

Revisiting Nepal's Children Act, 2018: A Contemporary Legal Analysis

Abstract

This article examines the constitutional protections afforded to children in Nepal. The Constitution of Nepal, a federal document, ensures a wide range of rights to children and outlaws all forms of discrimination against them. The Children Act ensures the right to confidentiality in criminal matters involving children, provides for diversion, prohibits the demand for bail, and forbids the imprisonment of children. The legislation also mandates that the state create a Children's Court as a dedicated district-level court. However, the state has yet to constitute such dedicated Children's Courts; instead, juvenile matters are currently handled by Juvenile Benches within District Courts. Moreover, both the Constitution and the Children Act remain silent on certain critical issues, such as mandating specialized expertise for judges presiding over juvenile justice matters. This paper discusses and critically analyses the constitutional and legal frameworks relating to children in Nepal.

Keywords: Juvenile, justice, children, law, constitution, Nepal, CRC

INTRODUCTION

In Nepal, Children's rights and issues are acknowledged in both the Constitution and specific legislation designed for them. The nation, recognized as the home of the Himalayas, has implemented a substantial set of laws to tackle the issues faced by its minority population. This dedication is evident in Article 39 of the Constitution of Nepal, which explicitly and authoritatively ensures children's rights. Article 39 guarantees each child's entitlement to education, health, support, appropriate care, sports, recreation, and comprehensive personality development, with related duties assigned to both the family and the government. Child marriage is prohibited by law, and the law forbids physical or sexual abuse, as well as all other forms of torture against children. Comprising as many as ten clauses, Article 39 seeks to secure children's rights for their cognitive, educational, physical, and spiritual growth. Nepal's civil laws recognize the property rights of children and prohibit discrimination based on gender in any manner. Article 12 of the Constitution grants individuals the right to acquire citizenship consistent with their gender identity, thereby reinforcing constitutional protections against

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discrimination. These constitutional and legal frameworks collectively aim to supplement and strengthen children's rights and causes. Despite this, the reports suggest that more than 5,000 Nepali children are struggling from pillar to post to obtain their birth certificates (Ed., The Kathmandu Post). These instances, in one other way, frustrate Section 4 of the Children Act, 2018, which guarantees every child the right to identity and birth registration. Similarly, Nepal began enacting specialized child legislation with the Children Act, 1992, which was subsequently repealed by the Children Act, 2018. The current Act establishes a separate bench within the District Court to handle juvenile matters and is progressive in several respects. Notably, it permits the creation of distinct juvenile courts in every district and forbids the requirement of bail for juvenile delinquents.

Despite these initiatives, significant gaps remain. The juvenile justice system needs additional reformation to more effectively promote the best interests of children, who are the nation's future. For example, the 2018 Act requires the establishment of a child fund and a local child rights committee within each local body, as well as the appointment of a child welfare officer. According to 2023 data from the National Child Rights Council (NCRC), out of 753 local levels, only 240 have established child committees, while 276 have appointed child welfare officers. In the same way, 216 possess child funds, and 325 have established the protocols concerning the safeguarding and advancement of child rights (Bhattarai, 2023). Nepal's transition to a federal governance system has expanded the responsibilities and authority of local governments, creating opportunities and obstacles for fostering child-friendly governance at the community level (Vaidya R and Baniya B, 2025). This paper examines the juvenile justice regime embodied in Nepal's Children Act, 2018, by exploring its historical background, relevant international precedents, and the prevailing constitutional and legal frameworks, with a view to critically reviewing the legislation.

LITERATURE REVIEW

Nepal stands out as one of the initial nations in South Asia to implement a "Comprehensive code of laws and human conduct," a document that amalgamated laws, ethical, and religious principles. Nepal is recognized as one of the first countries in South Asia to adopt a "Comprehensive code of laws and human conduct," which combined legal, moral, and religious guidelines. Notably, this Code also included clauses concerning children. For example, if a child made funeral offerings for both his biological and adoptive fathers individually, the child had the right to obtain a half share of assets from each. When there were no sons, daughters had the right to inherit their father's estate. A child under eight years of age was viewed as comparable to an unborn child, and until reaching 16 years, a child was deemed uneducated.

Following the *Nyayavikasini* (*Manavnyayashastra*), Nepal implemented the *Muluki Ain* (National Code) in 1854 (1910 BS), marking the first national code established after the unification of Nepal by the illustrious King Prithivi Narayan Shah. Nevertheless, the Code lacked a distinct chapter focused on children, though some provisions—such as rights to parental property—were included. The Children's Act, 1992, was the initial law focused solely on children. The Constitution of Nepal, 1990, enacted following the establishment of democracy, had already acknowledged the status of children and included provisions about

their rights. The Children's Act of 1992 recognized key principles and provisions of the 1989 Convention on the Rights of the Child. In that same year, Nepal implemented the Labor Act of 1992, which banned child labor by outlawing the employment of children under fourteen years old. However, children over the age of fourteen identified as minor workers were allowed to work in safe occupations.

