Concept of Juvenile Justice System, National and International laws related to Juvenile Justice

Background

Children are generally referred or understand miner in general term and juvenile is a legal term. Children in conflict with law is strictly a legal term that include two types of children. One is suspected and another is convicted. The human being who is under the age of 18 years and those children violate the criminal law of the country are called the children in conflict with law. Those children are also known as juvenile.

In law, the terms "juvenile" and "minor" are usually used in different contexts; (Juvenile Justice (Care and Protection of Children) Act, 2000AD of India, Section 2(k).define juvenile as a young person, not fully mature, both mentally and physically. Juveniles are not classified according to type of offence, but they are also tracked according to the nature of offences committed across years. With experience and through various knowledge, it has been accepted that children are different from adults.

Juvenile Justice System is a separate system from Criminal Justice system. It is concerned only with the children in conflict with law. The procedure is mostly informal in juvenile justice system and correction of children. The major goal of juvenile justice system rather than punitive. A child is thought to be incapable of committing crimes. A child is not a criminal. Protection of the best interest of the children in conflict with laws is prime goal in Juvenile Justice. The Juvenile Justice is wide concept. The young person under the age of eighteen commits any illegal activities is known as juvenile. The children is not responsible for his act because he has no mature mind or no foresight ness of the act. So, the punishment is reformatory than punitive

International Legal provision

Convention on the Rights of the Child, 1989

CRC was ratified by Nepal on September 14, 1990. The Convention on the Rights of the child is the first legally binding international instrument. Which incorporate the human rights: civil, cultural, economic, political and social rights. The convention sets out the basic human rights that children
everywhere have the right to survival to develop, to protection from harmful influences, abuse and exploitation and to participate in family.

These are the four main principles of the convention:

- Rights against non-discrimination.
- Protection of the best interests of the children.
- Protection of right to life, survival and development.
- Respect for the children.

The major article of CRC which is explain the rights of delinquency are as follows:

**Article 37**

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.

**Article 40**

Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- Presumed of innocent until proven guilty.
- To be informed promptly and directly of the charges against him or her, and it should be informed to his or her parents or legal guardians.
- To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law.
- Not to be compelled to give testimony or to confess guilt.
- If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or the judicial body according to law.
- Protection from free assistant of an interpreter.
- Provision of confidentiality in the case procedure.

**International Covenant on Civil and Political Rights (ICCPR), 1966**

The Covenant was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49) adopted by the international community in 1966. It was ratified by Nepal on 14 May, 1991 (31 *Baishakh*, 2048BS.). The covenant includes the following rights.

a. Equality before the law in any cases
b. Not be arbitrarily deprived of life of any person

c. Liberty and freedom of movement for the people

d. A fair trial in every process including all rights related to criminal procedure.

e. Prohibited torture and other ill-treatment

f. Privacy is maintain in the case of juvenile

g. Freedom is not restricted.

h. Freedom of opinion and expression as an fundamental rights

i. Freedom of assembly and association.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985

The rule was adopted by the United Nations General Assembly in September 1985. The Rules prescribed the following basic principle

- Detention be should use only as last resort.
- The principle of self-control should be applied to the juvenile.
- The states should give to a meaningful and valuable life.

The Beijing Rules establish the following rules:

- It provided the Comprehensive social policy in the field of juvenile delinquency.
- It provides the equal priority to the offender and victim in the case of Juvenile.
- Separate police officer for the investigation of the case of juvenile is needed.
- Detention is taken as last option or last resort.
- The case of juvenile should be disposed within short time.

Some basic formulations of the Rules are as follows:

- The process should be fair and humane treatment for the children.
- The treatment is proportionate between offence and offender.
- The diversion should be facilitate if the children accept the offence.
- Detention is optional as well as a last resort and for shortest possible for time period.
- Children should separate from adult offender.
- Various facilities should be provided in Reform home.


