

## **The Roles Opportunities and Challenges of the Juvenile Justice System in Nepal: Need of a Diversion from the Criminal Justice System**

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### **Some Theoretical Premises:**

The concept of diversion in the context of juvenile justice system emphasizes on children's accountability from a developmental perspective. The idea of diversion in this context, in a very simple note, is a departure from the traditional concept of the criminal judicial administration that renders children criminally accountable for their acts which have allegedly harmed others. The concept of juvenile justice system which necessarily attaches the juvenile acts with criminal justice procedures denies treating children differently than adult offenders.

The underpinning objective of this traditional concept is to punish the child offenders for his/her acts which harm others. However, no theory of justice has been able to rationally justify that a child can be subjected to the criminal liability of his/her act that comes to conflict with a law. The objective and notion of the criminal justice system in the context of child justice is thus obviously challengeable.

The old fashioned system of justice has failed to create a positive impact in prevention of the child delinquency. It has failed to take preventive as well as restorative approach into account while dealing with the child who has committed acts against the law. Juvenile courts in the western countries have widely experienced the failure of the juvenile court. In many countries juvenile courts are being challenged by an increase in the number of child coming into conflicts with laws before them. As Child Delinquency Bulletin Series, May 2003, cites the US juvenile courts, alone in 1997, handled 1, 80,000 juvenile offenders younger than 13 years old. These child delinquents accounted for 1 in 3 juvenile arrests in arson, 1 in 5 juvenile arrests for sex offences and 1 in 12 juvenile arrests for violent crimes.<sup>1</sup>

Studies conducted by Office of the Juvenile Justice in USA demonstrate that youths referred to juvenile courts before the age of 13 are far more likely to become chronic offenders than youths whose initial contact occurs at a later age. This finding gives a reason for concern about growing number of child delinquents in the context of countries like USA.<sup>2</sup> A number of psychological studies have pointed out those teenagers often tend to be idealistic in thinking about what "should be", intolerant of anything that seems unfair from their perspective, and vulnerable to a moral that values loyalty above all.<sup>3</sup> The tendency of inquisition and deviation from what is entrenched as a value is always great among the juveniles. Moreover, they are less aware of the importance of system of

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<sup>1</sup> . Office of Juvenile Justice and Delinquency Prevention. U.S. Department of Justice. USA. .

<sup>2</sup> . Ibid.

<sup>3</sup> . See, Best Practices in Juvenile Accountability: Overview. JAIBG Bulletin, 2003.

><http://www.ncjrs.org/html/ojjdp/184754/intor.html><

order and its mechanism as well as procedures. They therefore less care and respect the process of formal justice system. The formal judicial treatment is potentially destructive of child psychology. It is counterproductive to the system as well. The formal system values its operational procedures higher to the interest and need of the child, which is a potential to instigate a "revolt" not only against the judicial system, but also against the so-called values or morals of the society. The use of formal judicial system to treat the juvenile offenders may, therefore, be in itself a cause for generating more juvenile offenders. This has been what is widely experienced at least in USA.<sup>4</sup>

The main and fundamental conception of child justice system is thus founded on need of protecting the paramount interest of the child, which essentially requires change in the traditional approach. The modern approach calls for 'developmental and restorative' justice. This notion of child justice system seeks to hold juveniles accountable for their actions by combining consideration on adolescent development process, public safety and effects of victimization into a process that helps young offenders acquire empathy for those affected by their actions and make changes so they are less likely to put themselves and others at risk in the future.<sup>5</sup>

The answers to a question why juveniles need an alternative system of justice will amply justify the 'causes and efforts' for emergence of a 'diversion scheme' in the juvenile justice system. Answers can be enumerated as follows:<sup>6</sup>

- Children are inquisitive, and extremely concerned for justification of values they are instructed to follow. When these values create obstacles in matters of their free choice, they may tend to 'revolt' and disregard the values, and in many occasions they even come in conflict with laws. Nevertheless, they revolt for their own 'goodness' but not for the harms of others. The harms and injuries the others sustain is thus conceived only as an indirect consequence. In such a state of affairs, the imposition of a punitive sanction against them would be inviting more serious revenge or revolt from their part. As a matter of fact, for juvenile offenders to take responsibility for their actions, they need to be helped to think beyond their first response to the perceived or real unfairness of adult, lack of opportunity, or rivalry with another group and assisted in understanding consequences.
- Fear is another factor for children being able to make right choice of decision. Frequently, juveniles who use weapons do so when they feel threatened and their judgment is distorted. For young people who have felt intimidated because of their gender, race or as victims of physical or sexual assault, self-protection is an understandable defense against helplessness.

