BRIEF REPORT ON ORIENTATION TO DISTRICT COURT REGISTRAR ON JUVENILE JUSTICE ADMINISTRATION FROM (29 July- 31July 2017)

Program Organized by JJCC in support of UNICEF NEpal

Venue: Krishi Talim Nirdeshanalaya, Krishi Bibhag

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**Opening Session( 14th Shrawan, 0930-11:00am)**

The opening session of the Orientation program started after the arrival of chairperson of JJCC- Hon. Sharda Prasad Ghimire, Member Secretary of JJCC Mr. Nahakul Subedi (Chief registrar, Supreme Court) and Mr. Tomo Hozumi, Country Representative –Unicef Nepal.

Hon. Chairperson stated that children are our biggest asset for future and present; therefore we need to make our best possible effort to protect children who comes into conflict with law not ignoring victim and witnesses, and protecting them from any kind of abuses in the whole process of legal system. He said that it is important for the actors working directly , indirectly for the benefit of children should understand why diversion and restorative systems are important who happen to come in conflict with the law, how is it important for the legal actor should promptly address to channeling in a positive direction.

He shared his experience during his tenure in Kapilbastu. He emphasized that identification of actual age of child and its proper documentation is very important. He said that he is hopeful that this training will turn out to be one forum to share and exchange ideas and experience which will lead to positive direction in our formal system.

Member secretary, Chief Registrar added on the establishment of child friendly room in 75 districts. He shared his observation; that phase wise juvenile bench has established in 75 districts, trained judges, trained child psychologists and social worker, a complete team for the set of Juvenile Justice System, which means a total infrastructure of human resources. He added that our goal is to establish a child court and will make a proper departure after the endorsement of revised Child Act which is at MWCSW. Trainings are given to most of the judges, officers; social worker and child psychologist, therefore infrastructure of the human resource have been built. His concern is after the establishment of eh proper setup, what is the outcome? What is happening what to do? We should be clear in principle,

He said that we need to internalize the subject “child justice” and address them differently, especially district court registrar should be aware about this, and they have the important role while dealing with such cases and it is important to understand what was the reason for children to come into conflict with law? How to reintegrate them in the society through restorative and diversion method? Chief registrar said that we need to understand the value f training in different view, and should seriously attend all the sessions to a fruitful outcome. He also requests to take the training seriously. He said that he has observed that in some places with same resources, juvenile bench and child friendly set up are different, same good and some bad; he also said we have ample areas to work on, to manage best possible with the existing resources but is human attitude. He asked the participants to coordinate and communicate properly and on time and said that he is always ready to address the problems that come specifically/categorically with work plan.

He said though this is the additional job, proper reporting is very important, he asked the participants to go through them at once, so that anything missing will be immediately identified which will actually help judges to make a profound decision.

Mr. Tomo Hozumi stated that he believes that this training of district court registrar will strongly enhance the knowledge of the management for district court, will enhance to maintain records systematically, which means judiciary will have more skill human resource who would be able to deal cases with child and gender friendly manner. He also acknowledged high level judiciary who contributed the extensive hard work for the provisions of children protection in the amended and revised Children’s act which is currently being considered by Ministry of Women Children and Social Welfare. He believes that with this, the country will enter into a more progressive, with regard to justice for children, which will also allow the legal protection for victims and witnesses, which means linking to the referral system and leading towards the social welfare services.

Mr. Hozumi has some recommendations put forward by Child Protection Mapping Exercise conducted by Women Children and Social welfare in the area of justice for children.

* Conduct participatory sector wise justice for children assessment to improve justice dimension specific across criminal, peer justice with the view to mainstream, broader rule of justice reformation.
* Enforce exercising legal provisions relevant to justice mainly investigation and prosecution against all crime against children, victim compensation, care, custody monitoring, safeguarding child rights, safeguarding property, parental care in regard to the children in conflict with the law.
* Establish clear linkages between justice and social welfare systems with care and protection at all process and well defining vocational activities in justice systems.
* Develop child and gender friendly pre and post trial, child friendly interview and interrogation rules, child friendly court rooms institutionalization of social worker and child psychologist in juvenile benches.
* Enhance capacity building of lawyers other justice and law enforcement actors of court staffs child and to practice child friendly and gender sensitive approaches.

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**Day 1**

**Session1**

**International Standards of Juvenile Justice and their application in Nepal**

**Justice. Ishwor Prasad Khatiwada**

**1.1. Child Rights Convention (CRC1989)**

Convention on the Rights of Child (CRC) is the international binding law, which contains Preamble with 54 Articles, in which a child means every human being which is under the age of 18. CRC which is developed centralizing “Best Interest of the Child”, came into force on 02September of 1990 that, enumerates the National law with corresponding State’s Obligations. Though Nepal ratified CRC in 20 November,1989 it came into force in 02September. He informed that Scandinavian countries are far ahead applying the minimum standards of Juvenile Justice System in comparing with Asian Country. Nepal has also ratified both optional protocols which are not as binding as CRC (Soft laws Under CRC)

1. Optional Protocol to the Convention on Rights of the Child on the sale of children, children prostitution and child pornography, 2002- which entered into force January 18,2002
2. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 2000- which entered into force in 12February, 2002.

**Basic Norms on Juvenile Justice (fair trial guarantees) are stated in Article 40as follows:**

It contains on how to deal with the violation of penal by giving the example of a child who is released under the commitment to be present on date do not turn up, he should be explained properly rather than an interrogation by the court. Whether he/she needs to be counseled properly or have not been clarified.

* The charge should be informed immediately and should be presumed and deal as an innocent until proven guilty.
* To have the matter determined without delay by a competent, independent and impartial authority or judicial body in fair hearing.
* Confidentiality should be fully respected, free assistance of an interpreter
* Varity of disposition measures adopted and, and have clarified the implementation mechanism within the UN System.

