

Children's Act, 2048 (1992)

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Children's Act, 2048 (1992)

Date of the Royal Seal and Publication Date

2049/2/7 (May 20, 1992 A.D.)

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2057/3/7 (June 21, 2000 A.D.)

Child Labor (Prohibition and Regulation) Act, 2056

Act No. 10 of 2049 B.S.

Act relating to protect the rights and interest of Children

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

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

Chapter -1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called as "(The) Children's Act, 2048 (1992 A.D.)."*
 - (2) It shall come into force on such date as His Majesty's Government may appoint by a notification published in the Nepal Gazette.
2. **Definitions:** Unless the subject or context otherwise requires, in this Act, -
 - (a) "Child" means a minor not having completed the age of sixteen years.
 - (b) "Guardian" means the guardian appointed under Section 22 for the purpose of protecting the Child.
 - (c) "Children 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 member 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 are living.
 - (3) Who does not have any means of livelihood.
 - (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 and the word also includes any person who acts on behalf of such Chief in his absence.

* This Act has been appointed to commence on date 2050/1/1 B.S. (April 13, 1993 A.D.)

- (h) "Juvenile Reform Home" means Juvenile Reform Home established by His Majesty's Government under Section 42 or any Juvenile Reform Home being used for that purpose.
- (i) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules made under this Act.

Chapter -2

Rights and Interests of Children

- 3. **Right to name and determination of date of birth of 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 organization 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 organization bringing up the Child shall, in consultation with a registered medical practitioner, determine date of birth of the Child. Unless otherwise proved, the date so determined shall be deemed to be the date of birth of the Child.
- 4. **Right to maintenance and upbringing, education and health care:**
 - (1) Parents shall be under obligation to make arrangements to bring up Child and to provide education, health care, sports and recreation facilities to child according to the financial status of their family.
 - (2) Parents or guardian of a child shall cause to administer vaccinations 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 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 arrangements for providing advice to family planning education and services relating to preventive and curative health care to parents.
- 5. **Discrimination not to be made between a son or daughter and between sons and daughters themselves in matters relating to upbringing:** 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 Child by father, mother, member of the family, guardian or teacher for the interests of the Child himself/herself shall not be deemed to be violation of this Section.

8. **Facilities to be given to maintain contact:** (1) In circumstances where parents of a 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 parents for sometime.

Provided that, court may restrict 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 detrimental to the Child's interest.

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

9. **Adopted son or daughter to be permitted to make direct contact or correspondence with natural parents:** A person adopting a son or daughter having fulfilled the legal requirements shall, if such adopted son or daughter wills, 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 practice, the Child may, until the whereabouts of his father are traced, mention the names of his mother and maternal grandfather. In case of a Child either of whose parents are not traced, if the person or organization bringing up the Child certifies in writing that the parents have

not been traced, such Child shall have right not to mention the names of his father, mother or grandfather.

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

(2) If the age of the Child committing an offence which is punishable with fine under law, is 10 years or above and below 14 years, he shall be admonished and convinced and if the offence committed 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 a Child committing an offence is 14 years or above and below 16 years, he shall be punished with half of the penalty to be imposed under law on a person who has attained the age of majority.

(4) If a child commits an offence under advise or influence of any person, the person doing such act shall be liable for full punishment as per the law as if he/she has committed such offence.

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

(2) For the purpose of determination of counts of offence, an offence committed during childhood shall not be counted.

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

13. **Prohibition to engage Children in begging and to Shave hair:**

(1) No Child shall be engaged in begging except during observing religious or cultural traditions.

(2) No child shall be shaved with the purpose of making such Child a *Sanyasi*, *Bhikchhu* or *Fakir*, and even if shaved, it shall not have legal validity.

(3) A Child who has been made *Sanyasi*, *Bhikchhu* or *Fakir* prior to the commencement of this Act may, if he/she so wishes, give up such family life *vesh* and to join.

14. **Prohibition on offering of Child in 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 to any God or Goddess his own or anybody else's Child

having brought such Child, offering financial gain, under any kind of coercion or undue influence.

(2) No person shall, for any financial consideration, sell or otherwise handover his Child to anybody for the purpose stipulated in sub-section (1).

(3) No *Panda*, *Dhami*, *Priest* or the chief of any religious enshrinement shall incite to commit an act referred to in sub-section (1) nor shall perform or permit to perform religious rites or formalities in cases where a person brings a Child to any temple with the purpose of offering or surrendering to God or Goddess.

