

## Rights of Children Under the Constitution of Nepal: An Investigation

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### Abstract

*The article examines in detail about the progression from history regarding recognition of children for parental property. It illustrates how major legislations like the Children's Act, 1992, the Child Labour (Prohibition and Regulation) Act, the Kamaiya Labour Prohibition Act, 2002 and other legislative actions have aimed to protect children. The article also explains child rights granted by the constitution of Nepal and highlights juvenile justice regime of the Himalayan state. It gradually proceeds to examining the historical foundation of the Children's Act and critically presents its provisions. It also presents inconsistencies in practice and embedded legislations.*

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**Keywords:** Children, Law, Nepal, Constitution of Nepal, Child law,

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### I. INTRODUCTION

Nepal has enacted seven constitutions so far. The latest constitution came into force on September 20, 2015. It hosts splendid collection of fundamental rights, including that of rights of children. The erstwhile constitution of 1990 and Interim Constitution of 2007 had recognized the rights of the children. The Constitution of 1990 paved the ways for the adoption of special legislations in line with the internationally accepted principles and standards.

The Children Act of 1992 is the first specific legislation on children that was enacted after the promulgation of 1990 constitution, which was again enacted after the declaration of democracy. The 1992 Act outlawed the employment of children of below 14 at hazardous place. The current constitution contains a good deal of provisions for the children that include right to obtain citizenship, right to equality, right to lineage and inherit property, right to education and right to proper healthcare. Article 39 of the constitution expressly and authoritatively guarantees the right of citizens. This article directs the state to ensure every child a right to education, health, maintenance, proper care, sports, entertainment and overall personality development. The constitution directs the state as well as families to ensure a favourable environment for the children to grow. The constitution outlaws child marriage, physical or sexual abuses or other forms of torture. This article delves to examine the constitutional mandates for the children in Nepal.

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## II. Historical Background

Nepal is one of the first countries in South Asia to enact a "comprehensive code of laws and human conducts," a document that incorporated laws, religious, and moral principles.<sup>2</sup> Enacted by Jayasthiti Malla, one of the 15th century King of Nepal, the Code called *Manavnyayashastra* was highly influenced by the Hindu scriptures and Hindu way of life.

Interestingly, this Code contained provisions for children as well. If a child makes the funeral offerings of his natural and adoptive fathers separately, then in such case, child should receive a half share from both. As per the code, there are 12 types of sons.<sup>3</sup> If a father has no sons, then in such case, daughters were entitled to receive property of their father. A child below the age of eight years is like a child into the uterus. Until, s/he attains the age of 16 years, such a child would be considered as ignorant.

After the Code of *Nyayavikasini* (Manavnyayashastra), Nepal adopted *Muluki Ain* (National Code) in 1854 (1910 BS), which was the first national code after unification of Nepal done by great King Prithivi Narayan Shah. However, there was no separate chapter for children, though there were some provisions, like right on parental property, for children. Children's Act, 1992 is the first specific law on children. Nevertheless, the Constitution of Nepal, 1990, promulgated after the restoration of democracy in 1990, had recognized the status of a child and contained provisions for the children.

The Children's Act, 1992 acknowledged major principles and provisions of the Convention on the Rights of Child, 1989. In 1992 itself, Nepal adopted Labour Act, which prohibited child labour. The law prohibited the employment of children of below 14. However, at non-hazardous places, children of above 14, recognized as minor workers, were allowed to be employed at work.

In 2000, the Child Labour (Prohibition and Regulation) Act came into effect to eradicate child labour. This Act regulated the hours of work (not more than 36 hours per week) and prohibited the engagement of children younger than 16 years of age into hazardous work. Also, it prohibited the employment of children of below 14 in any kind of employment. The Act had provisions, classifying the sector of tourism as risky (hazardous) business. At the event of non-compliance of the provisions contained under this Act, there was stipulated punishment of imprisonment of up to one year in jail or a fine of fifty thousands. The Kamaiya Labour Prohibition Act, 2002 prohibited bonded (child) labour.

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<sup>2</sup> This Code was called, "Code for Human Justice."

