

## **CHALLENGES OF JUVENILE JUSTICE SYSTEM IN NEPAL**

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### **1.1 Background**

The term juvenile Delinquency describes acts that range from truancy to murder with such a range of acts considered delinquent by law, almost all juveniles might be classified as delinquents at one time or another, because many young peoples have committed at least one act of delinquency. Although almost all juveniles commit delinquent acts, most are not processed because they are never taken into custody. Juvenile delinquency is any behavior that is prohibited by the juvenile law of the state. The first category of delinquency is any act committed by a juvenile that would be defined as a crime if committed by an adult. Offences such as theft, burglary, assault and robbery are acts of delinquency. The second category of delinquency includes acts known as status offenses. Status offense includes running away from home. Skipping school, violation curfew, not obeying one's parents, illegal purchase of alcohol, smoking tobacco and underage drinking. Two reasons for separating juvenile delinquent from status offenders are to remove the stigma of being classified as juvenile delinquent from status offenders and to demonstrate that these juveniles have special problems and needs, but are not criminal in nature.<sup>1</sup>). The main objective of the juvenile justice system is helping the child to understand the consequences of the act that he/she has committed. Psychologically a child is destroyed by the punishment that results following a tedious procedural formalism under criminal justice system. The treatment and the punishment makes him/her a deviant to the values of the society. Education, rehabilitation and family social integration are thus the desired and zealously protected goals of juvenile justice system.<sup>2</sup>

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<sup>1</sup>Juvenile justice Poilices, Programmes and Practices, Robert W. Taylor, Erich J Frintsch, Troy J Caeti, page no,4,7

<sup>2</sup> Baseline Survey of Criminal Justice System of Nepal, CeLRR, Danida Hugou, designed by Kathmandu School of law, page no 100

## 2.1 Introduction to Juvenile Justice system in Nepal

The crime was not simply a deviant act of the human person liable to punishment but was also a "sin affecting the substances of life in its reincarnation". The Muluki Ain was immensely influenced by the "Hindu Value System" of strict child discipline, where a child was rendered to face liability for his/her immediate correction, irrespective of his/her age. The Muluki Ain was immensely influenced by this "Value System" and consequently the criminal responsibility at lower age was adopted as an outcome of the same. The legal system started to change to adversarial system from 1950's with this development. Many aspects of the Nepalese justice system became subjected to critical review. The concept of juvenile justice came along with this change.

In a modern and development concept of justice, the children in conflict with laws are treated differently from adults thorough out the process. The rationale for this specific treatment lies in the fundamental principle of criminal law that a person can be found fully or partially criminally liable only if he/she fully understood that what s/he is doing is forbidden by law. The constitution of the kingdom of Nepal, 1990, under the directive principles has seriously called for the state's attention to the welfare and development of the children. The children Act, which has been an outcome of the ratification of CRC (convention on the Rights of the child), has introduced a concept of 'juvenile Justice' as different to the ordinary criminal justice system. Nepal has been one of the five country beneficiaries of the DIHR juvenile justice programs being implemented for the last three years. This program has very significantly raised the 'awareness and commitment' of both the government and civil society, institutions to 'build a positive environment' of both the government' for the modern juvenile justice system, including the readiness to take diversion from the juvenile justice system, understood conventionally. Kathmandu School of Law and CeLRRd in collaboration with the judges' society, Government Attorney's Society, National police Academy and CWIN have conducted a number of empirical studies that help to comprehend the issues from realistic point of view.<sup>3</sup>

## 2.2 Procedure for Juvenile Justice System

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<sup>3</sup> Juvenile Justice system in Nepal, 2003, KSL for CeLRRd, Page no. 3)

Children Act 2048 is the basic law governing the treatment of juvenile by the Criminal Justice System sec 2(a) of the act defines as a boy or a girl who has not attained the age of sixteen years.

### **Investigation**

It has said that of all phase of juvenile justice procedure, it is on arrest and immediately thereafter, while in police custody, that an accused juvenile is mostly likely to become the victim of torture and others forms of cruel treatment. As such, compassion and kind firmness are important in this situation. The children Act applies this provision, states that not withstanding anything mentioned in other law in force, no child shall be subjected to handcuff and fetters, solitary confinement or put together in prison with an adult prisoner in case a child is convicted. In Nepal provision for these requirement can be found sec 42(2)(a) of the children's Act 2048 states that 'a child to be imprisoned pursuant to the existing law for the investigation or proceeding case being accused in any crime shall be kept in the juvenile reform home. The court hearing the case may order a suspected juvenile to be placed in the custody of their father, mother, relatives or other guardian.

