

# **An Act to Provide for Safeguarding the Interests of Children**

## **Date of the Royal Seal and Publication in the Nepal Gazette**

**2049/2/7 (May 20, 1992)**

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**Preamble:** Whereas, for the physical, mental and intellectual development of the children it is expedient to make timely legal provisions in order to protect the rights and interests of the children.

Be it enacted by Parliament in the twenty first of the reign of His Majesty's King Birendra Bir Bikram Shah Dev.

## **CHAPTER - 1**

### **PRELIMINARY**

#### **1. Short Title and Commencement:**

(1) This Act may be called the "CHILDREN'S ACT, 2048 (1992)."

(2) It shall come into force on such date as His Majesty's Government may, by a notification published in the Nepal Gazette, appoint.

#### **2. Definitions:** Unless the subject or context otherwise requires, in Act-

(a) " Child means every human being below the age of 16 years.

(b) "Guardian" means the guardian appointed under section 22 for the purpose of protection the Child.

(c) Welfare Board' means the Central Children Welfare Board and the District Children Welfare Board constituted under Section 32 for the protection and well being of Children.

(d) Children Welfare officer" means the Children Welfare Officer appointed under Section 33 by His Majesty's Government and includes any other person or employee as prescribed to act on behalf of such officer.

(e) "Abandoned Child" means a Child-

(1) Who has no father mother or any other of his family to look after him.

(2) Who has been neglected by his father, mother or any other member of his family even though they exist.

(3) Who does not have any means of living.

(f) "Children's Welfare Home" means the Children's Welfare Home established by His Majesty's Government under Section 34 for the purpose of upbringing and maintenance of the Abandoned Child.

(g) "Chief of the Children's Welfare Home" means and includes any person who works as the Chief of the Children's Welfare Home or any person who acts on behalf of such Chief in his absence.

(h) "Children's Rehabilitation home" means Children's Rehabilitation Home established by His Majesty's Government under Section 42 or any Children's Rehabilitation Home being used for that purpose.

(i) "Prescribed" or "As prescribed" means prescribed or as prescribed in Rules made under this Act.

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## **CHAPTER - 2**

### **RIGHTS AND INTERESTS OF CHILDREN**

#### **3. Right to a name and determination of birth date of the Child :**

(1) From birth, every child shall be granted a name according to the religion, culture and tradition by his father, if the father is not available by his mother and if the mother is also not available by any other member of his family. In cases where the father, mother or any other member of his family is not alive or their whereabouts are not known, the person or organisation bringing up the Child shall give a name to such Child.

(2) In cases where the date of birth of any child is not traced, the person or organisation bringing up the Child shall, in consultation with a registered medical practitioner, determine the birth date of the Child. Unless otherwise proved<sup>1</sup> the date so determined shall be considered to be the date of birth of the Child.

#### **4. Right to maintenance and upbringing, education and health care**

(1) Parents shall be under an obligation to make arrangements so as to bring up the Child and to provide education, health care, sports and recreation facilities to the Child according to the economic status of their family.

(2) The parents or guardian of the Child shall cause to be given the vaccination necessary to save the Child from diseases. The local authorities and related agencies of His Majesty's Government shall render assistance in this matter.

(3) His Majesty's Government shall render assistance in making arrangements for the proper health care to the pregnant mothers and the mothers who have recently given birth to a Child.

(4) His Majesty's Government shall render assistance in making arrangement for providing advice education and services relating to family planning and preventive health care to the parents.

**5. Discrimination not to be made between a son or daughter and between sons and daughters :**

No discrimination shall be made between a son and daughter and between sons and daughters themselves in matters relating to their upbringing, education and health care.

**6. Discrimination not to be made between children born out of wedlock or in lawful wedlock or between the adopted or the natural Child :**

(1) No discrimination shall be made between children born out of wedlock or in lawful wedlock in matters of their upbringing, education or health care.

(2) No discrimination of any kind shall be made between the natural or the adopted son or daughter.

**7. Prohibition on torture or cruel treatment:**

No Child shall be subjected to torture or cruel treatment.

Provided that, the act of scolding and minor beating to the Child by his father, mother, member of the family, Guardian or teacher for the interests of the Child himself shall not be deemed to violate the provisions of this Section.

**8. Facilities to maintain contact:**

(1) In circumstances where the parents of the Child are living separately due to divorce or any other reason, the Child living with the father shall be given an opportunity to maintain personal relation and direct contact with the mother and vice-versa on a regular basis or be allowed to live together with the other parent for sometimes.

Provided that, the court may prohibit to grant the facility of maintaining direct contact or living together if there is a reasonable ground to believe that such direct contact and personal relation or living with the other parent may be contrary to the Child's interest.

(2) If the parents do not agree on the question of the time of maintaining direct contact or the duration of living with the father or mother under sub-section (1), the question shall be settled as decided by the court.

### **9. Adopted son or daughter to be permitted to make direct contact or correspondence with natural parent :**

A person adopting a son or daughter having fulfilled the legal requirements shall, if such adopted son or daughter wishes, permit him or her to maintain direct contact or make correspondence with his or her natural parents on a regular basis.