<sup>3</sup> "There are twelve types of sons: - (1) one who is born with a married wife of fellow caste from one's own seed (2) One who is born with a wife of a brother and from one's own seed (3) Son of the daughter (4) one who is born to unmarried girl by own-self (out of wedlock) (5) one who is born after marriage with a woman who was already pregnant at the time of marriage (6) One who is born and grown up secretly out of secret love affairs (7) One who is born to a woman who has entered into second marriage (8) One who is given up by the parents (9) one who is found all of sudden (10) one who is purchased paying money to his parents (11) One who is taken care of as good as a son (12) One who has offered himself to serve him as a son. Out of these twelve types of sons, the six ones are entitled to get share of their father's property and the other six are not so entitled. Among them the formers are superior ones and latter fall under lower category." Enacted in the Bikram Era 1436, this Code is available at the official webpage of Nepal's Law Commission : <https://www.lawcommission.gov.np/en/wp-content/uploads/2018/09/nyayavikasini-manavanayashastra-of-jayasthiti-malla.pdf>

The government of Nepal has made policy level interventions to advocate the cause of the children. Nepal's Poverty Reduction Strategy, 2003, which was aimed at reducing poverty ratio by the end of Tenth National Development Plan (2002-2007), contained interventions for poverty alleviation. Then, the National Master Plan on Child Labour (2004-14) proposed rehabilitation programmes for rescued child labourers and it also shown its reaffirmation for ending cross-border child trafficking. Likewise, the School Sector Reform Program (2009-15), the National Plan of Action of Children (2005-16), the National Plan of Action on Human Rights; and the National Plans of Action on Trafficking of Women and Children and on Bonded Labour on 2001 and 2010, respectively were the policy level interventions effectuated by the government of Nepal. The government also allocated budget in district and local bodies for creating an enabling environment for children and to achieve child labour elimination goals.

The Comprehensive Peace Accord, 2007 contained provisions for eradication of child labour and commitment of the contracting parties to host special schemes for the advancement of the women and children. The Education Policy and Education Act of 2009 provides for free basic education up to grade-VIII. The National Master Plan (2011-2020) aimed to eradicate poverty by 2020<sup>4</sup>.

The Constitutions—Constitution of Nepal, 1990; Interim Constitution of Nepal, 2007 and 2015 Constitution of Nepal, which is the latest constitution--promulgated after the restoration of democracy of 1990 advocated for the protection and promotion of the rights of the children<sup>5</sup>.

### III. Constitutional framework

The Constitution of Nepal guarantees every citizen an inherent right against all forms of discrimination, unequal treatment and protects everyone's right to live with dignity and liberty. The preamble of the constitution lays down the purpose the constitution has intended to achieve: equality, fraternity, justice, liberty, and an inclusive federal democracy with socialist orientation. The charter nowhere promotes discriminations but forbids it. Under Part-II, the constitution embodies provisions for the citizenship where it has been proclaimed that no person shall be deprived of citizenship. In declaring so, the highest law of the land makes a thing clear that no one would be left stateless<sup>6</sup>. By virtue of being born (to the parents of Nepali nationals) and brought up in Nepal, every person would have a claim on citizenship.

Its worthwhile to mention here that Nepal follows the doctrine of *Jus Sangunis*, not *Jus Soli*, for awarding the citizenship. The citizenship is granted here on the basis of bloodline. Simply put, if a mother of non-Nepali origin gives birth to her child in Nepal, then in such a case, her child would not be in a position to claim citizenship at birth because his parents are non-Nepali. If a person, whose father and/or mother is Nepali, then the child would get citizenship by descent<sup>7</sup> and if mother is Nepali and father is otherwise and mother and child have not obtained

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<sup>4</sup> Eliminating Child Labour in Nepal: Facts, figure, commitments and action, available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/projectdocumentation/wcms\\_182777.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/projectdocumentation/wcms_182777.pdf)

<sup>5</sup> Section 2(e) of the National Civil Code, 2074 BS (2017) defines the term Minor as the person of below the age of 18 years.

<sup>6</sup> Article 10 of the Constitution of Nepal: "No citizen of Nepal may be deprived of the right to obtain citizenship. There is provision of single federal citizenship with state identity."

<sup>7</sup> Article 11(3) of Constitution of Nepal

citizenship of other country and have stayed in Nepal, then in such case, child would be granted naturalized citizenship. Similarly, if a child is found in Nepal and whereabouts of his father and mother are unknown, then in such case, child would be granted citizenship by descent. Article 12 provides that a person could obtain citizenship with identity of descent and gender. This provision has been brought for protecting the citizenship rights with gender identity to transgender persons.

