Report of

Three Days Orientation for District Registrars on Child Justice Administration System.

22-24 November 2018

25 November, 2018

**Day 1, 22 November 2018- Formal Opening**

Formal Opening was chaired by Hon. Sarada Prasad Ghimire, Justice of Supreme Court, distinguished guests were Chief Registrar of Supreme Court, Mr. RajanPrasad Bhattarai, Registrar of Supreme Court, Mr. Mahendra Nath Upadhyaya, Ms. Mariana Muzzi, Chief Chidl Protection of Uncief and Ms. Radha Gurung, Child Protection Specialist.

Marianna in her speech said that among many other international instruments, Beijing Rules is one of the international instruments Nepal has to follow while applying rules for children who comes in conflict with the law. Apart from the delinquent cases, most unheard, unreported and ignored are the cases of victim children, cases of child marriage, child victim cases of gender based violence, though such many cases occur in the alarming rate in present scenario of Nepal. She urged the participants to look into the unseen aspects also very carefully. She is hopeful that this training will make a significant change in work pattern in a positive direction and she hope that this training will be more useful to carry out the daily tasks of district registrars on the issues of children.

Sir. Rajan Prasad Bhattarai informed that the training had to be delayed though the dates were fixed earlier month due to the transfer of the registrars. Religion and Law had defined children are like clay and need to be dealt with their faults in different ways than adults. This year new constitution and New Children’s Act has declared children under the age of 18, Nepal being the state party of UNCRC is obliged to follow international rules given the same political and social environment.

Hon. Chairperson Sarda Prasad Ghimire said that the core function should be focused on the scrutiny of age of the children. He said that there are children who are staying in the Correction Home for more than nine months. Once the cases of district registrar are with them, they should be carefully read and dealt efficiently in Child friendly manner. He also mentioned about giving training about child Justice in Child Clubs of different districts. He suggested UNICEF to give training on Child Justice in Child Clubs of different remote districts that would be more efficient.

Sir. Mahendra Nath Upadhyay welcomed the participants from different districts. He asked all the participant to participate in the program actively. Since the New Children’s Act 2075 is in place and since the new regulations hasn’t been formed yet, technical gap may occur during hearing of the cases.

Therefore this may be a chance to clarify with the resource persons how such gaps should be bridged in an elegant manner during the period of transitions. He also asked the participants to be informed about the Children’s’ Act, and to deal with the proceedings with the best interest of the child during hearing as well as Trial. Our role would be to take the children out from the conflict, children who are in conflict with the law. Mr. Upadhyaya informed that the Committee to form a new Children’s Regulation has been formed under the chairpersonship of Hon. Sarada Prasad Ghimire, and the work has been started. He requested all the district registrar’s to put the issues of child justice rights in judicial outreach program. He thanked Unicef for supporting financially for such programs. Lastly, he said all the participants to participate actively and interactively in the program and gain as much as knowledge from our expert resource persons.

**National Legal Standards of Juvenile Justice: Mr. Bhadrakali Pokharel**

Mr. Pokharel started his session with sharing of work experience in different districts; participants shared the cases of children and the upcoming complications when the cases come mixing with the adults. Constitutional provision, provisions on Child justice, and provisions on regulations, National Criminal Code and assessment of offence. The presentation included background on the national legal instrument, specialty on the child justice system, objectives of child justice, provisions on the child justice procedural, basic principles of child rights, child rights and Constitution of Nepal, Convention on Rights of Child.

He presented the clear comparison between the comparative status of Children’s Act 2048 and Children’s Act 2075, provisions of comparative child rights in 2048 and 2075, Provisions on prosecution, Rights of Child victim, Child Rights during the hearing, Provision about the conditions on Diversion, Provisions during hearing of children’s cases, comparative provisions on penalties of 2048 and 2075. There were also the descriptions of Child Justice Provisions in National Code, about the status of Child Acts Regulation.

**Fundamental of Juvenile Justice: Mr. Suraj Basnet**

The session was started with the historical event before 6500years ago. Increasing ill manners of the children will bring society negativisms this was stated in the book of Ruth and Kalvin. The sessions started with the historical importance of the Juvenile Delinquencies. The research stated the historical notations made 6500 years ago that the children who prefer not to work but to stay idle or gossip will create a negative society. Teacher, Guardians are backfired by the children whenever they are told to do right things, Socrates had then stated in his philosophy that “Children are Tyranny towards their Parents”, and because of that the society will be ruined.

