

ANNEXURE I.

HEALTH LEGISLATIONS, ACTS AND RULES

COUNCILS SET UP BY LEGISLATION

The passing of the Poor Law Amendment Act in 1834 in the United Kingdom is said to be the start of the concept of public responsibility for the health of the individual citizen (1). As far as Nepal is concerned the early legal references to health matters may be said to be the codification of the Nepalese laws into what became known as the Muluki Ain, the first promulgation of which was on 5th January, 1854 AD (2). It has been suggested that further developments were brought about as a result of the observations of Jung Bahadur of both the English legal system and the French Code Napoleon during the course of his Belait Yatra in 1856 (3). The latest eleventh amendment of the Muluki Ain deals with matters pertaining to abortion.

Health Rights is something, which everyone is aware of. WHO has been advocating the use of health legislation to attain HFA 2000 and also at later date. It is accepted that more than half the world's population does not have health care (2). We too in Nepal talked of Health Rights in 1990 when the theme of the 15th All Nepal Medical Conference at Biratnagar when the theme of the Presidential address was Health Rights (3).

Health legislation covers a number of subject area in its entirety. The countries of SEARO have legislation pertaining to:

- general public health laws
- tobacco laws
- blood supply laws
- organ transplantation laws and
- international health regulations and food safety.

HEALTH LEGISLATIONS

The first attempt at bringing together the various rules and regulations then existing was in the Muluki Ain (Law of the Land) or Civil Codes of 1963/64.

This was divided up into 5 parts, which were in turn sub-divided into various Clauses or Mahals (4). The health related parts and clauses are as follows:

- Part III. Clause 15. Pertaining to adoption.
- Part IV. Clause 9. Pertaining to assault.
- Blindness or loss of vision
 - Loss of smell
 - Deafness from loss of hearing
 - Loss of ability to talk
 - Loss of function of breast
 - Impotency following sexual injury
 - Injury to spine and limbs
- Clause 10. - Post mortem by hospital doctor. Also abortions.
- Clause 12. - On Medical Practice (See 1 below).
- Clause 13. - Assault with intention to rape.
- Clause 14. - Rape of women under and over 16 years of age.
- Clause 15. - Incest.
- Clause 16. - Sex with animals.
- Clause 17. - Relating to marriage. Age at marriage, prohibition of marriages of minors.
- Medical reasons for divorce.

1. Ilaz Garne Ko or On Medical Practice in Muluki Ain (5)

This is divided into ten sections each one dealing with a certain aspect of treatment.

- a. Criteria for practising medicine, which could be even for those who have learnt it as an apprenticeship.
- b. Necessity of consent for operation and when it could be waived.
- c. Liabilities of the practitioner when even poisonous substances have to be administered for the sake of treatment.
- d. Consequences when patient who has been operated dies. Examination and testing of any remaining medication.
- e. Forbiddance to sell intoxicants, poisons or other medicines except by

prescription.

- f. Treatment of the mentally ill.
- g. Obligation of those who have sick servants or other ill persons in their charge.
- h. Responsibility of those authorised to give treatment in the event of the patient dying or suffering disability.
- i. Practise of medicine by those not authorised and the penalties for death or physical damage to those given treatment.
- j. Death during treatment and if due to malicious intent, the filing of complaint within three months.

NB. Jung Bahadur compiled in 1851 AD, the first Muluki Ain out of the numerous orders, Lal Mohurs and Sanads, which had been promulgated up to that time. This version of the ilaz garne ko is from the section of the New Muluki Ain, which received a Lal Mohur on 30th Chaitra, 2019 BS and came into force from 1st Bhadra 2020 BS.

- The Civil Code (Muluki Ain, 1963)
 - Prohibits child marriage, marriage without consent or forced marriage.
- The Civil Code (Muluki Ain, 1976, Sixth amendment).
 - Makes intention to rape an offence. A man contacting a girl over the age 11, who is not his wife; with the intention of raping her may be fined up to Rs. 5000 or imprisoned for a year or both. Intercourse with a woman above 16 years of age, without her consent, by threat or by taking advantage of the circumstances, is considered rape. Persons convicted of raping a girl less than 14 years of age are liable to imprisonment for 6-10 years. Those guilty of raping a girl above 14 years of age are liable for imprisonment for 3-5 years. Instigators and abettors are liable for 1-3 years imprisonment.
 - does not hold a woman liable for her actions in protecting her virginity or if, following rape, she attacks and kills her rapist within one hour of the rape having been committed.
- * The Civil Code (Muluki Ain, 2003. Eleventh amendment).
 - * This amendment, which came into effect immediately is concerned with safe abortion and a number of sections of the old Civil Code have been repealed. The new provisions allow for abortions under certain conditions.

Other legislations pertaining to health have been listed below in chronological order in which they have been enacted.

2. Police Act, 2012 BS (1956)

Enacted as Law No. 8 of 2012 BS and published in Nepal Gazette of Asoj 31, 2012 BS.

Deals with unclaimed dead bodies and states that following necessary investigations if the cause of death were natural, then the body may be handed over to the nearest medical college (6).

Necessity of doing post-mortem in cases of accidents, suicides and

suspected murder.

3. Jail Act, 2019 BS (1963)

Enacted as Law No.46 of 2019 BS and published in Nepal Gazette of Magh 23, 2019 BS.

Deals with:

- Obligations of state to health and treatment of inmates
- Death in custody.

