

The Act Relating to Children, 2075 (2018)

Date of authentication:

2075/06/02 (18 September 2018)

Act Number 23 of the year 2075 (2018)

An Act Made for Amendment and Consolidation of the Laws Relating to Children

Preamble:

Whereas, it is expedient to make amendment and consolidation of the laws relating to children in order to maintain the best interests of the children, by respecting, protecting, promoting and fulfilling the rights of the child.

Now, therefore, be it enacted by the Federal Parliament.

Chapter -1

Preliminary

1. **Short title and commencement:** (1) This Act may be cited as the "Act Relating to Children, 2075 (2018)".
(2) It shall come into force immediately
2. **Definitions:** Unless the subject or the context otherwise requires, in this Act,-
 - (a) "Orphan children" means orphan children as referred to in the prevailing laws.
 - (b) "Investigating authority" means an official having authority under the prevailing laws to investigate into the offence.
 - (c) "Offence" means a criminal offence as provided by the prevailing laws.
 - (d) "Children in conflict with law" means the children accused of committing an offence, and this term also includes the children convicted by the Juvenile Court for committing an offence.
 - (e) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.
 - (f) "Diversion" means the act of bringing the child accused of committing an offence outside the ambit of the formal judicial proceedings by adopting any of the processes mentioned in Section 29.

- (g) "Observation chamber" means an observation chamber established pursuant to Section 22.
- (h) "Family" means a child's father, mother, elder brother, younger brother, elder sister, younger sister, grand-father or grand-mother living in an undivided family and this term also includes other relative living in the undivided family.
- (i) "Council" means the National Child Rights Council referred to in Section 59.
- (j) "Children" means persons who have not completed the age of eighteen years.
- (k) "Violence against children" means an act referred to in sub-section (2) of Section 66.
- (l) "Juvenile Court" means a juvenile court constituted in accordance with sub-section (1) of Section 30 and this term also includes the juvenile bench constituted pursuant to sub-section (3) of the said Section.
- (m) "Child pornography" means an act to take or make video or picture of children showing their sex organ or making them involve in imaginary sexual activities, to demonstrate vulgar picture through newspaper, poster, print, movie or other medium of communication, and this term also includes activities of production, sale, import, export, collection or dissemination of such materials.
- (n) "Child welfare authority" means an official appointed or prescribed pursuant to Section 61.
- (o) "Child home" means a child home established pursuant to Section 52.
- (p) "Child sexual harassment/abuse" means an act referred to in sub-section (3) of Section 66.
- (q) "Child reform home" means a child reform home established pursuant to Section 43.
- (r) "Ministry" means the Ministry of Women, Children and Senior Citizens of the Government of Nepal.
- (s) "Children in need of special protection" means the children referred to in Section 48.

- (t) "Guardian" means a person or institution appointed or having an obligation to protect the rights and interests of the child in accordance with this Act or the prevailing laws, and this term also includes a curator in the absence of the guardian.
- (u) "Social service provider" means a person referred to in Section 62.
- (v) "Local Level" means any Rural Municipality or Municipality.

Chapter -2

Rights of the Child

- 3. Right to live:** (1) Every child shall have the right to live with dignity.
- (2) The Government of Nepal, Province Government and Local Level shall take necessary measures required for preventive and security service including prevention of possible accidents, minimization of risks that may occur on the children, in order to protect the rights of the child to live and development.
- 4. Right to name, nationality and identity:** (1) Every child shall have the right to have name with own identification and birth registration.
- (2) The father or mother of a child, after his or her birth, shall give a name to him or her and register it according to the prevailing laws.
- (3) The mother of a child born from rape or incest that is punishable by the prevailing laws shall register his or her birth by mentioning only the name of the mother if she so wishes.
- (4) While giving name pursuant to sub-section (2), if the father or mother of a child is not available immediately or there is no possibility that they can be available, then the child may have the name given by any other family member or guardian who looks after him or her.
- (5) Every child after birth may use the surname given by mutual consent of his or her parents or if such consent is not available he or she may use the surname of his or her father after his or her name.
- (6) Notwithstanding anything contained in sub-section (5), the child, if he or she so wishes, may use the surname of his or her father or mother or both.
- (7) A child whose paternal identity is not known may use his or her mother's surname after his or her name.
- (8) If a dispute arises regarding the surname of any child, except as proved otherwise, it shall be deemed that the child is using his or her father's surname.

(9) A child whose both father and mother are not identified may use the surname given by the guardian after his or her name.

(10) The child welfare authority shall be informed about it when the guardian gives the name and surname pursuant to sub-section (9).

(11) If the name of father, mother and grand-father, grand-mother must be mentioned pursuant to law in any formal legal proceeding or document, in cases where the father of the child is not known, he or she may mention his or her mother and parents' name and if the name of mother is also not known, mentioning that matter will suffice the requirement.

(12) The mother, father or guardian of a child shall not change his or her name, surname that hides the identity of the child with an intention to gain undue benefits.

5. Right against discrimination: (1) No discrimination shall be made against any child on grounds of religion, race, caste, tribe, sex, origin, language, culture, ideological thought, physical or mental condition, physical disability, marital status, family status, employment, health condition, economic or social condition of him or her or his or her family or guardian, geographical area or similar other ground.

(2) No one shall discriminate between son and daughter, son and son or daughter and daughter or children from ex-husband or wife or present husband or wife in maintenance, education or health care of children.

(3) No one shall make any kind of discrimination between their own son, daughter and adopted son, daughter.

(4) No discrimination shall be made with regard to maintenance, education and health care between children born to a man and woman before and after their marriage.

6. Right to live and meet with the parents: (1) No child shall be split or separated from his or her father or mother without his or her will.

(2) Notwithstanding anything contained in sub-section (1), the Juvenile Court may issue an order to separate any child from his or her father or mother and entrust him or her to any guardian's custody for the best interests of the child, if necessary.

Provided that the concerned party shall not be deprived of an opportunity to submit his or her explanation before issuing such an order.

(3) Except for the condition where the Juvenile Court has made a restriction stating that it would be not in the interests of a child, the child living separately from the father or mother or both shall have the right to make direct contact or meet with the father or mother regularly.

(4) The person adopting a child shall allow the adopted child to meet, contact and make correspondence with his or her biological parents.

(5) Any person or institution responsible for alternate care shall allow the children under their care or guardianship to meet their biological parents or families.

7. **Right to protection:** (1) Every child shall have the right to obtain proper care, protection, maintenance, love and affection from his or her father, mother, other member of family or guardian.

(2) The parents shall have equal responsibility in relation to care, protection and maintenance of their children. In cases where the parents are divorced or living separately due to any other reasons, financial expenses for the maintenance of their children shall be borne by both parents according to their capacity.

(3) No father, mother, other member of the family or guardian shall abandon or leave the child of their own or under his or her guardianship unattended.

(4) Children with disabilities, war victims, displaced, under vulnerable conditions, or living on street shall have the right to special protection as prescribed from the State for their secured future.

(5) Every child shall have the right to protection against any type of physical or mental violence and torture, hatred, inhuman treatment, gender or untouchability-based mistreatment, sexual harassment and exploitation that might be caused by his or her father, mother, other family member or guardian, teacher and other person.

(6) Every child shall have the right to protection from being exploited economically and shall also be entitled to be protected from any activity which may be harmful to him or her or be obstacle to his or her education or detrimental to his or her health, physical, mental, moral, social development.

(7) No child shall be deployed in army, police and armed group and be used for armed conflict or political purpose directly or indirectly.

(8) No one shall attack, or make hindrance to the operation and management of any school, including the place, service or facility, used for the best interests of children, with any excuse at times of armed conflict or in any adverse situation of whatever type.

(9) Children below fourteen years of age shall not be deployed in any risky work or used as a house-servant or house-maid.