### **10. Right to mention the name of mother and maternal grandfather :**

In cases where a Child is required under a law to mention the names of his father and grandfather in connection with official proceedings or in practice, the Child may, until the whereabouts of his father are known, mention the names of his mother and maternal grandfather. In the case of a Child either of whose parents are not traced, if the person or organisation bringing up the Child certifies in writing that the parents have not been traced, such Child shall have the right not to mention the names of his father, mother or grandfather.

### **11. Child and Criminal Liability :**

(1) If the Child below the age of 10 years commits an act which is an offence under law, he shall not be liable to any type of punishment.

(2) If the age of the Child is 10 years or above 10 years and below 14 years and he commits an offence which is punishable with fine under law, he shall be warned and explained and if the offence is punishable with imprisonment, he shall be punished with imprisonment for a term which may extend to six months depending on the offence.

(3) If the child who is above 14 years and below 16 years commits an offence he shall be punished with half of the penalty of the penalty to be imposed under law on a person who has attained maturity.

### **12. Disqualifications or recidivism not to be applicable:**

(1) If a person is to be disqualified to hold any office or enjoy any facility under the law for reason of committing an offence, such disqualification shall not be applicable with regard to a Child committing an offence during his childhood.

(2) For the purpose of determination of recidivism, an offence committed during childhood shall not be included therein.

(3) Even if a Child commits the same offence more than once, he shall not be liable to additional Punishment on the basis of continuation of such offence.

### **13. Prohibition to engage Children in begging and to make fakir :**

(1) No Child shall be permitted to be engaged in begging except in following the religious or cultural traditions.

(2) No measure shall be taken which will be directed towards making a Child Sanyasi, bhikchhu or fakir, and such measure, even if taken, shall not be legally valid.

(3) A Child who has been made sanyasi, bhikchhu or fakir prior to the commencement of this Act may, on attaining majority, enter into family life if he so wishes

#### **14 Prohibition on offering of child in the name of God or Goddess:**

(1) No person shall, for the purpose of fulfilling the promise made to God or for serving any other religious purpose, offer or surrender his or anybody else's Child to any God or Goddess by buying such Child, offering economic gain, under any kind of coercion or undue influence.

(2) No person shall, by accepting economic benefit, sell or handover otherwise his child to anybody for the purpose stipulated in sub-section (1).

(3) No panda, dharni, priest or the chief of any religious enshrinement shall incite to the commission of an act contained in sub-section (1) nor shall perform or permit to perform religious formalities in cases where a person brings his Child to any temple with the purpose of offering or surrendering to God or Goddess.

(4) If any event takes place after the commencement of this Act, in violation of sub-section (1), (2) and (3) above, the father, mother or any member of the family shall take custody of the Child and make arrangements for upbringing, education and health care of such Child on equal footing with other members of the family as if such event never took place.

(5) Notwithstanding anything contained in sub-section (4), a Child referred to in sub-section (1) and (2) who is below the age of 16 years at the commencement of this Act shall be brought up by any of the living parents.

#### **15. Prohibition on imposing rigorous punishment:**

Notwithstanding anything contained in the existing laws, no Child shall be subjected to handcuffs and fetters, solitary confinement or live together in prison with a prisoner who has attained maturity in case a Child is convicted for any offence.

#### **16. Children not to be made involved in immoral profession :**

(1) No person shall involve or use a Child in immoral profession.

(2) No photograph of a Child shall be taken or allowed to be taken, nor such photograph shall be distributed or exhibited for the purpose of engaging a Child in immoral profession.

(3) No publication, exhibition or distribution of photograph or personal events or descriptions of a Child tarnishing the character of such Child shall be made.

(4) No Child shall be made involved in, the sale or distribution of, and trafficking in alcoholic drinks, narcotic drugs or any other drugs.

### **17. Restriction on employment :**

(1) A Child who has not attained the age of 14 years shall not be employed in any work as a labourer.

(2) A Child who has attained the age of 14 years or above shall not be employed in work as a labourer during the period from 6 0' clock in the evening to 6 0' clock in the morning

(3) A Child who may be employed in work as a labourer shall not be made to be engaged in, work against his will.

(4) Every child labourer shall be provided equal remuneration for the equal work without discrimination of any kind of the Child's sex, religion, race or colour, caste and community.

### **18. Protection from engaging in hazardous work:**

No Child shall be engaged in work that is likely to be harmful to the Child's health or to be hazardous to the Child's life.

### **19. Children's case not to be entertained in the absence of legal practitioner:**

(1) The Court shall not entertain or decide a criminal charge brought against the Child unless there is a legal practitioner to defend the Child.

(2) In circumstances referred to in sub-section (1), the concerned Court shall make available the service of a legal practitioner appointed on behalf of His Majesty's Government or of any other legal practitioner wishing to provide such service.

### **20. Enforcement of Rights :**

(1) For the enforcement of the rights set out in this Chapter, every person shall have the right to file a petition on behalf of the Child to a District Court of the district where the Child is residing. On receipt of such petition, the concerned Court may, upon inquiry into the matter, enforce the right by issuing the appropriate order, direction or writ.

Provided that, in matters relating to the prohibition on maintaining direct contact or living by the Child in pursuance of the proviso clause of sub-section (1) of Section 8. such action may be initiated order may be issued only on the basis of a petition of the parent (s) of the concerned Child

(2) In cases where a person is aggrieved as a result of inflicting harm on any right conferred by this chapter, the Court may, in issuing order, direction or writ under sub-section (1), decide to grant a reasonable amount of compensation.