4. Smallpox Control Act, 2020 BS (1964)

Enacted as Law No.27 of 2020 BS and published in Nepal Gazette Vol. 13 No. 29 (Extraordinary) of Falgun 16, 2020 BS.

The Act deals with various aspects regarding vaccination such as:

- Licence to be obtained
- Private vaccinator
- Vaccination of unprotected child
- Duty of guardian and physician
- Inspector
- Steps after successful vaccination
- Steps after unsuccessful vaccination
- Use of vaccine
- Power of local office to order
- Fee and remuneration
- Penalties
- Power to take and dispose of cases

i. Smallpox Control Rules, 2023 BS

Published in the Nepal Gazette of Baisakh 18, 2024 BS

ii. Smallpox Control (First Amendment) Rules, 2027 BS

Published in Nepal Gazette of Baisakh 1, 2028 BS

It deals with:

- i. Area demarcation and vaccination provision
- ii. Vaccine, recording and certificate for it

iii. Miscellaneous

5. Infectious Diseases Act, 2020 BS (1964)

Enacted as Law No. 28 of 2020 BS and published in Nepal Gazette Vol. 13. No. 29 (Extraordinary) of Falgun 16, 2020 BS.

The Act deals with various aspects including the following:

- Power to make special arrangements
- Power to entertain and make decision of case
- Protection for bonafide action

6. Nepal Medical Council Act, 2020 BS (1964)

Enacted as Law No. 35 of 2020 BS and published in Nepal Gazette Vol. 13 No. 29 (Extraordinary) of Falgun 16, 2020 BS.

After dealing with the establishment of the Council and the constitution of the same, the term of office of the Chairman and members plus reasons for disqualification are defined. The Act makes provision for the following:

- Permission of the Council
- Fees and allowances
- Registrar and officers
- Duties and function of Registrar
- Registration of names
- Power of Council to remove names from Register
- Removal of name from Register
- Recognition of degrees, diplomas, licenses or certificates granted by Medical Institutions within the Kingdom of Nepal
- Power to direct submission of particulars
- Inspection of examinations
- Withdrawal of recognition
- Penalty for false use of Title pertaining to medical practice
- Prosecution

i. Nepal Medical Council Rules, 2024 BS

Published in the Nepal Gazette of Poush 17, 2024 BS
It dealt with:

- i. Provisions for entering of doctor's names in the register
- ii. Meeting of the Council and other matters
- iii. Miscellaneous

a. Nepal Medical Council (First Amendment) Act, 2044 BS

Enacted as Law No. 14 of 2044 BS and published in Nepal Gazette Vol. 37 No. 31 of Asoj 9, 2044 BS

Main changes are in the composition, criteria, suitability and duration of membership of Council. Clauses numbers 22, 23 and 24 of the original act dealing with powers of Nepal Medical Council regarding:

- a. Registration particulars of degree, diploma given by medical institutions,
- b. Appointment of inspector
- c. Removal of recognition.

Three clauses No. 22, 23 and 24 were however deleted during the final phase when the Act was being passed by then functioning Rastriya Panchayat. The thinking was that as the University was doing this function, it was not necessary to duplicate it. Representation regarding this was made immediately and the subsequent enactment made the reinstatement.

b. Nepal Medical Council (Second Amendment) Act, 2047 BS

Enacted as Law No. 14 of 2047 BS and published in Nepal Gazette Vol. 40 No. 44 of Aswin 27, 2047 BS.

The three clauses, which had been inadvertently removed in the First Amendment of 2044 BS, were reinstated.

The number of institutions recognised was revised.

i. Nepal Medical Council Act, (First Amendment) 2047 BS Rules.

These were enacted to amend the Nepal Medical Council Rules 2024 BS.

Published in the Nepal Gazette Part 3, Vol.40, No.28 of Kartik 12, 2047 BS.

c. Nepal Medical Council Act, (Third Amendment) 2056. BS.

Approved as Bill by both upper and lower House of Representatives during the thirteenth session.

Enacted as Law No. ... of 2054 BS and published in Nepal Gazette of the, 2055 BS.

This amendment deals with the under mentioned aspects which have been changed in this amendment.

- Total number of members to be 25 of which:
 - i. By HMG nomination - 11
 - ii. by election - 10
 - iii. Ex Officio - 4
- Pre-requisites for nominations/election
 - i. Chairman - 15 years registration
 - ii. Vice-Chairman - 12 years registration
 - iii. Member - 5 years registration
- Provisional registration period to be of two years
- Prior concurrence of NMC necessary before starting medical college.
- NMC given authority to institute/conduct licensing examination.

d) Amendment to some Health Acts 2058 BS

By this amendment the number of NMC members in the executive was reduced from 19 to 17.

7. Some Public Offence & Punishment Act, 2027 BS (1970).

Enacted as Law No. 12 of 2027 BS and published in Nepal Gazette of Asoj 18th, 2027 BS.

The Act deals with the production of written and figurative material relating to health sciences or public health, which is not considered pornographic.

8. Black Marketing & Other Social Offences Act, 2032 BS (1975).

Enacted as Law No.12 of 2032 BS and published in Nepal Gazette of Bhadra 20th, 2032 BS.

Also deals with adulteration of medicine and sale of it.

9. Drug Abuse Control Act, 2033 BS (1976).

Enacted as Law No. 24 of 2033 BS and published in Nepal Gazette of Asoj 10th, 2033 BS.