The constitution guarantees plethora of fundamental rights to individuals, including that of children. The chapter of fundamental rights begins with Article 16 which guarantees right to life and liberty. Article 17(1) guarantees that no person shall be deprived of his personal liberty except in accordance with law. Article 17(2) grants as many as six fundamental freedoms of which freedom of opinion and expression and freedom to move and reside could be availed by children as well. Article 18 guarantees right to equality and equal protection of law. This article is applicable in context of child as well. Right against torture, right of victim of crime, right against untouchability, right to religion, right to privacy, right to clean environment, right to education right to health, right to food, or right to housing are the rights available for citizens as well.

Article 39 of the constitution expressly and authoritatively guarantees the right of citizens. It ensures every child right to education, health, maintenance,, proper care, sports, entertainment and overall personality development from the families and the state. The constitution outlaws child marriage, physical or sexual abuses or other forms of torture. Home to as many as 10 clauses, Article 39<sup>8</sup> aims to secure the rights of children for their overall mental, educational, physical and spiritual development.

There appears plethora of provisions for the children under the scheme of the latest constitution. This shows the seriousness of the constitution makers towards the protection and promotion of rights of the children.

#### **IV. Mandates under Children Act**

The government of Nepal, in the third year of implementation of the current constitution, has adopted and enacted Children Act, 2018<sup>9</sup> to ensure the fundamental human rights of the children in letter and spirit. The Act, 2018 is divided into as many as ten chapters. It contains provisions relating to the rights of children (Chapter-2); duties towards children (Chapter 3);

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<sup>8</sup> “Article 39 Right of children: (1) Each child shall have the right to his/her identity with the family name, and birth registration. (2) Every child shall have the right to education, health care nurturing, appropriate upbringing, sports, recreation and overall personality development from family and the State. (3) Every child shall have the right to formative child development, and child participation. (4) No child shall be employed in factories, mines, or in any other hazardous works. (5) No child shall be subjected to child marriage, illegal trafficking, kidnapping, or being held hostage. (6) No child shall be subjected to recruitment or any kind of use in the army, police or armed groups, neglected, or used immorally, or abused physically, mentally, or sexually, or exploited through any other means, in the name of religious or cultural practices. (7) No child shall be subjected to physical, mental, or any other forms of torture at home, in school, or in any other places or situations. (8) Every child shall have the right to child friendly justice. (9) Children who are helpless, orphaned, physically impaired, victims of conflict and vulnerable, shall have the right to special protection and facilities from the State. (10) Any act contrary to Clause (4), (5), (6) and (7) shall be punishable by law, and children who have suffered from such an act shall have the right to be compensated by the perpetrator as provided for in law.”

<sup>9</sup> Hereinafter Children ‘s Act, 2018 will be referred as Act, 2018.

Child Justice (Chapter 4); Special protection and rehabilitation of children (Chapter 5); institutional provisions regarding child rights and child welfare (Chapter 6) safeguarding and enforcement of child rights and duties towards children (Chapter 7); offences against the children (Chapter 8); punishment, compensation and adjudicating authority (Chapter 9) and Miscellaneous (Chapter 10). This Act has replaced Children’s Act, 1992.

Every child has right to live with dignity. Section 3 of the Act, 2018 provides that every child would have right to lead a meaningful life. This provision obliges the governments to take necessary preventive and protection measures, including prevention of accidents that may occur against children and mitigation of risks. Section 4 provides that every child shall have right to name, nationality and identity. Section 5 provides rights against discrimination. This arrangement is in the negation of all forms of discriminations made on children, like prohibition of distinction between son and daughter, sons or daughters and their adopted sons and daughters or between one child and another under their care in any manner; or prohibition of discrimination between adopted sons or daughters between biological sons or daughters. The provision is inclusive in nature as it provisions many clusters—like religion, race, caste, ethnicity, sex, origin, language, culture, ideology, physical or mental conditions, disability, marital status, family status, occupation, health status, economic or social status, geographical region or any other such grounds—on which discriminations cannot be made.

Unless the context otherwise requires, no child can be separated or removed from his or her father or mother against his/her wishes. However, the court may pass an order for separating the child from his/her father or mother entrusting him/her in a guardian’s custody. In this regard, Section 6 provisions that the child, so living separately, shall have right to establish personal relationship or meet with his/her parents.