In 2000, the Child Labor (Prohibition and Regulation) Act was enacted to proscribe child labor. This Act governed working hours (not to exceed 36 hours per week) and forbade the employment of children under 16 in dangerous jobs. It also banned the hiring of children under the age of fourteen in any type of work. The legislation categorized the tourism sector as a risky industry. Failure to comply with the act resulted in penalties, which could include a prison sentence of up to one year or a fine of up to fifty thousand rupees. Likewise, the Kamaiya Labor Prohibition Act of 2002 prohibited bonded labor, including bonded child labor.

The Nepalese government has implemented various policy measures to promote and safeguard children's rights. The 2003 Poverty Reduction Strategy sought to reduce poverty by the end of the Tenth National Development Plan (2002-2007) and included initiatives to achieve this goal. The National Master Plan on Child Labor (2004-14) recommended rehabilitation initiatives for rescued child laborers and reiterated its recommendations. Nepal's dedication to eliminating cross-border child trafficking. Similarly, the School Sector Reform Program (2009-2015), the National Action Plan for Children (2005-16), the National Human Rights Action Plan, and the National Action Plans on Trafficking of Women and Children and on Bonded Labor (from 2001 and 2010, respectively) were important policy efforts implemented by the Nepalese government. The government allocated budgets to district and local bodies to foster a supportive environment for children and to meet the objectives for eliminating child labor.

The Comprehensive Peace Accord of 2007 contained clauses for the elimination of child labor and obligations by the involved parties to undertake specific initiatives for the betterment of women and children. Despite these commitments, the government data and studies depict a depressing reality. In Nepal, children are primarily engaged in informal sectors such as restaurants, transport, construction, agriculture, small and cottage industries, carpet and brick factories, potting, and domestic labor, with cases reported of children being involved in hazardous work by falsifying their age (Report, 2018). The National Population Census records 104,714 working children (56,267 males and 48,447 females), while the 2014 Nepal Multiple Indicator Cluster Survey reports that 37.4% of children aged 5 to 17 are involved in child labor (Report, 2018). The Report on the State of Children in Nepal further suggests that child labor is widespread for several reasons. Children are often hired because they are easily available, paid less, and made to work longer hours than adults. These depressing realities have the potential to frustrate Nepal's commitments expressed under legal frameworks.

Meanwhile, Nepalese law prohibits marriage under the age of 20 for both bride and grooms. However, the data suggests that this legal mandate is yet to be implemented in letter and spirit. The Nepal Multiple Indicator Cluster Survey 2014 revealed that 15.5% of women aged 15 to 49 were married before age 15. It also indicated that 24.5% of girls aged 15 to 19 had married

before turning 18 (Report, 2018). Child marriage is prevalent in illiterate and indigenous ethnic groups and the Dalit community members (Save the Children Report). Against this backdrop, State intervention is urgently needed, especially for marginalized groups, to ensure that their children can access education, secure better employment opportunities, and lead dignified lives.

The Education Policy and Education Act, 2009, provides for free fundamental education until Grade VIII. The National Master Plan (2011-2020) sought to eliminate poverty by 2020 (ILO).

In 2016, the total number of schools stood at 34,739, which rose to 35,601 in the fiscal year 2017/018. Of these, 29,035 were public/community schools, and 6,566 were institutional/private schools. Among the total, 907 were religious institutions (*Madarsa*, *Gumba*, and *Gurukul*). The number of religious schools had been 879 in the preceding year but increased to 907 in Fiscal Year 2017/018 (Report, 2018).

The Fiscal Year 2025/26 budget allocates Rs. 211.17 billion to the Ministry of Education, Science, and Technology, signaling a strong intent to reform. However, the Ministry's Flash Report 2025 highlights serious structural issues: many schools have fewer than 50 students, over 40% of community schools lack full-time principals, and senior teachers often manage schools without administrative or child development training. The student–teacher ratio remains inefficient, with cases such as a school in the district of *Khotang* operating with only nine students and two untrained teachers, as observed by Bista (2025). In this respect, the government schools are yet to be operated in line with national policies.

Finally, the Constitutions of Nepal—the Constitution of Nepal, 1990; the Interim Constitution of Nepal, 2007; and the Constitution of Nepal, 2015, the most recent constitution—have consistently supported the safeguarding and advancement of children's rights since the reinstatement of democracy in 1990. Section 2(e) of the National Civil Code, 2074 BS (2017) defines the term "minor" as a person below the age of 18 years. In Nepal, the 2007 Interim Constitution was the first to incorporate children's rights into the constitutional framework, while the current 2015 Constitution offers more explicit and detailed provisions concerning children's rights (Bashyal, 2021).