Deals with:

- Selling of narcotic drugs by prescription
- Intimation to users about use of drug
- Responsibility of prescribing doctor
- Freedom from prosecution whilst undergoing treatment at authorised treatment centre.

10. Drug Act, 2035 BS (1978).

Enacted as Law No. 21 of 2035 BS and published in Nepal Gazette of Kartik 8, 2035 BS.

There are forty Sections in the Act arranged in Seven Chapters. Chapter one deals about the definitions and explanations of different terminology. Chapter two deals about formation of Drugs Consultative Council (DCC) and Drugs Advisory Committee (DAC). Third Chapter deals about research and control of drugs. Fourth Chapter deals with legal procedures and measures related to manufacture, export, import distribution and sale of drugs. Chapter five deals about the quality and standard of drugs. Sixth chapter deals about the enquiry and inspection of drugs for its standard quality. In chapter seven miscellaneous legal provisions are included from section 25 to 40 (7).

Section 3 of the Act is about the formation of Drugs Consultative Council (DCC) and section 4 about Drugs Advisory Committee (DAC). Section 5 of this Act has vested executive powers to the Department of Drug Administration (DDA) for the implementation of the Drugs Act, Drug Regulations and Codes. Section 40 of this Act has empowered HMG/N to make necessary Regulations for implementing it.

This act, which had defined a physician as one, registered under the Nepal Medical Council Act, 2020 BS led to difficulties regarding the practise of medicine by paramedicals who had been trained by the Institute of Medicine, established in 1972.

- a. Regulations on constitution of Drug Consultative Council & Drug Advisory Committee 2037 BS (1979).
- b. Drug Registration Regulations 2038 BS (1981).

This gives the procedures and requirements to manufacture drugs. As per these regulation letter of recommendation has to be obtained from the Department of Drug Administration (DDA) for the establishment of drug industries.

First Amendment to Regulations 2058 BS.

A number of major changes have been made in the implementation of the regulations.

- c. Drug Enquiry & Inspection Regulations 2040 BS (1983)
- d. Regulations on Standards of Drugs 2043 BS (1986). Published in Nepal Gazette Vol. 36 No. 18 of 27th Shrawan, 2043 BS.

This deals with all aspects pertaining to the standards of medicines produced in the country.

A number of Codes were made under the Regulations or Rules and these were specifically in the fields of:

- Drug import
- Registration of retail shops/firms, industries and products
- Procedures of enquiry and investigation
- Quality and standards of drugs.

Failure to observe and abide by the Drugs Act and Regulations pertaining to it would make the concerned party liable to penalties as specified in the Act.

Code for Manufacture of Drugs. 2041 BS (1986).

This was passed and subsequently published in Nepal Gazette Vol. 34 No. 22 Kha (Extraordinary) of 11th Shrawan, 2041 BS.

Code for Sale and Distribution of Drugs.

Code for Advertisement of Drugs.

Enacted and published in Nepal Gazette Part 4. Vol.34 No.22 Kha. of Shrawan 11, 2041 BS.

National Drug Control Policy.

This was formulated following the recommendations of a workshop in July 1995 and its existence made public on Feb 2nd. 1996. It was approved by the cabinet and subsequently incorporated in the Ninth

Five Year Plan. This national policy covers aspects like law enforcement, demand reduction, treatment and rehabilitation services, preventive programmes with regard to drug abuse and its control.

11. Disabled Protection and Welfare Act, 2039 BS (1982)

Enacted as Law No. 13 of 2039 BS and published in Nepal Gazette of 6th Mungsir, 2039 BS.

This Act was enacted mainly with the commitment made during the International Year of Disabled Persons (IYDP) 1981. This is a comprehensive Act, which has as many as twenty-five headings dealing with the political and socio-economic aspects and needs of the disabled. One who is physically and mentally unable to lead a normal life has been defined as a disabled person.

12. Natural Disaster (Rescue) Act, 2039 BS (1982)

Enacted as Law No. 20 of 2039 BS and published in Nepal Gazette Part of 8th Poush, 2039 BS

- Responsibility of local committees to take injured to nearby hospital or health institution.

13. Council for Technical Education and Vocational Training Act, 2045 BS

Enacted as Law No. 20 of 2045 BS and published in Nepal Gazette Vol. 38 No. 46 (Extraordinary) of Kartik 28th, 2045 BS.

The Act provides for the establishment of CTEVT, which was to be made responsible for the training of basic and middle level technical workers. After stating the composition of the Council it deals with the duties, functions and powers. The following aspects are also catered for :

- Formation of subcommittees and task force
- Income of Council
- Delegation of powers.

14. Nepal Ayurvedic Council Act, 2045 BS

Enacted as Law No. 21 of 2045 BS and published in Nepal Gazette Part 2, Vol.38, No.46 of 28th Kartik, 2045 BS

Besides the establishment of the Council, the functions and rights of it, the Act makes provision on the under mentioned aspects:

- Requirements for membership
- Registrar, his functions and rights
- Registration of names in register
- Divisions of physicians
- Proof of registration
- Inability to practice without registration
- Rights to give certificate and prescription
- Licence for the production of ayurvedic medicines
- License for the selling of ayurvedic medicines
- Penalties

a) Nepal Ayurvedic Council (First Amendment) Act 2055 BS

15. Nepal Health Research Council Act, 2047 BS

Enacted as Law No. 29 of 2047 BS and published in Nepal Gazette Part 2, Vol.40, No. 67 of Chaitra 29, 2047 BS.