(10) The Government of Nepal, Provincial Government and Local Level may follow the necessary measures and make and implement the standards for the protection of the children.

8. **Right to participate**: A child who is competent to form his or her own opinion shall have the right to participate in the decision-making process of family, community, school or other public institution or organization on the matters concerning him or her.

9. **Right to freedom of expression and information**: (1) Every child shall have the freedom to express his or her opinion pursuant to the prevailing laws.

(2) Every child shall have the right to demand and receive information on the subject of his or her right, interest and concern subject to the prevailing laws.

10. **Right to open organization and assemble peacefully**: (1) Every child shall have the right to open a child club or organization or the right to assemble peacefully for the protection and promotion of the rights of the child.

(2) The provisions regarding the opening of a child club or organization pursuant to sub-section (1) shall be as prescribed.

11. **Right to privacy**: (1) Every child shall have the right to privacy regarding the subject of his or her body, residence, property, document, data, correspondence and character.

(2) No one shall do, or cause to be done the act of creation of personal information, details, photo, collection of information, publishing, printing, demonstrating, sale and distributing or transmitting by any means that causes negative impact on the characteristics of a child or any shame, regret or domination to him or her.

(3) The details that provide the identity of a child along with the name, surname, address, age, sex, family background, economic status, offence committed by, and any details regarding action, if any taken, against a child who is victim or accused of an offence by the Juvenile Court, police office, guardian,

caretaker, or any other body shall be kept confidential. The details of a child kept confidential shall not be used elsewhere except as provided by the law.

Provided that if such details have to be published for any study or research work, only the age or sex of the child, without disclosing his or her name, surname, address, other data which may reveal his or her identity and his or her family may be published.

12. Special rights of children with disabilities: (1) Special arrangements shall be made, as prescribed, for the children with disabilities.

(2) Every child with disability shall have the right to determine his or her own honour and prestige, to promote his or her own independency, to participate actively in the society and to live a life with dignity.

(3) Every child with disability shall have the right to obtain special care and to be assimilated in the society and to obtain the opportunity to education, training, health care, rehabilitation service, preparation for employment and entertainment for the development of his or her personality.

(4) Every child with disability shall have the right to equal access and utilize the public services and facilities.

13. Right to nutrition and health: (1) Every child shall have the right to proper nutrition, clean drinking water and the child up to two years of age shall also have the right to breast feeding.

(2) Pregnant women and children shall have the right to get necessary vaccination to prevent diseases and allow to utilize the physical and mental health services according to the national standards, to get information about body, reproduction and reproductive health according to age and maturity.

(3) Every child shall have the right to obtain free basic health service.

14. Right to sports, entertainment and culture: (1) Every child shall have the right to play games and participate in sports according to his or her age and interest.

(2) Every school shall encourage the children to participate in sports at the time other than study and for that purpose, provide for necessary playgrounds and sports materials.

(3) Every child shall have the right to child friendly entertainment according to his or her age, interest and requirement.

(4) Every child shall have the right to take part in cultural activities according to his or her religion, culture, custom, tradition and conscience without causing any adverse effect on his or her interests.

15. **Right to education:** (1) Children below six years of age shall have the right to learn in a proper way according to their age and level of development and to pre-child development.

(2) Every child shall have the right to acquire free and compulsory education upto the basic level and free education upto the secondary level pursuant to the prevailing law in a child friendly environment.

(3) Every child shall have the right to acquire education through proper study materials and teaching method according to his or her special physical and mental condition, pursuant to the prevailing law.

(4) Dalit children shall have the right to acquire free education with scholarship pursuant to the prevailing law.

Chapter -3

Responsibility towards Children

16. **Priority to be given for the best interests of children:** (1) The officials of every organization and institution that carries out activities related to children shall adopt necessary child friendly process by giving priority to the best interests of children, while doing every activity.

(2) It shall be the responsibility of everyone to instantly help children whose life is in risk.

(3) The child welfare authority or Juvenile Court shall, while making arrangement for a child's alternative care, separating a child from his or her parents or guardian, making decision on who has to take care of and maintain a child after divorce between his or her father and mother shall adopt the process as prescribed for the best interests of the child pursuant to this Act.

(4) Public and private social institutions where children stay or which provide services to children shall, while constructing or refurbishing the physical structures, make necessary arrangement that is child friendly.

17. **Responsibility of the family or guardian:** (1) Both the father and mother shall have equal responsibility on the child's care, maintenance and overall development.

(2) It shall be the responsibility of every father, mother, other members of the family or guardian to care, maintain and protect, to provide the opportunity for education, treatment, along with personality development of, to provide environment full of love and care and to guide properly for future certainty of the child.

(3) Father, mother, other family member or guardian shall provide suitable environment for acquiring education to every child of age to join school by admitting him or her to the school.

(4) Father, mother, other member of the family or guardian shall not engage the child on labour which may adversely affect his or her education, health and physical or mental development.

(5) Father, mother, other member of the family or guardian shall not leave the child below six years of age alone at home or any other place or send alone elsewhere, without being accompanied by an adult person.

18. **Obligation of the State**: The State shall make necessary arrangement for the basic needs including maintenance, protection, health and education of children in need of special protection, on the basis of the available means and resources.
19. **Responsibility of the media sector**: It shall be the responsibility of the media sector to publish and transmit information, without violating the rights of the child and causing adverse effect on the interests of the child.

Chapter -4

Relating to Juvenile Justice

20. **Matters to be considered while dispensing the juvenile justice**: A person, official and Juvenile Court involved in dispensing juvenile justice shall take into account the following matters, in the course of dispensing justice, in addition to the other matters as provided elsewhere in this Act:
- (a) To take opinion of a child before making a decision that affects him or her,
 - (b) To provide an opportunity to father, mother, other family member or guardian to put their opinion before making decision on the subject matter associated with the interests and benefits of the child,

- (c) To use parlance, speak and behave according to the child's age, level of intellectual development, conscience and cultural norms and values,
- (d) To use language preferred by the child and to take assistance of an interpreter as required while talking to him or her.

21. To take a child under control: (1) If information on an offence is received, the investigating authority shall immediately start investigation on it. While doing such investigation, if it appears that the investigation is not possible without taking the child accused of the offence under control, the investigating authority may take him or her under control.

(2) If it appears that it is no longer required to take a child under control, who has been taken under control, pursuant to sub-section (1), he or she shall be handed over to his or her family member or guardian or the nearest relative.

(3) If a child is taken under control pursuant to sub-section (1), the investigating authority shall give information about it to his or her family member, or guardian or close relative.

(4) The investigating authority shall not use force while taking a child under control pursuant to sub-section (1).

Provided that it shall not bar the using of minimum force required to take the child under control.

(5) The child taken under control pursuant to sub-section (1) shall, if possible, be referred to a child psychologist or a person working in the field of children's welfare in order to provide the required counselling service.

(6) If the child taken under control pursuant to sub-section (1) could deviate himself or herself pursuant to Section 27, the investigating authority may, notwithstanding anything contained in the prevailing law, take the deposition of him or her by himself or herself.

(7) The child taken under control pursuant to sub-section (1) may be kept in an observation chamber with the permission of the Juvenile Court for a maximum twenty-one days, not exceeding five days at a time.

(8) Notwithstanding anything contained in sub-section (7), if the Juvenile Court is of the opinion that it not reasonable to keep the child accused of offence in the observation chamber, having regard to the child's physical condition, age, circumstances at the time of commission of the offence or condition of the

observation chamber, the Juvenile Court may make an order to investigate the case by entrusting such a child to his or her father, mother, other family member or guardian and in their absence to any social organization working in the field of protection of the rights and interests of the child or child reform home on the condition that the child shall make presence when the Juvenile Court so requires.

(9) While inquiring into the child taken under control, the investigating authority shall make it in the presence of his or her father, mother or guardian or children welfare authority or legal practitioner in a child friendly environment.