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## **CHAPTER - 3**

### **PROVISIONS RELATING TO THE PROTECTION OF THE CHILD AND RELATING TO THE GUARDIAN**

#### **21 Looking after an orphan and custody of his property:**

(1) If the Children Welfare Officer or the Chief District Officer is informed of the fact that a Child does not have any relative of same home to look after the Child, the Children Welfare Officer or the Chief District Officer, as the case may be, shall make necessary arrangement for upbringing and maintenance of the Child. In doing so, the Child shall be, as far as practicable given to the custody of the nearest relative of the Child. In the case of non-availability of such relative, the Child may be given to any person or organization wishing to take the custody for his maintenance and upbringing. In case of non-availability of any relative, person or organisation wishing to take the Child for his maintenance and upbringing, the Child shall be surrendered to the nearest Children's welfare Home.

(2) In cases where the Child referred to in sub-section (1) has any property, the Children Welfare Officer or the Chief District Officer shall prepare a statement thereof in the presence of at least two local witnesses and shall keep one copy thereof in his office and the other one shall be given to the person or organisation responsible for upbringing and maintenance of the Child.

(3) The statement of property prepared under sub-section (2) and the property mentioned therein shall be given to the custody of the person, organisation or the Children's Welfare home responsible for upbringing and maintenance of the Child and such person, organisation or the Children's Welfare Home shall certify in writing the taking of the custody. Pending the custody of the property of the Child, the responsibility of taking care of or of protecting the property shall lie with the Children Welfare Officer, and if he is not available, with the Chief District Officer.

(4) The income derived from the property mentioned in sub-section (3) may be used by the person, organisation or the Children's Welfare Home taking responsibility for the maintenance, upbringing education and health care of the Child. The person, organisation or the Children's Welfare Home taking responsibility for the maintenance and upbringing of the Child shall, in respect of such property enjoy the same rights and comply with the same terms and conditions as those of a Guardian appointed under this Act.

#### **22. Appointment of Guardian :**

(1) In cases where a Child is deprived of his family for reasons of death of his parents or adult relative belonging to the same home, or even if though alive, if they are unable to bring up or look after the Child for reasons of physical or mental incapacity, every person may, for the purpose of giving the Child to a Guardian apply to the Children Welfare Officer. On receipt of such application, the Children Welfare Officer shall, upon necessary inquiry into the matter appoint a Guardian for the Child subject to the provisions of this Section.

(2) In appointing a Guardian under sub-section (1), priority shall be given, as far as practicable, to the nearest heir.

Provided that, if it is not appropriate to appoint the nearest heir as the Guardian for reasons of family confrontation quarrel or for any other reason, the Children Welfare Officer may, stating the reasons thereof, appoint as he deems appropriate a distant heir or any other person as the Guardian of the Child.

(3) In appointing a Guardian pursuant to sub-section (2), consent of the appointee to that effect shall be obtained.

(4) Notwithstanding anything contained in sub-section (2) the following persons shall not be qualified to be appointed to or, hold the office of the Guardian:

- (a) if he is suffering from mental disease,
- (b) if he has not attained the age of 25 years,
- (c) if he is relieved of the office of Guardian in accordance with Section 28,
- (d) if he is convicted of any offence by court involving moral turpitude, or
- (e) if he turns out to be insolvent.

(5) If nobody agrees to act as Guardian of the Child or if no appropriate person is available to be the Guardian, the Children Welfare Officer shall make arrangements to send the Child to a Children's Welfare Home.

(6) In case there is any property, it also shall be handed over while handing over the Child to the Guardian pursuant to sub-section (2) or to the Children's Welfare Home pursuant to sub-section (5). While handing over the property, its statement shall be prepared and one copy shall be kept in his office and the other one shall be given to the Guardian or Chief of the Children's Welfare home who takes over the property.

(7) The Guardian or Chief of the Children's Welfare Home may spend the income derived from the property taken over pursuant to sub-section (6) for the maintenance, education and health care of the concerned Child and keep its account.

### **23. Interest and property of the Child to be safeguarded:**

(1) The main duty of the Guardian shall be to safeguard the interest of the Child.

(2) The Guardian shall give special attention to the following points besides other things

- (a) To bring up the Child in a way that will enhance the physical and mental development of the Child.
- (b) To arrange for the education which may help the intellectual development of the Child.
- (c) To prevent Child from being involved in bad habit or company.
- (d) To keep the up-to-date record of the Child's property and to protect it.



(3) The Guardian shall initiate necessary proceedings in order to realise the property or income of the Child misappropriated by others and to release the impended property. For this purpose, the Guardian may submit application, complaint or suit in the office or court or may initiate other necessary legal proceedings on behalf of the Child.

#### **24. The works to be done by the Guardian :**

The Guardian may, to bear the expenses necessary for the maintenance, education or health care of the Child give any property of the Child to any person for earning or on rent.

#### **25. The works not to be done by the Guardian:**

The Guardian shall not do any of the following works:

- (a) To engage the Child in work that requires more labour than his physical capacity can bear.
- (b) To engage the Child in any work which may hurt in his religious or cultural usage or to use his property on such work, or
- (c) To sell the Child's property to others with an intention to take it back by himself.