This Act was brought with a view to establishing the Nepal Health Research Council to make a study of the various problems in the field of health and do research to maintain the health status of the people.

Following the short title, commencement, definition and establishment of the Council, the different clauses of the Act make provision for the following:

The Council to be a Corporate Body
Objectives of the Council
Functions, Duties and Rights of the Council
Constitution of the Executive Board
Meeting of the Board
Functions, Duties and Rights of the Board
Sub-Committee may be constituted
Permission to be obtained to do Research Relating to Health
Special Rights of the Council
Fund of the Council
Accounts and Audit

Administrative Chief.

16. Pesticides Act, 2048 BS (1990)

The Pesticides Act was promulgated in 1990 (2048 BS) with the objective of controlling import, export, production, sale and use of insecticides. The Act has sixteen sections.

17. Breast Milk Substitutes (Marketing Control) Act, 2049 BS (1992)

Enacted as Law No. 39 of 2049 BS and published in Nepal Gazette of 29th Mungsir, 2049 BS.

This Act makes provision for the under mentioned aspects:

- Implementation and Monitoring
- Committee for Promotion and Protection of Breast Feeding
- Meetings of Committee
- Functions, Duties and Powers of Committee
- Information and Education about Infant Feeding
- Manufacture, Distribution & Prohibited Practices
- Certification of Products
- Power and Functions of an Inspector
- Penalties

18. B.P.Koirala Institute of Health Sciences Act, 2049 BS

Enacted as Law No. 48 of 2049 BS and published in Nepal Gazette Part 2, Vol. 42, No. 55 of Magh 5, 2049 BS.

This act was passed with a view to setting up the B.P. Koirala Institute of Health Sciences at Dharan as a memorial to the late leader and with the objective of making Nepal self reliant in the health sector, providing good health care to the ordinary people, doing high quality research and study and producing the necessary health manpower.

Following the short title, commencement, definition and establishment of the BP Koirala Institute of Health Sciences the Act makes provision for the following:

- The Institute to be an Autonomous Body
- Objectives of the Council

Functions, Duties and Rights of the Institute
Establishment of the Governing Board
Meeting of the Institute and Decisions
Functions, Duties and Rights of the Institute
Establishment of the Executive Committee, its Functions, Duties and Rights
Appointment of Officers, Teachers and Employees of the Institute
Terms and Conditions of Work
Appointment of Director
Fund of the Institute
Accounts and Audit
Certificates to be issued by the Institute
Recognition of Certificates to be issued by the Institute
Facilities to Institute

i. B.P.Koirala Institute of Health Sciences Rules, 2050 B.S.

It deals with matters pertaining to the Council, Executive Committee, and various other officials of the Institute, their appointments, terms of service such as Director, Rector, Senior Administrator, and various matters concerning their functioning.

Other sections deal with code of conduct of students, academic and research work and the granting of certificates and degrees.

a) B.P. Koirala Institute of Health Sciences (First Amendment) Act 2055 BS

This amendment has effected certain changes such as :

1. The Prime Minister becomes the Chancellor of the institution and a new post of Vice-Chancellor is created.
2. The Institute is able to conduct Certificate, Graduate and Post-Graduate levels of study in medicine, nursing and in the health field.

19. Govt. Prosecution Related Act, 2049 BS

Enacted as Law No. 43 of 2049 BS and published in Nepal Gazette of 8th Poush, 2049 BS.

- Post mortem if cause of death is not known
- Examination of blood and semen.

20. Vehicular & Transport Act, 2049 BS

Enacted as Law No. 45 of 2049 BS and published in Nepal Gazette of 12th Poush, 2049 BS.

- Pertaining to medical examination for fitness to drive.
- Ban on smoking in public transport.

21. Nepal Nursing Council Act, 2052 BS

Enacted as Law No. 15 of 2052 BS and published in Nepal Gazette Part 2, Vol.45, (Extraordinary) No.49 of 7th Chaitra, 2052 BS.

Following the short title, commencement, establishment of the Council and its composition, autonomy, the criteria, tenure and disqualification from membership, duties, functions and rights of the Council plus matters for effective working are stated. The Act goes on to state the duties of the Registrar and details for registration and re-registration. Finally it makes provision for the following:

- Cancellation of Certificate
- Stoppage from Continuing in Nursing Profession
- Recognition of Academic Achievements
- Power to Direct Submission of Particulars
- Withdrawal of Recognition
- Fund of the Council
- Accounts and Audit
- Dissolution of the Council
- Penalties

A Nursing Council Act had been initially drafted as far back as 1965 but was never enacted. It was thus after years of efforts that this version was finally enacted in 1995.

a) Nepal Nursing Council (First Amendment) Act, 2058 BS.

22. Health Professionals Council Act, 2053 BS

Enacted as Law No. 20 of 2053 BS and published in Nepal Gazette Part 2, Vol 46, (Extraordinary) No. 56 of 13th Baisakh, 2053 BS.

The preamble of this Act states that it aims at providing in an organised

and scientific way the services of health practitioners other than those who are eligible to be registered at the Nepal Medical Council, so as to make health services timely and effective.