22. **Provision relating to establishment of observation chamber:** (1) The Government of Nepal may establish an observation chamber for the purpose of keeping a child taken under control on the charge of an offence, throughout the period of investigation.

(2) A separate room shall be arranged in every District Police Office until the observation room referred to in sub-section (1) is established.

(3) The child taken under control for investigation shall be provided with counselling by a child psychologist and psycho-social support as required.

(4) If any member of a child's family wishes to stay together with the child who is kept in the observation chamber for assistance, the investigating authority may give permission to stay together specifying the time and conditions as required.

(5) The provisions relating to the establishment, operation, management and monitoring of the observation chamber shall be as prescribed.

23. **Special provision relating to investigation and prosecution:** (1) Notwithstanding anything contained in the prevailing laws, the Government of Nepal shall form a separate unit in order to investigate into the cases of offences of which children are accused.

(2) The Government of Nepal may designate an official working at the District Police Office, who has got training on juvenile justice, to perform that function until the separate unit is formed pursuant to sub-section (1).

24. **Provision relating to trial:** (1) No child shall be detained in the course of trial and no bail or guarantee shall be demanded from him or her.

(2) Notwithstanding anything contained in sub-section (1), the Juvenile Court may, for reasons to be recorded, send a child accused of an offence to the child reform home during trial, in any of the following circumstances:

- (a) If there is adequate ground that the child's life would be in danger, someone would get hurt from him or her, such a child would go away or any other reason that it is not appropriate to put him or her elsewhere,
- (b) If it appears from the evidence available for the time being that a child accused of an offence punishable by imprisonment for a term not exceeding three years or more or there is a reasonable ground to believe that he or she is an offender.

(3) Except in the circumstance referred to in sub-section (2), other child accused of offence may be entrusted to his or her father, mother, other family member or guardian, and in their absence to an institution or person working for the welfare of the children on a condition that the child will be presented as and when needed.

Provided that if the Juvenile Court deems that it is not appropriate to keep the child in the reform home, taking into account the child's physical condition, age, circumstances at the time of commission of the offence as mentioned in sub-section (2), it shall not bar the entrusting of such a child to his or her father, mother, other family member or guardian, and in their absence, to an institution or person protecting the rights and interests of the child, by specifying the conditions pursuant to this sub-section.

(4) While entrusting a responsibility of a child pursuant to sub-section (3), that person and the child shall be informed about the specified conditions and the consequences that must be borne if they have not been followed.

(5) If the child who is entrusted to someone pursuant to sub-section (3) does not follow the conditions specified by the juvenile court, the trial of the case may be made by keeping him or her in the child reform home.

25. Rights of child victim: A child victim shall have the right to child friendly justice as follows in every stage of investigation, prosecution and judicial process:

- (a) To get information on the language he or she understands,
- (b) To participate or be involved,
- (c) To keep the details of personal identification confidential,
- (d) To get recovery of the reasonable compensation from the offender,

Provided that this clause shall not be considered as limiting the opportunity of the victim to receive compensation from the State.

- (e) To get free legal aid and socio-psychological counselling service as required and to appoint a separate legal counsel if he or she so wishes,
- (f) To get free service of the translator, sign language expert or interpreter if the victim does not understand the language used by the investigating authority or Juvenile Court,
- (g) To get, free of cost, the copy of the documents including the decisions and orders made by the investigating authority or Juvenile Court,
- (h) To get police protection for safety against the probable threat that may be caused from the offender or his or her party,
- (i) To have his or her case heard in camera,
- (j) To have the indirect presence of the defendant in the course of hearing of the case as required.

26. Rights available to child in the course of hearing: (1) A child accused of an offence shall have the following rights, in addition to the rights mentioned in the prevailing law and elsewhere in this Act, in the course of investigation and hearing of the case:

- (a) Right to obtain information on the charge made against him or her, its proceeding, order issued or decision made on it directly or through his or her family or guardian,
- (b) Right to receive free legal aid and other necessary support immediately in order to defend against the charge made against him or her,
- (c) Right to have the case tried and settled by the competent judicial authority,
- (d) Right to demand the presence of family or guardian required in all processes of juvenile justice delivery,
- (e) Right to receive prompt and fair justice from the Juvenile Court,
- (f) Right to have confidentiality in the process of juvenile justice delivery

- (g) Right to get information on the constitutional or legal rights,
- (h) Right to have investigation, prosecution and hearing in the child friendly environment,

Explanation: For the purposes of this clause, "child friendly environment" means the treatment done with the child that is commensurate to the age, maturity and psychology of the child, this term also includes the use of the language understood by the child, creation of the fearless atmosphere, presence of his or her mother, father or other family member or guardian, addressing the personal needs of the child and the availability of the facilitator as required.

- (i) Right to have an opportunity to participate in every stage of judicial proceedings and to put his or her own views independently,
- (j) Right to allow the participation of the parents, guardian of the child, during the hearing of the case, if he or she so wishes,
- (k) Right to stay separately from the offender, if the child so wishes where the father, mother, parents or guardian of the victim child is the perpetrator.

(2) The child accused of an offence shall be presumed to be innocent unless decided otherwise by the Juvenile Court, and such child shall not be compelled to give testimony against him or herself.

27. To divert: (1) Notwithstanding anything contained in the prevailing laws, the following authorities may, in the following circumstances, take decision to divert a child accused of an offence, if it appears reasonable to divert the child for his or her best interests:

- (a) The investigating authority, where the claimed amount is upto five thousand rupees or the offence is punishable by a fine of upto two thousand rupees or imprisonment for a term of upto two months,
- (b) The government attorney, where the claimed amount is upto ten thousand rupees or the offence is punishable by a fine of upto five thousand rupees or imprisonment for a term of upto three years,
- (c) The Juvenile Court, irrespective of the claimed amount or the amount of fine or term of imprisonment.

(2) Notwithstanding anything contained in clause (c) of sub-section (1), a child shall not be diverted in a case punishable by imprisonment for a term of three years or more than three years shall not be diverted.

(3) The child or guardian may, if not satisfied with the order of diversion, file a petition in the Juvenile Court in the case of clauses (a) and (b) of sub-section (1) and in the High Court in the case of clause (c).

28. Matters to be considered in making diversion: The following matters shall be considered while making diversion:

- (a) Confession of offence by the child,
- (b) Consent of the concerned child, his or her father, mother and other family member, or guardian where there are no parents,
- (c) Receipt of consent of the victim ensuring the rehabilitation of the victim party to the extent of possible,
- (d) Nature of the offence and circumstances of its commission, gravity of the event, age, maturity and intellectual level, family environment of the child and the damage caused to the victim and his or her rehabilitation are to be considered.

29. Procedures to be followed while making diversion: (1) One or more of the following appropriate procedures shall be followed while diverting a child, also having regard to his or her desire:

- (a) To have reconciliation or understanding between the child and the victim,
- (b) To make the child realize the mistake,
- (c) To provide necessary counselling to the child and his or her family,
- (d) To send the child to any community service,
- (e) To send the child to any institution for his care and protection,
- (f) To release the child on supervision and direction of the child welfare authority,
- (g) To entrust the child to his or her father, mother or other family member or guardian,
- (h) To make the child participate in any training or educational program.

(2) While diverting a child by adopting any procedure referred to in clauses (d), (e), (f), (g) and (h) of sub-section (1), the period shall also be fixed.

(3) While diverting a child by adopting the procedure referred to in clauses (d), (e), and (f) of sub-section (1), no diversion shall be made so that it exceeds the maximum term of punishment imposable for the commission of the offence.

(4) The investigating authority or government attorney shall, before diverting a child, obtain a report on study and analysis of physical and mental condition of the child by the child psychologist and child expert and economic, cultural condition and circumstances of the child by the social worker.