#### **26. Report to be submitted by the Guardian :**

(1) The Guardian shall submit a report to the concerned Children Welfare Officer stating all the particulars relating to the expenses incurred on his own for the maintenance, health care and education of the Child and the income earned from the property of the Child and the expenses incurred out of such income for the maintenance of the Child in each year within the month of Baisakh (May 13).

(2) The Children Welfare officer, if he deems necessary may check the reliability of the statement or statistics mentioned in the report submitted pursuant to sub-section (1), inspect or cause to inspect the Child and the place where his property is remained. For this purpose, the Children Welfare Officer may order to present the concerned Child before himself and also make necessary inquiry with the Child. In case the Children Welfare Officer issues an order to present the Child before him, it becomes the duty of the Guardian to present the Child

#### **27 The Guardian may retire taking approval:**

(1) In case the Guardian, appointed pursuant to this Act, desires to retire being unable to discharge his duty, shall submit an application stating the reason thereof to the Children Welfare Officer at least one month before. The Guardian shall also have to submit along with the application, the statement of the property of the Child that has taken in custody and the expenses up to the date of the application.

(2) If the reason stated in the application submitted pursuant to sub-section (1) is deemed reasonable, the Children Welfare Officer shall cause to handover the property in the custody of the Guardian to any office or person and permit him to retire.

### **28. Guardian may be removed:**

The Children Welfare Officer may remove the Guardian, in case it is proved that he has done any work in contravention to Section 23, 24 or 25 or gives a false statement while submitting the report pursuant to Section 26.

### **29. Another Guardian to be appointed :**

(1) In case any Guardian has expired or the Guardian cannot be retained due to any situation pursuant to sub-section (4) of Section 22 or the Guardian is retired pursuant to Section 27 or removed pursuant to Section 28, the Children Welfare Officer shall subject to Section 22 appoint another Guardian instead of such Guardian.

(2) If the Guardian, who is removed from the guardianship or is not retained as a Guardian pursuant to sub-section (1) has any property of the Child in his custody he shall handover such property and the related documents to the office or person specified by the Children Welfare Officer.

### **30. Maintenance of the Child having no sufficient income :**

(1) The Guardian may submit an application to the Chief District Officer for the Government assistance if he could not bring up the Child in a proper way due to in-sufficiency of income or property or the property is consumed by any other in an illegal way and the Chief District Officer shall, if he deems the statement reasonable, make available necessary Government assistance. In case such assistance is not available, an arrangement shall be made to keep the Child in the Children's Welfare Home.

(2) In case any Child is handed over to the Children's Welfare Home, the responsibility of the Guardian shall be deemed to be terminated from the date of such handover

### **31. Guardian to receive remuneration :**

(1) The Children Welfare Officer shall specify the remuneration of the Guardian on the basis of the property and income of the Child.

(2) The Guardian may take five percent of the reasonable expenses incurred for the realisation of the property or income of the Child pursuant to sub-section (3) of Section 23 and the current price of the property so realized or the income in the form of remuneration.

(3) In case the Guardian has spent some amount on his own for the maintenance, education or health care of the Child, he may also realise such amount from the income of the Child.

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## **CHAPTER- 4**

### **WELFARE PROVISIONS**

#### **32. Constitution of Central and District Children Welfare Board :**

(1) His Majesty's Government by publishing a notification in the Nepal Gazette constitute a Central Children Welfare Board consisting of twenty one members at the maximum including the members from among the social workers, woman social workers, medical practitioners, Child psychologist and teachers. The Name of the chairperson and members of the Central Children's Welfare Board shall be as prescribed in the same notice. The Board shall work subject to the policy and directives of His Majesty's Government.

(2) A District Children Welfare Board shall be constituted in each District under the convener ship of the Chief District Officer. In the District Children Welfare Board ,there shall be the persons as appointed by the Chief District Officer specially from among the following persons besides other persons:

- (a) persons involved in social service,
- (b) Social workers involved in the works relating to the rights and interests of the children,
- (c) Women social workers,
- (d) Medical practitioners,
- (e) Child psychologist,
- (f) Teachers.

(3) The tenure of the officials of the Central Children Welfare Board and District Children Welfare Board shall be of four years and they may be reappointed.

(4) The chairperson of the District Children Welfare Board shall be the person prescribed by the members of District Children Welfare Board from among themselves and untill such chairperson is appointed, the Chief District Officer himself shall act as the chairperson of the Board.

(5) Each District Children Welfare Board shall have to submit an annual report relating to the children's welfare activities conducted in the district level to the Central Children Welfare Board within the month of Baisakh. The Central Children Welfare Board shall prepare a nation-wide report relating to the Children on the basis of the annual reports received from the District Children Welfare Board and submit it to His Majesty's Government in each year within the month of Ashadh (July 13).

(6) Besides those written in this Act, the other functions, duties, rights and procedures of the Central Children Welfare Board and the District Children Welfare Boards shall be as prescribed.

#### **33. Appointment of Children Welfare Officer :**

(1) His Majesty's Government may appoint Children Welfare Officer in requisite number. His Majesty's Government may designate any other person or personnel to act as the Children Welfare Officer pursuant to this Act until the Children Welfare Officers are appointed.