(4) If any act is committed after the commencement of this Act, in violation of sub-sections (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 act is not committed.

(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 by either 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 be committed to live together in prison with prisoners having attained the age of majority in case a Child is convicted for any offence.

16. **Children not to be 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 involved in the sale or distribution or smuggling of intoxicating substances, narcotic drugs or any other drugs.

17. ×

18. ×

× Repealed by Child Labor (Prohibition and Regulation) Act, 2056 (2000 A.D.).

19. **Children's case not to be entertained in absence of legal practitioner:** (1) The Court shall not entertain or decide a criminal charge brought against a 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 willing to provide such service.

20. **Enforcement of rights:** (1) For enforcement of 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 to sub-section (1) of Section 8, such action may be initiated or an order may be issued only on the basis of a petition of the father or mother of the concerned Child.

(2) In cases where a person is aggrieved as a result of infringement of any right conferred by this chapter, the Court may issue order, direction or writ pursuant sub-section (1), and decide to make payment of a reasonable amount of compensation.

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 the 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 case of non-availability of such a relative, the Child may be given to any person or organization willing to take the custody for his maintenance and upbringing. In case of non-availability of any

relative, person or organization willing to take the Child for his maintenance and upbringing, the Child shall be referred to the nearest Children 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 organization 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, organization or the Children's Welfare Home responsible for upbringing and maintenance of the Child and such person, organization 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 accrued from the property mentioned in sub-section (3) may be used by the person, organization or the Children's Welfare Home taking responsibility for the maintenance, upbringing, education and health care of the Child. The person, organization 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 not living of his parents or adult relative belonging to the same home, or even if they are living but are unable to bring up or look after the Child for reasons of physical or mental incapacity, every person may, for the purpose of being a guardian to the Child, submit an application 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 feud or confrontation, or for any other reason, the Children Welfare Officer may,

stating the reasons thereof, appoint a distant heir or any other person as the Guardian of the Child as he deems appropriate.

(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 involving moral turpitude by a court, or
- (e) If he is bankrupt.

(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 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 receives the property.

(7) The Guardian or Chief of the Children's Welfare Home may spend the income accrued from the property handed 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 Child to be Protected:** (1) The main duty of the Guardian shall be to protect interests of Child.

(2) The Guardian shall, *inter alia*, give special attention to the following points:-

- (a) To bring up Child in a way that will enhance the physical and mental development of the Child,
- (b) To arrange for education which may help intellectual development of the Child,
- (c) To prevent the Child from being involved in bad habit or company,

(d) To keep updated record of the Child's property and to protect it.

(3) The Guardian shall initiate necessary proceedings in order to realize 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. **Works may be Performed 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 more property or on rent.
25. **Works not to be Performed by the Guardian:** The Guardian shall not do any of the following works: -
- (a) To engage the Child in work that requires more labor than his physical capacity can bear.
 - (b) To engage the Child in any work which may hurt in his religious or cultural traditions or to use his property on such work, or
 - (c) To sell the Child's property to others with an intention of retaining it by himself.
26. **Report to be submitted by the Guardian:** (1) The Guardian shall, in each year within the month of Baisakh (April 15 to May 15), submit a report to the concerned Children Welfare Officer stating all the particulars relating to the expenses incurred on his part for the maintenance, health care and education of the Child and the income accrued from the property of the Child and the expenses incurred out of such income for the maintenance of the Child
- (2) The Children Welfare Officer may, if he deems necessary, check the reliability of the statement or statistics mentioned in the report submitted pursuant to sub-section (1), inspect to or cause to inspect the Child and the place where his property is placed. 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 with approval:** (1) In case a 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 in

advance. The Guardian shall also have to submit, along with the application, the statement of the property of the Child that he has taken in custody and the expenses incurred 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 Sections 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 dies or the Guardian cannot be retained due to prevalence of 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) A Guardian may submit an application to the Chief District Officer for Government assistance if he could not bring up the Child in a proper way due to insufficiency 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 be entitled to 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, in the form of remuneration, five percent of the reasonable expenses incurred for the realization 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.

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

Chapter -4

Welfare Provisions

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

(1) His Majesty's Government shall, 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 amongst the social workers, woman social workers, medical practitioners, Child psychologists 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 Child Welfare Board shall be constituted in each District under the convenership of the Chief District Officer. In the District Children Welfare Board, there shall be the persons, *inter alia*, as appointed by the Chief District Officer specially from amongst the following persons: -

- (a) Persons involved in social service,
- (b) Social workers involved in works relating to rights and interests of children,
- (c) Women social workers,
- (d) Medical practitioners,
- (e) Child psychologists,
- (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 eligible for reappointment.