### **Prosecution**

Art 110 of the constitution of the kingdom of Nepal, 1990 has vested within the attorney general but the power is delegated to public prosecutor.

If the investigation is found to be complete, the public prosecutor will frame the charge sheet accordingly and present the case in the court. The charge sheet contains a description of the facts of the case, explaining the circumstances of the crime and the evidence collected, as well as the accusation of the crime and demand for punishment for the accused. If there is any provision for reduction of punishment, the defendant is required to prove their eligibility. There is no special provision in the process of prosecution.

### **Trial Procedure**

The proceeding of a case involving a juvenile shall be conducted in camera. Children's cases must be taken up by a juvenile court or by a child bench. The name and address of the child cannot be disclosed to the public. The juvenile's legal representative, father,

mother, relatives or guardian are followed to be present in the court for the hearing, or the representative of a social organization involved in safeguarding the rights and interest of the child to observe in bench proceeding.

### **The Juvenile Court**

The court first shall decide the case is to be tried the juvenile bench or an ordinary bench. After the children's Act 2048 has made special provision to safeguard the interest and rights of every juvenile in bailment proceeding and in the representation of the case. Sec 19 of the children's Act 2048, the court should not proceed with, entertain or decide a criminal charge brought against a juvenile unless there is a legal practitioner to defend him. The court has to decide whether or not to grant bail to their parents, a guardian bail or handed over to their parents, a guardian or social institution. They must send to the juvenile reform home as per 42 of children Act 2048 for the purpose of judicial authority.<sup>4</sup>

After collection of evidence, the case is listed in weekly and daily cause list and in the date given on the cause list it is presented to the bench for final hearing.

The court will declare a verdict of either guilty or not guilty and determine at the same time.

### **3.1 Challenges of Juvenile justice System in Nepal**

- Nepal is a signatory to the CRC and adopted CRC at its initial stage. In 1992, Nepal adopted the national children's Act, which focuses on neglected children. Both requires special treatment for children and prohibit their handcuffing in the court room. Unfortunately, the rules and the guidelines promulgated under the act are seldom enforced, and children are still treated much like adults in criminal proceedings.
- Children's Act of 1992 prohibits the mistreatment of children during the detention period. There are many children who are victims of illegal arrest and detention and who are imprisoned with adult offender and exposed to physical and psychological torture. CWIN report 1996-child offender belong to (14-16) years age group 81%

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<sup>4</sup> Juvenile Justice System in Nepal, 2003, KSL for CeLRRd, page no. 4,5,6,7,8,9,10

were detained in police custody and mistreated. 36% were beaten during interview were sent to prison.

- It is difficult to determine the age of child offenders because formal birth registration often cannot be located. The survey reveals that this lack of documentation has led to increased juvenile imprisonment.
- The Beijing Rules (13.b) which state that the arrest detention, or imprisonment of a child should be in conformity with the law, used only as a last resort and imposed for the shortest appropriate period of time is rarely observed. When child offenders are arrested their age is determined only after they have detained with adult prisoners.
- The constitution also guarantees the rights to be free from torture. In addition, sec 5 of the children's act of 1991 states that, child offenders not to be subjected to handcuff, fetter or solitary confinement. Unfortunately, this progressive attitude is not the standard. INSEC has reported that 50% children under the age of 15 suffered human right violation in 2001.
- The law provided for the establishment of juvenile courts. This provision has not been enforced until recently. In the last 10 years, the government has also failed to establish correction homes where children offenders have simply been thrown into jail.<sup>5</sup>

### 3.2 Situation of juvenile justice system in Nepal

#### 1. Activate juvenile benches

Juvenile courts are relatively new legal provision. The government had introduced juvenile benches in the courts of law only two years ago. According to the government decision, juvenile benches were to become operational in all 75 districts of the country. However the concept of juvenile courts has yet to become properly imbedded in our legal and judicial system. Most legal practitioners as well as the judges of the courts have not been keen to make the distinction between juvenile crimes and adults criminal act in the process of carrying on their professions. This fact has once again been highlighted by a recent news report. The juvenile benches as proposed by a government decision remain largely defunct. Apart from the novelty of the concept of juvenile courts, the major reason for their new legal provision not becoming functional has been pointed out as the government's failure to extend adequate logistical support. A high ranking official at the judiciary council has been quoted as questioning the highly unrealistic amount of 25