(2) The Children Welfare Officer, appointed or designated pursuant to subsection (1), shall work subject to the general control and directives of the District Children Welfare Board.

(3) Besides those written in this Act, the other functions, duties, rights terms and conditions of service of the Children Welfare Officer shall be as prescribed.

#### 34. Establishment and operation of Children's Welfare Home :

(1) His Majesty's Government shall establish Children's Welfare Home in the various regions of the Kingdom of Nepal as required.

(2) His Majesty's Government may utilize Children's Welfare Home, orphanage or center operated by any other person or organisation, for the purpose of keeping the Children until the establishment of Children's Welfare Home pursuant to subsection (1).

Provided that, anything written in this sub-section shall not be deemed to have given rights to His Majesty's Government to interfere in the operation of such Children's Welfare Home, orphanage or centre.

#### **35. Abandoned Child to be kept in the Children's Welfare Home:**

(1) The Children Welfare Officer and the police personnel shall handover the Abandoned Child, they have found or handed over to them by any person, to the nearest Children's Welfare Home after keeping the records of the Child including the name, surname, address, photograph, any special mark on his body and thumb impressions and as far as practicable the name of his father and grandfather in their office.

(2) The Chief of the concerned Children's Welfare Home shall take into its custody the Abandoned Child brought to handover pursuant to sub-section (1) except in the case of lack of lodging place.

(3) In case the Chief of the Children's Welfare Home did not take into its custody the Abandoned Child due to the reason mentioned in sub-section (2), such Child may be handover to any other Children's Welfare Home.

(4) The Abandoned Child residing in, the Children's Welfare Home shall be kept separately on the ground of sex.

(5) The Children Welfare officer, Police Officer or Chief of the concerned Children's Welfare Home may, in order to find out father, mother, relatives or Guardian of the Abandoned Child cause to publish a notice including the description and photograph of such Child in in any or cause to communicate through any other medium of communication

### **36. Duration to kept in the Children's Welfare Home :**

(1) An Abandoned Child shall be kept in the Children's Welfare Home until he attains the age of sixteen years.

Provided that, if the Child of such age is sent of from the Children's Welfare home, it is deemed that he will face the problem of livelihood, he may be kept in the Children's Welfare Home until he attains the age of eighteen years.

(2) Notwithstanding anything contained in sub-section (1), the age bar to live in the Children's Welfare Home does not apply in the case of blind, disabled or mentally retarded Abandoned Child, until they are sent to the Children's Welfare Home provided for their living.

(3) Notwithstanding anything contained in sub-section (1), If the father, mother or the Guardian of the Abandoned Child desires to take the Child with them, the Chief Of the Children's Welfare Home shall allow to take the Child at any time and prepare a document for such take over of the Child.

### **37. Assistance to be give to provide vocational training or put on the job:**

(1) The Abandoned Children residing in the Children's Welfare Home shall be involved in vocational training or teaching and learning on the basis of their aptitude and knowledge.

(2) His Majesty's Government shall provide assistance to engage an Abandoned Child who has already obtained any knowledge or skill in any vocational jobs suitable to his knowledge or skill.

### **38. Child may be kept in the Children's Welfare Home on the Condition of payment:**

(1) In case the father, mother or relatives of the Child who often runs away from the home agrees to bear all the expenses required for his maintenance, the Chief of the concreter Children's Welfare Home may allow to keep such Child in the Child Welfare Home having prepared a document of agreement to bear such expenses.

(2) When the Child kept in the Children's Welfare Home pursuant to sub-section (1), completes the specified period in the Children's Welfare Home, the Chief of the Children's Welfare Home shall handover the Child to the custody of his father, mother or relatives. While banding over the Child the balance amount, if any, of the money deposited for the maintenance of such Child shall also be returned along with the statement of expenses incurred for his maintenance.

(3) In case any Child kept in the Children's Welfare Home pursuant to sub-section (1) has escaped from the Children's Welfare Home or has expired, the Chief of the Children's Welfare Home shall immediately give this information to the father, mother or relatives of the Child and do everything possible to trace him in the case of escaping.

(4) The Chief of the Children's Welfare Home shall, while giving the Child to the custody of his father, mother or relatives pursuant to sub-section (2), also return his immovable property, if any and the related documents.

(5) In case the Child escaped pursuant to sub-section (3) is not found or the Child has expired any goods or immovable property of the Child shall be returned to his father, mother or relatives and realised from them the due expenses relating to the Child, if any.

### **39. General punishment may be given to maintain the discipline:**

(1) In case an Abandoned Child does not comply with the terms and conditions to be complied with while staying in the Children's Welfare Home or does any act which violates the discipline, the Chief of the Children's Welfare Home may impose any of the following punishments on such Child:

(a) To deprive him from the facilities available in the Children's Welfare Home not exceeding three days at one time or,

(b) To realise full or partial amount of the damage, in case anything of the Children's Welfare Home is broken or damaged knowingly.

(2) Notwithstanding anything contained in sub-section (I), it shall not be deemed to be conferred the power to the Chief of the Children's Welfare Home to beat or detain the Child in solitary confinement or to stop giving food and water to such Child.