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<sup>4</sup> . See for detail, Child Delinquency: Early Intervention and Prevention. Child Delinquency Bulletin Series. May 2003. Office of Juvenile Justice and Delinquency Prevention. Department of Justice, US.

<sup>5</sup> . Pranis, K. Guide for Implementing the Balance and Restorative justice Model, Washington, D.C. US Department of Justice Office, Juvenile Justice Program. 1998.

<sup>6</sup> . 'A Celebration or a Wake? The Juvenile Court After 100 Years. Washington D.C., Coalition for Juvenile justice, 1998. pp. 43-44.

- Young offenders need to learn mature through process, (which include anticipating the consequences of behaviors, developing and following a plan, imagining the worst outcome of actions, seeing alternative choices, and acquiring other aspects of critical thinking skills and abstract thinking), and to gain empathy so they can understand what they have done to their victims and can do make amends to them and to the community.
- Many young offenders have neurological problems resulting from substance exposure in utero. Many have failed in schools for years. Many live in high-crime neighborhood where it is difficult not to be involved in delinquency. Many seem hopeless about employment prospects. Young people behave better when their strengths are appreciated and they become involved in programs that build their competencies rather than punish them for their deficits.

Griffin has described three interdependent areas of accountability:<sup>7</sup>

- a. For young offenders, recognizing that they have done and taking action to make amends victims and the community.
- b. For community, reinforcing young offenders' efforts to make reformation by teaching them and volunteering in restitution and mediation programs rather than sending to prisons ort out of community; and
- c. For the juvenile justice system, restructuring "to hold itself responsible for outcomes and devise a carefully designed a large range of response to juvenile crime.

The theoretical discourse above amply suggests that the juvenile justice system as an essential part of the criminal justice system ignores the paramount interest of the child, and as affects the interests of the community as well as the victim. Since the young people think differently than adults, are emotionally immature, and do not have fully formed moral values, the existing traditional paradigm of the juvenile justice system does not address the need of the child. As indicated above the juvenile accountability requires a combination of skills building, reparation to victims, and citizen protection in an approach that encourages the development of young people so they become contributors to the community.<sup>8</sup> As the Coalition for Juvenile Justice described in its 1998 report to the congress:

"Because juveniles are developmentally and socially different from adults, they are more likely to be rehabilitated by carefully designed and tested treatment programs than by a purely punishment-based sanction system.... Young people who break law must be held accountable for the consequences of their illegal behavior... by a legal system that balances the protection of the community, the developmentally

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<sup>7</sup> . Griffin, P. Developing and Administering Accountability-Based Sanctions for Juveniles, Washington D.C. US Department of justice, Office of the Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 1999. pp, 2-3.

<sup>8</sup> . Ibid.

appropriate correction of juveniles who violate the law, and the protection of the legitimate rights of the victims of juvenile crime".<sup>9</sup>

To sum up, the separation of child justice system as an independent system is justified by the following grounds:

- No child is considered capable of committing a crime, as the crime is an outcome of the pre-conceived thought and pre-determined action to transform the thought into reality. An act of child constituting the violation of law is not an outcome of the pre-conceived thought, nor is it materialized with pre-determined plan.
- No child is criminally liable to be punished for his/her act. Although, his/her act harms others, he/she is considered equally affected thereby needing a help to come of this situation.
- The child justice system should be concerned with the correction and rehabilitation of the child thus benefiting the community as well as the victims. The criminal proceeding of a child is potential of destroying him/her psychologically and socially, the ultimate consequence being the transformation into a state of criminality.

The perception that the juvenile justice system is an integral part of the criminal justice system is, therefore, inherently defective. This perception is intrinsically founded on a number of wrong notions concerning the child's treatment in and by the family and the society, which subject the child into a number of adverse circumstances.

The concept of criminal liability of the child's act is based on idea of obliging him/her to the perceived obligation of molding in accordance with entrenched values of the society. The conflict between the child's choice and societal values is, therefore, always potential. Any act of child in antagonism to the perceived obligation is defined to be a threat to the existing norms of the society. In this context, the juvenile justice system as a part of the criminal justice system is taken as an instrument to reinforce the loyalty from the child to the traditional/entrenched values of the society. Consequently, a child who comes into conflict with laws is thus necessarily subjected to criminal liability in order to protect the entrenched values in disregard of the best interest of the child.<sup>10</sup>

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<sup>9</sup> . A Celebration or a Wake? The Juvenile Court After 100 Years, Washington D.C., Coalition for Juvenile justice, 1998. pp. 43-44.