(5) The investigating authority, government attorney or Juvenile Court shall give the information about the diversion of the child pursuant to sub-section (1) to their respective higher office and Juvenile Court.

(6) If the child accused of an offence is diverted, such a dispute shall terminate, and its formal judicial proceeding shall be deemed to be concluded.

(7) The investigating authority, government attorney or Juvenile Court that has made diversion shall make arrangement to monitor, whether the diverted child has been continuously participating in the diversion procedure or not, through a probation officer.

(8) The following may be done to indemnify the damage caused to the victim while diverting a child:

- (a) To compensate the victim or to have recovery of the actual loss and damage,
- (b) To cause the property, profit or material acquired from the offence to be returned to the concerned owner,
- (9) Other provisions relating to the diversion shall be as prescribed.

30. Formation of the Juvenile Court: (1) The Government of Nepal may, on recommendation of the Judicial Council, form the required number of Juvenile Courts to originally proceed, try and settle the offence committed by the children.

(2) The notice of formation of the Juvenile Courts pursuant to sub-section (1) shall be published in the Nepal Gazette, and the territorial jurisdiction and venue of such Courts shall be as mentioned in the same notice.

(3) A juvenile bench shall be formed in each District Court for the proceeding, hearing and settlement of the offence to be dealt with the juvenile court until the Juvenile Court is formed under sub-section (1).

(4) The juvenile bench referred to in sub-section (1) shall consist of the following members:

- (a) District Judge,
- (b) Social service provider,
- (c) Child psychologist or child specialist.

(5) The qualification, appointment, remuneration and other conditions of service of the social service provider, child psychologist or child specialist referred to in clauses (b) and (c) of sub-section (4) shall be as prescribed.

(6) Notwithstanding anything contained in sub-section (1), if an adult person is involved, along with the child, in any offence, the matter shall be proceeded, tried and settled by the Juvenile Court in the case of the child, and the matter shall be proceeded, tried and settled pursuant to the prevailing laws in the case of the adult person by establishing a separate case file.

31. **Exercise of jurisdiction of the Juvenile Court:** The exercise of jurisdiction of the Juvenile Court shall be made as prescribed.
32. **Proceeding by the Juvenile Court:** Even if the child attains the age of eighteen years during the proceeding of the case, such case shall be proceeded, tried and settled by the Juvenile Court itself.
33. **Cases to be transferred to the Juvenile Court:** If any child has been accused of offence before the commencement of this Act and the case is being originally tried by the District Court or other body pursuant to the prevailing laws, the case shall be transferred to the concerned Juvenile Court after the commencement of this Act.
34. **Provision relating to trial:** (1) The Juvenile Court shall try the case in a child friendly environment by taking into consideration the age and maturity of the child.
- (2) The Juvenile Court shall make the child participate while trying the case and shall provide an opportunity to freely put his or her views.
35. **Provision of in camera bench:** (1) The trial and adjudication of the case against a child accused of an offence shall be carried out in camera bench except as otherwise ordered by the Juvenile Court.
- (2) During the trial and adjudication of the case in-camera pursuant to sub-section (1), only the concerned child, his or her family member or guardian, victim, government attorney, concerned legal practitioner and the person permitted by the Juvenile Court may enter into the in-camera bench.
- (3) The procedures of the in-camera bench shall be as prescribed.

36. Provisions relating to punishment: (1) If the child is less than ten years of age at the time of commission of the offence, no case and punishment of any kind shall be instituted against and imposed on him or her.

(2) If a child of ten years of age or above but below fourteen years of age commits an offence that is punishable by a fine, the child shall be released after counseling him or her and if such a child commits an offence that is punishable by imprisonment, the child shall be punished with imprisonment for upto six months or be sent to the child reform home for a period not exceeding one year without subjecting him or her to imprisonment.

(3) If a child of fourteen years of age or above but below sixteen years of age commits an offence, the child shall be punished with half the punishment that is imposable on the person having attained majority pursuant to the prevailing law.

(4) If a child of sixteen years of age or above but below eighteen years of age commits an offence, the child shall be punished with two-thirds of the punishment that is imposable on the person of legal age pursuant to the prevailing law.

(5) The Juvenile Court shall, having regard, inter alia, to the age, sex, maturity of the child who is held to be subject to punishment pursuant to subsection (2), (3) or (4), nature of the offence and also the circumstances of the commission of the offence, postpone his or her punishment or make any of following appropriate decisions as punishment, with or without specifying the terms and conditions:

- (a) To counsel or advise the child about good human behaviours by any family member or guardian,
- (b) To give orientation to the child through any institution or person that provides the service,
- (c) To provide single, group or family psycho-social counselling service,
- (d) To keep the child under the observation of any family member, guardian, school, person or institution that provides service for a fixed period subject to the observance of the specified terms and conditions,
- (e) To send the child for community service that is suitable to his or her age, by specifying the nature and period of service,

(f) To make the child stay in the child reform home for a period not exceeding that of the punishment imposed on him or her.

(6) If any person has caused a child to commit an offence, by teaching, giving pressure, ordering, luring or in any other manner, that person who has taught so, given pressure, ordered, lured or made to commit it shall be punished pursuant to law as if that person committed the offence on his or her own.

(7) Notwithstanding anything contained elsewhere in this Section, while punishing a child who has not completed sixteen years of age, no punishment of imprisonment shall be imposed on such a child except in cases where he or she has committed a heinous offence, grave offence or repeated the offence.

37. **Period for disposing of the case:** Notwithstanding anything contained in the prevailing laws, the Juvenile Court shall generally dispose of a case within one hundred twenty days from the date of filing of the case and the proceeding and adjudication of such a case shall be made on the basis of continuous hearing.

38. **Reform period may be reduced or remitted:** (1) If there is satisfactory improvement in the behaviour of a child kept in the child reform home or kept under the protection or supervision of any institution or person pursuant to the decision of the Juvenile Court, the child welfare authority may recommend the Juvenile Court to reduce or remit the period of reform of such a child.

(2) The Juvenile Court may reduce or remit the remaining period of reform of the child if it thinks it reasonable to reduce or remit the period of reform upon examining the recommendation received pursuant to sub-section (1).

39. **Restorative justice:** (1) While dispensing the juvenile justice, it shall be made in compliance with the principle of restorative justice.

(2) Other provisions relating to restorative justice shall be as prescribed.

40. **Not to be considered disqualified:** Notwithstanding anything contained in the prevailing laws, if any person becomes disqualified to receive any post or facility pursuant to law by the reason of the commission by him or her of any offence, he or she shall not be considered disqualified to receive that post or facility on the ground of the offence that he or she committed when he or she was a child.

41. **Punishment not to be counted:** (1) Notwithstanding anything contained in the prevailing laws, the offence committed by a person during childhood shall not be counted while counting repeated offence pursuant to this Act or the prevailing laws, for the purposes of punishment.

(2) Notwithstanding anything contained in the prevailing laws, although any child commits an offence time and again, he or she shall not be subjected to additional punishment on the basis of repetition of the commission of the offence.

42. Not to be handcuffed, shackled or kept in solitary confinement:

Notwithstanding anything contained in the prevailing laws, no child in conflict with law shall be handcuffed, shackled or kept in solitary confinement or detention, or prison.

43. Provision relating to child reform home: (1) The Government of Nepal shall establish the child reform home as required for the purpose of keeping the children in conflict with law until their reform and rehabilitation.

(2) Any institution may, with the approval of the Government of Nepal, establish a child reform home, for the purpose of sub-section (1).

(3) The Juvenile Court may monitor and inspect the child reform homes established within its territorial jurisdiction, issue necessary directives to such child reform homes and order such child reform homes to submit reports on the condition of reform of the children kept in such homes.