The constitutional provision and legal provisions embodied under the Children Act, 2018, are designed to safeguard and advance the rights and well-being of children. However, problems such as child marriage, child labor, poor management of government schools, and nonadherence to provisions of the Children Act often highlight a gap between the government's commitments on paper and their implementation in practice. For instance, Juvenile Benches at District Courts still do not consistently ensure the presence of social activists and child Psychologists, and courts continue to struggle in providing a child-friendly environment. In addition, interpreters for children are not adequately provided, and the mandate for the presence of child psychologists remains largely formal rather than substantive, maintains Paudel, T.

RESEARCH METHODOLOGY

This study is a legal investigation using a socio-legal framework to examine children's rights, related issues, and their implications for Nepal. The paper critically analyzes the constitutional and legal provisions for children in the Himalayan Republic. The data sources for this study include legal texts, scholarly articles, jurisprudence, and national policies pertinent to children's rights and juvenile justice in Nepal. The inclusion criteria comprised legal texts (laws, regulations, and court decisions) and academic literature (journal articles, books, and prior research) that specifically address child rights, child protection, and juvenile justice. Moreover, the Children Act 2018 is a piece of legislation that addresses children's rights and concerns. The exclusion criteria involved documents not directly related to Nepal's juvenile justice regime. The selected documents were prioritized based on their significance in shaping legal frameworks, judicial practice, and socio-legal discourse on children.

The qualitative document analysis technique has been applied in this research. Content analysis was used to identify recurring patterns, key themes, and legal mandates regarding child rights and protections. Legal documents were analyzed to understand statutory provisions and judicial interpretations, while literature documents provided insights into socio-legal perspectives, policy implications, gaps, and comparative frameworks. Through this methodology, the paper critically examines the legal framework, scholarly debates, gaps in enactment and enforcement, challenges impeding the law, and other socio-legal dimensions of child rights in Nepal.

Constitutional Scenario

The Constitution of Nepal ensures that every citizen has an inherent right to be free from any type of discrimination. The constitution's preamble aims to reinforce equality, fraternity, justice, liberty, and an inclusive federal democratic framework with a socialist perspective. The constitutional charter does not encourage discrimination in any way; instead, it explicitly forbids it. In Part-II, the constitution contains stipulations regarding citizenship and declares that no individual shall lose their citizenship. Nepal adheres to the principle of *Jus Sanguinis* rather than *Jus Soli* when granting citizenship. Thus, citizenship is conferred based on lineage. In simple terms, a child born in Nepal to a father and mother who are not of Nepali descent cannot obtain Nepali citizenship solely on the basis of being born in Nepal. But if a child's father and/or mother is Nepali, the child obtains citizenship by descent, as provided in Article 11(3) of the Constitution. If the mother is Nepali, the father holds a foreign nationality, and neither the mother nor the child has obtained citizenship in another nation while living in Nepal, the child may receive naturalized citizenship.

In the same way, if a child is discovered in Nepal and the location of both parents is unknown, the child has the right to citizenship by descent. Article 12 states that an individual can acquire citizenship reflecting both lineage and gender identity. This measure has been initiated to safeguard citizenship rights concerning gender identity, which encompasses transgender individuals. The Constitution ensures a wide range of essential rights for individuals, including minors. The section on basic rights starts with Article 16, which assures the right to life and freedom. Article 17(1) states that no individual shall lose their personal freedom unless it is done in accordance with the law. Article 17(2) ensures six essential freedoms, including the

right to express opinions and the freedom to move and reside, which are equally accessible to children. Article 18 ensures the right to equality and equal legal protection, which is also applicable to children. Additional guaranteed rights encompass the right to be free from torture, the rights of crime victims, the right to be free from untouchability, the right to practice religion, the right to privacy, the right to a healthy environment, the right to receive education, the right to healthcare, the right to adequate food, and the right to secure housing.

Article 39 of the Constitution expressly provides for children's rights. It guarantees the right of every child to education, health, support, appropriate care, sports, recreation, and comprehensive personality development from both the family and the government. The Constitution bans child marriage and forbids physical or sexual abuse, along with any other forms of torture against minors. Containing up to 10 clauses, Article 39 seeks to protect children's rights concerning their comprehensive mental, educational, physical, and spiritual growth. This way, scores of regulations for children are available under the constitutional framework itself. This demonstrates the dedication and seriousness of the constitution drafters in safeguarding and advancing children's rights.