Though The USA had initiated for the draft of UNCRC, the USA did ratified the same, stating that they have their own system, for the children’s’ rights issues into prime consideration. Somalia was the other country that did not ratified the UNCRC, stating that they do not have resources to fulfill the commitment; but will try their best to follow the rules of convention. In Paris Convention the USA played an active role to organize a Paris Convention but had stepped back while in the time of commitment.

Parents/Patrie: Children are prime responsibility of parents, but if the children do not have parents/ guardians or if they are incapable to look after their children, it becomes the ultimate responsibilities of nation to take the responsibilities of such children.

**2. The Beijing Rules 1985**

Several decisions have been made. The ground (articles) provided by UNCRC is not much different from Beijing rule. The Beijing Rules provide guidelines on how juveniles should be treated while part of the justice system addressing issues such as privacy, special training for the police and due process guarantees. In addition, the Rules set out guidelines for the diversion of juveniles from judicial proceedings. Beijing rules were executed by UNCRC in 1950 and in 1985,

**The United Nations Standard Minimum Rules for the Administration of Juvenile Justice “ the Beijing rules”, 1985**

* Includes the idea of “Juvenile in conflict with the law” and it should be conceived as the integral part of the national development process.
* To emphasize in the training to specialize as police would be the first contact person for any cases.
* Detention should be used only as the last resort and for the shortest possible time.
* Wherever possible detention shall be replaced by alternative measures, such as remanded to the custody of parents or guardians.
* Juvenile under detention pending trial shall be entitled to all rights and guarantees Minimum Rules for the treatment of prisoners adopted by United Nation.
* Juveniles under detention with pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of the institution also holding adults.
* While in custody, children should be treated with care protection, necessary vocational, education, medical assistance in view of their age sex and personality.
* Social Inquiry Reports Required to gather every nitty gritty of the case related observation and evidence. This is the important document on the.
* Guiding Principals in adjudication and disposition. Various disposition measures proceeded:
* Care
* Guidance
* Community service order
* Financial penalties, compensation and restitution.
* Intermediate and other treatment orders.
* Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules or the Treatment of Prisoners adopted by United Nations (ICCPR-3 International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.)
* The reaction taken shall always be in proportionate not only to the circumstances and the gravity of the offence but also to the circumstances and the need of the juvenile”. By giving the example of the child who stole food out of hunger.
* Restriction on personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum, which means to keep them in correction home just to control their freedom to some extent.

**2.1. Various deposition measures are provided:**

Disposition of cases should avoid unnecessary delay; records should be kept strictly confidential. Training should be given time and again for the professional who bears responsibility on the due process in the legal system, so that effective implementation is carried out for the disposition.

**United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (The JDL Rules)**

The Juvenile Justice System should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be the last resort. The Juvenile Justice System should uphold the rights safety and promote the

* The JDL rule is one of the rules that is been compiled with CRC.
* Mental and physical status should be ensured properly.
* Imprisonment should be the last resort.
* Beijing rules and CRC should be followed.
* Record system should be reliable, systematized and documented.
* Classification and placement.
* Referred to community
* Diversion options should be open.

Since the children are immature physically and mentally; juveniles who come into conflict with law are mostly believed to be the consequences of men’s- rea of an adult person. Therefore such children should be corrected by diverting their act into social contribution, but focusing on the best interest of the children. Police is believed to be the first contact person to deal with the children who comes in conflict with the law, they should have proper training and should be well aware about how to deal with such children and should be aware why children should be dealt differently from adult.

While in open discussion a question was put to the participants “what should be done if the child released on the hearing date do not presents himself on the date. How should law treat such child?”He added that the child released under the “Hearing date” is not benefit given to him. It should be checked if the child has been informed or counseled properly to make him understand why he/she need to be present on the date given.

**3.Riyad Guideines 1990:** Guiding Principal: The prevention of Juvenile Delinquency is the essential part of Crime Prevention in Society.

* Role of Mass media has been clarified.
* Social Policy has been underlined
* Research Policy development and Cooperation.

**4. Tokyo Rules** ( non – Custodial Measures)1990 (Applies both in child as well as in adult practice.)

* Humanitarian measures have been prescribed for adult as well as for the children. It should be well understood that to keep inside the cell means only to limit the freedom not to torture them either physically or mentally rules.
* Juveniles under detention trail shall be entitled adopted by the United Nation, should be treated as Prisoner rules.
* Child should not be kept with adult should be kept separately.

Hon. Justice said that if the child can be used for the project of Bagmati River cleaning, it should be evaluated in the beginning that if the child is appropriate for the project. The realization and the feeling are what matters to do the task given to the child rather than only to assign the job. He also emphasized that the tone while speaking to someone is very important while communicating to anyone.

* Restitution if possible
* Counseling or group counseling
* Foster care and other relevant orders.

**6. Nepalese perspectives:**

Until Child Act was formulated on 2048, traditional practice were continued to deal with the children. After the Enactment of Child Act in 2048 (1992A.D), Procedural Rules of Juvenile Justice 2063(2006 A.D) came along. The Procedure Rule progressively interpreted by the courts, domestication of the International Standards started and later laws superseded the earlier ones.

Justice Khatiwada added, to raise awareness in community about the rights of children who came in contact with law and who came in conflict with law, is the most difficult but important task, for all the service providers as well as duty bearers. He added that change in behavior and attitude should start from own self and from the very moment. Hon justice gave an example of London; when a juvenile decided to free a juvenile, the community went against the decision, with the protest that culprit of whatever should not be released. He also advised the participants that learning by doing is very important; and also talked about the Monism and Dualism

**Session2**

**Child Victims and Child Protection- By Hon. Til Prasad Shrestha**

**1.Development of Concept**

Child Victim or witness means a person under the age of 18 who is a victim of or witness to a crime, regardless of his or her role in the offence or in the prosecution of the alleged offender or groups of offenders. (Model Law, UNODC/Unicef). “Victims” means persons who, individually or collectively, have suffered harm through acts or omissions that are in violation of criminal laws. Harm means-physical, Mental, emotional, economic, substantial impairment of fundamental rights. Children are biologically and cognitively less developed and considered vulnerable. In case of juvenile delinquency the children are considered mostly unintentional, knowing less about the consequences what they are told to do by ill-intentioned adult.