Juvenile Justice was conceptualized as “ Let’s do the peace for the King” focusing that the nation should be the one to be responsible for how to take care of the children who are activated against the Nation. He stated that the cause of juvenile delinquencies of children with different theories such as:

Social Disorganizations Theory:

The theory made emerging modernity of family responsible for the causes of delinquencies act. Migration is the main cause of Juvenile delinquencies. Frequent mobility has created the cultural heterogeneity and languages differences that actually created the unregulated and frustration in children as most of the children are abandoned by their parents for their income generations, therefore delinquency is consequences of unplanned behavior and is response of unregulated society. Therefore the state should take an action to prevent the delinquency act rather than the action happened afterwards.

Anomie Theory:

Society determines one goal, but all may not be capable of getting the goal. There are categories of children’s behavior, 1, with all the emotional and wealth support, 2. Self-harm, due to pressure of the parents3.Wants to make the gang and appear different. 4. Children’s have done extreme crime, therefore subculture should be dealt differently. This theory says that if the goal set by society and if the level of achievement is not compatible either the children will harm themselves or form subculture e.g 1313 gangs have been formed. He also stated the research of Fredrik Theathure. The slum children went to an open area to play, where the other group of children felt that their space have been captured, and hence the other group formed went against the group of slum group. In order to defense themselves they formed the group with a feeling that if the group is formed no one can come against them.This development of the feeling of gang developed the organized crime later. Therefore it is identified that the children’s playground is essential so as not to develop the negative thoughts and behavior.

He also mentioned about “The Middle Class Measuring Rod” theory. The different behavior shown by teacher to the children of lower class family and middle class family is different. Created threat due to the creation of discrimination and penalty then they concentrated on damaging and thinking about revenge, with this they started doing delinquency. This was found when scrutinized criminal records and history of the delinquent child and hence found that the school is also on of the factor of juvenile delinquency.

Deferential Theory: The children who commits delinquency is undoubtedly influenced by other person. Delinquency is a learned behavior, from his association. He also discussed about article 2,3,6,12 of CRC.

Doli in Capex and Parent’s Patre were discussed. We should understand that Doli in Capex and Parent’s Patria are the entire juvenile justice system. And therefore has also proved why Juvenile Justice System is different.

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

His presentation was interactive and based on discussions, he started his sessions with some questions regarding restorative justice to the particpants. He explained how restorative Justice System is different and how it is important and possible for someone who has been in conflict with the law, to be restored in his family and society again. Objectives of Restorative Justice. He enlighten on the restorative provisions on National Code victim friendly provisions, reintegration of offender, role of community.

He also shared about the existing operating modality of the prisons and Correction home in Nepal. It was also discussed that that the person who is released after confiscation of everything has nowhere to go, which is more horrifying. Restorative justice system is a different way of treating children in conflict with law than Criminal Justice System. He reiterate that it is the society who forces directly, indirectly or gradually for children to be in contact with law, and hence it should be society who should be taking responsible of it in the best interest of children.

**Day 2**

**Correctional Measures for Juvenile: Hon Judge Til Prasad Shrestha**

He started with the difference of definition between Child Justice and Juvenile Justice. Child Justice starts from once the child is conceived by the mother, to determine the rights of child justice once he is conceived and one given birth can be the another subject and another debate. There are right to abortion at some states. Therefore determination of age for child justice and juvenile justice different. In some states there are rights to abortion as well.

The reason behind a children to delinquent are the incapability of parents and why parent are incapable, level of capability of parents and guardians in terms of resources is another topic of discussion. If parents are incapable and unwilling to take care of the children, then the state should be the ultimate parents for the children. The Layman’s School of America was formed after the realization of Parents Patrae. Following Philosophies/ Theories were discussed for Community based measures, Institutional based Measures and Probation based measures:

1/ Medical Model: Basic teaching can correct the mistakes of children.

2/Berake’s “Principal of win Win”: Calculation of Profit and loss before any wrong doing.

3/ Positive Schools: Children are misdirected and misguided.

4/ Individualized Justice: Individual child should be treated for correction for their wrong doing.

Hon. Judge also shared some of the cases he dealt that some parents would not want their children at home, because they hope that their children will be improved under the supervision of law. He discussed about “Disposition Plan” that started by John August and was formalized in mid of 18th century in Maschahutes, to send the children in community service under the supervision of probation officer with regular monitoring turned out to be effective.

Correction measures can be treated to the wrong doers at different levels of categorized individual. He discussed about the three categories who would adhere to law:

1st category who would not do the crime, when it is understood that this is not right no matter how profitable could that be.

2nd category of people will calculate profit and loss before he breaks the law, and will act accordingly, if he/she sees the benefit and less loss after committing a crime.

3rd category will break the rule, no matter what. While generalizing over the law breakers, he said that the laws and rules are for the beings who lie under second category.

Roles and Responsibilities of Probation Officer, Nepalese Law and Practices and what can be done in the existing scenarios of Nepal?