International Scenario

The protection of children is a broad concept that entails safeguarding children from all types of violence and guaranteeing their protection from actions and situations that undermine their healthy development. It also refers to the prevention of and response to exploitation, neglect, physical, mental, or emotional harm, as well as other forms of violence against children. The children, who are individuals below 18 years of age (as provided under Article 1 of the UN Convention on the Rights of the Child, 1989), are human beings; individuals are granted human rights inherently. These fundamental human rights are conferred upon them from the very fetal stage. There are laws on record that guarantee property rights, and among other rights, to an unborn child as well. For instance, Section 13, Transfer of Property Act, 1882: Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transfer in the property.” This Act applies in India, Pakistan, and Bangladesh, with some modifications.

The United Nations (UN) adopted the Convention on the Rights of the Child (CRC) on November 20, 1989, which has been ratified by a record 196 countries, excluding the United States (US). The convention has been celebrated as the global commitment to children everywhere. On the global front, the League of Nations, an international organization based in Geneva, Switzerland, was established after World War I to address unresolved international issues and foster collaboration to achieve global peace and security. Established in 1920, it was officially dissolved in 1946. On September 26, 1924, the Geneva Declaration of the Rights of the Child was adopted by the League of Nations. The Declaration required the states to ensure that every child has the right to grow materially and spiritually; the right to food; the right of orphans and abandoned children to have shelter; the right for children to receive assistance

during times of hardship; the right to a means of living; the right to protection from exploitation and the freedom to be raised in a way that fosters social awareness (Geneva Declaration). It was drafted by Eglantine Jebb.

In this way, the roots of the Convention on the Rights of the Child (CRC) date back to 1924, when the League of Nations adopted the Geneva Declaration. On 11 December 1946, the United Nations General Assembly created the United Nations Children's Fund, initially named the United Nations International Children's Emergency Fund (UNICEF), to deliver urgent food and healthcare to mothers and children in nations affected by the Second World War. UNICEF's mandate has also evolved to address the ongoing and lasting needs of children and mothers in developing nations. Correspondingly, it became a permanent part of the UN system in 1953, and the terms "International" and "emergency" were excluded from the organization's title, although the original acronym, UNICEF, was retained (CCOI).

Meanwhile, children's rights received international protection for the first time from the UN in 1948 with the Universal Declaration of Human Rights (UDHR). Article 25 of the UDHR states that mothers and children are entitled to special care, assistance, and protection. It highlights children's entitlement to special care and support. This objective can be achieved by protecting children directly and by protecting mothers as an indirect way of safeguarding children. This article emphasizes specific care and support, while Article 26 addresses access and the purpose of education. The right to an education has been guaranteed as free and mandatory, at least at the primary and basic levels. Technical and vocational training ought to be widely accessible, and higher education should be attainable for everyone on the basis of merit.

The protection of children was further augmented with the adoption of the 1959 Proclamation of Children's Rights. Principle 1 of the Declaration grants children the right to be free from discrimination based on race, color, gender, language, religion, political or other beliefs, national or social origin, property, or various other reasons. Principle 2 obliged states to ensure that children receive special protection to enable them to grow mentally, morally, spiritually, and socially. Similarly, the declaration guarantees other rights, including: entitlement to a name and citizenship; entitlement to social security, shelter, healthcare services, and food; specific care for disabled children; and entitlement to free and mandatory education for children in primary grades.

The international commitment to the protection of children was further strengthened through the 1966 International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (CESCR). Articles 23 and 24 of the ICCPR, 1966, envisage that children have the right not to be discriminated against on any ground, that their rights should be protected in situations involving the termination of their parents' marriage, and that every child shall have the right to have a name and citizenship. The provisions, such as special protection, social security, and the prohibition of child labor, are set out in Article 10 of the ICESCR, 1966. The International Conference on Human Rights, 1968, was held to assess the progress made by the signatory countries in the two decades since the adoption of the UDHR in 1948. The conference stipulated that safeguarding families remains

a priority for the international community. Paragraph 16 of the conference stipulated that couples would have the right to freely and responsibly decide the number and spacing of their children.

Likewise, in 1973, the International Labor Organization (ILO) adopted Convention 138, setting 18 as the minimum age for employment in hazardous environments. In 1974, the UN General Assembly approved the Declaration on the Protection of Women and Children in Emergency and Armed Conflicts to prevent assaults or detention of women and children during armed conflict. Its regulations seek to preserve the dignity of women and children. The declaration requires the states to adhere to the Geneva Protocol of 1925 and the Geneva Convention of 1949 to uphold human rights during armed conflict.