Following the short title, commencement, establishment of the Council and its composition, autonomy of the council, tenure, duties and functioning of the of the office bearers, the meetings and decisions of the Council, duties of the Registrar and the registration of the Health Practitioners. The Act also makes provision for the following:

- Removal of Name from Register and Re-registration
- Cancellation of Certificate
- Stoppage from Continuing as Health Professional
- Recognition of Academic Achievements
- Power to Direct Submission of Particulars
- Inspection of Examinations
- Withdrawal of Recognition
- Fund of the Council
- Accounts and Audit
- Dissolution of the Council
- Penalties

23. Nepal Health Services Act, 2053 BS*

Enacted as Law No. 32 of 2053 BS and published in Nepal Gazette Part 2 Vol. 46, (Extraordinary) No 59, of 15th Falgun, 2053 BS. This Act has been passed with a view towards making health services available in the far-flung districts of Nepal. It has incorporated allopathic, ayurved and homeopathy to give equal opportunities to doctors and health workers to provide health services and receive facilities and benefits in return.

The Act makes provision for the following:

- Section 1 - Start
- Short Title and commencement
 - Definition.
- Section 2 - Establishment of Health Services
- Establishment
 - Levels in the Health Services
 - Posts in the Health Services.

- Section 3 - Filling of Posts in the Health Services
 - Filling of Posts
 - Appointments on basis of PSC recommendations
 - Appointments on basis of criteria and categories.
- Section 4 - Transfers, Deputations and Promotions
 - Right to transfer / send on deputation
 - Promotions
 - Evaluation of work
 - Criteria for promotion.
- Section 5 - Nominations for Study, Training
 - Criteria for nominations for study / training
 - Plus points and disqualifications for nomination.
- Section 6 - Remunerations for work, Dasain and other benefits
- Section 7 - Retirement, Gratuity & Superannuation
 - Retirement from service, gratuity & Superannuation.
- Section 8 - Mode of Conduct.
- Section 9 - Rights of the Work.
- Section 10 - Punishment and Review.
- Section 11 - Miscellaneous.

* The Health Act was implemented as from 27th May, 1997 (14th Jestha, 2054 BS).

a) Nepal Health Services (First Amendment) Act 2055 BS

Some changes effected pertained to the implementation of the act as from 14th Jestha 2054 BS (27th May, 1997) and in certain areas.

- Prohibition to employ personnel of daily wages
- Upward movement / promotions
- Temporary appointments, transfers
- Promotions.

b) Amendment to some Health Acts, 2058

c) Nepal Health Services (Second Amendment) Act, 2058

i. Nepal Health Service Rules, 2055 BS.

Printed in the Gazette No 48 (Extraordinary 62) of 14th Poush, 2055 BS.

The 132 rules are divided among the 14 (?16) Chapters that this set of rules comprises. Following the preamble, these are categorised as relating to:

- Organisation set up and provision of post
- Filling of posts and authority
- Provision of specialist post
- Posting and transfer
- Deputation and authority delegation
- Attendance and leave
- Promotion
- Remuneration / benefits
- Illness expenditures
- Pension and other benefits
- Extension of service
- Punishment and review
- Miscellaneous

There is some discrepancy between the Act and the Rules e.g. Rule 28(5) states that one must have spent four years in one post before promotion is given, whilst the Health Services Act (first Amendment) 2054 states that an officer in the 9th grade can be promoted after 2 years of work.

24. B.P. Koirala Memorial Cancer Hospital Act, 2053 BS

Enacted as Law No. 34 of 2053 BS and published in Nepal Gazette Part 2 Vol 46, (Extraordinary) No 59, of 15th Falgun, 2053 BS. This Act has been passed with a view to keeping alive the memory of the people's leader late Biseshwar Prasad Koirala by establishing a Cancer Hospital to provide facilities for the research, and also high standard treatment for cancer patients.

Following the short title, commencement, definition and establishment of the BP Koirala Memorial Cancer Hospital, the Act makes provision for the following:

- The Hospital to be an Autonomous Body
- Objectives of the Hospital
- Functions, Duties and Rights of the Hospital
- Hospital Running Board & its Composition
- Termination of Board Membership
- Functions, Duties and Rights of the Board Chairman
- Functions, Duties and Rights of the Board Secretary
- Executive Director, Advisor and other employees
- Functions, Duties and Rights of the Executive Director
- Limitations on activities of Chairman, members, executive director and employees of the hospital
- Restrictions to claims from the hospital
- Right to use dead body for purpose of research and study
- Hospital Fund
- Exemptions and Facilities for hospital
- Accounts and Audit
- Right to form Technical Committee
- Delegation of Duties
- Ability to give direction
- Right to make rules and regulations.

25. Environment Protection Act, 2053 BS

Enacted as Law No. 24 of 2053 BS and published in Nepal Gazette Vol. 46 (.....) of 17th Baisakh, 2053 BS

The preamble goes on to state that the Act has been passed to protect the human race, the flora and fauna from the effects of environmental degradation and to further protect the environment from destruction by use of existing resources in proper manner.

Clause 7 deals with stoppage and control of pollution. No one is entitled to disturb the environment by adding to it industrial hazards such as sound waves, heat and radiation rays that are harmful to living beings.

Details of inspection for control are also stated.

26. Compensation for Torture Act, 2053 BS

Enacted as Law No. .. of 2053 BS and published in Nepal Gazette of 3rd Poush, 2053 BS.

Pertains to examination by physicians under government service or otherwise.

- application by relative of accused if torture whilst in detention is suspected.