The Rules is adopted by General Assembly Resolution 45/110 of 14 December 1990. The Rules are especially focus on non-custodial measure and alternative to imprisonment.
This rule is especially related to punishment. The punishment for the children is as reformatory. So, the alternative measure of punishment are applied in the case of juvenile. The non-custodial punishment should applied. The punishment should be as treatment model. After disposition of the case the follow up system and the system of probation should maintained.


Some formulation of juvenile justice are as follows:

- Prevention of children in conflict with law.
- The society always give priority in prevention.
- The rule focus on the prevention of delinquency as well as adult offender.
- The responsibility of family is the center point in socialization of children.
- Different preventative programmed should be lunched from early childhood.
- Community based programmed is effective for the juvenile to socialization.

United Nations Rules for the Protection of Juvenile Deprived of Their Liberty (The JDL Rules), 1990

The Rules adopted by General Assembly Resolution 45/113 and 68th Plenary Meeting of 14 December 1990. The Rules set out the following:

- It try to introduce the framework to regulate the deprivation of liberty of the children.
- Some principles which are define the specific circumstances under which young person can be deprived of their liberty.

National legal provision

Constitution of Nepal (2072)

Constitution of Nepal, 2072 was enhance after the revolution of people. So, this constitution protects the many rights of human. The constitution always provided and protects the fundamental rights. As same as constitution of Nepal 2072 has provided special protection and promotional provisions in the best interest of the children.

In the article 44 of the constitution of Nepal mention the following Rights:

a. Every child shall have the right to his her identity and name.

b. Every child shall have the right to education, health, nurture, appropriate care, Sports, entertainment and personality development.

c. Every child shall have the right to preliminary child development and child Participation.

d. No child shall be employed to work in any factory, mind or engaged in any
e. Similar other hazardous work.

f. Child marriage, illegal transportation, abduction or kidnapping of any child shall not be allowed.

g. Child marriage shall be or used in army, police or armed groups or mistreated or neglected in any way in the name culture or religious tradition or exploited

h. Physically, mentally, sexually or used in any inappropriate way.

i. No child can be tortured physical, mentally or in any other way in home, school, or any other places and conditions.

j. Every child shall have right to child-favored justice.

k. The helpless, orphan, disabled, conflict victim, displaced, and vulnerable children shall have the right to get special protection and facilities from the state.

l. Any act contrary to sub-articles 4, 5, 6 and 7 shall be punishable by law and the victim shall be entitled to compensation from the perpetrator as determined by Law.

**Children Act, 2075**

The first separate law in the field of children was children Act 2048. Which was entirely focused to children's rights and rights related to children in conflict with law. That was outcome of the ratification of the Convention of the right of the children. The children Act, 2048 provided separate procedure. It works since 2075. Then it is replaced by another law relating to children 2075 which is prevailing now. The children Act, 2075, sec 2(j) has defined the children as "Children" means persons who have not completed the age of eighteen years. The children Act, 2075, sec 2(d) has defined the children in conflict with law as "Children in conflict with law" means the children accused of committing an offence, and this term also includes the children convicted by the Juvenile Court for committing an offence. Some special provision related to children are in Children’s Act are as follows:

Sec.20 of children’s Act states to use language preferred by the child and to take assistance of an interpreter as required while talking to him or her.