**1.1 Basic Principals of Justice for Victims of Crime**

# Hon Justice Til Prasad Shrestha started a session with a case of “Best Bakery” which made Mr. Narendra Modi restricted from entering USA, because he was the president of the state. Later after, “bidi Shasta” was published, of 500 pages, the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was drafted and later came in force: A Constructive Critique, which entails about access to Justice, Fair treatment, Restitution, compensation and Assistance.

# 1.1.1 Access to Justice: It is important to know what the law is and to make use of it, this is something like correlation of demand side and supply side.

# 1.a/ Physical Access: Accessibility and transportation is also one of the factor if one can get the service in easy way.

# 1.b/ Financial Access: Finance is the most important aspect for accessibility of anything.

# 1.1.2. Fair Treatment: Sometimes it becomes difficult to prove the perpetrator guilty, because there will not be the tangible evidence. He shared his experience about the case; the victim was not in a position to defend herself. On the basis of the legal instrument of Chicago sexual offence act “Custodial rape” with the statement of “Absence of no is not yes” he sentenced the perpetrator. Cases, especially of children should be dealt withn 24 hours. Cases are not reported and even the reported cases are not taken seriously.

# 1.1.3. Restitution: Compensate Victim exactly in a way as it was before.

# 1.1.4. Compensation: To compensate victim in almost all the equivalent value monitory etc.

# 1.1.5. Assistance: Relate to assistance Hon. Justice shared that there the cases reported earlier in Domestic violence cannot be withdrawn, in America. He gave an example of one case in Nepal, a child born out of rape from principal, there were no such remarkable action taken in favor of the victim except some monetary value was compensated through women development department.

# 1.1.6. Equality, Caring and Sensitive Manner, Privacy and participation: The victim should not be discriminated in any form and manner neither at home, community or society she/ he should be treated equality as others and should enjoy the basic rights equally as others. Confidentiality of the victim and his/her right to be participated are as equally as others.

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# 2.Relevant Legal Provision and The Identification of the problems (Rights of Child Victims and Witness)

# **Witness is a natural person different than the accused person, who has been called (summoned) by authorities involved in criminal proceedings to testify about**matters important for criminal proceedings, which he has perceived (learned) through his senses, i.e. what he saw, heard etc. Therefore a witness is irreplaceable by another person:

# 2.1Best Interest of the Child (Article3): Child Rights Convention (CRC) 1989 was developed in 54 articles on the foundation of Best Interest of the Children that includes.

# 2.2Right to Protection: Children’s right to be protected from discrimination, regardless of race, ethnicity, gender, color etc aligned.

# 2.3Right to change for harmonious development: Distinction between children should only be based on their best interest, positive discrimination; equal right to participate fully in the justice process, child’s young age alone cannot be an adequate ground to disregard his or her testimony.

# 2.4Right to be treated with dignity and compassion; The children who comes in conflict with law is also a victim, both the victim’s dignity should be respected and protected, should treated in a caring and sensitive manner, should be respectful at their physical, mental and moral integrity. Interference in the child’s private life should be limited to the minimum needed; the language used should be understandable to child.

# 2.5 Right to be protected from discrimination- (Article2): The victim and witness should be treated fairly and equally, regardless of race, ethnicity, gender,colour etc and should have equal right to participate in justice process, child young age alone cannot be an adequate ground o disregard his or her testimony.

# 2.6Right to be informed: Both Victims and Witness both have the right to be informed about status of specific case, Existing opportunities to obtain reparation, availability of services and means of accessing such services, role of child victims in the justice process, support mechanism and other relevant rights.

# 2.7 Right to be heard and to express views and concerns: Victims and Witnesses have right to contribute to the decisions affecting his/her life. Victims should be enable to express their views, treat children as a complete human being

# 2.8 Right to effective Assistance: Registrars should ensure justice for child victims. Victims and witnesses should have access to assist and support services on financial, legal, counseling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s reintegration

# 2.9 Right to Privacy: Confidentiality of victim and witness should be protected as primary importance, should be careful so as not to lead to identification of a child.

**3. Protection/ Preventive Modalities:**

**To set up judicial prevention of offences against children at risk, special units should be set up for child related crimes. Alternative care should be provided. At prevention level awareness-raising with multidisciplinary approaches should be carried out as in Cambodia and Russia. Victims should be safeguard from further re victimization or offending**

**4. Significance in Nepal with National legal instruments:**

**Constitution of Nepal 2072 article 21,**

**Children Act 2048 with the articles 49, 51, 53 (6), 55, 57**

**Directives enforced from Supreme Court 2064/9/10**

**5. Roles of Register:**

**Hon. Justice Advice registrars to become proactive specially while dealing with the cases of children, because delay by any reason may not be affordable to repair the damage that would have made after the victims come in contact with law; A slight change in traditional or existing behavior change such as, expedite process, limiting the number of interview, avoiding unnecessary contact with the justice in process, examining hidden or overlooked perpetrators, dealing with the children in child sensitive manner and reducing potential intimidation will help to take someone’s life in positive direction and become a good start in a proceedings systems.**

**6. Others**

# In 1985 UN declares Right of Witness, conjugating with the case of US in 1963, Joseph Valcie, Mafia gangster of Newyork who turned informant. In September 1963, he appeared as the star witness before "The McClellan Committee," a government inquiry into the mob. Valachi revealed graphic details of mob life and confirmed the existence of five crime families in New York and one in New Jersey. After returning to prison, Valachi teamed with appointed writer Peter Maas to publish his memoirs,( The Valachi Papers, in 1968.) He died on April 3, 1971, at La Tuna Federal Correctional Institution in Texas.( <https://www.biography.com/people/joseph-valachi-12103158>). In 1963 it was the first time any witness was provided with the protection such as:

# Grehar Mular was one of the German national whose identity was changed as per the protection of witness.

* Tumaso Buseta was one of the Italian national who was relocated as per the protection of witness in Rome

**Others**

Overall his sessions were case based. The floor then was opened for the discussion, where he stated that the victims have right to be informed on the status of their cases. If only they are informed by telephone calls or if only notified by an email th**at** would project efficiency of the responsible of C**ourt. He** gave one example of how to penalize for the person who raped 500 ladies **in..**Vine in Florida The primary function of Victim Services is to assist victims of crimes to assist by providing information and status of the case. In Congo the assistant is called a case worker, in Singapore Volunteer support program, in USA Adult Attendees, Vietnam Impact Statement. Maintaining confidentiality the information should be flowed maintaining certain amount of confidentiality.