(4) If a child kept in a child reform home attains the age of eighteen years before completion of the period for which he or she has to remain in the child reform home, he or she shall be kept separately from the other children in the child reform home for the remaining period by considering, inter alia, the improvement seen in his or her behaviour, continuity of skills and education gained.

(5) The establishment, operation, monitoring and other arrangement of the child reform home shall be as prescribed.

44. To shift children suffering from chronic or serious disease to another place:

(1) If any child kept in a child reform home needs continuous treatment because he or she has suffered from any chronic or serious disease or if the concerned doctor has recommended to shift any child somewhere else due to his or her physical or mental disability or his or her addiction to narcotics, the Juvenile Court may issue an order to shift such a child to another place for a certain period.

(2) An institution or person who keeps the child as per the order issued pursuant to sub-section (1) shall submit a report related to the health of the child to the concerned Juvenile Court in every six months.

(3) If the child is found to be healthy or free from addiction on the basis of the report referred to in sub-section (2), the Juvenile Court may issue an order to return that child to his or her previous condition.

45. Psycho-sociological and psychological study report: (1) An individual psycho-sociological and psychological study report shall be prepared for the purpose of investigation, prosecution, proceeding, hearing or adjudication of the charge made against a child in conflict with law.

(2) The provisions regarding the preparation of the study report referred to in sub-section (1) shall be as prescribed.

46. Central Juvenile Justice Committee: (1) There shall be a Central Juvenile Justice Committee, as prescribed, at the central level for carrying out the functions, including making coordination between the various institutions working in the field related to juvenile justice.

(2) The meetings, functions, duties and powers of the Central Juvenile Justice Committee shall be as prescribed.

47. District Juvenile Justice Committee: (1) There shall be a District Juvenile Justice Committee in every district, and the formation, functions, duties and powers and rules of procedures of meetings of such Juvenile Justice Committee shall be as prescribed.

CHAPTER 5

Special Protection and Rehabilitation of Children

48. Children in need of special protection: (1) The following children shall be deemed to be children in need of special protection:

- (a) Orphan children,
- (b) Children that have been left or found abandoned in hospitals or other public places or separated from parents or left unclaimed, with the identity of their parents unknown,
- (c) Children that are deprived of appropriate care due to serious physical or mental disability or incapacity of their parents,
- (d) Out of the children in conflict with law, those who have been referred for alternative care under the diversion process,
- (e) Children who are staying in prison being dependent on their father or mother who is detained or imprisoned,

- (f) Infants born due to rape or incestuous relationships that are punishable by law and concerning whom application has been made to the child welfare authority, stating inability to maintain them,
- (g) Children who have been separated from their families for their best interests due to abuse, violence or neglect by their respective father, mother or guardian,
- (h) Children who are earning their living by engaging in labour that is forced or bonded or hazardous or worst in form or that contravenes a prevailing law, who are addicted to smoking, drinking or other narcotic drugs, or are infected with HIV,
- (i) Children who are experiencing difficulty leading normal life or whose lives are at risk, having been suffering from serious physical or mental health problems or serious disability, due to the inability of their parents or families to afford treatment,
- (j) Children who are the victims of offences against children or are at such risks,
- (k) Children who have lost both or either of their parents, or whose parents have disappeared, or have themselves got injured physically or mentally or disability due to a disaster or armed conflict,
- (l) Children belonging to deprived Dalit communities,
- (m) Such other children as may be specified as children in need of special protection by the Ministry by publishing a notice in the Nepal Gazette.

(2) Other services and support, including rescue, temporary protection, health treatment, psychosocial support, family reunion, rehabilitation, alternative care, family support, social security and socialization, as required, to children referred to in subsection (1) shall be as prescribed.

49. Provision of alternative care: (1) The children referred to in clauses (a), (b), (c), (d), (e), (f) and (g) shall be considered as children that require alternative care.

(2) The child welfare authority shall make arrangements for alternative care for the children referred to in sub-section (1) on the basis of the following order of priority:

- (a) Relative from the side of the father or mother of the child,
- (b) Family or person willing to provide care to the child,

- (c) Organization that provides foster (**family-modelled**) care,
- (e) Children's home.
- (3) Other provisions relating to alternative care shall be as prescribed.

50. Protection of children: (1) A person who has information about a child in need of special protection at any place shall give information thereof to the child welfare authority.

(2) If information is received pursuant to sub-section (1), the child welfare authority shall, if he or she finds it necessary to urgently rescue the child, rescue the child and keep him or her in a temporary protection service referred to in Section 69.

(3) The child welfare authority may make arrangements for providing necessary services, upon conducting inquiry on the basis of the information received pursuant to sub-section (1).

(4) The child welfare authority may entrust a social service provider in order to provide necessary services pursuant to sub-section (3), as prescribed.

(5) While conducting inquiry pursuant to sub-section (3), other services needed by the children in need of special protection shall be ensured. If it is deemed that special protection is not necessary and the child's father, mother, other family member or guardian has been traced, the child welfare authority may hand over the custody of such children to them.

(6) If the child welfare authority thinks that any support is needed for handing over the custody of the child to her or his father, mother, other family member or guardian pursuant to sub-section (5), he or she shall make arrangements for necessary services such as sponsorship or family support, by making coordination with the relevant organizations.

Clarification: For the purposes of this Section:

- (a) "Sponsorship" means the act of making available financial support on the long-term or short-term basis for necessary maintenance and education for children by any person, organization or body.
- (b) "Familial support" means the support provided for creating an environment that is conducive to safeguarding of children within the family by identifying and addressing the economic and social factors that lead the child's family to disintegration, while maintaining unity and harmony in the family.

(7) If, in making examination and inquiry pursuant to sub-section (3), it appears that alternative care is necessary, the child welfare authority shall make arrangements for such care.

(8) In a case involving a child as a victim, the child welfare authority shall arrange for separating a child victim from her or his parents or family and keep him or her in a temporary protection service for a certain period of time, if the child so desires, or the parent or guardian is the perpetrator or because of their complicity with the perpetrator there is a possibility of greater risk to the child, or there is likelihood of obstruction in the examination, inquiry, proceedings and fact-finding of the incident.

(9) If, in spite of making examination and inquiry pursuant to sub-section (3), the paternity and maternity of the child cannot be determined, the child welfare authority shall recommend for her or his birth registration and government identity card setting out the identity.

51. **To appoint or designate guardian:** In providing the alternative care service pursuant to Section 49, arrangement shall be made for appointing or designating a guardian pursuant to the prevailing law.
52. **Establishment and operation of children's home:** (1) The Government of Nepal, Provincial Government and the Local Level shall establish children's homes, as required, for the purpose of protection of the children requiring special protection.
- (2) The provisions relating to the establishment of children's home, qualifications of operators, operational licence, renewal, classification, management, operation standards and monitoring shall be as prescribed.
53. **Duration of stay at children's home:** The children requiring special protection shall be kept in children's homes until they have been properly rehabilitated or until they have attained the age of eighteen years.
54. **Family reunion to be made:** (1) Family reunion shall be made if the parents or guardians of the children staying in children's homes are traced and it is in the best interests of the children to do so.
- (2) After the commencement of this Act, no child shall be kept in a children's home except as in accordance with Sections 49 and 69.
55. **Liability relating to rehabilitation and social reintegration:** It shall be the liability of the concerned children's home or child correction home to assist the

child welfare authority in the rehabilitation and social reintegration of the children staying at that children's home or child correction home.

- 56. Chief of the organization to be responsible:** (1) If an organization is entrusted with the guardianship of a child pursuant to this Chapter, the chief of the organization shall be deemed to have the ultimate responsibility for the care and maintenance of the child.

Clarification: For the purposes of this Section, "chief of the organization" means the chief executive officer or chairperson, managing director of such an organization acting in that capacity or such other officer as designated pursuant to the rules of that organization.