Sec. 21 explain to **take a child under control**: (1) if information on an offence is received, the investigating authority shall immediately start investigation on it. While doing such investigation, if it appears that the investigation is not possible without taking the child accused of the offence under control, the investigating authority may take him or her under control. (2) If it appears that it is no longer required to take a child under control, who has been taken under control, pursuant to sub-section (1), he or she shall be handed over to his or her family member or guardian or the nearest relative. (3) If a child is taken under control pursuant to sub-section (1), the investigating authority shall give
information about it to his or her family member, or guardian or close relative. (4) The investigating authority shall not use force while taking a child under control pursuant to sub-section (1). Provided that it shall not bar the using of minimum force required to take the child under control. (5) The child taken under control pursuant to sub-section (1) shall, if possible, be referred to a child psychologist or a person working in the field of children's welfare in order to provide the required counselling service. (6) If the child taken under control pursuant to sub-section (1) could deviate himself or herself pursuant to Section 27, the investigating authority may, notwithstanding anything contained in the prevailing law, take the deposition of him or her by himself or herself. (7) The child taken under control pursuant to sub-section (1) may be kept in an observation chamber with the permission of the Juvenile Court for a maximum twenty-one days, not exceeding five days at a time. (8) Notwithstanding anything contained in sub-section (7), if the Juvenile Court is of the opinion that it not reasonable to keep the child accused of offence in the observation chamber, having regard to the child's physical condition, age, circumstances at the time of commission of the offence or condition of the observation chamber, the Juvenile Court may make an order to investigate the case by entrusting such a child to his or her father, mother, other family member or guardian and in their absence to any social organization working in the field of protection of the rights and interests of the child or child reform home on the condition that the child shall make presence when the Juvenile Court so requires. While inquiring into the child taken under control, the investigating authority shall make it in the presence of his or her father, mother or guardian or children welfare authority or legal practitioner in a child friendly environment.

Sec 22. Provision relating to establishment of observation chamber: (1) The Government of Nepal may establish an observation chamber for the purpose of keeping a child taken under control on the charge of an offence, throughout the period of investigation. (2) A separate room shall be arranged in every District Police Office until the observation room referred to in sub-section (1) is established. (3) The child taken under control for investigation shall be provided with counselling by a child psychologist and psycho-social support as required. (4) If any member of a child’s family wishes to stay together with the child who is kept in the observation chamber for assistance, the investigating authority may give permission to stay together specifying the time and conditions as required. (5) The provisions relating to the establishment, operation, management and monitoring of the observation chamber shall be as prescribed.

Sec.23 is Special provision relating to investigation and prosecution:
Sec. 24 is relating to trial: (1) No child shall be detained in the course of trial and no bail or guarantee shall be demanded from him or her. (2) Notwithstanding anything contained in sub-section (1), the Juvenile Court may, for reasons to be recorded, send a child accused of an offence to the child reform home during trial, in any of the following circumstances:

(a) If there is adequate ground that the child's life would be in danger, someone would get hurt from him or her, such a child would go away or any other reason that it is not appropriate to put him or her elsewhere, (b) If it appears from the evidence available for the time being that a child accused of an offence punishable by imprisonment for a term not exceeding three years or more or there is a reasonable ground to believe that he or she is an offender. (3) Except in the circumstance referred to in sub-section (2), other child accused of offence may be entrusted to his or her father, mother, other family member or guardian, and in their absence to an institution or person working for the welfare of the children on a condition that the child will be presented as and when needed. Provided that if the Juvenile Court deems that it is not appropriate to keep the child in the reform home, taking into account the child's physical condition, age, circumstances at the time of commission of the offence as mentioned in subsection (2), it shall not bar the entrusting of such a child to his or her father, mother, other family member or guardian, and in their absence, to an institution or person protecting the rights and interests of the child, by specifying the conditions pursuant to this sub-section. (4) While entrusting a responsibility of a child pursuant to sub-section (3), that person and the child shall be informed about the specified conditions and the consequences that must be borne if they have not been followed. (5) If the child who is entrusted to someone pursuant to sub-section (3) does not follow the conditions specified by the juvenile court, the trial of the case may be made by keeping him or her in the child reform home.