In 1978, the Human Rights Commission presented a draft for the Convention on the Rights of the Child. Subsequently, the UN General Assembly proclaimed 1979 as the International Year of the Child (IYC) to commemorate the twentieth anniversary of the 1959 Declaration of the Rights of the Child. Notably, UNICEF was instrumental in monitoring IYC. In 1985, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) were adopted to promote the best interests of the child, encompassing education, social services, and fair treatment for juvenile detainees (UNICEF). In 1989, the United Nations ratified the Convention on the Rights of the Child (CRC), often referred to as the Child's Bill of Rights. The CRC acknowledges the human rights of children, encompassing their social, economic, political, civil, and cultural rights. It compels the states to implement a minimum set of standards to safeguard the rights and interests of children without any discrimination.

In 1990, the World Summit for Children took place in New York. The Recommendations for Preventing Juvenile Offending (Riyadh Guidelines) were adopted to require states to develop detailed crime prevention strategies and to implement them within national legislation, policies, and practices. This convention outlines strategies for preventing crimes against children (UN). Afterward, the Child Rights International Network (CRIN) was established in 1995. It was an outcome of the formal meeting of the specialists from UNICEF, Save the Children, Defense for Children International, and various other organizations. In 1999, the International Labor Organization adopted the Worst Forms of Child Labor Convention, obliging states to immediately prohibit any form of work that could endanger the health, safety, or morals of children. Article 6 imposes a duty on states to create and execute action plans aimed at abolishing the most severe types of child labor. Article 9 states that the states must notify the Director General of the International Labor Organization Office regarding the ratification of this convention (ILO, 1999).

In 2000, the United Nations General Assembly approved two optional protocols to the 1989 Convention on the Rights of the Child, obliging the states to adopt laws, policies, and practices to prevent children from being abused or sexually exploited. After a couple of years, children's representatives spoke for the first time at the United Nations Special Session on Children (in 2002). The World Fit for Children agenda was adopted, outlining specific goals to enhance children's futures over the next 10 years (UNICEF).

In 2006, UNICEF and the United Nations Office on Drugs and Crime collaboratively released Manuals for Measuring Juvenile Justice Indicators. The Manual requires states to implement changes in juvenile justice systems. In 2010, the UN Secretary-General released the status of the Convention on the Rights of the Child. A new optional protocol to the Convention on the Rights of the Child was adopted in 2011. Under this protocol, the Committee on the Rights of the Child can investigate complaints of violations of children's rights. In 2015, the Convention on the Rights of the Child was ratified by South Sudan and Somalia. This agreement is the most broadly endorsed international instrument, with 196 countries. However, the United States has not ratified it to this day.

In contrast, the Committee on the Rights of the Child comprises 18 experts who oversee the implementation of the provisions of the UN CRC. It also monitors the execution of the stipulations of the two optional protocols on the CRC, Article 43, Para-2, UN CRC. The Committee is established under Articles 43, 44, and 45 of the Treaty on the Rights of Children. The Committee has a role in consulting and cooperating with specialized UN agencies to implement the provisions of the Convention. The Committee meets three times each year for three weeks in January, May-June, and September. Every state party must provide the Committee with periodic reports on the implementation of children's rights within its nation. These developments demonstrate that the international community has been serious about upholding the rights and concerns of children worldwide at all times.

Towards The Children Act of Nepal

In the third year after the Constitution's implementation, the Government of Nepal enacted the Children Act, 2018, to ensure children's fundamental human rights. The Act is divided into ten separate chapters. The Act includes regulations concerning children's rights (Chapter 2); responsibilities towards children (Chapter 3); Juvenile Justice (Chapter 4); special care and rehabilitation for children (Chapter 5); organizational provisions on child rights and welfare (Chapter 6); protection and enforcement of child rights and responsibilities towards children (Chapter 7); crimes against children (Chapter 8); sanctions, compensation, and adjudicatory body (Chapter 9); and Other (Chapter 10). This legislation has annulled the Children's Act of 1992. Undoubtedly, every child is entitled to live with dignity. Section 3 of the Act, 2018 states that each child is entitled to live a significant life. This clause requires the government to implement essential preventive and protective actions, including avoiding accidents that affect children and reducing the risks they might encounter.

Section 4 provides that every child shall have the right to name, nationality, and identity. Section 5 provides rights against discrimination. This arrangement prohibits all forms of discrimination, including distinctions between sons and daughters, biological and adopted children, or between one child and another under their care. It also forbids discrimination between adopted children and biological children. The provision is inclusive in nature, covering multiple grounds—such as religion, race, caste, ethnicity, sex, origin, language, culture, ideology, physical or mental condition, disability, marital status, family status, occupation, health status, economic or social status, geographical region, or any other basis—on which discrimination is not permitted.

Unless the context otherwise requires, no child can be separated from his or her father or mother against their wishes. However, the court may order the separation of a child from their parents and place the child under the custody of a guardian. In this regard, Section 6 provides that a child living separately retains the right to maintain personal relationships and meet with his or her parents.