(3) For the purpose of realisation of the amount of the damage from the Abandoned Child pursuant to clause (b) of sub-section (1), the Chief of the Children's Welfare Home shall realise the amount as possible from the income of the concerned Child or from his salary, if he has to get any for working there, and shall have to reconcile by remitting the remaining amount.

### **40. Expenses may be realised handing over the Child to his father, mother etc:**

(1) In case it is known that the father, mother or a member of the family of any Child has enrolled him to a Children's Welfare Home, orphanage or such other centre giving a false statement that he is an Abandoned Child or an orphan, the Chief of the Children's Welfare Home shall have to handover such Child to his father, mother or a member of the family whoever comes in contact.

(2) In the situation pursuant to sub-section (1), the concerned Children's Welfare Home, orphanage or Centre shall have to realise all the expenses incurred for the maintenance (If the concerned Child as a Government due from the father, mother or a member of the family of the Child who has enrolled him fraudulently.

Provided that, the concerned Children's Welfare Home, orphanage or centre shall not realise the expenses incurred for the maintenance of the Child in case the father, mother member of the family the Child has no income or property.

#### **41. Chief of the Children's Welfare Home to keep records and to report :**

(1) The Chief of the welfare Home shall have to prepare personal records of all the Abandoned Children residing in the Children's Welfare Home. If any punishment pursuant to sub-section (1) of section 39 is awarded to any child, that also shall be mentioned in such record.

(2) The form of personal records to be kept pursuant to sub-section (1) shall be as prescribed.

(3) The records maintained pursuant to sub-section (1), shall be kept secret and such records shall not be shown or given to any person other than the Children Welfare Board or Children Welfare Officer or the person or office having permission from such Board or Officials.

Provided that, this restriction shall not apply to the records demanded by the court in relation to a case.

(4) The Chief of Children's Welfare Home shall send reports, in the prescribed form stating all the activities carried out by the Children's Welfare Home in the last year to the District Children Welfare Board and Children Welfare officer in each year within the month of Baisak (May 13).

#### **42. Establishment and operation of Children's Rehabilitation Home :**

(1) His Majesty's Government shall establish Children's rehabilitation Homes as required.

(2) The following children shall be kept in the Children's Rehabilitation Home established pursuant to sub-section(1):

(a) Child to be imprisoned pursuant to the existing law for the investigation or proceedings of the case being accused in any crime,

(b) A Child to be imprisoned being punished pursuant to existing law,

(c) A Child addicted to narcotic drugs,

(d) A Child who often runs away from father, mother or the family,

(e) A Child who has company with the persons involved in immoral or inexpedient activities of such persons or depends upon their earnings,

(f) Children of the categories prescribed by His Majesty's Government.

(3) His Majesty's Government may utilise the private Children's Welfare Home, orphanage or centre operated by any person or body in the form of Children's Rehabilitation Home temporarily by obtaining permission of such person or body until the Children's Rehabilitation Home is established pursuant to sub-section (1).

(4) In case the Child mentioned in the clause (d) of sub-section (2) is kept in the Children's Rehabilitation Home with the consent of his father, mother or a member of the family, his father, mother or a member of the family shall have to bear the expenses incurred for his maintenance.

(5) The operation of the Children's Rehabilitation Home and the facilities, training and education to be provided for the children residing therein as well as the terms and conditions to be followed by the children shall be as prescribed.

**43. Establishment and operation of orphanage and centre for mentally retarded Children:**

(1) His Majesty's Government shall establish orphanage and centre for mentally retarded children as required for the maintenance and dwelling of orphans, disabled or mentally retarded children having no parents.

(2) His Majesty's Government shall provide necessary education for the children residing in the orphanage or centre for mentally retarded children pursuant to sub-section (1).

(3) Notwithstanding anything contained in sub-section (1) His Majesty's Government may, under an agreement, utilise the orphanage or centre for mentally retarded children operated by any other person or organisation, for the purpose of this Act.

**44. Inspection of Children's Welfare Officer shall inspect the Children's Rehabilitation Home, orphanage etc :**

(1) The Central Children's Welfare Board or may inspect or cause to inspect all Children's Welfare Home orphanages or centres established within the Kingdom of Nepal at any time and the District Children Welfare Board or Children Welfare Officer may inspect or cause to inspect the Children's Welfare Homes, orphanages or centres within their own area at any time.

(2) The Children's Welfare Officer shall inspect the Children's Welfare Homes, orphanages or centres at least twice a year within at twice a year his area and while doing such inspection, in case it is found that any act to be done pursuant to this Act and the Rules made there under is not done or any act is done in contravention to the existing law, he shall have to send its report to the District Children Welfare Board.

(3) The Children Welfare Board or Children Welfare Officer may issue directives to correct the irregularities found in the Children's Welfare Home, children's Rehabilitation Home, orphanages or such other centres and it shall be the main duty of the Chief of the Children's Welfare Home, Children's Rehabilitation Home, orphanages or centres to follow such directives.

**45. Provision relating to the Children's Welfare Home Children's Rehabilitation Home. orphanage etc:**

The person to operate the Children's Welfare Home, Children's Rehabilitation Home, orphanage etc, power to be used by him, terms and conditions of his service and the rules to be obeyed by and the education and training to be provided for the Children residing in such Children's Welfare Home, Children's Rehabilitation Home, orphanages or centres shall be as prescribed.