Sec. 25 explain Rights of child victim: A child victim shall have the right to child friendly justice as follows in every stage of investigation, prosecution and judicial process: (a) To get information on the language he or she understands, (b) To participate or be involved, (c) To keep the details of personal identification confidential, (d) To get recovery of the reasonable compensation from the offender, (e) To get free legal aid and socio-psychological counselling service as required and to appoint a separate legal counsel if he or she so wishes, (f) To get free service of the translator, sign language expert or interpreter if the victim does not understand the language used by the investigating authority or Juvenile Court, (g) To get, free of cost, the copy of the
documents including the decisions and orders made by the investigating authority or Juvenile Court,
(h) To get police protection for safety against the probable threat that may be caused from the offender or his or her party, (i) To have his or her case heard in camera, (j) To have the indirect presence of the defendant in the course of hearing of the case as required

Sec. 26 is related of hearing: (1) A child accused of an offence shall have the following rights, in addition to the rights mentioned in the prevailing law and elsewhere in this Act, in the course of investigation and hearing of the case: (a) Right to obtain information on the charge made against him or her, its proceeding, order issued or decision made on it directly or through his or her family or guardian, (b) Right to receive free legal aid and other necessary support immediately in order to defend against the charge made against him or her, (c) Right to have the case tried and settled by the competent judicial authority, (d) Right to demand the presence of family or guardian required in all processes of juvenile justice delivery, (e) Right to receive prompt and fair justice from the Juvenile Court, (f) Right to have confidentiality in the process of juvenile justice delivery (g) Right to get information on the constitutional or legal rights, (h) Right to have investigation, prosecution and hearing in the child friendly environment, Explanation: For the purposes of this clause, "child friendly environment" means the treatment done with the child that is commensurate to the age, maturity and psychology of the child, this term also includes the use of the language understood by the child, creation of the fearless atmosphere, presence of his or her mother, father or other family member or guardian, addressing the personal needs of the child and the availability of the facilitator as required. (i) Right to have an opportunity to participate in every stage of judicial proceedings and to put his or her own views independently, (j) Right to allow the participation of the parents, guardian of the child, during the hearing of the case, if he or she so wishes, (k) Right to stay separately from the offender, if the child so wishes where the father, mother, parents or guardian of the victim child is the perpetrator. (2) The child accused of an offence shall be presumed to be innocent unless decided otherwise by the Juvenile Court, and such child shall not be compelled to give testimony against him or herself.

Sec. 27 is provision of diversion: (1) Notwithstanding anything contained in the prevailing laws, the following authorities may, in the following circumstances, take decision to divert a child accused of an offence, if it appears reasonable to divert the child for his or her best interests: (a) The investigating authority, where the claimed amount is up to five thousand rupees or the offence t is punishable by a fine of up to two thousand rupees or imprisonment for a term of up to two months, (b) The government attorney, where the claimed amount is up to ten thousand rupees or the offence is punishable by a fine of up to five thousand rupees or imprisonment for a term of up to three years, (c) The Juvenile Court, irrespective of the claimed amount or the amount of fine or term of imprisonment.
(2) Notwithstanding anything contained in clause (c) of sub-section (1), a child shall not be diverted in a case punishable by imprisonment for a term of three years or more than three years shall not be diverted. (3) The child or guardian may, if not satisfied with the order of diversion, file a petition in the Juvenile Court in the case of clauses (a) and (b) of sub-section (1) and in the High Court in the case of clause (c).

Sec.28 states the Matters to be considered in making diversion: The following matters shall be considered while making diversion: (a) Confession of offence by the child, (b) Consent of the concerned child, his or her father, mother and other family member, or guardian where there are no parents, (c) Receipt of consent of the victim ensuring the rehabilitation of the victim party to the extent of possible, (d) Nature of the offence and circumstances of its commission, gravity of the event, age, maturity and intellectual level, family environment of the child and the damage caused to the victim and his or her rehabilitation are to be considered.

Sec. 29 states Procedures to be followed while making diversion:

(1) One or more of the following appropriate procedures shall be followed while diverting a child, also having regard to his or her desire: (a) To have reconciliation or understanding between the child and the victim, (b) To make the child realize the mistake, (c) To provide necessary counselling to the child and his or her family, (d) To send the child to any community service, (e) To send the child to any institution for his care and protection, (f) To release the child on supervision and direction of the child welfare authority, (g) To entrust the child to his or her father, mother or other family member or guardian, (h) To make the child participate in any training or educational program.