The session as started with the explanation of role of probation/Police who are entitled to take care of community and would ensure quality of life for community. Therefore program of preventions should be intervened before any mishappening occur. It is said that the criminal acts occur when one has:

1/ criminal desire

2/criminal skill and

3/ criminal opportunity.

Our law are mainly focused on the treatment of criminal act, once the intent gets the opportunity. The intervention should be made to stop arise criminal desire and skill.

* Primary level: medical level where morality, ethics and civilizations are taught to own by the children
* Secondary level: treatment to intervene for the children who are vulnerable to crime such as street children
* Final level: treatment to intervene who have already come into conflict with law.
* Aspersive, Concurrent and general Jurisdiction were also discussed.

Lastly he discussed about the provisions in new Children’s Act, such as Restorative Justice, Institutionalized, Community Correction, Probation Service, diversion, Victim Offender Mediations and some we need to do urgently could be the monitoring of Child Care Homes, Monthly, Quarterly reports of Chidlren. He said that at some international level the state would want to lower the age of children from 18 to 16 and we are now at the starting of 16 to 18, which notions a bit of irony. He concluded that the changes in New Act will bring out to the positive notions of best interest of children and improvement from basic levels of socity.

**Roles and responsibilities of Juvenile Justice Actors: Mr. Krishna Jibi Ghimire**

Mr. Ghimire started his session with a question to participants about their expectation from the session. Few participants said that they are in dilemma when the mixed cases come with minor age under 16 and with the adult. They put a question on “ Missile Phutaune “ kura. How to carry out the cases balancing over the time limitation of closure when there no regulation is made.

He started his session relating Children’s Act 2075 with Constitutional provisions and four pillars of CRC.Clarified with examples of cases, practicalities on the Roles and responsibilities of Police Personal, Public Prosecutes, and Judges.

He discussed about the technical confusions faced by civilians when surnames are not properly written in the citizenship and it is more difficult when the parents of such children are staying separately.

Since the district Registrar’s are the ones who would be first contacted by the civilians, to deal with such people with good behavior at first hand is very important. When judges sometimes are not present in the court the registrars have to play a role of judges incase when judges are not available. He also said that since the State is responsible for the children, institutions working for the state also become ultimately responsible to deal children’s issues with the best interest of children.

While discussing on the topic of Roles and Responsibilities of Police, it is discussed that there are the situations of practical difficulty in some cases, no matter how flexible our legal documents policies are, police personal do have the capacity of solving any kinds of problem.

He also shared his experience about the institutional problems while in the monitoring visit to some districts for example such as a pregnant women had to be kept in a children’s room to save her from cold and one of the child wanted to stay with an old aged man rather than stay alone, and to keep the child with the old man seemed better for their mental health and they share healthy companion with each other.

International Instruments in Juvenile Justice: Hon. Tek Narayan Kunwar

In this session, Four Models of Juvenile Justice were discussed. Discussed on Convention of Rights of Child, its protocols, Beijng Rules 1985, Riyadh Rules 1990, Tokyo Rules and Havana Rules. He explained detail on the general comments are developed after detail studies of the report from each states by the committee members in CRC.

Basic principles of CRC best interest of the children, Survival and Development, Non- Discrimination and participation are the basic rights of the children, which has been sufficiently portrayed in the New Child Act 2075 than in 2048, victims issues has been considerably mentioned in the new Act than in the Act of 2048m and therefore is underscored on the basis of basis of best interest of the children.

United Nations standard minimum rules for the administration of juvenile justice ( the Beijing ) Beijing rules , Adjuration and disposition, general principals, Non- Institutional treatment, Substandard Minimum Rules for the administration of Juvenile Justice BR92), Research, Planning , Policy Formulation and Evaluation, United Nations guidelines for prevention of juvenile delinquency, , Pre-trail stage , Trail n sentencing stage, Post- sentencing stage are the topics discussed in the session.

He gave an example of the family conference between the families of victim and offender he practiced way back during his jurisdiction before it was enlisted in the Act, to give an example that the judgment has to have a contextual basis because the child who comes as an offender is also a victim and therefore is always a sensitive case.

While explaining on the four pillars of CRC, Right to Life, Survival and development, Non- Discrimination and Participation, it is released that this is something an individual has to own and practice from a home. It was child under the age of 18 who committed heinous crime in the Delhi Gang rape case, but was sent to Correction home, while the others were hanged, one of them committed suicide. The cases where child and Adult are involved should be treated differently.

The Comments of General Comment 10 was also explained. Proper ways of treating a child who come in contact with the law were discussed. He said that Victim Offender mediation was practiced a way back in some cases under his jurisdiction, which has now been incorporated in Children’s Act 2075. He said that in the new Act of Children 2075 provisions for victims have considerably been included.