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**Session3**

**Correction Measures for Juveniles**

1. **Rationale for the correction measures**

Conceptual Foundation of juvenile Justice, is formed to define why correction measures for children or human should be taken?

* Principle of segregation and
* Principle of Parents Patrie

London in 1837, Principle of segregation was developed, in the absolute rule of law where adult and children were kept together in the same place, where the child enters as a child but comes out as the veteran criminal, the children are likely to be contaminated, so the it was said that if the juveniles and adult could not be segregated, they should not be charged, not should they be taken under the process of law. It is realized that children can be corrected in their attitudinal and behavior change.

To take the responsibility of the children is the prime responsibility of parents, but by any reason if the parents and guardians are not able to the responsibility or unwilling to take the responsibility of such children, Nation become ultimate responsible for the children and that’s how the principle of Parent Patrie came into force. In a Lay Man’s school in the USA this was practiced first time.

**1.1Why correction?**

Human being is inherently evil and must be taught to be good. Children therefore need to be taught from the beginning. Medical model was presented with the example of stealing bread from a shop. The child should be diagnosed why the bread was stolen rather than just punish him because his act was not acceptable in the community.

Further he clarified on truancy/ vagrancy and curfew. He gave an example of the US that though the US has not ratified CRC, they have researched and analyzed detail on different perspective of desire, though it is the cases of children, they have been classified according to the intensity of the case. Open juvenile proceedings have been developed, sometimes priority is given more on the protection of society than the child, also to hold the parents criminal than the child, teens courts are established,

**2.Best practices adopted for the corrections**

Three types of Corrections which are practiced as best practice:

* Institutional measures
* Community based measures
* Probation measures

**2.1 Institutional measures:**

The children should be kept in an institution, far from the attachment of the parents, severe punishment, authentify the private institution also, transfer of the child and the kind of medication for the children should be decided by the official of child care homes. It is not a right of the child to be in correction home when he reaches age of adult.

**2.1.1Programs of Institutional measures:**

* **Correctional treatment**:

**Rehabilitation**: The children while released go with mature and creative positive thinking that is beneficial to the community.

**Deterrence:** To make aware about the long term negative results and risks than the short-term benefit of whatever feeling while committing crime

**Incapacitation:** To keep in detention so that the other people are not harmed by any kind of repeated criminal act in future.

* **Correctional Education:**

To reintegrate such child in community through educational process such as life skills training, spiritual education such as yoga, meditation, stress and conflict management etc.

To educate through vocational trainings, to the children who have reached to the age of adult such as mechanical training, internship, cooperative etc so that they they get engaged in the income generation for the positive cause.

**2.2 Community Based Measures**

To make the child work in the community so as to give service no only as the penalty of his deeds but also to cultivate realization that the act he done was not correct. For this there should be social service centers opened to work voluntarily. To serve in the institutions like foster care, group homes and social service centre etc.

**2.3 Probation Service**

This was initiated by Mr. John Augustus. In 18th Century the people convicted for alcohol consuming were given the alternative measures as sewing shoes as penalty or correction measures. In 1869 the probation service was authentified by state of Massachusetts. From 1878 probation officer was appointed. This s was one of the alternative e model, that to be monitors and was proved to be less expensive and effective than keeping in detention.

Juvenile Probation: Juvenile probation was designed in way that the parents or guardians along with the juvenile to serve the community under certain rules and conditions. Such rules and conditions need to balance the need and protection of eh society with what is the best interest of the child.

Probation conditions are, to present compulsorily in school, to complete the dedicated work, alcohol strictly prohibited, no stigmatization, come regularly in contact with probation officer, should not carry weapon, obedient to the parents and guardians, compensate the victim and to complete the social work given.

**2.3.1 Kinds of Probation**

* Probation under supervision: probation under close supervision, in Australia there is en electronic device attached in the body so as to track down if the juvenile goes further than the entitled distance.
* School based probation: Children to be enrolled in schooled and supervised by the dedicated probation officer.
* House Arrest and electronic Monitoring: If the case is serious and if it is safe for others to keep the culprit inside the house, he is kept inside house and supervised and monitored by cctv camera or something like that. Honorable Til Prasad Shreeman shared that though the USA have not ratified the CRC, the concept for juvenile justice have been practiced analyzed and now they have come to the conclusion with many researches that ,

They have classified the cases of children with the degree of the kind of cases.

* Standard justice system has been developed rather than individual justice system, according to the seriousness of the crime they commit.
* Open juvenile proceedings have been operated.
* The focus has become more on the safety of the society and public.
* To hold parents also responsible if the children commit crime.
* Teen courts are established curtailing juvenile court.
* It is believed that justice should be accountable to the public than to a chi

**DAY2**

**Session1**

**Sentencing of Juveniles- Hon. Kishore Silwal**

**1.Sentencing of Juveniles**

Justice Kishore Silwal took the 1st session of second day on Sentencing of juveniles. The overall sessions was structured as Difference between conviction and sentencing, Objective of Sentencing in Juvenile Cases, factors to be Considered in passing sentencing, Sentencing options in Nepal, Postponement or suspension of sentence, Implementation of sentencing orders.