27. Iodised Salt (production, sale & distribution) Act, 2053 BS

Enacted as Law No 16 of 2055 BS and given Royal Assent on 2055/10/1. Approved as Bill by both upper and lower House of Representatives during the thirteenth session. Its objective is to ensure the supply of iodised salt all over the country.

28. Consumer Protection Act, 2054 BS

Enacted as Law No. 20 of 2054 BS and published in Nepal Gazette Vol. 47 (Extraordinary 54) of 15th Magh, 2054 BS.

The preamble goes on to state that the Act has been passed to protect the health, facilities and financial interest of the consumer in respect of the quality of the substance or services, the results and costs and in keeping with the interest of the consumer.

Definition provides for various terms:

- Substandard consumer items which are harmful to health, stale, poisonous or one to which harmful ingredients or colouring has been added

Clause 6 deals with the rights and well being of the consumer in respect of substances or service provided for a fee, which causes harm to body, life or health of the consumer.

Clause 10 forbids the production and use of substance or service likely to cause harm to the health of the consumer.

29. Human Organ Transplantation (regular & prohibition) Act, 2055 BS (1998).

(In 1995, following the appearance of a news item of a first renal transplant done at a nursing home at Kathmandu on 26th April, 1995; a letter regarding this was printed in The Rising Nepal (6). It drew attention to the necessity of having an Organ Transplant Act, as soon as possible to prevent the possibility of having spurious dealings related to kidney transplantation done in this country. Both upper and lower House of Representatives passed the necessary Act during the thirteenth session).

Enacted as Law No. 20 of 2055 BS and given Royal assent on 2055/10/21. It was to be effectively on publication in Nepal Gazette.

Section 1. Short title and commencement.

Section 2. Permission regarding organ transplantation and individual license for such.

- Duration of permission and renewal.
- Cancellation of permission and individual license. Reconsideration of decision.

Section 3. Organ Transplantation Co-ordination Committee.

This nine-member committee is to be headed by a senior doctor nominated by the government and the member-secretary will be the Director General of the Health Services.

Section 4. Activities related to organ transplantation.

- Activities concerning organ transplantation, which should not be done.
- Removal of and transplantation of organs.
- Criteria for removal of organ from a living person.
- Removal of organs from a dead body.
- When not to remove organs from a dead body.
- Consent of donor.
- Entailed expenses and service charge.
- Technical formalities when taking out organs.

Section 5. Crime and Punishment.

- Criminal offence in relation to organ transplantation.

- Punishment/Sentence.
- Non-advertisement about availability of organs.

Section 6. Miscellaneous.

a) Kidney Transplantation (Regular & Prohibitory) Rules, 2058

30. Saheed Ganga Lal National Heart Centre Act, 2057 BS.

Enacted as Law No 13 of 2057BS and given Royal consent on 2057/10/4. Came into immediate effect.

This Act has been enacted to set up a National Heart Centre in memory of Saheed Ganga Lal. Its objectives as stated in the Act are to:

- reduce the incidence of heart disease
- diagnose, treat and rehabilitate patients with heart disease
- provide facilities and do research in this field.

31. Nepal Pharmacy Council Act, 2057 BS.

Enacted as Law No 14 of 2057BS and given Royal consent on 2057/10/18. (Jan 31,2001) by Published in Nepal Gazette.. HMGN implemented the Act on 2058-6-8 by constituting the Council.

As per the Act, no one can practice the pharmacy profession without registering his/her name in the Council. Pharmacy profession means profession which certifies the production of drugs, quality assurance, inspection and recommendation for drug industries, storage of manufactured drugs, technology for supply, supervision of supply, registration of drugs, drug medication for its effectiveness and quality and safety and term also includes Hospital pharmacy.

The main functions of the Nepal Pharmacy Council are as follows:

1. To prepare and implement policy, plan and programmes to run profession of pharmacy scientifically and systematically.
2. To grant recognition to the educational institution and the certificate and degree awarded by such institution, which provides pharmacy education.
3. To determine the standards of curricula, condition for admission and examination system of the educational institution providing pharmacy education, and enquire whether standards so determined are maintained or not, and abrogate the certificate and degree awarded by the educational institution which do not comply with standards so determined after completing the procedures as

prescribed.

4. To determine the qualification and register the name of pharmacist and pharmacy assistant as prescribed the Registration Book of the Council who has completed the qualification so determined.
5. To remove the names of registered pharmacist and pharmacy assistant from the Registration Book after the completion of the procedures as prescribed if they are found to violate or not follow the professional code of conduct as prescribed.

ORDINANCES.

1. SPECIAL ORDINANCE FOR HEALTH 2057 BS

This was the first time ever that a special ordinance has been passed for health act amendments. It comprised of measures to deal with certain health acts, which needed to be amended viz.:

- Health Services Act
- Nepal Medical Council Act.

This ordinance was subsequently passed by the Parliament.

2. National Academy of Medical Sciences , 2060.

Ordinance No. 2 of 2060 BS as per Dhara 72 of the Constitution of Nepal 2047 BS. Royal assent given on 2060/2/12.

The preamble goes on to state that this ordinance was brought about to provide high quality services all over the kingdom of Nepal by setting up of an academy for the training of high quality manpower. This Academy will also be a National Centre for the conduction of research also.

The ordinance came into effect immediately with its main office at Kathmandu but can also have branches elsewhere in the country.