(4) The chairperson of the District Children Welfare Board shall be the person prescribed by the members of District Children Welfare Board from amongst themselves and until 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 children welfare activities conducted in the district level to the Central Children Welfare Board within the month of Baisakh (April 15 to May 15 A.D.). 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 Ashad (June 15 to July 15).

(6) Functions, duties, powers and procedures of the Central Children Welfare Board and the District Children Welfare Board, other than those referred to in the Act, shall be as prescribed.

33. **Appointment of Children Welfare Officer:** (1) His Majesty's Government may appoint Children Welfare Officer in required 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 sub-section (1) shall work subject to the general control and directives of the District Children Welfare Board.

(3) Functions, duties, powers and terms and conditions of service of the Children Welfare Officer, other than those referred to in this Act, 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 may be necessary.

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

Provided that, nothing stated in this sub-section shall be deemed to have given powers to His Majesty's Government to interfere in the operation of such Children's Welfare Home, orphanage or center.

35. **Abandoned Child to be kept in the Children's Welfare Home:** (1) The Children Welfare Officer and Police personnel shall handover an 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 stating therein 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 case of lack of place for living.

(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 handed over to any other Children Welfare Home.

(4) Abandoned children residing in the Children Welfare Home shall be kept separately on the ground of sex.

(5) The Children Welfare Officer, Police Officer or Chief of the concerned Children Welfare Home may, for the purpose of tracing the father, mother, relatives or Guardian of the Abandoned Child, cause to publish a notice stating the description and photograph of such Child in any paper or cause to transmit through any other medium of communication.

36. **Duration to be kept in the Children's Welfare Home:** (1) An Abandoned Child shall, normally, be kept in the Children's Welfare Home until he attains the age of sixteen years.

Provided that, if it seems that the Child of such age released from the Children Welfare Home may have to face the problem of livelihood, he may be kept in the Children 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 case of blind, disabled or mentally retarded Abandoned Child, until they are sent to the Children Welfare Home established 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 Welfare Home shall allow to take the Child at any time and prepare a document for such hand over of the Child.

37. **Assistance to provide Vocational Training or 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 interest 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

concerned Children's Welfare Home may allow to keep such Child in the Children's 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 handing 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 Welfare Home pursuant to sub-section (1) has escaped from the Children Welfare Home or is dead, the Chief of the Children Welfare Home shall immediately give this information to the father, mother or relatives of the Child and do everything possible to trace him in 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 is dead, any goods or immovable property of the Child shall be returned to his father, mother or relatives and realized 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 compiled with while staying in the Children's Welfare Home or commits any act which violates 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 for a period not exceeding three days at one time or,
- (b) To realize full or partial amount belonging to the damage, in case anything belonging to the Children Welfare Home is knowingly broken or damaged.

(2) Notwithstanding anything contained in sub-section (1), it shall not be deemed to have conferred powers to the Chief of the Children's Welfare Home to batter or detain the Child in solitary confinement or to stop giving food and water to such Child.

(3) For the purpose of realization 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 realize the amount from income of the concerned Child or from his salary, if he is getting any for working there, and shall have to reconcile the account by remitting the remaining amount.

40. **Expenses may be realized 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 center 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 into contact.

(2) In the situation pursuant to sub-section (1), the concerned Children's Welfare Home, orphanage or center shall have to realize all the expenses incurred for the maintenance of 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 center shall not realize the expenses incurred for the maintenance of the Child in case the father, mother or a member of the family of the Child has no income or property to realize.

41. **Chief of the Children's Welfare Home to keep records and to report:** (1) The Chief of the Children's Welfare Home shall have to prepare personal records of all the Abandoned Children residing in the Children's Welfare Home. If any punishment is imposed to any Child, pursuant to sub-section (1) of Section 39, 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 maintained confidential and such records shall not be shown or given to any person other than the Children's Welfare Board or Children's Welfare Officer or the person or office having permission from such Board or Officials.

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

(4) The Chief of the 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 Baisakh (April 15 to May 15).

42. **Establishment and operation of Juvenile Reform Home:** (1) His Majesty's Government shall establish Juvenile Reform Home as required.