(2) If any organization that has been entrusted with the responsibility of guardianship acts in contravention of the prescribed conditions and procedures, the child welfare authority may prevent the organization from engaging in child protection activities, also setting out the conditions breached by it.

(3) If it is established from the monitoring that an organization that has been prevented pursuant to sub-section (2) has made desired improvements, the child welfare authority may remove the prevention made on the organization from engaging in child protection activities.

- 57. Standards relating to child protection:** (1) A school, every public body, private sector as well as social organization directly working with children shall formulate and enforce child protection standards at the institutional level, in order to prevent violence against children or child sexual abuse, ensure protection of children and immediately take action on complaints.

(2) It shall be the liability of the school, chief of every public body, private sector and social organization to enforce the child protection standards formulated pursuant to sub-section (1).

- 58. Monitoring and reporting:** (1) The person, guardian or organization that has assumed the responsibility of care and maintenance of children pursuant to this Act shall submit details of the children to the Local Child Rights Committee through the Child Welfare Authority concerned, within three weeks of the expiration of each fiscal year.

(2) Based on the details received pursuant to sub-section (1), the Local Child Rights Committee shall prepare and submit a report to the Provincial level

Child Rights Committee and Local Level Child Rights Committee on an annual basis.

(3) The Provincial Child Rights Committee and Local Child Rights Committee shall periodically inspect and monitor the overall status of children and the quality and effectiveness of the available services within the Province and the Local Level, respectively.

Chapter- 6

Institutional Provisions Relating to Rights and Welfare of the Child

59. National Child Rights Council: (1) There shall be a National Child Rights Council, as prescribed, under the chairpersonship of the Government of Nepal, Minister for Women, Children and Senior Citizens, in order to protect and promote the rights and interests of the child.

(2) The provisions relating to the meeting, functions, duties and powers of the Council shall be as prescribed.

60. Provincial and Local Level Child Rights Committee: (1) There shall be a Provincial Child Rights Committee in each Province, to be chaired by the Minister of the Province overseeing the matters relating to children.

(2) There shall be a Local Child Rights Committee in each Local Level, to be chaired by a Member of the Rural Municipality or Municipality designated by the Vice-Chairperson or Deputy-Mayor of such Rural Municipal Executive or Municipal Executive respectively.

(3) The number of members of the Provincial Child Rights Committee and Local Child Rights Committee referred to in sub-sections (1) and (2), and the functions, duties and rights and procedures of meetings of the Committees shall be as determined by the Province and Local Level.

61. Child welfare authority: (1) There shall be a child welfare authority at the Local Level in order to, inter alia, respect, protect and promote the rights of the child to carry out child protection acts.

(2) Other provisions including the appointment, functions, duties and powers and the terms of service of the child welfare authority shall be as prescribed.

62. Social service provider and child psychologist: (1) Any persons willing to work as social service providers and child psychologists shall get their names enlisted themselves with the Local Child Rights Committee, as prescribed.

(2) Social service providers and child psychologists may be appointed in required number, from among the social service providers and child psychologists enlisted in the list referred to in sub-section (1), for carrying out child protection related acts and delivering services at the Local Level.

(3) The social service providers and child psychologists appointed pursuant to sub-section (2) shall act under the direct guidance and supervision of the child welfare authority.

(4) The social service providers and child psychologists required for the juvenile court shall be appointed from among the social service providers and child psychologists enlisted pursuant to sub-section (1).

(5) The process of appointment, qualifications, functions, duties, powers, terms of service and other provisions related to social service providers and child psychologists shall be as prescribed.

63. Child Fund: (1) There shall be a child fund, also for performing acts such as immediate rescue, relief and rehabilitation and providing compensation to children.

(2) The fund referred to in sub-section (1) shall consist of the following amounts:

- (a) Amounts received from the Government of Nepal, Provincial Government and Local Level,
- (b) Amounts received from a foreign government, international agency, organization or individual,
- (c) Amounts received from a native person, agency or organization,
- (d) Amounts received in lieu of fines imposed by the juvenile court,
- (e) Amounts received from any other source.

(3) The permission of the Government of Nepal, Ministry of Finance shall be obtained prior to receiving amounts pursuant to clause (b) of sub-section (2).

(4) The amounts of the fund referred to in sub-section (1) may also be made available to the children's fund of the Province and Local Level in accordance with law.

(5) The provisions relating to the management, operation and use of the fund referred to in sub-section (1) shall be as prescribed.

Chapter 7

Protection and Enforcement of the Rights of, and Liabilities Towards, the Child

64. Local Level to enforce the rights of the child: (1) If a person violates the rights of a child referred to in Chapter 2 or does not fulfil his or her liabilities towards the child referred to in Chapter 3, the concerned child or the stakeholder may file an application with the judicial committee of the Local Level where the child is residing, for the enforcement of such rights or liabilities.

(2) If an application is received pursuant to sub-section (1), the judicial committee may require the person concerned to appear within twenty-four hours, excluding the time required for journey, and make necessary inquiry.

(3) If, in making inquiry pursuant to sub-section (2), it appears that the person concerned has violated the rights of the child or has not fulfilled her or his liabilities towards the child, the judicial committee shall, within thirty days of the receipt of the application, order the person, organization or agency concerned at the Local Level to enforce the rights of the child or fulfil the liabilities towards the child.

(4) If, in making inquiry pursuant to sub-section (2), it appears that the matter of enforcing the rights of the child or fulfilment of the liabilities towards the child does not fall under its jurisdiction, the judicial committee shall write to the judicial committee of the other Local Level concerned to enforce the rights of the child or fulfil the liabilities towards the child.

(5) If a correspondence is received pursuant to sub-section (4), the judicial committee of the Local Level concerned shall make arrangements to enforce the rights of the child and fulfilment of the liabilities towards the child pursuant to sub-section (3).

(6) While enforcing the rights of the child or fulfilment of the liabilities towards the child pursuant to this Section, the judicial committee may give necessary suggestions to the child, guardian or family member or warning to the guardian or family member.

65. To enforce the rights of the child: (1) Notwithstanding anything contained in Section 64, if a person violates the rights of the child referred to in Chapter-2 or

does not fulfil the liabilities towards the child referred to in Chapter-3, the concerned child or stakeholder may file an application directly to the concerned High Court to have the said rights enforced or the said liabilities fulfilled.

(2) If an application is received pursuant to sub-section (1), the High Court shall make necessary inquiry into the application and make an appropriate order to the person, organization or agency concerned to enforce the rights of the child or fulfil the duties towards the child.

(3) If, in making inquiry into the application received pursuant to sub-section (1), it appears that the guardian or family member has violated the rights of the child or has not fulfilled his or her liabilities towards the child, the High Court shall inform such a guardian or family member about the rights of the child and have him or her make commitment to not to repeat the violation of the rights of the child or to fulfil his or her liabilities towards the child.

(4) While making an order pursuant to sub-section (2), the High Court may warn the person or chief of the organization or agency that has violated the rights of the child or has not fulfilled their duties towards the child or to impose punishment on them and order the recovery of compensation from them pursuant to this Act.

Chapter 8

Offences against the Child

66. Offences against the child: (1) If any person does any act of violence referred to in sub-section (2) or sexual abuse referred to in sub-section (3), he or she shall be deemed to have committed the offence against the child under this Act.