HEALTH ASPECTS IN LEGISLATION ABOUT FOOD

There is limited legislation about the standards of food for sale or offered to the public and the hygienic standards at eating-places has been felt. Requests for more specific legislation regarding these aspects have been made from time to time. The Consumer Protection Act 2054 BS will be able to deal with certain aspects of it.

The recent cases of “dropsy”, brought about by international

adulteration of mustard oil in various parts of India in Sept. 1998 has highlighted the inadequacies of our laws against any form of adulteration. It is a known fact that items such as butter yellow, orthotricresyl phosphate, mineral, white, paraffin and even engine oils have been used to adulterate cooking oils.

The accidental/intentional adulteration of mustard oil by argemone mexicana is just as liable to occur in Nepal. Though legal requirements existed for oil produced in Nepal to be labelled by source, batch number and date of production, it turned out that the producers had not been following this code and were resisting its application. It turns out too that the testing facilities and the rigorous implementation of the same has to be done by the Food Research Laboratories. At about this same time the police arrested a producer for clandestinely producing adulterated liquor of a particular brand.

Colouring matter used in various mithais (sweets), meat of lime fed animals, polished dal or lentils and even sand or marble chips in cereals are all harmful when eaten.

Thus not only laws safeguarding what we eat, inclusive of food, beverages and medicines be enacted but that the regulations must be strictly enforced by reliable, competent and properly equipped authorities. Only then will it have any meaning.

A. Food Act, 2023 BS (1966)

Enacted as Law No. 8 of 2023 BS and published in Nepal Gazette of 24th Bhadra, 2023 BS.

Provision exists for the concerned officer to confiscate and to forbid the distribution of foodstuff concerned harmful.

Such foodstuff should be examined at a designated laboratory and the report obtained from the designated officer/s.

i. Madira Niyamharu. 2033 BS.

B. Animal Slaughter House and Meat Examination Act, 2055 BS

Under discussion as Bill by both upper and lower House of Representatives during the thirteenth session. Yet to be approved.

HEALTH ASPECTS OF INDUSTRIAL LEGISLATION.

Labour Act 2049 BS (1992). Act No 9 of 2049 BS, published in Nepal Gazette on 2nd Baisakh, 2049 BS.

Section 5 deals with Health and Protection. Clause no. 27 details various aspect amongst which there is provision to ban smoking in the whole or part of the working area.

LEGISLATION FOR THE WELFARE OF CHILDREN

Relevant laws and regulations concerning child welfare prior to ratification of the Convention on the Rights of the Child were (9):

ACTS

- Begging (Prohibition) Act in 1961.
- Birth and Death Registration Act in 1976.
- Drug Abuse (Control) Act in 1976.

REGULATIONS.

- Suckling Baby (Maintenance) Rule, 1963.

Prohibition of child labour was made statutory on 20th Sept. 1990. The new government then also promulgated the new Labour Act, 1991 and the Children Rights Act, 1992. The gist of the new legislation is as below:

- a. The Constitution, 1990.
 - prohibits the employment of children in any occupation, which is hazardous to life.
 - prohibits the trafficking of human beings including children, slaves, and serfs and forced labour. It restricts the sale, trafficking and abduction of children.
- b. The Labour Act, 1992.
 - prohibits the employment of children less than 14 years of age.
 - requires the employees of more than 50 workers to provide supervised care and also time for mothers to breast feed their children.
 - provides for initial check-up and medical treatment of employees.

c. The Child Rights Act, 1992.

- right of the child to name and birth date.
- prohibits the employment of children under the age of 14.
- prohibits the employment of minors, aged 14 to 16, between the hours of 18.00 and 06.00
- prohibits the employment of minors, aged 14 to 16, for more than six hours per day and more than 36 hours per week
- prohibits the employment of children in work that is likely to be harmful to health or hazardous to life.

c.i. Rules and regulations relating to Children - 2051 BS.

- Preamble.
- Provision in relation to Central Child Welfare Committee.
- Provision in relation to District Child Welfare Committee.
- Duties, Functions and Rights of Child Welfare Officer.
- Formation of Management Committee.
- Provision of Chief, Child Welfare Centre and its management.
- Arrangements for Child Welfare.
- Miscellaneous.

Many children are trafficked to India for work, including circuses and are vulnerable to exploitation and sexual abuse. There are reports that in the conflict with the Maoists many children and youth are being used. Many children themselves are in conflict with the law. Many are accused and arrested, but they may be brought for trial without proper investigation. In the meantime however the government has opened a 'Children's Correction Home' where such accused children are supposed to be kept.

Under the Children's Act (1992), Children below 10 years are not criminally liable; those between 10 and 14 receive warnings if the offence is punishable by a fine, and are sentenced to a maximum of six months if it is punishable by imprisonment, and those between 14 and 16 if convicted to half the penalty imposed by law on an adult for that offence. Currently a recommendation has been made that the age for criminal liability be raised from 16 to 18 years.

Other Legislations

The Decentralisation Act, with the object of transferring administrative and financial authority from the centre to the districts was passed in 2039 BS. (1982). It covers also administrative matters regarding health care delivery. So also The District Development Committee Act, 2048 BS, The Village Development Act, 2048 BS and the Municipality Act 2048 BS deal with this aspect. The Local Self Governance Bill, after years of discussion was passed by both Houses of Parliament only in 2055 BS (1998).

The National Calamity (Relief) Act, 2048 BS (1992) deals with various provisions in relation to disasters.