**1.1Difference between Conviction and Sentence:**

A Conviction refers to the outcome of criminal trial. It is the act of proving or declaring a person guilty of a crime. A sentence id the formal declaration by a court imposing a punishment on the person convicted of a crime. Conviction is a result of the verdict of a judge and /or jury, but a sentence is typically ordered by a judge. The court cannot order a sentence unless the person has been found guilty or convicted. Therefore sentence is proceeding after conviction.

**1.2Principles of Sentencing**

Sentencing especially in the cases of child is very difficult; therefore the judge should check all the related evidence and document thoroughly before sentencing. Social Enquiry Report and Opinion Report thus should have all the nity gritty information that can provide enough evidence on socialization and psychological aspect of the juvenile.

* Endangered principle (k|ltzf]wfTds l;4fGt): He presented an example of a case of Daileskh here a child killed his Aunt ( wife of his Brother) for a minor reason. The child was under 16 years. In this case, judge should consider the seriousness of the case and its impact in community and society. S
* Principle of discouragement (xtf]T;fx ;DalGw l;4fGt) definition
* Communal Rejection ( ;fd,lxs lgGbf ;DalGw l;4fGt\_
* Correctional measures - ;'wf/fTds l;4fGt\_
* Right of Rehabilitation - lkl8tsf] clwsf/sf] k'gM:yfkgf;DsGeL l;4fGt\_

**2.Factors that should be considered when sentencing**

The nature and seriousness of the offence, age and maturity of the child, parental or the other significant support, environment. Education and other acivities he she is been brought up or living around.

**2.1 Factors that affect while sentencing the cases of children**

* If the child is involved during the crime
* The degree of damage done to victim, intentionally done, or if it was predetermined,
* Involvement in crime before or repeatedly
* Bringing p of the child, education and the kind of company he is around with
* Physical and mental condition,
* Probability of repeated offence
* Family status of the child
* Compensation given to the victim

**3.Sentencing Option in Nepal:**

Juvenile Courts offer adolescents many sentencing options, also known as “disposition orders”.These sentencing options fall under two major categories and depend on the severity of the offense and the minor’s criminal history. Incarceration and Non- incarceration

**3.1.Incarceration**: It might sound like a prison or jail , but the judge can order confinement of the juvenile offender, some of the different levels of incarceration are:

* Home confinement or house arrest
* Placement with someone other than parent or guardian
* Juvenile hall
* Probation
* Secured juvenile facilities
* Adult jail
* Blended sentence

Hon. Keshari Raj Pandit said that in some cases if the judges may not be aware about the alternatives for the children, it becomes the roles of registrar to remind and notify about the kind of alternatives for the children before the jdge make any final decision.

**3.2Non- incarcareation**: A juvenile court judge also has the discretion to offer rehabilitation options for pending on the crime. Some disposition orders that do not include confinement are: verbal warning, fine, community service and electronic monitoring

**4.Practices of sentencing for Juveniles in Nepal:** According to the Children’s Act 2048, article 11,

* The child under the age if 10 is given the 100% immunity.
* If the offender is more than 10 years at minimum and 14 years at the maximum will be he will be penalized as the law, or will be warned verbally. If the child commits crime od detention, according to the law he will be detained for 06months.
* If the child who is 14 years of age and is under 16years of age he will be charged 50% of the punishment given to adult perpetrator.
* Alternative of detention is not regulated in Nepal as in the other developed countries.

Followings notables are some on which basis juveniles are sentenced in Nepal:

* Involvement of the child during the incident happened.
* Involvement in criminal activities before
* Seriousness of the crime done in early ages ( unexpected incidents)
* Bringing up of the child, kind of company he keeps around , level of education
* Physical and mental status
* Probability of repeating offence
* Family status if the child
* Compensation given to the victim

Therefore the role of social worker and child psychologist and the social enquiry report plays an important role to help decide what kind of alternative measure would be appropriate for the best interest of the child.

**4.1. Implementation of Punishment:**

Implementation of order is done in the end of trial. While ordering, the child should not be kept with adults. Trial of children should not be propagating by media, which should strictly be followed by media and should be notified to them in writing about this. If the hearing is postpones such should be explained to the child or either to the parents/guardians of juvenile. When the child is released, the court should stay as witness and during the protection duration, the report of his/her behavior should be submitted to the court.

**5. Provision in Nepal regarding the Postponement of Sentencing**

The child who has been ordered to imprison, can be diverted to send to correction home after the scrutiny of circumstance in which he found guilty can be considered on the basis of his/her age, mental and physical status.

Further, the floor was open and discussion it is said that monitoring is one of the drawback in our system and poor record keeping which get s directly impact on the life of the children. Judge also said that registers of the district can be creative and where he as to intervene he has right to intervene because the one wise and innovative steps of registrar would save many of being in trouble and prevent making wrong decisions as well.

**Session 2**

**Restorative Justice: Principal and Approaches, Mr. Keshari Raj Pandit**

**1.Defining Restorative Justice:**

Theexperiences of many countries of the world in criminal justice system, due to various reasons, have not been successful in achieving its objectives. Delay in disposal of cases and consistently rising rate of acquittals has resulted in the loss of public confidence in the system. Whatever may be the outcome of the casein the court **,** the fact is victim remains all alone. Restorative justice eis a new, alternative for criminal justice:

* That the response to crime should repair as much as possible the harm suffered by the victim;
* That offender should be brought to understand that their behavior is not acceptable and that it had some real consequences for the victim and community;
* That offender can and should accept responsibility for their action
* That victim should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation
* That the community has a responsibility to contribute to this process.
* Way of responding o criminal behavior by balancing the needs of community, victims and offender.

The Economical and Social Council (ECOSOC), 2000 “Restorative process means any process in which the victim and the offender, and where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a familiar. Restorative processes may include mediation, conciliation conferencing and sentencing circles.

**2.Objectives:**

**Related to victim**: The victim has right to be informed about the status of the cases, they can be encouraged to speak up, and speak the truth. This alternative mechanism would empower the victim and offenders are made to compensate to the damage they have made by any means.