The Act, 2018 obligates the state to ensure protection as well as participation of children in affairs beneficial for their overall growth. Right to protection includes right to receive appropriate care, protection, nurturing, or affection from family. Section 7 provides that children would have right to protection from all forms of physical, mental violence, neglect, inhuman behaviour, or untouchability. It outlaws engagement of children of below 14 at hazardous places. Under Section 7(10), the central, provincial and local governments have power to make necessary measures for the protection of children.

The children, who are capable of forming opinion, would have right to participate in decision-making to be taken by his/her family, community, school or other public agency or institution that concerns him or her.<sup>10</sup>

S.No.	Rights	Duties
1.	Right to voice opinions and concerns; right to information in matters relating to his/her interests that concern them.	Everyone’s duty to help children whose lives are at risk;
2.	Right to establish child clubs, or assemble peacefully; right to confidentiality in matters of his/her	The child welfare authority or court, while making arrangement for alternative care of child, while

<sup>10</sup> Section 8, Act, 2018

	body, residence, property, data, correspondence, and character.	separating a child from his/her parents/guardian, or while deciding who between father and mother, having been divorced, will take care of child and adopt the best interest of the child in determination
3.	Right to special protection for children with disabilities, right to self-respect and self-esteem and actively participate in society, right to mingle in society and avail opportunities for education, healthcare or personal development; right to receive basic health care free of cost; right to take part in sports	Father and mother both have equal duty in relation to children's care, nurturing and personality development; it would be the duty of every parent to ensure availability of opportunities, like education, healthcare, nutrition and all other things required for their personality development.
4.	Right to education; right to receive compulsory and free education up to basic level and free education up to secondary level	Father, mother other family members or guardian shall neither engage their children in labour, nor would they leave their child under six years of age alone at residence
5.	Pregnant women and children shall have right to receive necessary immunization	Subject to available resources, the state has a duty to provide basic needs, including nutrition, protection, health and education. It shall be the duty of media to publish information without violating child rights

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The Act, 2018 details provisions regarding “child Justice” under Chapter-4. Section 20 is of natural import in this regard. It envisages that the persons, office bearers and the child court involved in dispensing child justice should have to take the following things into consideration:

- views of the child before taking any decision;
- views of the parents or guardians;
- adoption of language, speech and behaviour compatible with child's age , level of mental development;
- conversation with the child in the language s/he understands or take help of interpreters if required

If the investigating authority has a reason to believe that its imperative to take the child into custody, then in that case, they make take the child into the custody. However, they cannot apply force on the child so taken into custody. The child may be kept in an “observation cell”<sup>11</sup>

<sup>11</sup> Section 22, Act, 2018: “Provision regarding establishment of observation cells: (1) The Government of Nepal may set up observation cells for the purpose of keeping children accused of offensive act who have been taken into custody during the period of investigation. (2) Arrangement shall be made for a separate cell in every district

for a period of not exceeding 21 days. The probing of a child can be done in absence of his parents or guardian but in a child friendly way. The government of Nepal may appoint a police staff trained in child justice to undertake the investigation. A delinquent would not be kept in detention during the period of trial unless he is found guilty of committing offence punishable with imprisonment for a term that may be of three years or more; or if there is danger to his/her or other's life, or if there is fear of his/her escaping.

The Act explicitly under Section 25 guarantees rights of child victims. They have a right to receive information in a language understandable by them; they have right to involve or participate in the proceedings; right to free legal aid; right to receive copies of documents, including decisions and orders; or right to receive police protection. Similarly, the children, who are in conflict with law, would have right to information regarding the proceedings and charges; right to speedy and fair justice; free legal aid; right to confidentiality in the process of administration of justice; right to information regarding constitutional or legal rights. The delinquents have a right to give information or receive the same in the language they understand and speak. They should be provided with interpreters if required.

- **Diversion**

The Act, 2018 provides room for diversion, which is an intervention approach that redirects youths away from formal proceedings in juvenile justice system while holding them accountable for their actions. Section 27 provides that there could be no room for divergence in case if the child has committed offence punishable with imprisonment for a term that may be of three years or more. While taking a decision to divert the child, the following things would be taken into consideration:

- a. Child's admission to committing the offence;
- b. Consent of the child, parents or guardians;
- c. Consent of the victim;
- d. Nature and gravity of the offence

The investigating authority or government attorney would have to rely upon the report of the child's physical and mental conditions before diverting. While diverting, one or more of the processes stated below would have to be considered:

- a. Compromise between child delinquent and victim;
- b. Making the child realize his wrongdoings;
- c. Provide necessary counselling;
- d. Refer the child for community service;
- e. Refer the child to an organization for care and protection;
- f. Release the child under the guidance of child welfare authority
- g. Entrust the child to the care of his or her father or mother or family members or guardian

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police office until the time an observation cell is set up pursuant to Subsection (1). (3) Counselling and psychosocial support, as necessary, shall be made available to the child taken into custody for investigation.