LEGISLATED COUNCILS

Nepal Ayurved Council (NAC)

Though the Act to establish this Council was passed as long ago as 2045 BS, it has not really been implemented. Whilst provision was made for the traditional practitioners plus those trained up to 1972, the HRH in ayurvedic medicine after this period felt that provision for their registration had not properly been spelt out. Hence the delay. This Act too is in the process of being amended for the registration of graduate manpower in this field.

Nepal Health Research Council (NHRC)

Nepal Health Research Council was established as an autonomous government body on the 29th April, 1991 in accordance with the Nepal Health Research Council Act, 1991 published in the Nepal Gazette dated April 12, 1991. Prior to this date, health research was one of the activities of the Ministry of Health and then Nepal Medical Research Committee functioned as one of several committees chaired by the Secretary, Ministry of Health.

The main objectives of the NHRC are:

- i. to provide information and consultancy services to make the study and research activities relating to health more useful, and
- ii. To acquire information concerned with medical researches and on various activities relating to health around the world and to brief His Majesty's Government from time to time on these issues.

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Nepal Medical Council (NMC).

It was at the time of the First All Nepal Medical Conference in 1963 that the Nepal Medical Association (NMA) requested by way of a resolution to HMG/N that a Nepal Medical Council Act and a Drug Control Act be passed. The Nepal Medical Council Act was ultimately passed in February, 1964. A notification, which appeared in the Nepal Gazette of Bhadra 28th, 2022 BS stated:

Under the powers delegated by Sub clause (3) of Clause (1) of the Nepal Medical Council Act, 2020 BS, His Majesty's Government has enforced the following Clauses 2,3,4,5,6,7,8, 10,11,12, 31,32 and 33.

The Council consisted initially of nine members viz. four elected by the NMA, and three nominated. The President of NMA was ex-officio member and the Director of Health Services was the first Chairman. The same notification went on to state that Mr. Bimal Raj Basnyat, then a section officer in the Health Services was the Registrar of the Council.

The first amendment to the Act was in 2044 BS when the composition was enlarged to 17 members with Dean of the IOM being ex-officio member. It also had more elected members than nominated members with a nominated layperson as a member too. A second amendment to the Act was in 2047 BS. The Nepal Medical Council has passed a **Code of Ethics** which all doctors who register are required to sign and then subsequently keep as guidance for behaviour in their future practices. Proposal for further amendments to the Act in view of the increased number of medical schools and also because of the starting of postgraduate education is in process. Guidelines regarding the establishment of medical and dental colleges, forms if internship, have been laid down.

The effectiveness of the Act and its composition was tested recently. An attempt was made to summarily replace Dr. M.R. Baral as Chairman of the NMC. He was given a letter that he had been replaced as of 20th Nov., 1993. He obtained a Stay Order from the High Court and subsequently filed a lawsuit against the then Health Minister and the Health Ministry. Dr. M.R. Baral won his lawsuit on 2nd May, 1995 and was reinstated as Chairman of the NMC.

In celebrating the thirty years of its establishment, the NMC together with the NMA held on 13th & 14th Sept. '95, a two day seminar with the theme "Medical Education for the coming Century". On the subsequent two days a workshop on "Policy and the Development of Medical Education" was also conducted. A book entitled "Medical Education in Nepal" was

brought out on the occasion. A third amendment of the Act increased the membership to twenty-five.

Nepal Nursing Council (NNC)

An attempt to form the Nepal Nursing Council was made in the sixties but somehow it got delayed. The act was in the final stage of being enacted and with the presumption that this would be done, registration of nurses and subsequent issue of Certificates, with the signatures of the Chairman and the Secretary of the Nepal Nursing Council, was done. A specimen of such a certificate, dated 13th April, 1960 shows the then Director of the Health Services as Chairman of the NNC. Such certificates of registration were issued till 1972 and over this period of thirteen years a total of 147 certificates, so stamped with the NNC logo, were issued. Then catastrophe for the fire at the Singha Durbar destroyed all the papers then. It can be presumed that there was every intention of enacting the Nepal Nursing Council Act, but why the process was delayed for so long is anyone's guess. The Act has now been enacted. It had been an uphill task to try to get legislation passed for the formation of the Nepal Nursing Council but now it may take some years to be implemented.

Nepal Health Professionals Council

This Council was formed following the passage of the Nepal Health Practitioners Council Act in 2053 BS. The act states that the objective is to make provision for providing in an organised and scientific manner, the services of health practitioners other than of those registered with the Nepal Medical Council.

Nepal Pharmacy Council

This council was formed in 2057 with a view to organise the professionals with pharmacy degrees and certificates. The council has now started functioning. It is now registering personnel as required by the Nepal Pharmacy Council Act. The numbers registered as of 2004 is 207 Pharmacists and 49 Pharmacy Assistants.

To try to regularise the distribution and sales of medicines in Nepal it is bringing out a 'National Good Pharmacy Practice Guidelines'.

Pending Legislations

The Ayurvedic Council Act is in the process of being amended.

... Pregnancy Safeguarding Act.

?. Narcotic Drug (Control) Act 1996.. (205?3).

The objectives of this Act is to control the misuse of narcotic drugs and to ban cultivation, preparation, sale, export, import, transportation, storage or use of cannabis, opium and cocoa in Nepal. The Act has provision to allow to procure narcotic drugs to drug industry for the preparation of medicine.

A Medical Education Act is contemplated.

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