(2) While diverting a child by adopting any procedure referred to in clauses (d), (e), (f), (g) and (h) of sub-section (1), the period shall also be fixed. (3) While diverting a child by adopting the procedure referred to in clauses (d), (e), and (f) of sub-section (1), no diversion shall be made so that it exceeds the maximum term of punishment imposable for the commission of the offence.

(4) The investigating authority or government attorney shall, before diverting a child, obtain a report on study and analysis of physical and mental condition of the child by the child psychologist and child expert and economic, cultural condition and circumstances of the child by the social worker.

(5) The investigating authority, government attorney or Juvenile Court shall give the information about the diversion of the child pursuant to sub-section (1) to their respective higher office and Juvenile Court.
(6) If the child accused of an offence is diverted, such a dispute shall terminate, and its formal judicial proceeding shall be deemed to be concluded.

(7) The investigating authority, government attorney or Juvenile Court that has made diversion shall make arrangement to monitor, whether the diverted child has been continuously participating in the diversion procedure or not, through a probation officer.

(8) The following may be done to indemnify the damage caused to the victim while diverting a child: (a) To compensate the victim or to have recovery of the actual loss and damage, (b) To cause the property, profit or material acquired from the offence to be returned to the concerned owner.

(9) Other provisions relating to the diversion shall be as prescribed.

Sec. 30 explain the Formation of the Juvenile Court: A juvenile bench shall be formed in each District Court for the proceeding, hearing and settlement of the offence to be dealt with the juvenile court until the Juvenile Court is formed under sub-section (1). The juvenile bench referred to in sub-section (1) shall consist of the following members:

(a) District Judge, (b) Social service provider, (c) Child psychologist or child specialist. If an adult person is involved, along with the child, in any offence, the matter shall be proceeded, tried and settled by the Juvenile Court in the case of the child, and the matter shall be proceeded, tried and settled pursuant to the prevailing laws in the case of the adult person by establishing a separate case file.

Sec. 31 explain jurisdiction of the Juvenile Court:

Sec. 32. Proceeding by the Juvenile Court: Even if the child attains the age of eighteen years during proceeding of the case, such case shall be proceeded, tried and settled by the Juvenile Court itself.

Sec. 33. Cases to be transferred to the Juvenile Court: If any child has been accused of offence before the commencement of this Act and the case is being originally tried by the District Court or other body pursuant to the prevailing laws, the case shall be transferred to the concerned Juvenile Court after the commencement of this Act.

Sec. 34. Provision relating to trial: (1) The Juvenile Court shall try the case in a child friendly environment by taking into consideration the age and maturity of the child. (2) The Juvenile Court shall make the child participate while trying the case and shall provide an opportunity to freely put his or her views.

Sec. 35. Provision of in camera hearing:
(1) The trial and adjudication of the case against a child accused of an offence shall be carried out in camera bench except as otherwise ordered by the Juvenile Court.

(2) During the trial and adjudication of the case in-camera pursuant to subsection (1), only the concerned child, his or her family member or guardian, victim, government attorney, concerned legal practitioner and the person permitted by the Juvenile Court may enter into the in-camera bench.

(3) The procedures of the in-camera bench shall be as prescribed.

Sec. 36. **Provisions relating to punishment**: (1) if the child is less than ten years of age at the time of commission of the offence, no case and punishment of any kind shall be instituted against and imposed on him or her. (2) If a child of ten years of age or above but below fourteen years of age commits an offence that is punishable by a fine, the child shall be released after counseling him or her and if such a child commits an offence that is punishable by imprisonment, the child shall be punished with imprisonment for up to six months or be sent to the child reform home for a period not exceeding one year without subjecting him or her to imprisonment.