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## **CHAPTER - 5**

### **WORKING HOURS AND LEISURE**

#### **46. Particulars to be Child as a labourer:**

(1) The person or organisation engaging a Child as a labourer shall send a photograph and particulars of the concerned child in the prescribed form to the district Children Welfare Board.

(2) The District Children Welfare Board, if it deems necessary, may cause to submit the particulars in addition to the particular submitted pursuant to sub-section (1), and check or cause to check whether the statement written in the particulars are correct or not. In case anything is found in contravention to this Act or existing law or statement mentioned in the particulars while checking, the person who checked on behalf of the Board may give necessary directives to correct it.

(3) It shall be the duty of the concerned person or organisation to submit the particulars demanded and to comply with the directives issued pursuant to sub-section (2).

#### **47. Working hours and leisure :**

(1) While engaging a Child as a labourer pursuant to Section 46, he shall not be engaged more than 6 hours a day and nor more than 36 hours a week.

(2) Generally, after continuous work of three hours, a leisure of half an hour and a holiday of one day for each week shall be given to the Child engaged in the work pursuant to sub-section (1). The leisure of half an hour for each day and a holiday for each week provided thus shall also be regarded as the working hours for the purpose of this Section.

#### **48. Approval to be obtained :**

(1) In case any corporate body or industrial enterprise has to engage a Child of 14 years or above as a labour or any other has to include any Child in any recreation or cultural programme having commercial purpose, shall obtain approval of the Children Welfare officer and his father, mother or Guardian as well.

Provided that, no permission is required pursuant to this Section to engage the Children (if any educational organisation, Children's Welfare Home, Children's Rehabilitation Home or orphanage in the functions organised by those organisations to cause to participate them in the cultural programmes conducted by those organisations for the wide interest of such organisations.

(2) In the place where there is not a Children Welfare Officer, the permission pursuant to sub-section (1), shall be taken from the Labour Office of His Majesty's Government, if it exists and if not, the permission shall be taken from the Chief District Officer.

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## **CHAPTER -6**

### **MISCELLANEOUS**

#### **49. Only particular persons can attend in the case relating to the Child:**

(1) The legal practitioner or the father, mother, relatives Guardian of the Child and if the officer hearing the case deems it appropriate and permits any person or the representative of the social organisation involved in safeguarding the rights and interests of the Child may attend in the proceedings of any case related with the Child initiated under this Act or existing laws.

(2) The case pursuant to sub-section (1) and the particulars of the incident relating to it cannot be published in any paper without the permission of the investigation officer of the case or the officer hearing the case. Such restriction shall also prevail for the owner of the press, news agents and photo news agents.

#### **50. Investigation of the case and pending of the punishment:**

(1) In case the officer hearing the case deems that it is not appropriate to keep the Child in prison in consideration to the physical condition age of the accused Child who is to be investigated keeping in prison pursuant to existing law, situation at the time of offence and the place of imprisonment may issue an order to handover the Child to the custody of his father, mother, relatives or Guardian or any social organisation involved in safeguarding the rights and interests of the Child or the Children's Rehabilitation Home on the condition to present him as and when required and to carry on investigation or proceeding of the case.

(2) In case the officer hearing the case deems that it is not appropriate to keep the Child in prison who has got a sentence of imprisonment being proved as an offender in consideration to his physical condition, age, or situation at the time of offence and repetition of offence etc., he may keep the case pending for not to undergo the punishment at once or may prescribe the duration of such prescribed punishment to be passed residing in a Children's Rehabilitation Home or remaining in the guardianship of any person or organisation. The officer hearing the case may issue an order in the case of the Child whose punishment is suspended, if the Child is given a sentence of imprisonment being proved an offender of the same or any other offence during the period of one year, to implement the punishment at one time adding both the sentences of imprisonment.

#### **51. Case can be filed on the behalf of a Child :**

(1) In case a suit or complaint is to be filed or a case to be defended in any matter of right of a Child, his father, mother or Guardian may file a suit, complaint or defend the case. This right goes to his claimant, in case the child has no father, mother or Guardian.

(2) The case relating to the officer to be punished under this Act can be initiated on the complaint of any person or His Majesty's Government.

## **52. Statistics relating Child and restriction in its use :**

(1) The police office shall keep the statistics of the Child apprehended on the charge of any offence in the secret form mentioning his name, address, age, sex, family background, economic conditions, offence committed by him and if any proceeding is initiated on it, its particulars and the copy of such statistics shall be sent to the Police Head Quarter every six month.

(2) In case the statistics maintained pursuant to sub-section (t), are to be published for any study or research work, it can be published or utilised on the basis of age or sex without mentioning the name, surname or address of the Child.

## **53. Punishment:**

(1) In Case any person commits any offence in contravention to Section 13,17,18 or abets others to commit such offence or attempts to do so, he shall be punished with a fine up to three months or with both .

(2) In case any person commits any offence in contravention to Section 14 or abets other to commit such offence to do so, he shall be punished with a fine upto ten thousand rupees or with imprisonment for a term which may extend to five years or with both. If it is proved that any person has sold a Child taking any amount, such amount also shall be seized from the person selling the Child and in case such amount couldn't be realised, he shall be punished with imprisonment for a term which may extend to two years more in addition

(3) In case any person commits any offence in contravention to Section 7 or 15, he shall be punished with a fine upto five thousand rupees or with imprisonment for a term which may extend to one year or with both. In case of torture and cruel treatment he shall be made liable to pay a reasonable amount of compensation to the Child.