**Related to offenders:** The objective of restorative system is to make offender responsible and accountable to the victim and the society for the damage he /she had made by the act, by restitution, compensation or the by delivering service to the society. This alternative system will open the gate for the correction of the wrong deed.

**Related to society**: To implement restorative system in society is only possible when there will participation and acceptance of community and society. The community will be able to understand and accept only when there need are genuinely addressed.

**3.Different Modalities and their success stories:**

Countries in Europe, Sweden and Philippines, restorative justice system have always been adopted.

**Newzealand and Australia:**

Family group conference: This model in its form was adopted in to national legislation and applied to the youth justice process in Newzealand in 1989. This was the most systematic institutionalized and any existing restorative justice approaches. Family group conferencing is a restorative approach to problem solving that involves children, young person and adults in families in making their decisions. FGC started in the field of child welfare and youth justice, but is now used in mental health, education, domestic violence and other applications.

**Thailand :**

Family and community group conferencing: The government facilitator is given an authority to divert youth or child in alternative system, for the person, who is sentenced for 5yrs of detention

**United Nation**: Developed a Crime and Disorder Act 1998, where a program was conducted as mediation of Victim/offender. The next neutral party will facilitate victim and offender for the environment of conversation that will lead to the settlement by compensating to the victim in any form demanded by victim.

**Sweden**: Mediation Act (Medlingslagen 2002:445) in 2002 , was enforced and implemented since 2002, where victim and offender mediation program has been conducted. This program focused to the youth offenders and is conducted in national level and community level. Before getting into this mediation the detail of the case should be documented and informed to the police and both victim and offender should agree for the mediation process.

**Philippines:** In 2006, Juvenile Justice and Welfare Act has been enforced, which states that the juvenile who comes into conflict with the law should take an alternative measures such as restorative justice system. With Regard to this, the act has provisioned that the offender should be reintegrated in society.

**South Africa**: Mediation between victim and offender, pre-trail community service, youth Empowerment Scheme, family group conferencing are conducted for the measures of restorative system

**4.Problems and Prospects for the implementation of the concept in Nepal**

**Child Act 1992, Article.** has provisioned establishment of child correction home, state that detention should be the last resort and every alternative measures shall be taken in the best interest of the child. There are immense laws and legislations that provide the process of best practices to mend the loss made by either the party. But during the proceeding s from intake till release the actors who will be directly and indirectly involved should be engineered that the laws and acts are implemented. Mr.Keshari Raj Pandit injected on the behavioral change and become sensible and proactive.

Social worker and child psychologist who prepare the Social enquiry report and opinion report have worked hard in many palces gathering information in many palaces despite the geographical difficulties. Gathering correct birth certificate and calculation of age of the child is precarious in the present scenario of Nepal and is very challenging.

**03Session**

**Diversion- Mr.Ashish Adhikari**

**1.Concept and its Objectives:**

Mr.Ashish Adhikari started his presentation with the accident in a certain trail, the traffic would be diverted to another route so as to prevent from more accident in the route is diversion. Diversion is the integral part of Juvenile Justice System and ultimately to the successful children justice system. In the same way diversion is the process of channeling away of young offenders from punishment in Juvenile justice system. It is also about leading a young offender toward reformation and rehabilitation.

Objectives of diversion are

* To make the offender accountable and responsible for the damage he/she has done.
* To give a chance of correction for the damage he/she did.
* Compensate victim.
* Continue education and retain contact with the society
* To reintegrate in society
* To develop positive perception of children towards law.
* This will lessen the burden of Criminal Justice System.
* Find out the real causes of juvenile delinquency and reduce such cases
* To let such children understand the affect of their behavior in family and society and make them realize towards the responsibility and accountability, this will also help them to change and move ahead in positive direction of life without stigmatization.

**2.Things to be considered while making a diversion order**

Every child who comes into conflict with law won’t be able to divert. Analyzing situation of child, his physical and mental condition such steps should be taken. After gathering necessary information and on the basis of report submitted by social worker or child psychologist, it is decided whether certain child should be diverted. The diversion order should is given taking into the account f best interest of children only. Diversion cannot be channeled for the child who has done serious crime. Parents of the children should also be involved in the process of diversion. The officer who is assigned to facilitate for the diversion should be determined about the positive result no matters what comes in between.

**3.Different Approaches of Diversion**

* In criminal law the justice system is uniform and specified, but in diversion the individual case has to have the assessment by the probation officer if such is possible. The probation officer will verify person details and based on available information make a recommendation for prosecution or diversion.
* To move forward with the diversion option the sensitive and cooperative community, specified program with specific responsibility with the dynamic officer should be available.
* Diversion is approached as optional but important project towards the successful juvenile justice system.

**4.Diversion Options:**

**In Thailand**

Rehabilitation Plan: Rehabilitation plan may be prepared through as restorative justice process, called conference, and is developed by means of a standard form, including conditions duration and monitors with prime conditions of finalizing education, compensating victim and disciplinary camp.

The rehabilitation plan usually lasts between six months to two years, if the child complies with the conditions the report is sent to the court in order to “strike the case off the case list”. If the child does not fully comply the conditions, it will be notify to the court and the court will issue orders as it considers appropriate owl will resume the proceedings.

**In Indonesia**

Community service as primary penal sanction in Indonesia. Community service is an actively carried out to assist work at the government institution or social welfare institution imposed for a minimum of seven hours and maximum of 120 hours. In case where the child does not perform the community work agreed upon the supervising judge may order the child to repeat wholly or partly the community service subjected as his or her punishment.

**5. Minimum standards applicable to diversion**

For a child offender to be considered for diversion the accused has to admit guild in front of the prosecutor and only the decision will be made if the case is eligible for diversion. The guilt form should be filled if the accused fail to comply with the conditions of diversion. Even the accused believes he or she is innocent diversion may still apply for he or she to apply to the child to be a better option than the risk of being convicted and sentenced. If the child has committed the offence for the for the first time and if it is not serous diversion is considered. Parents and child should be ready to get into the process. According to article 6, centralizing Best interest of the children, following process is taken into as minimum standards for diversion:

* Create an environment of conversation and understanding between victim and offender.
* Encourage the child to be accountable for the harm caused.
* Promote the reintegration in family and community and provide necessary counseling to family.
* To send the child in a correctional institution
* Encourage the rendering of some symbolic benefit, or delivery of some object as the compensation of the harm caused
* Reduce the potential of reoffending.
* Release the child in the close monitoring and supervision of social worker or child psychologist.
* Prevent stigmatization and prevent the adverse consequences flowing from being subject to the criminal justice system.