Giving the example of one of the delinquent cases in Sarahi, while trying to practice the rules set for the “ best interest of child” in some way sometimes turn out to be opposite. He shared on of is experience in Sarlahi that most of the children in Sarlahi are used in the drug smuggling,

The child who came in the case of drug smuggling always wanted to be with the uniformed officer than any other. It was discussed that the children are mostly driven by the act of adult, and get to come in contact with the law out of curiosity. It was discussed that social worker and child psychologist, should be appointed at the time of the arrest so that they are able to come up with the correct information in the report, so that it will be helpful during the time of decision. The conflict between the placement of judges and social worker was also mentioned. It was also discussed that while going through the research it is found that the child is minor, the transportation of the children from court to Child Correction home is very far, therefore there should be the provision of video conferencing.

**Diversion: Mr. Ashish Adhikari**

The concept of diversion on child justice emerged after the realization that the criminal law is not appropriate for the children. Though diversion has come into practice a long before in Nepal, Child Act 2075 has clearly defined the acts and rules to implement in the child justice. Gradual change of during hearing had already been started years back such as decision making in presence of social worker and child psychologist, instead of only in the presence of judges and lawyers, sending children to correction home instead of jail were few example practiced by the judiciary officials. To address children in polite words are also the elements in diversion.

Definition of Diversion, Uses of Diversion, objective of Diversion, Important parts of Diversion, Pre-status of Diversion in National and international context, Practices of Diversion option in Asian Country,Positvie and Negative Aspect of Diversion uses of Diversion in Nepali Context, Processes of Diversion and provisions of Diversion in New Act were shared and discussed in this session.

**Day III: Sentencing of Juveniles:Hon. Kishore Shreeman**

To find a way out in between the problems and shortcomings is our challenges, opportunity are the prime duties with an example of famous Bablu Gudia case. Meaning of sentencing, punishment Act 204, why sometimes children who comes in conflict with the law should t for detention be penalized, under which basis children are sent to detentions, options for sentencing, forms of incarceration, and postponement or suspension of sentence were discussed.

Discussed on how and when probation and parole officer are appointed in regard to the children who comes in conflict. Accused children sometimes need to be detained for certain period of time considering again “Best interest of that child” given certain circumstances and situation. Child Justice System is deviated from traditional cultural system of penal laws. Few laws and act are against practical convenience, they need to be kept away from criminal intended people, not disassociate with community. Community services, Counselling, e-monitoing system are some options of diversions for children in conflict of law.

One of the participant shared that once a child was taken into control who came in case of rape, he then was handed over to his mum, promising different condition, and the next very day some government parties came and said why the child was handed over to his family? Family structure shape to the chiffon’s understanding. Bringing up the children, background, age and identification of the turning point, his/her cultural pattern of the children’s are some factors that shape the thinking of the children, therefore such small details need to be observed and pointed out in the social inquiry report by child psychologists and social worker. It’s shared that committee has been formed for children’s rules regulation 2018. He also discussed about the status of offence, created by the environment he/she is brought up, and small things that is ignored by parents at home.

**Principles of Juvenile Justice: Dr. Ram Krishna Timalsina**

He said that we are with the third generation of juvenile justice a/ Crime committed by children

2. Juvenile justice and 3/ Children in Conflict with law.

At primarily the law was mixed with religion. Capacity to commit the crime and intention to commit crime. Child are the only person, who have rights without fulfilling duty. He also discussed about protectionist approach, compensatory approach. Rights, Protection is the protectionist law. Customs that is contradictory to law is not valid. Juvenile justice has two parts post and pre delinquency. Law should be able to pre and post delinquency. Preventive measure should be taken.

Justification of Juvenile Justice, Models of Juvenile Justice, Doctrine of Parens Patrae, Hard Law, Development Rights, Protection Rights, Participation rights, Soft Laws, Beijing rules, Riyad Guidelines, UN Rules for the protection of Juveniles Deprived of their Liberty, Scope of Non-Custodial Measures, Pre- Trial Dispositions, general Principles, and Domestics laws The Children’s rule 2051, the Juvenile Justice (Procedure) Rules 2063 were discussed in his session.

And brief presentation about Child Justice Coordination Committee (CJCC), Brief presentation of the problems experienced by CJCC, Expectation from the participants/Role of District Registrars. Feedback forms was collected from the participants, 90% of them stated that the sessions were effective and informative.

In the Closing Ceremony, Sir, Mahendra Nath Upadhyaya instructed all the registrar’s to work in close coordination with Supreme Court for any Problem and Child Justice Coordination Committee Secretariat for the programs. He shared that committees have been formed to develop the draft of Child Justice Regulations. He said the participants would utilize maximum of what they have learned from the training in their daily work to make the system child friendly and to contribute from individual level in the process of making successful child Justice system in Nepal



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