(3) If a child of fourteen years of age or above but below sixteen years of age commits an offence, the child shall be punished with half the punishment that is imposable on the person having attained majority pursuant to the prevailing law.

(4) If a child of sixteen years of age or above but below eighteen years of age commits an offence, the child shall be punished with two-thirds of the punishment that is imposable on the person of legal age pursuant to the prevailing law.

Sec. 37. **Period for disposing of the case**: Notwithstanding anything contained in the prevailing laws, the Juvenile Court shall generally dispose of a case within one hundred twenty days from the date of filing of the case and the proceeding and adjudication of such a case shall be made on the basis of continuous hearing.

Sec. 38. Reform period may be reduced or canceled: (1) If there is satisfactory improvement in the behavior of a child kept in the child reform home or kept under the protection or supervision of any institution or person pursuant to the decision of the Juvenile Court, the child welfare authority may recommend the Juvenile Court to reduce or remit the period of reform of such a child. (2) The Juvenile Court may reduce or remit the remaining period of reform of the child if it thinks it reasonable to reduce or remit the period of reform upon examining the recommendation received pursuant to subsection (1).
Sec. 39. Restorative justice: (1) while dispensing the juvenile justice, it shall be made in compliance with the principle of restorative justice. (2) Other provisions relating to restorative justice shall be as prescribed.

Sec. 40. **Not to be considered disqualified**: Notwithstanding anything contained in the prevailing laws, if any person becomes disqualified to receive any post or facility pursuant to law by the reason of the commission by him or her of any offence, he or she shall not be considered disqualified to receive that post or facility on the ground of the offence that he or she committed when he or she was a child.

Sec. 41. **Punishment not to be counted**: (1) notwithstanding anything contained in the prevailing laws, the offence committed by a person during childhood shall not be counted while counting repeated offence pursuant to this Act or the prevailing laws, for the purposes of punishment. (2) Notwithstanding anything contained in the prevailing laws, although any child commits an offence time and again, he or she shall not be subjected to additional punishment on the basis of repetition of the commission of the offence.

Sec. 42. Not to be handcuffed, or kept in solitary confinement: Notwithstanding anything contained in the prevailing laws, no child in conflict with law shall be handcuffed, shackled or kept in solitary confinement or detention, or prison.

Sec. 43. **Provision relating to child reform home**:

Sec. 45. **Psycho-sociological and psychological study report**: (1) an individual sociological and psychological study report shall be prepared for the purpose of investigation, prosecution, proceeding, hearing or adjudication of the charge made against a child in conflict with law. (2) The provisions regarding the preparation of the study report referred to in sub-section (1) shall be as prescribed.

Prohibition on torture or cruel treatment.

(d) Not to be Disqualification or recidivist

Disqualification and recidivist is not applied. If a person is to be disqualified to hold any office or enjoy and facility under the law or reason of committing an offence, such disqualification shall not be applicable with regard to a child committing an offence during his/her childhood.

Sec. 83 Basis for the determining Children’s age.

**Children’s Regulation, 2051**

The major provisions relating to children in conflict with law are as follows:


c) It provides the duties and powers of Children's Welfare Officer.

**Juvenile Justice Execution (Procedure) Regulation, 2076**

Government of Nepal has framed the Juvenile Justice Execution (Procedure) Regulation, 2076 for as per section 85 of the Children's Act, 2075. The Juvenile Justice Execution (Procedure) Rules, 2076 include forty-eight Rules. The provisions stated under the Rules are important for the modern development of the juvenile justice. (a) Provisions relating to investigation and interrogation. Rule 3 of the Juvenile Justice Execution (Procedure) Regulation mentions about the application of complain. Rule 4 provided that taking of children under control by police. After under control the children, then handover to their parents or guidance.