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<sup>5</sup> Baseline survey on criminal justice system of Nepal, CeLRRd, page no. 101,102,103

thousand rupees provided by the government to start juvenile benches in each of the country's 75 district. The government therefore needs to seriously look into the financial and logistical requirements for making the proposed juvenile benches effective in practice.<sup>6</sup>

## **2. Despite the law, children languish in jails**

The irony is the law forbids sending boys and girls under 16 years to jail even if they are guilty of any crimes. The article 16 of child Act says one thing and but in reality the police often flaunt the legal provision and do not document the age of the arrested children in order to avoid the responsibilities involved in processing the case of child prisoners. Police lack knowledge about their age and this is a major reason why they land in jails. Child and an adult are accused of the same offences, the adult is set free on bail while the child is kept on remand and due to lack of legal representation they have to spend their life in jail.<sup>7</sup>

## **3. Illegal detention of minor**

Children's Act 2048, clause 17 has provision that children who are below the age of 16 should not be kept with handcuff and they should not be put in jail with other criminals but 15 year old child are kept into Mahatri Jail. He/she was accused on the charge of dacoits though the court has decided that he/she should be kept in reform home but seen in the jail.<sup>8</sup>

## **4. Four children in jail**

Four children have been languishing in Morang district jail for the past year despite the Supreme Court order not to keep children below 16 inside the jail.<sup>9</sup>

In the above article, we can see the situation of juvenile justice system in Nepal and the real scenario that is existing in the society. In different part of the Nepal they are being deprived of the child right because most of the juveniles are seen to be spending their life in the jails with the other adult criminals. We can see that the child Act is in one hand and the practicability of the law and the reality is in other hand. Though the law has provision

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<sup>6</sup> Article, Space time today, 2058-10-20, Rekha Shrestha

<sup>7</sup> The Kathmandu post, 2059-2-28-Tabibul Islam

<sup>8</sup> Annapurna post, 2062-8-28, Iswari Paudel

<sup>9</sup> The Himalayan, 2062-8-23, Manoj Shrestha

about the child right and the state is also aware that the right should not be violated and the juveniles should be treated differently then also why the juvenile are being kept with the adult can be a big question mark. We should see the lacking of the state and the attitude as well as responsibility of the state towards their citizen. It is seen that the state is not responsible and sensitive towards the life and dignity of the child. The state seems not thinking about the future of the child and the torture that is provided to the juveniles letting them sit together with the criminals. Child are not seen to be sent in the reform home for the reformation and to make them realize their mistake and to make them understand between the wrong and the right. These can be analyzed from the above article and the situation of juvenile justice system in Nepal.

## Conclusion

Psychologically a child is destroyed by the punishment that results following a tedious procedural formalism under criminal justice system, the treatment and punishment makes him/her a deviant to the values of society so for the purpose of addressing the psychology of the child this juvenile justice system came into existence. Since the objectives of the juvenile justice system are to prevent the juvenile delinquency and to assist children in developing a sense of responsibility, the term rehabilitation should be interpreted so as to promote those objectives. Section 42 of the children's Act provides that a child convicted of an offence and imprisoned shall be kept in a juvenile reform home. Section 42(3) of the Act provides that until a juvenile reform home is created the government may temporarily send convicted juvenile offenders to juvenile welfare homes, orphanages or centers established and operated by other bodies.

Despite these provisions, the mixed incarceration of juveniles and adults persists. Until recently, all detained and imprisoned juveniles were placed in the same facilities as adult prisoners. It is likely that adult prisoners abuse juveniles imprisoned in these institutions physically, emotionally and sexually.

## Recommendation

As the main objectives of the juvenile are to reform the juveniles and to make them able to stand in the society they should be made free from all the torture which is seen to be given while in investigation and prosecution. There is need of unambiguous provision for not sending the children to the jail. It is better to send them for vocational training

caters or others skill acquiring activities than sending to jail. The amendment to the children Act may provide continuous hearing and shorten the period of hearing. That will substantially cut the bad time of juvenile and save from the adverse from the adverse effects. For the victim children there is lack of immediate care from the side to the state. It is necessary to establish and maintain a revolving fund for assisting the victim children and this will also provide compensation so such children. It is to be established by the government and maintained by collection of fine or compensation made by the culprit to the victims.