**6. Problems for the use of Diversion option in Nepal**

Mr. Adhikary Presented few decisions made in Bhaktapur district court and Jajarkot District court for the diversion process. There are many challenges need to be addressed, while in the legal processes documentation and implementation.

Sensitization of duty bearers in regard to the cases of children from intake till release / diversion and reintegration in community and society is of need of present scenario though much have been improved after enforcement. Trainings should be given to court staffs, police prosecutors and other service providers. Practice of making a child an adult to simplify the process is precarious for the future of the child. Monitoring mechanism need to be strengthened.

**Conclusion**

Stages of the trials are Pretrial, Trail and Post Trail. It is stated that diversion should be implemented wherever possible during the time of intake or during trial period. Victim should not be neglected. The registrars said that police who is the first contact point of offender and victim, writes report aging 16years for the child of 14years but they no one can do anything.

**Day3**

**Session1**

**Fundamentals of Juvenile Justice-Mr. Suraj Basnet**

**1.Origin of the system:**

A tenth century Monarch King Athelstan of England enacted a law that stated “man shall not stay any younger than a fifteen winters”. In the middle ages, when social disorder were widespread throughout the world, the Christian Church exercise vast influence in Europe and also acted as the focal point of justice. “If anyone steal… with the knowledge of all his households, let them all (with children) go into lsaver. A baby of 10 years may be privy to at heft” here the law defined minimum age as 10 years. The Christian Church also started to play an important role in regulating the behavior

of children during this period.

During 18th Century “The Englingtenment” appeared as a new culture. It is also known as the beginning of humanism. Children were looked as flowers that needed nurture and care to bloom. It started with the upper class Americans who who started to attend schools and Universities.

In 1823, a House of refuse was proposed for juvenile delinquent and finally able to establish as the “New York house of Refuse” in 1824. In 1855, Reform school was established in Chicago, the reformers who supported these institutions sought to protect juvenile delinquent s by separating them from adult offenders. The reformers also focused on rehabilitation of juveniles.

During the session it was also discussed that while the trend was going in favor of their forming children, the children other side had confused police by appearing as hippies and freak in seventies. Forensic doctor ( Longroso) in…

Claimed that criminal intend sometimes comes by birth. Because of frequent mobility of parents, delinquency comes out of frustration of children of such parents due to frequent cultural and social differences.

**2.Child Justice and Juvenile Justice and difference between juvenile justice system and Criminal justice System**

Child Justice Covers over all issued of children’s rights, protection and prevention being delinquent. It covers the right for victim and witnesses, the overall issues of child who comes in contact with the law. But Juvenile Justice covers the issue ad rights of child who comes in conflict with the law only

Juvenile Justice System is for the children who come in conflict with the law are always intended for the correction to ultimate rehabilitation in family, community and society. To prevent such children from delinquency, they are diverted for correction o school, church and involve in some recreational activities. . Limitation on public access to information

Diversion: A significant number of juveniles are diverted away from juvenile justice system often into alternative program. While intake of the case, it is not the prosecutor, who decides what cases to file. Decision will be made by court to file the petition, on the basis of both social and legal factors. Most of the cases are diverted to service operation while intake. Juveniles are detained for their own or the community’s protection. Juvenile court proceedings are. Juveniles may not be confined with adults without “sight and sound separation”. Court proceedings are “quasi-civil” not criminal and confidential in most of the cases. Dispositions of cases are based on individual and social factors, offense severity and youth offense history. Disposition covers a wide range of community-based and residential services. Disposition may be indeterminate based on progress. A function that combines surveillance and reintegration activities ( e.g family school and work)

Criminal justice System: Sanctions are proportional to the offence. Rehabilitation is not primary goal. Open public access to all information. Law enforcement is exercised to divert criminals out of the criminal justice system. Pleas bargaining are common. Prosecution decision based on legal facts and is valuable in building history for subsequent offence. Guilt must be established on individual offenses charged for conviction. All proceedings are open. Sentencing decision is primarily bound by the severity of current offense and offender’s criminal will. Sentencing philosophy I based largely on proportionality and punishment. Surveillance and reporting function to monitor illicit behavior.

**3.Difference between Juvenile Justice System and Criminal Justice System**

* Children are biologically and physically not developed for means-rea or criminal act, they are by any means used by the ill-intense adult or by the circumstances.
* The criminal act done by children is out of aggression, excitement or curiosity without being known about the consequences and its long term effect.
* Normally it is easy to gather evidence for the criminal act done by the children.
* In juvenile court, the discussion is ho w to get help from society, and about what curative measures should be taken. Therefore child delinquency is different from criminal law and is a social problem.

Therefore to go into the curative measures, physical setup of the court should be different than the criminal court, legal proceedings should be different than the criminal proceedings. Child friendly room, casual wear in the court while hearing, no handcuffs and no uniforms while arresting. Dealing and behaving gently with them are few characteristic of juvenile justice proceedings. Article 2, 3, 6,1 2of CRC Non discrimination, Best interest of the child , participation and development of are the four pillars that link all the national and internationals acts and regulations on Child rights and the right of children who comes in conflict with the law.

**4.Why separate system for juveniles?**

Because of absence of criminal intend and due biological and cognitive immaturity, delinquents are diverted to reintegration process through correctional measures, therefore separate justice system needed was formed, separated from adult system so that they are not contaminated, to cure such children from totally a different legal approach. Diversion and restorative system were discussed.