The provisions relating to **interrogation** Execution (Juvenile Justice (Procedure) Regulation, 2076 of Nepal. Rule 5, 6 explain the follows:

a) While making interrogation with the child, the police officer shall ask the question in easy way and the process applied in child friendly environment.

b) Interrogation may conducted in presence of the father, mother or guardian. Some time, in the absence of parents the legal practitioner or representative of the children welfare home or orphanage should be in behalf of the children.

c) Provision of handover of the children.

Rule 7 explain about **police investigation** in the case of children are as follows:

a) The police personnel shall not have follow the procedure with wearing uniform.

b) While arresting the child, the information of the reason of arrest should be provided.

c) In every process of investigation, the language should use understandable. If necessary the facility of interpreter should provide.

d) The notice of delinquency should provide to his parents.

e) Application of the rights to medical checkup after arrest.

f) The enquiry takes place in presence of both father and mother, if available, or at least one out of them and the guardian if there are no parents of the child.

Rule 8 explain about the provision of police **interrogation**.

- Police officer can request to the service providing person or association for the preparation of social study report as prescribed format as per the law.
While making interrogation, the investigation officer may ask in soft manner and ask for related questions.

No interrogation shall be made with the child for more than one hour at a time.

Water, food and rest should well managed. The law prohibits interrogation during night time.

All the process of investigation, interrogation should conducted in homely environment as connection with the investigation, the investigation officer may receive assistance of a local body, police, local administration and social organization or Non-Government Organization.

It shall be the duty of all the concerned to provide such assistance. While interrogating a child, the investigation officer may provide the facility of interpreter, if is needed.

Rule 9 explain about the provision of diversion by the investigation officer or government attorney. The rule states that the investigation officer can take the report for diversion. Then can decided for diversion. Similarly the government attorney can decided the process of diversion. Rule 11 explain about the provision of separate charge sheet should field if the case jointly come with adult and minor in the juvenile bench. Rule 12 states about the right of providing of Charge sheet to the children or his gardens. Rule 13 is about the provision of appointment of child psychologist, social worker and their qualification etc. Rule 18 provides the provision of the collaborating hearing of child psychologist, social worker and judge in the juvenile bench. Rule 19 provides the provision of diversion can be held by juvenile bench.

Rule 20 states about the closed hearing of juvenile cases. Rule 21and 22 are related with Trial process and evidence collection by the juvenile bench. Rule 25 states the provision to give the order for the protection of the right of the children.

Rule 26 is related with the disposition of the case with in time period. Rule 27 explain the execution of the decision. Rule 29 explain about restorative justice Rule 39 is the provision of the format of psycho social report of the children.

Rule 41 is the provision of to complete the diversion process or change the process which was over the juvenile. Rule 43 is related with the rights and duties of probation officer. Rule 44 states the interpretation is necessary on behalf of the children.

The Rule provides the Provisions relating to the Juvenile Court or Juvenile Bench some provision related to Juvenile Bench are as follows:
a) There shall be formed of juvenile bench in each district Court comprising a social worker, child specialist or child psychologist in addition to the District Court Judge.

b) If there are more than one district judge, the judge designated by the main judge shall include in the juvenile Bench.

The Rule provides the provision related to charge sheet and with trial. After file the charge sheet in the Court, immediately the copy of charge sheet should provide to the children or his guardian. The notice of charge sheet should provide the guardian. The Rules provides the provision of the judge, social worker, child specialist or child psychologist shall collectively hear cases in the Juvenile Court or Juvenile Bench.

In the proceedings the judge in the Juvenile Bench in the absence of any or each of the social worker, child specialist or child psychologist shall not be invalid. The social worker, child specialist or child psychologist shall present their opinion in writing to the judge. Upon receiving the opinion, the judge shall decide the case. Some provision related the hearing of case is explained as follows:

a) The Juvenile Court or Juvenile Bench shall have the child friendly environment.
b) The Juvenile Court or Juvenile Bench shall use the language which the child can understand easily. Sometimes, the interpreter can be consulted.
c) While hearing the case, the Juvenile Court or Juvenile Bench shall give information to the child of the nature and the information of the collected evidence.
d) If possible the children interrogate in child friendly environment. The interrogation may be two way communication in bench.
e) At the time of interrogation, father, mother, guardian or legal practitioner of the child may sit along with the child.