The Children's Act, 2018, obligates the state to ensure both the protection and the participation of children in matters that benefit their overall growth. The right to protection includes the right to receive appropriate care, nurturing, protection, and affection from the family. Section 7 provides that children have the right to protection from all forms of physical and mental violence, neglect, inhuman treatment, or untouchability, and it prohibits the engagement of children below the age of 14 in hazardous occupations. Under Section 7(10), the central, provincial, and local governments are empowered to take necessary measures to protect children. The children, who are capable of forming an opinion, would have the right to participate in decision-making that concerns them, to be made by their family, community, school, or other public agency or institution, as provided under Section 8 of the Act, 2018. The Children's Act, 2018, outlines provisions regarding child justice under Chapter 4, with Section 20 being particularly significant. This section emphasizes that all persons, office-bearers, and the child court involved in dispensing child justice must take several factors into consideration. These include listening to the views of the child before making any decision, considering the views of the parents or guardians, using language, speech, and behavior appropriate to the child's age and level of mental development, and communicating with the child in a language they understand, with the assistance of interpreters if necessary.

The investigating authority may take the child into custody. However, they cannot apply force to the child. The child may be kept in an "observation cell" for a period not exceeding 21 days. Probing a child can be done in the absence of his parents or guardian, but only in a child-friendly atmosphere. The government of Nepal may appoint a police staff trained in child justice to undertake the investigation. A delinquent would not be kept in detention during the period of trial unless he is found guilty of committing an offense punishable with imprisonment for a term that may be of three years or more; or if there is danger to his/her or others' life, or if there is fear of his/her escaping.

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

- **Diversion**

The Act, 2018, provides for diversion, an intervention approach that redirects youths away from formal proceedings in the juvenile justice system while holding them accountable for their actions. Section 27 provides that there could be no room for divergence in case the child has committed an offense punishable with imprisonment for a term of three years or more.

While making a decision to divert the child, the following things would be taken into consideration:

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

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

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

The child, once diverted, would be monitored by the probation authority to ensure participation in the diversion process.

- **Child court**

The government of Nepal, on the recommendation of the Judicial Council, may establish the required number of Child Courts. Section 30(3) provides that a Child Bench shall be constituted in each district court to conduct proceedings. The constitution of the Judicial Council is set out in Article 153 of the Constitution of Nepal. It sees the Chief Justice of Nepal as Chairperson, while the Law Minister, the senior-most judge of the Supreme Court, one jurist nominated by the President on the recommendation of the Prime Minister, and a senior advocate nominated by the Nepal Bar Association as its members.

In February, the government decided to establish the first juvenile court in the federal capital. The court, based in Bhaktapur, began functioning from April 15, 2025, and handles juvenile cases from Kathmandu, Lalitpur, Bhaktapur, and Kavrepalanchok (The Kathmandu Post, 2025). However, specialized child courts are yet to be established in the country.

Section 30(4) envisages that the District Judge, Social Service Provider, and Child Psychologist or Child Specialist could be members of the Child Bench. The hearing and proceedings of the cases against the child shall be conducted in a closed bench. The case must be disposed of within 120 days on a continuous-hearing basis.

In this context, learned Justice Tej Narayan Paudel observes that the child benches have not included social workers, child psychologists, or child experts as members. The arrangements for a child-friendly complete bench have not been made so far. Children involved in legal proceedings are not being kept with peers of their own age; they are not being kept separate from the public. He further argues that there are problems related to the issuance of time-bound summons. Under the Children Act, 2018, due to general delays, cases that should have been decided within 120 days have not been finalized, he opines. Social workers and psychologists have not been properly involved in the procedural and investigative aspects. Children involved in legal proceedings are not being questioned using child-appropriate methods, argues Justice Paudel, T.

To ensure child justice, the Chief Justice of Nepal assigns the senior-most judge of the District Court to hear cases related to children by exercising the power under Rule 6 of the Child Justice Administration (Procedure) Regulations, 2019. The Supreme Court of Nepal, in the case of *Dhangadhi 33 v District Police Office, Kailali, et al.*, held that, generally, among all the judges posted at the respective court, the judge with the highest seniority becomes the senior-most judge. In the absence of that judge, the judge with the next highest seniority assumes the position of senior-most judge. The senior-most judge of the District Court is expected to serve as the chief person responsible for the court's functioning, and since a court is a body with perpetual succession, the position of senior-most judge cannot remain vacant. Therefore, among the available judges, the one with the highest seniority automatically becomes the senior-most judge to hear the matters of children.

Still, the law does not require that the Bench possess expertise, have studied relevant material, or have received training in Juvenile Justice.