P*arens patriae* is a doctrine that allows the state to step in and serve as a guardian for children, the mentally ill, the incompetent, the elderly, or disabled persons who are unable to care for themselves. The doctrine Prens Patriae served as the foundation for the newly established rights for the states to intervene and to provide protection for children whose parents did not provide adequate care and supervision such as in the care of juvenile delinquency.

**5.Fundamental values of Juvenile Justice System and changing shape of the juvenile justice system**

* Fundamental fairness: Ensuring equitable treatment, children must be treated fairly regardless of race, ethnicity, gender, sexual orientation, geographic origin or economic status.

Guaranteeing due process: Youth are entitled to due process of law at every stage of the justice system – from first contact with law enforcement to parole decisions and parole revocation hearings – and have meaningful access to zealous representation and advocacy to protect these rights. Programs and policies which ensure meaningful access to counsel can ensure due process protections for children and can facilitate to inform detention, sentencing and other decisions.

Relying upon data: State and local systems should operate with transparency, including timely and full provision of data regarding the youth who enter, penetrate and exit those systems.

* Recognizing Youth adult difference: **An effective juvenile justice system acknowledges the fundamental developmental differences between child, youth and adults. An effective juvenile justice system utilizes adolescent development research to facilitate healthy development and address the needs, characteristics and assets of youth rather than relying upon adult criminal justice approaches.**

Child or Youth must not enter the delinquency system due to unaddressed mental health, substance abuse. Educational, housing or parenting needs.  Practitioners at every stage of the system must have opportunities and expectations to divert youth to more effective, less intrusive and less expensive community-based services which address these needs effectively.

**Eliminating Unnecessary Detention and Incarceration**:  An effective juvenile justice system uses secure confinement as a last resort and in ways narrowly tailored to preserve public safety.

* Individual differences: Effective juvenile justice systems recognize and respond to the individual differences among youth, including their developmental capacities and needs. **Meeting Gender-Specific Needs** present very different needs and assets.  Understanding and meeting the needs of both boys and girls – who are being pulled into the justice system
* Family engagement: Developing individualized case plans which articulate and intentionally build upon the strengths in the youth’s family – as well as address family needs or risks, when possible – will foster positive outcomes and reduced recidivism. Engaging families during case planning and throughout the juvenile justice system, including incarceration and aftercare stages, will produce the best outcomes.
* Community engagement, Community safety, Accountability and Cost effectiveness.

Refreshment trainings for police , court staffs , social worker and psychologists and a bit of proactiveness, sensitive , responsible and understanding need of behavior change in our usual way of working and communicating will gradually change in the scenario of present were the conclusion of the discussion of the session.

Second and third session were mostly focused on the discussions on the prevailing problem and was interactive than lecture. However Mr. Lalmani Pandey went through his slides on national and international instrument of juvenile justice system and administration of juvenile justice system, Directive on the prevention of juvenile delinquency(1990),JDL rules, Tokyo Rules, alternative measures of detention, process of Juvenile Jusctie,its regulation and infrastructure of juvenile court, diversion and victims and witness protection, and formation of Juvenile Justice Coordination Committee.

During the discussion, he ask the concerned district of participant have the child friendly room. Most of them accept Kathmandu do not have the child friendly room and juvenile bench. Most of the participant said they do not have space and for the building being establish will have in future. Some said the resource sent from central level is not enough to set up infrastructure. On this Gyanendra sir said they may utilize the money NR50, 000.00 sent to the district. In Rupandehi, an NGO named Kopila provided resources to establish a child friendly room.

Lal Bahadur sir also mentioned about the need of sensitivity and behavior change inside the court during proceedings. Participants said such trainings should also b given to other staffs of district court. He also said that juvenile justice is in the priority of supemecourt. To maintain confidentiality is another important responsibility of district registrars. Guideline of confidentiality is being developed by NJA. JJCC is to circulate the district mentioning about the child friendly room to be established.

Gyanendra sir informed that NPR 3000.00 is paid for social enquiry report and 6000.00 for submitting opinion report. Participant’s aid that there should be refreshment training for lawyer and social worker. Letters will be circulated informing about the establishment of child friendly room and juvenile court in all the districts. He also emphasized that social enquiry report is must while claiming the service charge.

**6. Problems in the implementation of Juvenile Justice Standards- Chief Registar Nahakul Subedi**

The session was interactive session; Chief registrar said that this is the forum to discuss a problem. While in the issue of social worker child psychologists, some said that since they are working in a call and cases basis only, they are most unavailable when called upon, or they are already engaged in other organization.

One of the registrar said that there is a need of training for judges also, while diverting to parents also there is a lack of monitoring mechanism and is a chance of child being recidivism. Diverting to child care home is also a problem because of no CCH in phyuthan.While appointing child psychologist and social worker it is important to specify qualification also, the qualification of child psychologists need to be reviews. If could not find in the same district, he/she can be called from district near also.

One of the registrars shared, some social worker work very hard to travel to the remote areas to gather information of child, so if only they could be provide with DSA. On this Gyanendra sir said we shall put this in the board meeting. Some said that they have no idea what is the child friendly room, they are even not clear on the role and responsibilities. Registrar of Banke said that the CCH in Banke is going very slow, Juvenile bench have been set up with the support of Save the Children Nepal. Issues came up were no clear process for cases of adult and child and only for child. Trainings are needed for the “assistant level staffs and police also”. Sometime the registration of birth certificate comes late and debate of age is a prevailing issues. Participants said that the training has been very fruitful, and they are much clear on juvenile justice system.

**Advice from Chief Registrar:**

In regard of the Social Inquiry report, Chief registrar advised district registrars to go through the report in detail, to check if the requirements have not missed rather than just sending over.

On this Chief register advise why not to mobilize social worker and child psychologist in monitoring while reintegration of child in family and community. Data base of social worker and child psychologist to prepare so that we can appoint incase of absence of the other. He also advised the participants that being proactive on time will save a lot of hassle later on, and it is the role of registrar. Last but not the least reporting and updating about how much work is done is the most essential part in the system to operate smoothly.