The process of examination of the evidence and witnesses are explained as follows:

a) The social study report is very important. Thus if it has not been submitted along with the charge sheet, Court can order for submission of the report.
b) If there are any evidence found in investigation, those evidence should submitted with charge sheet. Those evidences can be requesting for examination.
c) In the case process, the juvenile bench can order for submission for the related evidences.
d) Sometime when the child wants to produce his or her witnesses on his or her own accord, the Juvenile Court or Juvenile Bench may give permission to produce the witness.

If there is a dispute as to the age of a child, the Juvenile Court or Juvenile Bench shall determine the age on the basis of the following documents as per the Rule 15 of regulation.
a) The date of birth is primarily determined by the birth certificate of the hospital.

b) If there is no birth certificate, or doubt in the hospital’s certificate, another document in which the date of birth is mentioned in the birth registration certificate issued by the Local Registrar’s Office.

c) Beside the situation of above no. (b), the date of birth mentioned in the school character certificate or mentioned at the time of admission to the school.

d) If there is no such certificate, the date of birth certified by a government hospital. Court may send for hospital to conform the age.

The Juvenile Court or Juvenile Bench shall adjudicate the case within one hundred twenty days after case registered in the Court. The judgment shall contain the following contents as per Juvenile Justice Execution (Procedure) Regulation as following:

a. Explain the brief description of the charge sheet
b. Analysis and examination of evidences.
c. Analysis of brief description of the report of social worker, child specialist or child psychologist.
d. Hearing and Pleading of the legal practitioner
e. Analysis of Relevant precedents
f. Disposition based on evidences.
g. Alternative measures to be taken for correcting the child

**Muluki Criminal Code 2074**

Sec.10. No liability for the children in any crime under the age of 10 years.

Sec.28. If any person who order for children to commit the crime, the word giver is liable.

Sec. 45 is related with the punishment for the children. (1). If the person is under the age of 10, commits any crime is not liable for punishment. (2). If the children is 10 years or up to 14 years at the time of committing the crime, the judicial authority should request and suggest. And if the offence if liable for imprisonment, the judicial authority can punish up to six month of imprisonment according to the nature of offences or can send to reform home for up to one years. (3). If the children is 14 years or up to 16 years, they would liable for half punishment as the punishment warded to adult. (4) If the children is 16 years or up to 18 years, they would liable for one-third punishment as the punishment warded to adult. (5). whatever explain in sub sec.2, 3, 4, if the children is not cross the age of 16 years, could not punished of imprisonment beside the case of grievous, heinous and recidivists.

**Criminal offence (Determination of punishment and Execution) Act 2074**

Sec.16 states the following things should followed at the time of awarding the punishment to juvenile
• Best interest
• Gravity of offence
• His personal situation

National Child policy 2069

Nepal has been made national policy for the convenience of application of laws. The policy helps to promote and strengthen in the field of the rights of the children.

Conclusion

As mention above, in the international laws related to children in conflict with laws have many more provision related to diversion, restorative justice, provision of probation are clearly mention but those provisions are not clear in Nepalese laws related to delinquency. The children’s act 2075 of Nepal provides the provision of probation and other related provision but those provision was not immediate applied. Which are clearly mention in law. The provision of diversion well as the process of diversion is also not clearly mentioned as in international laws. The provision of best interest of children is mention in Children’s Act but the best interest are not mentioned. The process of protection of best interest are not explained. The definition of children is not uniformity in the children’s Act 2075 and CRC 1989.

Questions for discussion

1. Are Nepal ease legal provisions related to children sufficient?
2. Whether Legal provision are completely applied in practiced or not?
3. What are the problems in practice and it’s solution?

Thank You