(2) If any person does any of the following acts against a child, he or she shall be deemed to have committed the act of violence against the child:

- (a) To involve the child in addictions such as smoking, drinking or gambling,
- (b) To allow him or her to enter to, or use him or her in, recreational facilities opened for the adults such as dance bars and casinos,
- (c) To show him or her motion pictures or other audio-visual materials classified as for the adults only,

- (d) To inflict physical or mental punishment on, or behave, in an undignified manner, him or her whether at home, school or any other place,
- (e) To inflict physical injuries or effect to, terrorize or intimidate, humiliate, neglect, discriminate, exclude or hate, isolate, or cause mental torture to, him or her,
- (f) To harass, cause pain to, him or her by using electronic or other means,
- (g) To organize him or her for the political purpose or use him or her in a strike, shutdown, transportation strike, **sit-ins** or rally,
- (h) To keep him or her in illegal confinement, detention, prison or house arrest, handcuff him or her,
- (i) To treat him or her in a cruel or inhumane manner or torture him or her,
- (j) To cause him or her to beg or disguise as an ascetic, monk or mendicant, except for the tradition, custom or any religious or cultural activity,
- (k) To forcibly declare, or register him or her, as an orphan,
- (l) To offer or dedicate him or her in the pretext of a pledge, religious or any other purpose, or subject him or her to violence, discrimination, neglect or exclusion or mockery in the pretext of the custom, culture or ritual,
- (m) To engage him or her in a magic or circus show,
- (n) To teach or train him or her to commit any offense or involve him or her in such offense,
- (o) To fix his or her marriage, or marry, or cause to marry, him or her,
- (p) To remove any organ of him or her in contravention of the prevailing law,
- (q) To use him or her for medical or any other experiment,
- (r) To keep him or her in a children's home, except in accordance with law.

(3) If any person does any of the following acts against a child, he or she shall be deemed to have committed child sexual abuse:

- (a) To show, or cause to show, him or her an obscene picture, audio-visual recording or other material of similar kind or display, or cause to display, such expression or gesture that reflects obscene or sexual conduct or behaviour to him or her or display, or cause to display, child pornography,
- (b) To distribute, store or use any actual or fictitious obscene picture or audio-visual material of him or her,
- (c) To propose, lure, coerce or threaten him or her for sexual activity,
- (d) To use him or her in the production of an obscene act and material,
- (e) To touch, kiss, hold sensitive parts of body of him or her, embrace him or her with sexual intent or cause him or her to touch or hold sensitive parts of own body or body of another person or render him or her unconscious with sexual intent or display, or cause him or her to display sexual organs,
- (f) To use, or cause to use, him or her for stimulating sexual lust or sexual excitement,
- (g) To use, or cause to use, him or her for the purpose of sexual gratification,
- (h) To engage, or cause to engage, in child sexual exploitation,
- (i) To use, or cause to use, him or her with the intent of providing sexual services,
- (j) To use, or cause to use, him or her with the intent of engaging in sexual abuse,
- (k) To use him or her in prostitution or other sexual work.

(4) Notwithstanding anything contained in sub-section (3), anything that is expressed by means of writing, speaking, gesturing or displaying any word, picture, audio, visual means and object or material on a sex related matter without displaying obscenity with the aim of imparting information and education or an act done in good faith in the course of making treatment of the child or saving the child from an accident or risk shall not be deemed to constitute an act of sexual abuse.

67. Not to be deemed eligible: (1) If it is held that a person who is serving in any public or private organization commits any offence against the child, the person shall be dismissed in accordance with the prevailing law, and, based on the gravity

and nature of the offence, such a person shall not be deemed eligible for up to ten years to be involved in the future in any act involving direct contact with the child or to be appointed, nominated or elected to such a private institution or organization.

(2) A person who is convicted of child sexual abuse pursuant to this Act or the prevailing law shall be deemed to have committed a criminal offence involving moral turpitude.

68. To give information: (1) If the father, mother, guardian, one who directly provides services to the child such the caregiver, teacher, health-worker or any other person comes to know that any person has committed or is committing or going to commit act of violence or child sexual abuse against the child he or she shall give information thereof to the nearby police office immediately.

(2) The police office concerned shall immediately give the information referred to in sub-section (1) to the child welfare authority and seek necessary support.

(3) While giving information with the intent of protecting the child, no legal action shall be taken against the informant merely on the basis that he or she has given such information.

(4) The identity of the informant who gives information pursuant to sub-section (1) shall be kept confidential if he or she so desires.

69. Temporary protection service: The Government of Nepal shall make arrangements for temporary protection service for safe accommodation of the children who appear to be in need of immediate rescue and protection.

70. Rescue, protection and health check-up to be made: (1) If the police employee receives any information, complaint or report about violence against the child or child sexual abuse, he or she shall write, or cause to write, necessary details and register it, and if the child needs to be rescued immediately, rescue him or her and refer the victim child to a temporary protection service.

(2) If it appears that the child victim is in physical or mental pain, the police employee shall send him or her to a nearby hospital or health centre and have his or her health checked up and treated.

(3) While taking the statement of the child victim, the police employee shall do so in the presence of his or her parents, other family member or guardian if it

is possible that they can so appear, and if they cannot so appear, in the presence of a female representative of a social organization or a social service provider.

Provided that if the parents, guardian or other family members are the perpetrator of violence against children or child sexual abuse, their presence shall not be allowed during the taking of such statement.

71. Rehabilitation centre: (1) The Government of Nepal shall establish rehabilitation centres, as required, for physical or mental treatment or social rehabilitation of the child victims of offences against the child.

(2) An organization may, for the purposes of sub-section (1), establish a rehabilitation centre by obtaining permission from the Government of Nepal as prescribed.

(3) The services and facilities to be made available at the rehabilitation centres and other provisions including those relating to the management, operation, monitoring of such centres shall be as prescribed.

Chapter-9

Punishment, Compensation and Case Trying Authority

72. **Punishment:** (1) If any person, organization or body violates any of the child rights set forth in Chapter-2 or does not fulfil any of the liabilities towards the child set forth in Chapter-3, such a person or the chief of such organization or body shall be liable to a fine of up to fifty thousand rupees.

(2) If the guardian or any family member does not fulfil his or her liabilities or if the mother, father or guardian alters the name and surname of the child with the intention of acquiring undue benefits or misappropriates the child's property, such a mother, father or family member or guardian shall be liable to a fine of up to one hundred thousand rupees.

(3) A person who commits the offence against the child shall be liable to the following punishment, according to the degree of the offence:

- (a) In the case of the commission of any act referred to in clause (a), (b), (c), (d), (e), (f) or (r) of sub-section (2) of Section 66 or sub-section (1) or (2) of Section 78, a fine of up to fifty thousand rupees and imprisonment for up to one year,
- (b) In the case of the commission of any act referred to in clause (g), (j), (k), (l), (m), (o) or (q) of sub-section (2) of, or clause (a), (b), (c), (e), (f) or (i) of sub-section (3) of, Section 66, a fine of up to seventy-five thousand rupees and imprisonment for up to three years,
- (c) In the case of the commission of any act referred to in clause (d) of sub-section (3) of Section 66, a fine of up to eighty thousand rupees and imprisonment for up to four years,
- (d) In the case of the commission of any act referred to in clause (h) or (i) of sub-section (2) of Section 66, a fine of up to one hundred thousand rupees and imprisonment for up to five years,
- (e) In the case of the commission of any act referred to in clause (n) of sub-section (2) of Section 66, half the punishment that is imposable on the liable to the offender of the offence that is taught or trained to be committed,

- (f) In the case of the commission of any act referred to in clause (p) of sub-section (2) of Section 66, a fine of up to five hundred thousand rupees and imprisonment for up to ten years,
- (g) In case of an act as per clause (g) or (h) of Sub-section (3) of Section 66, the punishment that is imposable on the offender of rape under the prevailing law,
- (h) In the case of the commission of any act referred to in clause (i) or (k) of sub-section (3) of Section 66, a fine of up to one hundred fifty thousand rupees and imprisonment for up to fifteen years.

(4) A person who incites another person, attempts or abets to commit any of the acts set forth in sub-sections (1), (2) and (3) shall be liable to the punishment of fine and imprisonment imposable on the principal offender.

(5) A person who does any act, in contravention of this Act or the rules framed under this Act, other than that contained in this Section, shall be liable to a fine of up to fifty thousand rupees or imprisonment for up to one year, or both punishments, according to the degree of the offence.