(2) The following children shall be kept in the Juvenile Reform Home established pursuant to sub-section (1): -

- (a) A Child accused of any offence and to be imprisoned pursuant to existing law for investigation or adjudication,
- (b) A Child to be imprisoned having been punished with imprisonment punished to existing law,
- (c) A Child addicted to narcotic drugs,
- (d) A Child who is used to run away from father, mother or the family,
- (e) A Child who has company with persons involved in immoral or untoward activities or takes part in the 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 utilize the private Children's Welfare Home, orphanage or center operated by any person or body in the form of Juvenile Reform Home temporarily by obtaining permission of such person or body until the Juvenile Reform 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 Juvenile Reform 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 Juvenile Reform 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 center for mentally retarded Children:** (1) His Majesty's Government shall establish orphanage and center 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 center 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, utilize the orphanage or center for mentally retarded children operated by any other person or organization, for the purpose of this Act.

44. **Inspection of Children's Welfare Home, Juvenile Reform Home, Orphanage etc:** (1) The Central Children Welfare Board may inspect or cause to inspect all Children's Welfare Home orphanages or centers 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 centers within their own area at any time.

(2) The Children Welfare Officer shall inspect the Children's Welfare Homes, orphanages or centers at least twice a year within his area and while carrying out 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 committed in contravention to the existing law, he shall have to send its report to the District Children Welfare Board.

(3) The Children Welfare Board of Children Welfare Officer may issue directives to regularize irregularities found in the Children's Welfare Home, Juvenile Reform Home, Orphanages or such other centers and it shall be the main duty of the Chief of the Children's Welfare Home, Juvenile Reform Home, Orphanages or centers to follow such directives.

45. **Provisions relating to the Children's Welfare Home, Juvenile Reform Home, Orphanage etc:** The person to operate the Children's Welfare Home, Juvenile Reform Home, Orphanage etc. power to be used by him, terms and conditions of his service and the rules to be followed and the education and training to be provided for the Children residing in such Children's Welfare Home, Juvenile Reform Home, orphanages or center shall be as prescribed.

^x Chapter -5

46.

^x Chapter -5 is repealed by Child Laborer (Prohibition and Regulation) Act, 2056 (A.D.).

- 47.
- 48.

Chapter -6

Miscellaneous

49. **Only certain persons to attend in cases relating to Child:** (1) While proceeding of a case relating to a Child under this Act or prevailing laws is going on, the legal practitioner, the father, mother, relatives or Guardian of the Child and, if the officer hearing the case deems appropriate and permits, any person or representative of the social organization involved in protection of rights and interests of Children may appear to the bench.

(2) The case pursuant to sub-section (1) and particulars of the incident relating to it shall not be published in any paper without permission of the investigating officer of the case or the officer hearing the case. Such restriction shall also apply to correspondents or the press photo representatives.

50. **Investigation of case and suspension of punishment:** (1) In case the officer hearing the case deems it not appropriate to keep a Child in prison having considered to the physical condition, the age of the accused Child who is to be investigated having detained in prison pursuant to existing law, circumstances during the time of commission of the offence and the place of imprisonment, he may issue an order to handover the Child to the custody of his father, mother, relatives or Guardian or any social organization engaged in protection of rights and interests of the Child or the Juvenile Reform Home on the condition to present him as and when required and to continue investigation or proceedings of the case.

(2) In case the officer hearing a case deems it not appropriate to imprison a child convicted of an offence and imposed a sentence of imprisonment in a prison having regard to his physical condition, age, circumstances in which the offence has been committed and times of commission of the office, he may suspend the sentence to the effect of not under going the sentence for the time being or he may prescribe to undergo the sentence residing in a Children Rehabilitation Home or in guardianship of any person or organization. In case the same child having had his sentence suspended in such a way is convicted of the same offence or any other offence and is imposed a sentence of imprisonment within a period of one year, the officer hearing the case may order to execute the sentences of punishment having added the earlier sentence imprisonment.

51. **Case May be filed on behalf a Child:** (1) In case a suit or complaint is to be filed or a case has to be defended in any matter involving rights of a Child, his father, mother or Guardian may file a suit, complaint or defend the case. In case the child has no father, mother or Guardian, the claimant of the child shall be entitled to the right.

(2) The case relating to an offence punishable under this Act may be initiated on the complaint of any person or of His Majesty's Government.