<sup>10</sup> . The conventional approach of the juvenile justice system is founded on the theories of sociological jurisprudence that emphasizes to maintain the balance of conflicting interest between an individual and the society in the favor of the latter. These theories call for use of laws as coercive instruments to protect the interests of society, the benefit or welfare of the larger number of people being the thrust. The individuality of the person is thus compromised to the interest of the society. The importance, need and recognition of the individual person's entity are disregarded for the purpose of upholding the sanctity of so-called social interest. The criminal justice system is thus postulated as an instrument to 'suppress all those affairs of individual members' that violate the perceived values of the society. The difference between a person of minority and majority in age is immaterial in this sense.

## Nepalese Context:

The juvenile justice system in Nepal, in practical sense, is hardly different from criminal justice perception in strict sense, i.e. prosecution and sentencing of offenders. Although there are some special provisions set forth by laws concerning special treatment of the child engaged in conflict with law, the procedure applicable to child in criminal proceeding is similar to that of adult. This situation makes the juvenile justice system in Nepal not only archaic, but also inconsistent with the spirit of the constitution and the provisions of the Children's Act 1991.<sup>11</sup>

The Concept of God residing in child versus the wrong interpretation of *karmic*<sup>12</sup> philosophy: The wrong interpretation of the perception of "*karma*"<sup>13</sup> is instrumental for subjecting children to pervasive ill-treatment. The procedural aspect of the law is, of course, very heavily influenced by the Hindu doctrine of "*karma*". The *Muluki Ain*<sup>14</sup>, which provides the substantial part of the procedural law, has been indirectly but immensely influenced by the Hindu doctrine of karma.

Till 1951, Nepal practiced an indigenous 'inquisitorial system' which emphasized the confession of crime as a part of "*prayaschitta*".<sup>15</sup> The perception of "*prayaschitta*" was applicable for people irrespective of age and sex. Accordingly, the criminal liability had

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<sup>11</sup> . Article 26 of the Constitution of the Kingdom of Nepal, 1990, stipulates special treatment and welfare for the children. The Children' Act on the other had guarantees special safeguards to the children. These safeguards are however generally violated or ignored. For instance, children are incarcerated along with adults. Children are detained while investigation is undertaken, and most importantly they are fettered in handcuffs.

<sup>12</sup> . "Geeta" a religious text on "Hindu Philosophy of Life" as expounded by Lord Krishna, one of the incarnation of the Lord Vishnu, one of the three Supreme Gods, explains that the 'life of human being is subjected to birth and rebirth till the salvation is achieved. The birth and rebirth is an outcome of the deeds in the past life. The present life is thus determined by the deeds in the past life. All acts of human being the present life are therefore viewed as the result of the past life, and to face what comes is a process to proceed to the next life. The commission of the crime was thus defined 'an outcome of the deeds in the previous life' – *purbajanmako ko karma* of phal. Irrespective of the age and sex, each person is thus subjected to face what comes to him/her. The punishment (*danda*) was considered as an instrument for 'rectifying' the wrong committed, so that the life marching to the road of the ultimate salvation (*paramatma*) is possible.

<sup>13</sup> . Hindu philosophy defines all acts of human being are determined by his/her 'good or bad deeds' in the past life. The destiny of a person is virtually determined by his/her deed. The type of life in the present form is a consequence of the deeds in the past life, and the act and its liability in this life is something governed by the dictates of the past life. The accountability is thus not only important from the perspective of law, it is equally important from the moral and religious perspective too. This philosophy founded on Bhagawata Geeta, highlights on "discharge of liability" for betterment of the next life leading to salvation. This perception is pervasive in all aspects of lives of Hindus, irrespective of age and sex.

<sup>14</sup> . Laws of the Land. This was the first formal codification of Nepal after unification of the Kingdom. The original code was promulgated in 1854. It was replaced by new one in 1964. Recognition of caste system and gender differences in matters of personality of individual, rights and privileges and system of penal liability were the foundation principles of the code. Protection of the orthodox Hindu values was the supreme objective of the code, which, among others, put children under strict discipline imposed by the parents or guardians. Children could be put under criminal liability for acts resulting in criminal offences.

