religion, culture, ritual or any other name, while recognizing the principle that every person is equal in terms of rights and human dignity, to make punishable the acts of untouchability, exclusion, restriction expulsion, contempt or any other discriminatory act that is against humanity, to provide compensation to the victims of such acts, to keep intact the national unity and create an egalitarian society, by strengthening the relationship subsisting among the general public;

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

- 1. Short Title and Commencement:** (1) This Act may be cited as the "Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2068 (2011)."

¹ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

(2) This Act shall extend throughout Nepal and also apply to any Nepali citizen who resides outside Nepal and has committed any offence referred to in this Act against a Nepali citizen.

(3) This Act shall come into force immediately.

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

(a) "Caste-based discrimination and untouchability" means any act referred to in Section 4.

(b) "Offence" means any act referred to in Section 3.

(c) "Public place" means any place used for public purpose such as a governmental or non-governmental office, educational institute or industrial enterprise, ancient monument, inn, water tap, well, pond, *Chautari*, road or way, means of public transport, graveyard, garden, religious site of any kind, and this term also includes any other place where goods or services are sold or distributed publicly.

(d) "Public service" means any governmental or non-governmental office, public institution, transport, industrial enterprise or educational institute, company, firm, shop, hotel, resort, lodge, restaurant, cafe, film hall or theatre, and this term also includes any service and facility to be provided by any governmental or non-governmental body for public use or utility.

(e) "Public ceremony" means religious, social or cultural ceremony of any kind such a publicly organized feast or party, worshipping, religious offering, birth, naming, marriage ceremony, and death rites and rituals.

(f) "Public office holder" means a person who holds a post entitling him or her to exercise any public authority or obliging him or her to perform any duty or obligation pursuant to the Constitution, other prevailing law or any decision or order of the concerned body or authority, and this term also includes any incumbent official or employee holding any post in a public organization.

(g) "Prescribed or as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

2A. Right against untouchability and discrimination: (1) Each person shall have the right against untouchability and discrimination.

(2) Each person shall have the following rights pursuant to sub-section (1):

- (a) Right to have equal treatment from the court or other judicial body,
- (b) Right to equal protection in respect of the services and facilities to be provided by any governmental body,
- (c) Right to equal access to public services,
- (d) Right to make movement and reside within and outside Nepal,
- (e) Right to equal participation in cultural activities,
- (f) Right to marry and choose the bride or bridegroom,
- (g) Right to assemble peacefully and organise,
- (h) Right to select employment and to work,
- (i) Right to have equal salary for an equal work,
- (j) Right to have equal access to public places,
- (k) Right to get prompt judicial remedies and appropriate compensation against untouchability and discrimination.

3. Prohibition on untouchability and discrimination: (1) No one shall commit, or cause to be committed, untouchability and discrimination.³

(2) No one shall aid, abet or instigate anyone to commit untouchability or discrimination or attempt to commit such an act.

(3) A person who commits the act referred to in sub-section (1) or (2) shall be deemed to have committed the offence referred to in this Act.

4. To be deemed to have committed cast-based discrimination and untouchability: (1) If any person commits, or causes to be committed, any act referred to in this Section on the ground of custom, tradition, religion, culture, rituals, origin, caste, race, descent, community, occupation or business or physical condition⁴ shall be deemed to have committed untouchability and discrimination.⁵

² Inserted by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

³ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

⁴ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

⁵ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

(2) No one shall, on the ground of custom, tradition, religion, culture, rituals, origin, caste, race, descent, community, occupation or business or physical condition,⁶ do or cause to be done any of the following acts in any public or private place against a person, by making untouchability or discrimination.⁷

(a) To prevent, control or restrict anyone in any way from entering, attending or participating.

(b) To expel anyone individually or collectively from a public place or public occasion or to make social exclusion or discrimination of any kind or to impose restriction on such act or to demonstrate any other kind of intolerant behaviour.

(3) No one shall, on the ground of origin, caste, race, descent, community, occupation or business or physical condition,⁸ deprive a person of using or enjoying public service.

(4) No one shall, on the ground of origin, caste, race, descent, community, occupation or business or physical condition,⁹ deprive a person of organizing public occasion or performing any act to be organized publicly.

(5) No one shall instigate or provoke anyone to commit an act that causes untouchability or discrimination ¹⁰or abet any one to commit such act, or knowingly participate in such act.

(6) No one shall, on the ground of origin, caste, race, descent, community, occupation or business or physical condition,¹¹ prohibit any one to carry on profession or business or compel any one to carry on any occupation or business.

⁶ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

⁷ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

⁸ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

⁹ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

¹⁰ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

¹¹ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

(7) No one shall, on the ground of origin, caste, race, descent, community, occupation or business or physical condition,¹² deprive or cause to deprive any one of performing any religious act.

(8) No one shall, on the ground of origin, caste, race, descent, community, occupation or business or physical condition,¹³ prevent, or cause to prevent, anyone from producing selling or distributing any goods, services or facilities.

¹⁴(9) No one shall, while producing, selling or distributing any goods, services or facilities, produce, sell or distribute any goods, services or facilities only to the person belonging to a particular caste or race or prevent such a person from purchasing or obtaining the same.

(10) No one shall, on the ground of caste or race, exclude any member of family or prevent him or her from entering into the house or evict him or her from the house or village, or compel him or her to leave the house or village.

(11) No one shall, on the ground of origin, caste race, descent, community, occupation or business¹⁵ prevent a person of marriageable age under the prevailing law from getting inter-caste marriage or deny to perform the naming ceremony for the person born from such marriage or compel, or cause to compel, one to dissolve the already concluded marriage.