(4) If any member of the family of a child kept in an observation cell desires to stay with her/him for her/his assistance, the investigations authority may grant permission for her/him to stay after stipulating the time and conditions, as necessary. (5) The provisions regarding the setting up, operation, management and monitoring of observation cells shall be as prescribed."

h. Involve the child in training or educational programme

The child so diverted would be monitored by the probation authority so as to ensure whether the child is participating in diversion process.

- **Child Court**

The government of Nepal, on the recommendation of Judicial Council<sup>12</sup>, may establish Child Courts in required number. However, specialized child courts are yet to be established in the country. Section 30(3) provisions that Child Bench shall be constituted in each district court to conduct proceedings. Section 30(4) envisages that the District Judge; Social Service Provider and Child psychologist or child specialist could be the members of the Child Bench. The hearing and proceedings of the cases against the child shall be conducted in closed bench<sup>13</sup>. The case has to be disposed off within 120 days on continuous hearing basis.

- **Punishment**

S.No	Age	Punishment (Section 36)
1	Child of under 10	No case, no punishment to be instituted
2	Above 10 and below 14	Imprisonment up to six months, or up to one year in child correction home
3	14 years or above but below 16	Half of the punishment set for a major
4	16 years or above but below 18	Two-third of the punishment
5	Below 16 years of age	No punishment of imprisonment unless the act is heinous, grave and repeated offence [Sec. 36(7)].

Considering the nature of offensive acts and circumstances in which the act was committed by a child, the child court has been entrusted with the power to postpone the punishment. The court would take the following things into account while postponing punishment:

- Having any member of the family or guardian to teach him good human behaviour;
- Having a service providing organization providing orientation to the child;
- Psychological counselling;
- Assigning child under the guidance and supervision of school, family, guardian, service providing organization;
- Referring the child in community service;

<sup>12</sup> The constitution of Judicial Council has been provisioned under Article 153, Constitution of Nepal. It sees Chief Justice of Nepal as Chairperson, while Law Minister, senior-most judge of the Supreme Court, one jurist nominated by President on the recommendation of the Prime Minister and a senior advocate on the recommendation of the Nepal Bar Association as its members.

<sup>13</sup> Section 35, Act, 2018: "Provision of closed bench: (1) Unless the child court passes an order to the contrary, the hearing and proceedings of cases against children accused of offensive act shall be conducted in closed bench. (2) While the hearing and proceedings of the case are being conducted in closed bench pursuant to Subsection (1), only the child concerned, members of her/his family or guardian, victim, government attorney, legal practitioner concerned and persons authorized by the child court shall be given entry into the court. (3) The procedure of hearing in closed bench shall be as prescribed."



- Referring the child to a correction home for not exceeding the duration of punishment s/he is liable to

If there is significant improvement or reformation in the child kept under supervision or correction home, then in such case, the child welfare authority may recommend to the child court to remit or waive the correctional period of such child. Nepal has adopted “restorative”<sup>14</sup> child justice administration<sup>15</sup>. The delinquents would not be handcuffed, shackled or kept in solitary confinement or detention or prison. Their punishment or offence would not be counted and such children would not be disqualified for any job or anything for the act done by them during their childhood.

- **Special protection**

The children who are abandoned, orphan, infants born due to rape, children of separated parents, infected with HIV, child labourer, or children of deprived Dalit community would be provided special protection by the government. Such children would be kept in Children’s Homes until they have been rehabilitated or until they complete the age of 18 years. The sole purpose of such arrangement is rehabilitation and social integration.

- **Institutional framework**

The Act, 2018 directs the state to establish National Child Rights council at the national level and state and local level child rights committees at provincial and local levels for protecting and promoting the rights of children. Also, there would be child welfare authority at local level to safeguard rights of children. A children’s fund would be set up which would be utilized for providing immediate rescue, relief, and rehabilitation. The fund would see the amounts received from government of Nepal, provincial governments, local governments, amount relieved from citizens and organizations, foreign aid, aid from international organizations, amount received in lieu of fines imposed by child court and from other sources. The child court may pass an order on the offender, or direct the government or the Children’s Fund to provide a reasonable amount of compensation to the victim.