<sup>15</sup> . Prayaschitta is 'absolution' from the guilt through internal realization of the misdeed. It is an internal aspect of the punishment.

been taken as an instrument of "*prayaschitta*", supposedly a good deed for next life. The child was thus subjected to criminal liability as a process of rectifying his/her misdeed in order to help him/her come out of the *pap* (sin) which was thought to be essential for his/her better next life.

The punishment for any undesirable or unacceptable act (*dharma*- religion-is defined as acceptable behavior, so that an unacceptable act was defined *adharm*a-anti-religious ) is, therefore, a mandatory process to rectify the mistakes or wrongs, and thus to lead to the ultimate salvation. In the Hindu society, the enforcement of the law has two fold objectives; firstly, the crime is an outcome of the *pap* (sin) in the past life, so that the punishment is an instrument to rectify the sin committed; and secondly, the punishment is an 'instrument' to reduce the degree of bad consequence of the *pap* for the next life.

This wrong interpretation of *Geeta*<sup>16</sup> has pervasive influence in the legal and justice system, including the one that is applicable to juveniles. This doctrine considers the crime not only a deviant act incurring the sanction- punishment- but it is also taken as a '*pap* affecting the substance of life in its chain of reincarnation'. This doctrine has immensely negative connotation to the child's act that violates the law. It is, however, contradictory to the original philosophy of *Geeta* and several other texts that the child is an incarnation of the God. These texts have profoundly entrenched a conception that the child's soul is a residence of the God. The interpretation of the criminal act as a "karmic outcome" is therefore irrational and exists against profound principle of child's innocence and ignorance of the consequence of the act. The prevalence of the so-called *karmic* doctrine thus ignores the well-established Hindu belief that "the god resides in every child". The act of subjecting the child to criminal liability is therefore essentially an outcome of the wrong interpretation of the *karmic* philosophy.<sup>17</sup> The application of the wrong interpretation of the *karmic* philosophy has resulted in number of anti-child mentality and practice:

- A child committing a crime needs to be punished to rectify his/her next life. The punishment is, therefore, taken as a normal phenomenon. The low-criminal liability age,<sup>18</sup> the disregard of the need for preventing child from being affected psychologically, the lacking in consideration for circumstances forcing the child to commit violation of the laws while subjecting to criminal liability and sentencing, and disregard of the assistance to the child to socially and psychologically rehabilitate him/her are few very stark examples of laws being influenced by said *karmic* doctrine.

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<sup>16</sup> . A socio-political and religious text which lays down code conducts for socio-political and religious lives.

<sup>17</sup> . Many Hindu Religious Texts refer to child as an innocent, incapable of harming others and devoid of any stigma as the God resides in the child. This perception about the child does not allow the legal and justice system define a child as an 'offender'. The perception that a child is an innocent and harmless person does rule out any possibility that the criminal procedure is applicable in an act of the child that violates the existing law. The provisions law that subject the child to criminal proceeding is, therefore, contrary to fundamentals of the Hindu *dharma* concerning the treatment of a child.

<sup>18</sup> . Clause 11 (2) of the Chidern's Act subjects a child above the age of 10 years to criminal liability of his act.

- The influence of the 'doctrine' is heavy and pervasive among the actors, and
- The juvenile justice system is essentially integrated with the criminal justice system.

Reforms of the System: After 1990, following the restoration of democracy, there have been attempts made to reform the juvenile justice system. The Constitution of the Kingdom of Nepal prohibits physical and mental torture of a person who is detained during the investigation<sup>19</sup> It forbids cruel, inhuman or degrading treatment, and moreover, provides for the compensation in case the torture arises. The Torture Compensation Act, 1996, enables persons subjected to torture for compensation, yet the Act has failed to criminalize the torture. It is one of the reasons, despite constitutional protection to torture, the children are vulnerable to both the mental and physical torture during they are incarcerated in police custody.

Nepal hardly had any juvenile justice concept prior to the promulgation of the Children Act 1992. Even after this development, the juvenile justice is not treated as a separate and independent system, thus obviously subjecting the children in conflict with laws to general criminal procedures and as such the prevailing practices exist in stark contradiction to the UN Convention on Child Rights, 1989. However, after 1990, a number of developments have ensured optimism. The ratification of the CRC is one of the most important developments, followed by promulgation of the Children Act 1992. The following provisions of the Children Act have made serious attempt to modernize the juvenile justice system:

- a. Clause 7 strictly prohibits the torture and ill treatment of child in conflict with laws. Moreover, the Torture Compensation Act, 1996, capacitates the child tortured or ill treated during detention.<sup>20</sup>
- b. Clause 11 prescribes a duty on law enforcement agencies and the courts to be liberal in matters of treatment and punishment. This provision helps the judiciary to adopt a child friendly sentencing policy.
- c. Clause 12 prohibits 'recidivism' in the case of child. This is a non-negotiable provision.
- d. Clause 15 prohibits stiffer sentencing
- e. Clause 42 provides for establishment of the juvenile reform home.
- f. Clause 50 stipulates for suspension of judicial custody and punishment.
- g. Clause 55(5) enables the government to work out procedures for composition of the juvenile bench in the district court. The juvenile bench may include social worker, child specialist or child psychologist along with judge.
- h. Section 55(6) enables the juvenile courts or benches ;Procedure for juvenile court or district Court for trial of cases in accordance with the Summary Procedure Act, 2028 (1974), which sets a limit of three months for disposal of the case.

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<sup>19</sup> . Article 14 (5).

<sup>20</sup> . Pursuant to Clause 83 of the Court Management Section of the Muluki Ain, guardian of the child may file a case in the District Court for compensation. The Torture Compensation Act is thus enforceable in the case of the child's torture through guardian.

In addition, the following developments can be taken as important indicators of the reformative approach to the juvenile justice system:

- a. Clause 9(2) of the Treaty Act, 1993, recognizes the supremacy of the international treaty and conventions in case the domestic law is contradictory to them. This provision provides a stronger foundation for the enforcement of the CRC.
- b. The Supreme Court's instruction<sup>21</sup> to all trial courts to set up juvenile bench is another significant development.
- c. Pursuant to the directive of the Supreme Court, the Ministry of Women and Children has set a Reform Home in Kathmandu with capacity to accommodate 60 juveniles at a time.
- d. The positive intervention of the Supreme Court in a number of juvenile cases which prohibited the detention of children along with adults is also a remarkable development. These judgments have also obliged the government to set up the child reform home.
- e. Creation of the baseline information and review of the legislation was equally significant development. The following research and activities are important in this regard:
  - Overview Research on Juvenile Justice System in Nepal with comparison to International Standards
  - Baseline survey on Juvenile Delinquency situation
  - Study on trend of Juvenile Delinquency in the Kathmandu valley
  - Psychosocial Analysis of Juvenile Justice System of Nepal
  - Development of Procedural Guidelines on Juvenile Justice System
  - Preparation of proposal for amendment of the laws for modernizing the juvenile justice system
  - Development of the electronic data-base and scheme for exchange intra-and inter country information
  - Preparation of training curriculum for the actors of the juvenile Justice System
  - Training to 110 professionals from various agencies

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<sup>21</sup> . In *Bablu Godia V. HMG*, Writ No. 3390. 2057 B.S. (2000), the Supreme Court instructed the Government to place Bablu Godia , a 14 years old child, in the juvenile reform home as prescribed by the clause 42 (3) of the Children Act. In ***Keshav Khadka vs. Dhankutta District Court and others*** (writ no. 3685 of 2000) , the Supreme Court held placement of minor in incarceration with adult as inappropriate. In, ***Ashish Adhikari vs. His Majesty's Government and others*** (writ no. 3391 of 2000) the Supreme Court obliged the Government to set up the juvenile reform home. In ***Pode Tamang vs. Sindhupalchowk District Court and others*** (writ no. 4022 of 2001), the Supreme Court reiterated the need of setting up of a reform home, and issues a stricture that the Government had given no **proper attention toward the rights and interests of the children**. In ***Sarita Tamang vs Illam District Court and others*** (writ no. 21 of 2001) the Supreme Court directed the Jail authority to release the Child as she was not put into a reform home. These judgments manifest a proactive attitude of the apex court towards reformation of the juvenile justice system in Nepal.

Kathmandu School of Law (KSL) played a crucial role of conducting research and coordinating the activities is a pioneer institution to intervene in this situation for positive transformation.

**Problems:**

Despite a number of successful interventions and successful stories in the past three years, a number of problems still loom large. These problems need prompt and systematic interventions.