• Punishment

	<i>Age</i>	<i>Punishment (Section 36)</i>
1	Child of under 10	No case, no punishment to be instituted
2	Above 10 and below 14	Kept in observation up to six months, or up to one year in child correction home
3	14 years or above but below 16	Half of the punishment prescribed for an adult (i.e., to be kept under observation for a period equivalent to half of the imprisonment term prescribed for an adult).
4	16 years or above but below 18	Two-thirds of the punishment prescribed for an adult

5 Below 16 years of age

No punishment, including an order for keeping a juvenile under observation in a correction home, shall be imposed unless the act constitutes a heinous, grave, or repeated offence [Sec. 36(7)]

Considering the nature of the offense and the circumstances under which a child committed it, the child court has been entrusted with the power to postpone punishment. The court would take the following things into account while postponing punishment:

- Having any member of the family or guardian to teach him good human behavior;
- Having a service-providing organization provide orientation to the child;
- Psychological counseling;
- Assigning a child under the guidance and supervision of the school, family, guardian, or service-providing organization;
- Referring the child to community service;
- Referring the child to a correctional home for not exceeding the duration of punishment.

If there is significant improvement or reformation in a child kept under supervision or in a correctional home, the child welfare authority may recommend to the child court that the correctional period be remitted or waived. Nepal has adopted a “restorative” approach to child justice administration. The delinquents would not be handcuffed, shackled, or kept in solitary confinement, detention, or prison. Their punishment or offense would not be counted, and such children would not be disqualified from any job or other opportunity because of an act committed during their childhood.

- **Special protection**

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

- **Institutional Framework**

The Act, 2018, directs the state to establish the National Child Rights Council at the national level and state and local level child rights committees at provincial and local levels for protecting and promoting the rights of children. Also, there would be a child welfare authority at the local level to safeguard children's rights. A children's fund would be set up to provide immediate rescue, relief, and rehabilitation. The fund would include amounts received from the government of Nepal, provincial governments, local governments, amounts remitted by

citizens and organizations, foreign aid, aid from international organizations, amounts received in lieu of fines imposed by the child court, and other sources. The child court may pass an order on the offender, or direct the government or the Children's Fund to provide a reasonable amount of compensation to the victim.

- **Role of Judicial Committee**

The "Judicial Committee" has been entrusted with the power to receive complaints relating to the mistreatment of children's rights. Upon receiving the application, the Committee may call the individual involved within 24 hours. If it seems that the individual involved has infringed upon the child's rights or has failed to meet their responsibilities toward the child, the Committee will issue a directive to the individual, organization, or agency at the local level within 30 days of receiving the application to uphold the child's rights or compel the individual to fulfill their obligations to the child.

Article 217 of the Constitution of Nepal provides for the establishment of a Judicial Committee in every local-level government to facilitate the administration of justice at the grassroots level. The Committee is chaired by the Deputy Chairperson of a Village Council or the Deputy Mayor of a Municipality and is authorized to hear and settle disputes as prescribed by federal and provincial laws. To ensure collective decision-making, the Committee consists of two additional members, nominated by the Chairperson of the Village Executive for a Village Council and by the Mayor for a Municipality. Through this constitutional mechanism, local governments are empowered to resolve certain disputes efficiently and enhance access to justice for local communities.

- **Crimes Committed against Minors**

The 2018 Act, in Section 66, outlines an extensive list of actions and failures that constitute offenses against children. It encompasses: participation of children in addictions like smoking, drinking, or gambling; permitting access to, or employing children in leisure activities at bars or similar venues; exposure to pornography, involvement of children in pornography; imposing physical, mental, or any type of punishment; causing injuries, harm, humiliation, neglect, discrimination, exclusion, hatred, isolation, or torture; utilizing children in experiments; sexual conduct; child marriage; child labor; and others. Section 72 mandates penalties of fines and imprisonment for crimes committed against children.

- **Incapacity**

An individual found guilty of child sexual abuse will be considered to have perpetrated a crime demonstrating moral turpitude. Nepalese law clearly states that individuals found guilty of crimes involving moral turpitude are disqualified from contesting elections, joining any organization or political party, and entering the civil service. Where a person working in any public or private institution commits an offense against a child, they shall be removed from their position. Based on the severity of the offense, the perpetrator will be disqualified for up to 10 years from participating in any work that entails direct interaction with children or from

being appointed or elected to such institutions or organizations. Section 67 of the Children Act, 2018, is the relevant clause in this context.

- **Privacy**

The legislation seeks to safeguard the privacy rights of minors. In this context, Section 78 states that no individual may publish or broadcast any information revealing the identity of a child involved in a case currently under consideration by the Child Court. If disclosing the identity would not adversely affect the child's best interests and the Child Court permits it, the child's identity may be disclosed.