(4) In case any person commits any offence in contravention to sub-section (1), (2) or (3) of Section 16 or abets others to commit such offence or attempts to do so, he shall be punished with a fine upto ten thousand rupees or with imprisonment for a term which may extend to one year or with both and the photographs taken with an aim to engage the child in an immoral profession and all the publications printed with an aim to publish may be seized by the order of court.

(5) The person engaging a Child in the business in contravention to subsection (4) of Section 16 shall be punished with imprisonment for a term which may extend to five years ill addition to the punishment to be given pursuant to existing laws.

(6) In case there has been any hurt in tile character of the Child or adverse effect ill his health or dismembering of physical organ due to the reason that any person has caused the Child to engage ill ally prohibited business pursuant to Section 16,17 or 18 the officer hearing the case may cause

to pay a reasonable amount of compensation in proportion to such damage to the child from such person in addition to the punishment to be given pursuant to sub-section 1 or 4.

(7) In case the Guardian contravenes or does not follow anything mentioned in Section 23, 24 or 25, he shall be punished with a fine upto three thousand rupees or with imprisonment for a term which may extend to three months or with both.

(8) In case the Guardian submits contrary to Section 26 or the property to be returned pursuant to Section 29 is not returned, he shall be punished with a fine upto six thousand rupees or with imprisonment for a term which may extend to six months or with both and the property misappropriated shall also be realised from him.

(9) In case the Chief of the Children's Welfare Home shows or gives personal particulars maintained pursuant to Section 41 to any unauthorised person or any person publishes the particulars of a case contrary to Section 49 or discloses the secrecy of the statistics relating to the Child or brings it in use or publishes it contrary to Section 52, he shall be punished with a fine upto three thousand rupees or with imprisonment for a term which may extend to three months with both and all the papers and books relating to the offence shall also be seized.

(10) In case any person commits any offence in contravention to Section 46, 47 or 48 he shall be punished with a fine upto three thousand rupees or with imprisonment for a term which may extend to three months or with both.

#### **54. Limitation:**

Complaints shall be filed within one year from the date of offence committed which is punishable under this Act.

Provided that, the complaint may be filed forever in case the property of a child so sold malafidely and within three years from the date of such happening in the case a Child is caused to engage in an immoral profession.

#### **55. Officer hearing the case and procedures to be followed relating to the case:**

(1) His Majesty's Government shall, by publishing a notification in the Nepal Gazette constitute juvenile court as required. The area and headquarter of such court shall be as prescribed in the same notice.

(2) The Juvenile Court constituted pursuant to sub-section (1) shall have the power to hear and decide the case of first instance in which the Child is a plaintiff or defendant except in the situation of Section 20.

Provided that, the Juvenile Court shall not hear and decide the case in which a Child is involved alongwith a major person.

(3) The concerned District Court shall have the power to hear and decide the case pursuant to sub-section (2) until the Juvenile Court pursuant to sub-section (1) is constituted and after the constitution of the Juvenile Court the case filed in the District Court shall be transferred to the Juvenile Court.

(4) There shall be a Children's Bench in each District Court for hearing and deciding the case to be heard from the District Court pursuant to sub-section (3).

(5) His Majesty's Government shall prescribe the procedure relating to the constitution of the Children's Bench pursuant to sub-section (4) on the advice of the Supreme Court and may include social worker, child specialist or child psychologist besides the judge while prescribing the bench.

(6) The procedures to be followed by the Juvenile Court or District Court for hearing and deciding the cases shall be as prescribed and until such procedure is prescribed those Courts shall follow the procedures of the summary procedure Act, 2028.

#### **56. Appeal :**

Any person not satisfied with the decision made by the Juvenile Court or District Court pursuant to Section 55 may file an appeal to the Appellate Court within thirty five days of such decision made thereto.

#### **57. Priority to be given in hearing the cases:**

The case under this Act in which a Child is a plaintiff or defendant shall have to be given priority for hearing and deciding.

#### **58. Power to frame Rules :**

His Majesty's Government may frame necessary Rules for implementing the objectives of this Act.

#### **59. Repeal :**

(1) No. 1 and 2 of the Chapter "of poor" of Muluki Ain (Law of the Land) are hereby repealed.

(2) The figure "1" after the word "Mahal" (Chapter) contained in number 6 of the Chapter "of poor" of Muluki Ain (Law of the Land) is deleted.

(3) The words "the Child below the age of 8 years or" appearing in No.1 of the Chapter "of punishment" of the Muluki Ain (Law of Land) and the phrases "If the age of the Child is 8 years or above 8 years and below 12 years and he commits an offence which is punishable with fine under law, he shall be warned and if the offence is punishable with imprisonment he shall be punished with imprisonment for a term which may extend to two months depending on the

offence. If the Child who is 12 years or above 12 years and below 16 years commits an offence he shall be punished with half of the penalty of the penalty to be imposed on a person who has attained maturity. The Child or" appearing in the same No., have been deleted.