52. **Statistics relating to the Child and restriction in its use:** (1) A police office shall keep the statistics of the Child apprehended on the charge of any offence in confidential manner having stated his name, address, age, sex, family background, economic conditions, offence committed by him and if any proceeding is initiated on it, its particulars and a copy of such statistics shall be sent to the Police Head Quarter in every six month.

(2) In case the statistics maintained pursuant to sub-section (1), are to be published for any study or research work, it may be published or utilized on the basis of age or sex without mentioning the name, surname or address of the Child.

53. **Punishment:** (1) Whoever commits any offence in contravention to Section 13, [×]..... or abets others to commit such offence or attempts to commit so, he shall be liable to a punishment with a fine up to three thousand rupees or with imprisonment for a term which may extend to three months or with both.

(2) Whoever commits any offence in contravention to Section 14 or abets others to commits such offence or attempts to commit so, he shall be liable to a punishment 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 for taking any amount, such amount also shall be seized from the person selling the Child and in case such amount could not be realized, he shall be liable to an extra punishment of imprisonment for a term that may extend to two years.

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

(4) Whoever commits any offence in contravention to sub-section (1), (2) or (3) of Section 16 or abets others to

[×] Repealed by Child Labor (Prohibition and Regulation) Act, 2056 (1999 A.D.)

commit such offence or attempts to do so, he shall be liable to a punishment 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 the Court.

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

(6) In case character of a Child is hurt or adverse effect is caused in his health or his physical organ is damaged due to the reason that any person has caused the Child to engage in any prohibited act pursuant to Section 16, [×]..... 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 imposed pursuant to sub-section (1) or (4).

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

(8) In case the Guardian submits a report in contravention to Section 26 or does not return the property to be returned pursuant to Section 29, 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 realized from him.

(9) In case the Chief of the Children Welfare Home discloses or provides the personal particulars maintained pursuant to Section 41 to any unauthorized person or in case any person publishes particulars of a case in violation of Section 49 or discloses the confidentiality of statistics relating to the Child or brings it in use or publishes it in violation of 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 or with both and all the papers and books relating to the offence shall also be confiscated .

[×] (10)

[×] Repealed by Child Labor (Prohibition and Regulation) Act, 2056 (2000 A.D.).

[×] Repealed by Child Labor (Prohibition and Regulation) Act, 2056 (2000 A.D.).

54. **Limitation:** Complaints relating to an offence punishable under this Act shall be filed within one year from the date of commission of the offence.

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

55. **Officer hearing cases and procedures relating to case:** (1) His Majesty's Government shall, by publishing a notification in the Nepal Gazette, constitute a Juvenile Court as may be necessary. The territorial jurisdiction and seat of such Court shall be as prescribed in the same notice.

(2) Except in the situation of Section 20, the Juvenile Court constituted pursuant to sub-section (1) shall have powers to first initiate and decide cases in which a Child is either a plaintiff or defendant.

Provided that, the Juvenile Court shall not hear and decide a case in which a Child is involved along with a person having attained the age of majority.

(3) The concerned District Court shall have powers to hear and decide the case pursuant to sub-section (2) until a Juvenile Court pursuant to sub-section (1) is constituted, and after the constitution of the Juvenile Court, cases 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 procedures relating to constitution of the Children's Bench pursuant to sub-section (4) on the advice of the Supreme Court and while prescribing the Bench it may include social worker, child specialist or child psychologist in addition to the judge.

(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 procedures are prescribed those Courts shall follow the procedures of the Summary Procedure Act, 2028.

56. **Appeal:** Any person not satisfied with decisions made by the Juvenile Court or District Court pursuant to Section 55 may file an appeal to the Appellate Court within thirty five days from the date of such decision.

57. **Priority to be given in hearing cases:** Any case under this Act in which a Child is either a plaintiff or a defendant shall be accorded priority for hearing and deciding.
58. **Power to frame Rules:** His Majesty's Government may, in order to implement objectives of this Act, frame necessary Rules.
59. **Repeal and Amendment:** (1) Nos. 1 and 2 on the Chapter "*of Pauper*" of *Muluki Ain* (the country code) are hereby repealed.
- (2) The figure "1" appearing after the word "Mahal" (Chapter) contained in No. 6 of the Chapter "*of Pauper*" of *Muluki Ain* (the country code) 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* (the country code) and parts of sentences, "If the age of the minor 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 minor who is 12 years or above 12 years and below 16 years commits an offence, he shall be punished with half of the punishment to be imposed on a person who has attained the age of majority. The minor or" appearing in the same No. have been deleted.