1. The present law on criminal liability of the child is fixed at extremely low age. The current law therefore exists in stark contradiction with the CRC and international practice. Section 9(2) of the Treaty Act, 1993, of Nepal stipulates supremacy of international treaty or convention ratified by it to laws that exist in contradiction with such treaty or convention. The amendment of the existing laws negatively affecting the best interest of the child is thus considered one of the most serious problems needing immediate intervention.
2. Juvenile justice system is traditionally considered as an integral part of the criminal justice system. The existing criminal justice system suffers from a number of problems concerning fair and impartial trial, and juvenile justice system in this context is no exception. The trial procedure is lengthy and troublesome. Children have to wait long process of trial, and consequently psychologically their interest is negatively affected. Investigation system is not pro-child or child friendly. The following factors render the problem persistent affecting the best interests of the child affected:
  - Actors of criminal justice system are not sensitive to the child friendly procedures and process,
  - The government of Nepal had developed no special plan of action to develop a child friendly justice system,
  - The civil society is equally insensitive to the rights of child to the child friendly justice system,
  - Concept of diversion system is grossly lacking,
  - Criminal Procedures applicable to adult offenders are equally applicable to juveniles,
  - The existing mentality of the actors of the criminal justice actors is not suitable for the diversion system
  - There has been a lack of coordination among the actors of criminal justice system and other concerned government institutions, as well between the government and the civil society
  - There has been a great lack of human resource like child psychologist, child right activists, etc.
3. Lacking of mechanism for monitoring and overlooking the juvenile justice system is also considered as one of the major problems. Judiciary still has not been able to materialize the concept of juvenile court although there has been a policy of establishing a separate Juvenile Bench in each trial court. The judiciary has complete lack of concept of juvenile bench or court at the higher level of the judiciary.

4. Inadequacy of Reform Homes is also a major problem. After positive intervention of the Supreme Court, the Government has created a Reform Home at Kathmandu, but it can hardly address the problem of other parts of the country.
5. Children are not exception to exercise rights regarding criminal justice guaranteed by the constitution. However, there are instances of denial for providing such rights at the pre-trial stages. It is said that the juveniles are in most vulnerable situation in the immediate phase after their arrest. They are put into a hostile environment and ill treated. There is no specific cell for minors in police station, in some cases; police officers falsify the date of arrest of the minor accused. A report made by CWIN in 1996 shows that 81% of young offenders were detained in police custody and subsequently mistreated. Among them 36% were beaten during interrogation, 11% were forced into labor, 7% were threatened and abused, 3% were kept starving, 21% were deported to the city boarder, and 3% were sent to adult prison. One may differ on the accuracy of figures as it is shown by the CWIN. But it is a unanimously accepted fact by the researchers that a large number of juveniles are mistreated at the time of arrest and while they were in police custody.<sup>22</sup>

#### **Reform Agenda:**

The modernization of the juvenile justice system requires multi-pronged approaches and schemes. Some of them are highlighted as follows:

- Amendment of the Children Act in order to incorporate the concept of diversion and address the present state of ambiguity is thought to be the first step to begin. As it has been widely discussed before, the juvenile justice system has been taken as an integral part of the criminal justice system, and the Children's Act has not been able to address this ambiguity and error.
- Strengthening the capacity of actors/stakeholders of the child justice system by strengthening the sensitivity and culture of child friendly treatment in all aspects of juvenile justice system is another area of prime concern.
- The Supreme Court played pro-active role in reforming the system. However, the sensitivity of the lower courts is negligible. The trial courts, in particular, are found indiscriminately placing the children in judicial custody. The pro-activeness of the lower level courts has to be strengthened. In the meantime. The following interventions are considered as priority agenda:
  - Widespread application of judicial activism in the juvenile issues;
  - Formulation of a separate body of procedures for investigation, prosecution and adjudication of the juvenile cases, emphasizing need of diversion in all stages.
  - Development of a monitoring and supervising mechanism, so that the functions of lower courts in relation to the juvenile issues ensure fair trial.
  - Setting up of electronic baseline information on juvenile issues.

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<sup>22</sup> . Khatiwada, Ishwor, Nepalese Juvenile Justice System: An Overview, KSL Journal. Vol 3, 2004. Kathmandu School of Law, Nepal.

- Establishment of Central Steering Committee to coordinate between actors and stakeholders.
- Arranging suitable trainings and sensitization programs for the judicial personnel; and
- Issuing juvenile justice process guidelines.

**Conclusion:**

Juvenile Justice System is an independent justice system which is, without negotiation and compromise, looks after the best interest of the child. Obviously, it is fundamentally different from the criminal justice system, of which main purpose is to punish the offender. Developing and underdeveloped countries have less clarity of the concept of child personality, which is not perfect due to his/her physical and mental immaturity. This is one of the fundamental reasons for "criminalizing" the child act. The reform agenda therefore must concentrate on 'deconstruction' of the traditional or stereotyped concept of the justice. The development of the diversion from the criminal justice system can be an appropriate way to modernize the juvenile justice.