(12)¹⁶ No one shall, by disseminating, publishing or exhibiting any audio-visual material, article, picture, figure, cartoon, poster, book or literature or by way of electronic means or any other manner, **denote hierarchical supremacy** of any person or community on the ground of origin, caste or race of such a person or community or justify social discrimination on the ground of caste, race or untouchability or transmit the views based on untouchability and caste-supremacy or hatred or instigate, or cause to be instigated, in any manner caste-based discrimination.

¹² Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

¹³ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

¹⁴ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

¹⁵ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

¹⁶ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

(13) No one shall, on the ground of origin, caste race, descent, community, occupation or business,¹⁷ deny, or cause to be denied, anyone to provide employment or discriminate in remuneration.

5. Complaint: (1) A person who knows that one has committed or is going to commit the offence referred to in Section 4 may make a complaint to the nearby police office as prescribed.

(2) Notwithstanding anything contained in sub-section (1), if any one commits the offence referred to in Section 4 outside Nepal, a complaint shall be made to the nearby police office of the area where the victim resides or of the district where the defendant resides.

(3) If the concerned police office does not register the complaint made pursuant to sub-section (1) or (2) or does not take necessary action on the complaint pursuant to the prevailing law, the concerned person may make a complaint of that matter to the National Dalit Commission or Local Body,¹⁸ as prescribed.

(4) The National Dalit Commission or Local Level¹⁹ shall forward the complaint received pursuant to sub-section (3) to the concerned police office, as prescribed.

(5) After receiving the complaint pursuant to sub-section (4), the concerned police office shall make necessary inquiry into the complaint and take necessary action on such a complaint pursuant to the prevailing law.

6. Cooperation may be sought in investigation of cases: While making investigation of any case under this Act, the investigating authority may seek cooperation as per necessity from the Dalit community, local leaders, civil society or representative of the organization working for the rights and empowerment of the victims of untouchability or discrimination.²⁰

7. Punishment: (1) The following punishment shall be imposed on a person who commits the following offence:

¹⁷ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

¹⁸ Amended by the Act Amending Some Nepal Acts, 2072.

¹⁹ Amended by the Act Amending Some Nepal Acts, 2072.

²⁰ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

- (a) A person who commits the offence referred to in sub-section (2), (3), (4), (5), (6) or (7) of Section 4 shall be liable to the punishment of imprisonment for a term from three months to three years and a fine from fifty thousand rupees to two hundred thousand rupees.²¹
- (b) A person who commits the offence referred to in sub-section (8), (9), (10), (11), (12) or (13) or Section 4 shall be liable to the punishment of imprisonment for a term from two months to two years and a fine from twenty thousand rupees to one hundred thousand rupees.²²
- (c) A person who aids, abets or instigates anyone to commit untouchability or discrimination²³ or attempts to do such act shall be liable to half the punishment prescribed to the principal offender.

(1a)²⁴ If a person sentenced for any offence referred to in Section 4 again commits any offence referred to in that Section, such a person shall be liable to double the punishment set forth in clause (a) or (b) of sub-section (1) for each instance.

(2) If a person holding public post commits the offence referred to in sub-section (1) shall be liable to the punishment of an additional fifty percent to the punishment referred to in that sub-section.

8. Punishment to person causing hindrance or obstruction: If a person causes hindrance in or obstruction to the inquiry or investigation of an offence punishable under this Act, the court may, on the basis of the report of the investigating authority, impose on him or her half the punishment to which the offender is liable.

259. Compensation: (1) If a person is convicted of an offence under this Act, the court may order the offender to provide compensation to the victim in a sum not exceeding two hundred thousand rupees.

²¹ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075, and by the Act Amending Some Nepal Acts Relating to National Code, 2075.

²² Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

²³ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

²⁴ Inserted by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

²⁵ Amended by the Caste-Based Discrimination and Untouchability (Offence and Punishment) (First Amendment) Act, 2075.

(2) If the offender has caused any physical harm or loss to the victim, the court may, on the basis of the nature of such harm or loss, order the offender to provide medical treatment cost or reasonable cost for additional damage or harm to the victim.

(3) If it is not possible to have the amount referred to in sub-section (1) or (2) recovered from the offender at the moment, such amount shall be recovered from the victim relief fund in accordance with the prevailing law, and the amount so recovered shall be recovered from the concerned offender and reimbursed into that fund.

10. **Limitation to file case:** A case has to be filed on any offence under this Act, within three months from the date of its commission.
11. **Government of Nepal to be plaintiff:** The Government of Nepal shall be the plaintiff in any case filed pursuant to this Act, and such a case shall be deemed to have been included in Schedule-1 of the National Penal Procedure Code 2074.
12. **Summary procedure to be followed:** The procedures as provided in the Summary Procedure Act, 2028 shall be followed in the trial and settlement of the cases under this Act.
13. **Punishment to be imposed pursuant to the prevailing law:** If an act considered to be an offence pursuant to this Act is also considered to be an offence pursuant to the other prevailing law, nothing contained in this Act shall be deemed to bar the instituting of and taking action on a case with respect to such an offence pursuant to the prevailing law.
14. **This Act to prevail:** The matters set forth in this Act shall be governed by this Act, and the other matters shall be governed by the prevailing law.
15. **Duty to extend co-operation:** It shall be the duty of all the concerned to cooperate in the investigation of the case under this Act.
16. **Power to frame Rules:** The Government of Nepal may frame necessary Rules to implement the objectives of this Act.
17. **Repeal:** Number 10A. of the Chapter on Decency of the *Muluki Ain* (Country Code) is hereby repealed.