(6) If a person who has been punished once under this Act repeats such act, he or she shall be liable to an additional punishment of twenty-five per cent of the punishment imposable pursuant to this Section.

(7) Notwithstanding anything contained elsewhere in this Section, if an act referred to in sub-section (3) is also deemed to be an offence under any other prevailing law, no provision of this Section shall prevent the instituting of a separate case against, and imposing of punishment on, the offender for such offence under that law, and, if the punishment imposable on him or her under the prevailing law for the commission of any act in contravention of this Act exceeds the punishment set forth in this Section, he or she liable to the punishment accordingly.

(8) If any one establishes or operates a children's home, child correction home, observation chamber, rehabilitation centre or temporary protection service centre without obtaining permission under this Act, the Ministry may shut down such children's home, child correction home, observation chamber, rehabilitation centre or temporary protection service centre and impose a fine of up to one hundred thousand rupees on the person and organization involved, and may proceed with other additional actions in accordance with the prevailing law.

- 73. Compensation:** (1) The juvenile court shall cause the recovery of such a reasonable compensation in lump sum or instalments from the offender to the victim child that is not less than the amount of fine imposed on the offender committing the offence against the child under this Act and the prevailing law, having regard to, inter alia, the loss caused to the education, and physical and mental health, development and family of the child victim.
- (2) In cases where the amount of fine cannot be recovered pursuant to sub-section (1) from the offender or if the Juvenile Court is of the opinion that such amount of fine, even if recovered, is negligible or inadequate in comparison to the offence against the child, the Juvenile Court shall cause the payment of a reasonable amount of compensation to the child victim from the Child Fund referred to in Section 63.
- (3) If the child victim dies before receiving the amount of compensation referred to in sub-section (1), such amount shall be provided to his or her father, mother or, if they are not available, to other family member or guardian.
- (4) If it is necessary to immediately carry out medical treatment of or provide compensation or any kind of relief to the child victim of an offence against the child under the prevailing law or offence against the child, interim compensation shall be provided in accordance with the prevailing law.
- 74. Statute of limitation:** (1) In relation to any offence under Section 66, a case has to be filed within the statute of limitation, if any, specified in the prevailing law, and, if not so specified, within one year of the date of the commission of that offence.
- (2) In cases where no case has been filed pursuant to sub-section (1), notwithstanding anything contained in the prevailing law, the statute of limitation for filing the case with respect to the offence against the child shall continue to exist until one year after such a child has attained the age of eighteen years.
- 75. Power to try cases:** The Juvenile Court shall have the power to try and dispose of cases punishable under the sub-sections other than sub-section (8) of Section 72.
- 76. Government of Nepal to be plaintiff:** In the cases under Section 66, the Government of Nepal shall be the plaintiff, and such cases shall be deemed to be included in Schedule 1 of the National Criminal Procedure (Code) Act 2017.

Miscellaneous

77. **Duties of the child:** (1) It shall be the duty of every child to respect his or her father, mother, guardian, other family members, teachers and social service providers and obey the advice, suggestion, guidance and instruction given by them, taking into consideration of his or her best interests.
78. **To maintain confidentiality:** (1) No person shall publish or broadcast through print or electronic media any details that discloses the identity of a child concerned with a case that is *sub judice* in the Juvenile Court.
- (2) No person shall broadcast information or news through any communication media by disclosing the identity of a child victim of an offence against children.
- (3) The police, government attorney or Juvenile Court shall make arrangements for maintaining records of child victims of the offences against children, without disclosing their names and identity.
- (4) The investigation authority, government attorney and Juvenile Court shall keep the identity of children in conflict with law confidential. Copies of documents related to such charge shall not be given to any person other than the concerned police and government attorney's office, Juvenile Court, the child concerned, family members, guardian, legal practitioner of the concerned child and Central and District Child Justice Committee.
- (5) Notwithstanding anything contained elsewhere in this Section, the details related to the child may be published or broadcast as follows, in the following circumstance:
- (a) If publishing or broadcasting the details relating to the children in conflict with law does not adversely affect the interests of such children, such details, with the permission of the Juvenile Court,
- (b) Data on the children in conflict with law may be published with the permission of the concerned agency, for any study or research, with the disclosure of their age or gender, without disclosing their names, surnames, personal details and addresses.
79. **Provisions relating to probation authority:** (1) The Government of Nepal shall appoint the probation authority in each district to carry out, inter alia, investigation into the concerned case, inspection of the observation chamber, diversion, and

preparation of reports on the status of implementation of the orders by the Juvenile Court, in close contact with the children accused of offense.

(2) Until the probation authority is appointed, the Government of Nepal may designate any authority of the Government of Nepal to act as the probation authority.

(3) The functions, duties, powers and terms and conditions of service of, and other provisions relating to, the probation authority shall be as prescribed.

80. Case not to be tried and disposed of without legal practitioner: (1) Notwithstanding anything contained in the prevailing law, the Juvenile Court shall not try and dispose of a case involving a child charged with committing an offense until a legal practitioner is appointed for defending the child.

(2) In cases where no legal practitioner has been appointed on behalf of a child accused of an offense, the concerned Juvenile Court shall make arrangements to make service available from a paid legal practitioner or any other interested legal practitioner.

81. Appeal: (1) In the case of not being satisfied with the decision made by the Juvenile Court or by the Ministry pursuant to sub-section (8) of Section 72, an appeal may be filed in the concerned High Court within thirty-five days of such a decision.

(2) Notwithstanding anything contained in sub-section (1) and in the prevailing law, no appeal shall be admissible against a decision of the Juvenile Court that acquits a child, other than in the circumstances affecting justice because of erroneous interpretation of law, wrong use of precedent or non-admission of an admissible evidence or admission of a non-admissible evidence.

82. Priority to be given in proceedings of case: Priority shall be given to the proceedings, trial and disposal of cases involving children either as plaintiff or defendant in the courts other than the Juvenile Court.

83. Basis for determining children's age: While determining the age of a child, the following matters shall be taken as the basis:

- (a) The date of birth recorded in the child's birth registration issued by the hospital,
- (b) If the date of birth referred to in clause (a) is not available, the date of birth recorded in the child's birth registration certificate issued by the Local Registrar's Office,

- (c) If the certificate referred to in clause (b) is not available, the date of birth recorded in the child's school character certificate or the date of birth recorded at the time of child's admission to the school,
- (d) If the certificate referred to in clause (b) or the date of birth is not available, the date recorded in the certificate of age issued by the hospital,
- (e) If the certificate referred to in clause (d) is not available, the age recorded in the *Janmakundali* (birth chart), *Cheena* (horoscope), notes, or the age disclosed by the father, mother, guardian or any other family member of the child or similar other relevant evidence.

84. Act to prevail: The matters contained in this Act shall be governed by this Act and the other matters shall be governed by the prevailing law.

85. Power to frame rules: The Government of Nepal may frame necessary rules in order to implement the objectives of this Act.

Provided that the Supreme Court may frame the rules relating to procedures on the dispensation of juvenile justice.

86. Power to frame guidelines and operational procedures: (1) The Ministry may frame guidelines and operational procedures, as necessary, subject to this Act and the Rules framed under this Act.

(2) The Supreme Court may frame juvenile justice procedures or guidelines subject to this Act or the Rules framed under this Act.

87. Amendment, repeal and saving: (1) The following clause (a) shall be substituted for clause (a) of sub-section (1) of Section 4 of the Births, Deaths and Other Personal Events (Registration) Act, 2033 (1976):

“(a) Information on birth and death by the father, mother, any family member or guardian,”

(2) The Act Relating to Children, 2048 (1992) is hereby repealed.

(3) Any acts done and actions taken pursuant to the Act Relating to Children, 2048 (1992) shall be deemed to have been done and taken under this Act.