- **Role of Judicial Committee**

The “Judicial Committee”<sup>16</sup> has been entrusted with the power to receive complaints relating to child rights’ abuse. Upon receiving such application, the Committee may summon the person

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<sup>14</sup>“The three core elements of restorative justice are the interconnected concepts of Encounter, Repair, and Transform. Each element is discrete and essential. Together they represent a journey toward wellbeing and wholeness that victims, offenders, and community members can experience. Encounter leads to repair, and repair leads to transformation.” Available at: <https://restorativejustice.org/what-is-restorative-justice/#:~:text=The%20three%20core%20elements%20of,and%20community%20members%20can%20experience>

<sup>15</sup> Section 39, Act, 2018

<sup>16</sup> Article 217 of the Constitution of Nepal envisages for “Judicial Committee: (1) There shall be a Judicial Committee under the Convenorship of the Deputy Head of the Village Executive in every Village Council and under the Convenorship of the Deputy Mayor of the Municipality in every Municipality to exercise power to hear cases, as entrusted to the Village Council or Municipality pursuant to Federal and Provincial laws. (2) The Judicial Committee, pursuant to Clause (1), shall have two members designated by the Head of Village Executive in case of Village Council and two members designated by the Mayor of the Municipal executive in case of a Municipality.”

concerned within 24 hours. If it appears that the person concerned has violated the rights of the child or has not fulfilled their obligation towards child, the Committee shall pass an order on the person or organization or agency concerned at the local level within 30 days of receiving application to enforce the rights of the child or to oblige the person concerned to fulfil his duties towards the child.

- **Offences against children**

The Act, 2018 under Section 66 details a long list of acts and omissions that constitute offence against children. It includes: involvement of children in addictions such as smoking, drinking or gambling; allowing entry to, or use of children in recreational activities at bars or others; showing pornography, use of child in pornography; infliction of physical, mental or any form of punishment; inflicting injuries, harm, humiliation, neglect, discrimination, exclusion, hate, isolation, or torture; use of child in experiments; sexual activities; child marriage; child labour; and among others. Section 72 stipulates punishment of fine and imprisonment for offences against the children.

- **Ineligibility**

A person convicted under child sexual abuse would be deemed to have committed a criminal offence of moral turpitude. Nepal's law is clear on a point that the persons of moral turpitude would be disqualified to run for election; join any organization or party and even they would be debarred from joining civil services.

If a person employed in any public or private organization commits offence against the children, the person would be dismissed and based on the severity of the offence, the outlier would not be considered eligible for up to 10 years in future for the work involving direct contact of children or to be appointed or elected in such private institution or organization. Section 67 of the Act, 2018 is relevant provision in this regard.

- **Confidentiality**

The Act aims to protect the right to privacy of the children in conflict with laws. In this light, Section 78 envisages that no person shall publish or broadcast the details of the identity of a child in the case that is *sub judice* before the child court. However, if such publication about the details of child would not adversely affect the interest of the child and the child court permits, then in such case, the identity details of the child could be published.

- **Basis of determining age**

In case of age determination, the documents like, the date of birth recorded in the child's birth registration issued by the hospital; birth certificate by issued by the local bodies; school certificate mentioning the date of birth; or the age recorded in birth chart (Janmakundali) or by the age disclosed by the father, mother or family, would be taken into consideration.

## **V. Conclusion**

The government of Nepal has adopted and enacted a fair corpus of laws for upholding the cause of children. The Constitution of Nepal guarantees a bundle of fundamental rights to children.

These rights are of natural import. However, the juvenile justice regime appears to be restrictive in nature (to some extent) than restorative for a number of reasons. First, the law allows the judicial authority to pass order for sending the delinquents into correction homes. Secondly, the Act under Section 27(1)(c) empowers the Juvenile Court to pass order for diversion, irrespective of the claimed amount or of fine or of term of imprisonment. But, at the same time, Section 27(2) restricts diversion in case where a delinquent is accused of committing offence punishable by imprisonment for a term of three years or more. This shows that the preceding clause widens the scope of diversion while the succeeding one narrows the same.