- **Age Determination**

For age determination, documents such as the date of birth noted in the child's hospital-issued birth registration, a birth certificate provided by local authorities, a school certificate stating the date of birth, or the age indicated in a birth chart (*Janmakundali*) or as revealed by the father, mother, or family will be considered.

- **Miscellaneous**

This Act is central legislation under which the government of Nepal has been conferred the power to frame rules. However, the Supreme Court would outline the operational procedures for administering justice (Section 85). If there is dissatisfaction with the child court's ruling, an appeal may be filed with the relevant High Court within 35 days of the ruling. In court practice, it is observed that police officials involved in juvenile cases appear in court in police uniform, along with the juveniles. The Supreme Court of Nepal has issued scores of welcome verdicts to uphold the cause of children. In the case of *Abha Parajuli, affiliated with PDS Nepal, on behalf of 64 Chinchu 75(O) v Surkhet District Court and Others*, the Supreme Court, on March 25, 2022, held that no judges, except for the highest-ranking judge of the District Court, will have jurisdiction to preside over the Juvenile Bench. In the instant case, the Juvenile Bench was presided over by a judge who was not the senior-most, which was held to be contrary to law. The apex court annulled the decision of the court of first instance, stating that the trial court's proceedings contained a jurisdictional error.

Issuing a writ of certiorari filed by Birendra Tharu, the apex court, on March 23, 2022, quashed a decision of Kapilvastu District Court. In this case, the Kapilvastu District had demanded a bail bond from the delinquent, sent the child behind bars, and, prior to the trial, which was conducted ordinarily, was in non-compliance with the Children Act. The law prohibits the Court from demanding a bail bond from the delinquents, forbids imprisonment, and requires proceedings before the Juvenile Bench. Under Section 24, the Act prohibits the demand for bail and guarantees. In India, Section 12 of the Juvenile Justice Act permits the imposition of bail bonds or sureties on delinquents.

CONCLUSION

The Government of Nepal has enacted a substantial body of laws to protect the rights and welfare of children. The Constitution of Nepal assures a set of fundamental rights for children, and these rights are of natural importance. From Hindu-influenced laws to the implementation of a specific children's law in the early 1990s, and from the downfall of the Hindu monarchy to the dawn of secular republicanism, Nepal's child law regime has adopted a secular character in recognition of established legal principles. Nepalese law prohibits the imposition of bail on juvenile delinquents. It neither permits the police to handcuff juveniles nor allows courts to imprison them in jails where adult offenders are housed. However, the juvenile justice regime appears, to a certain degree, more restrictive than restorative for several reasons. First, the law allows judicial authorities to order that juvenile delinquents be kept in correctional homes. Secondly, Section 27(1)(c) of the Act empowers the Juvenile Court to issue diversion orders irrespective of the claimed amount, fine, or term of imprisonment. Simultaneously, Section 27(2) limits diversion when the juvenile is charged with an offense that carries a potential prison sentence of three years or longer. This illustrates that although the prior provision expands the range of diversion, the following provision considerably restricts it. The sentencing regime under the Children Act is based on age categories—below 10 years, ages 10 to 14, ages 14 to 16, and ages 16 to 18. The law classifies children by age group and prescribes legal measures accordingly. However, it does not adopt a uniform parameter that defines a child as a person under 18 years old. Moreover, the Children Act recognizes police investigation, providing that a police officer trained in juvenile justice shall investigate instances concerning minors in violation of the law. Such involvement of police authorities may have psychological effects on a child's mind. The government could instead consider establishing a separate investigating agency to deal exclusively with juvenile delinquency cases. In the case of postponement of punishment under Section 36(5), clarity and precision are needed. While the law bars courts from demanding bail from juvenile delinquents, it simultaneously permits the imposition of fines. In this respect, the law reflects a dual and inconsistent approach. In addition, the Constitution and statutes confer upon citizens the right to obtain citizenship at age 16 or older, whereas the age of majority is attained upon reaching age 18. Moreover, the minimum marriage age for both the bride and the groom is set at 20 years. These legal provisions do not conform to one another. There is a pressing need to harmonize the law on age-related thresholds, particularly regarding the minimum age for citizenship and marriage. The provision relating to citizenship, in particular, indicates that the minors are entitled to obtain citizenship upon attaining the age of sixteen years or above, which further highlights the inconsistency in the legal framework. Above all, the prevailing legal practice and precedent in Nepal is that the senior-most judge of a District Court presides over juvenile matters through the Children's Bench (Juvenile Bench). The law does not prescribe any standard requiring a judge to possess specialized expertise in juvenile justice. This constitutes a serious flaw in the legal framework, as seniority does not necessarily equate to expertise.

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