

# Draft bills and research reports on: reducing judicial corruption and child labor in Nepal

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DRAFT BILLS AND RESEARCH REPORTS ON

# REDUCING JUDICIAL CORRUPTION AND CHILD LABOR IN NEPAL

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Part I: Research Report

Part II: Draft Bill

December 14, 1999

## INTRODUCTION

These two draft bills and accompanying research report comprise the work of two teams of Nepali officials from Nepal's Ministry of Law and Justice who prepared them in the context of the Boston University School of Law Program on Legislative Drafting for Democratic Social Change. They attended that Program as part of a larger Ministry of Law and Justice Program, funded by the United Nations Development Program (UNDP), to strengthen Nepal's legal framework and the Rule of Law. Using the bills and reports as case studies, the four officials aimed to learn legislative theory, methodology and techniques. The Ministry had assigned them, on their return to Nepal, to play a significant role in institutionalizing an on-going learning process to strengthen Nepali drafters' capacity to prepare the effectively implementable legislation necessary to ensure good governance and development.

Ideally, in terms of government priorities, the Ministry should have selected the bills on which the four officials would work, and ensured that, before they came to Boston, they had in hand all the relevant ministry files on those bills. In the event, the four officials, themselves, drawing on their own knowledge of Nepal's problems, made the choice. Because corruption appeared as a pervasive problem -- an important factor in triggering the Project -- they chose to work on one bill to reduce corruption in the judiciary. To learn how to translate policy relating to broad social issues into effectively implementable law, they chose to work on a second bill which aimed to contribute to the effective implementation of Nepal's existing legislative prohibiting child labor law.

The two teams included the following officials:<sup>1</sup>

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To write research reports as to the nature and causes of the social problems in Nepal that their bills sought to address, the two teams worked diligently to gather what information they could. The Ministry of Labour sent them some background information relating to child labor. We had on hand the files we had obtained during our Mission to Nepal to design the Project with a special focus on overcoming the problems of corruption. In addition, the professors with whom they worked on provided the teams information concerning other countries' experiences in drafting laws to deal with similar problems.<sup>2</sup> Nevertheless, some gaps remain. Now that they have returned, they will need to fill these by discussing the issues with the relevant ministry officials.

Because they themselves had to choose which problem areas their bills would address, questions inevitably remain as to the extent that their efforts will lead to actual legislation. Using the bills and accompanying research reports as case studies, however, did prove useful in helping them to think through the implications of the legislative theory and techniques they learned in the BU Program's learning process. Hopefully, they will find these useful for their future work in drafting and institutionalizing an on-going learning process to strengthen Nepal's drafting capacity and its legal framework to foster good government and development.

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Legislative Drafting for Democratic Social Change

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<sup>2</sup> We would like to express appreciation to Professors Larry Yackle, Michael Harper of Boston University School of Law, and Beverly Greer, Head of the Government Department, Clark University, for their contribution to the background information about foreign law and experience; and to the Pappas Library Staff, especially Stefanie Weigman, and to Liz Lampert, who helped them obtain information, not only BU's library collection, but also Lexis and the Internet.

PREVENTION OF JUDICIAL CORRUPTION AND OTHER MISCONDUCTS BILL, 1999

An Act to prevent corruption and some other misconduct from the judiciary.

This Act enacted by the Parliament , on the twenty eighth year of the reign of  
the throne of His Majesty King Birendra Bir Bikram Shah Dev.

Chapter 1

PRELIMINARY

1. Short title ,extension and commencement -

- (1) This Act may be called "Prevention of Judicial Corruption and other misconduct Act, 1999."
- (2) This Act extends throughout the Kingdom of Nepal.
- (3) This Act come into force since Baisakh 1, 2057.

2. General Principles -

This Act has the following objectives :

- (1) By requiring judges to write carefully reasoned opinions and by prohibiting them from informal social contacts with lawyers involved in matters before them , and by developing the Judicial Council into a proactive agency investigating the incompetence , misbehavior and failure to discharge the duties of office in good faith , to make corruption more difficult and to facilitate the Council's constitutional tasks;
- (2) by making it more probable that informers will report instances of corruption to the Council , to make it more likely that the Council will learn of charges of corruption; and
- (3) by making the procedures of the Council more open and accountable , to improve the operations of that body.

3. Definition -

In this Act -

- (a) "Council" means Judicial Council composed of under Article 93 of the constitution of the Kingdom of Nepal 1990.
- (b) "Chairperson" means chairperson of the council.
- (c) "Judge" means Chief Judge of Appeal Court and judge of Appeal and District Court.
- (d) "Judicial Service Commission means" Judicial Service Commission composed of under Article 94 of the Constitution.
- (e) "Public Service Commission" means Public Service Commission composed of under part 14 of the Constitution.
- (f) "Secretary" means secretary of the council.

## CHAPTER 2

### RULES OF CONDUCT OF JUDGE

#### 4. Code of judicial conduct -

- (1) The council shall formulate a code of judicial conduct.
- (2) In the code , the Council shall define the details of judicial incompetence , misbehavior and failure to discharge the duties of office in good faith.
- (3) The code shall include the following provisions with respect of incompetence:
  - (a)Not taking necessary legal steps in a case within a legally prescribed time;
  - (b)Delaying in making orders and decision;
  - (c)Quantum of work below than the set standard;
  - (d)Different opinions in the same legal issue in different cases, but without reasons for changing opinions;
  - (e)Misinterpretation of law in the face of record.
- (4) The code shall include the following provisions with respect of misbehavior:
  - (a) Corruption
    - (i) bribery
    - (ii) misappropriation
  - (b) Indecent behavior
    - (i) in the court room
    - (ii) in a public place
    - (iii) through public means
  - (c) misuse of court or public property
  - (d) violation of some other criminal law including provocation, attempt and conspiracy on
    - (i) Narcotic drug

- (ii) Smuggling
- (iii) Trafficking of human beings
- (iv) Fraud
- (v) Cheating
- (vi) Perjury
- (vii) Rape
- (viii) Theft
- (ix) Bigamy
- (e) Breach of civil duty
- (i) Breach of Income Tax Act

(5) Special prosecutor shall recommend to the Attorney General to file a case against the judge if council recommends to remove a judge under sub-section (4) (d) and (e) of Section 4.

(6) The code shall include the following provisions with respect of failure to discharge the duties of office in good faith:

- (a) Delay in case flow;
- (b) Negligent to the official duties;
- (c) Poor court management;
- (d) Poor time management;
- (e) Poor case management;
- (f) Frequent and unreasonable absenteeism;
- (g) Reluctant to witness examination;
- (h) Denial or delay in carrying supervisory orders of the superior court or judge;
- (i) Delay in writing decision and order of the court.

#### 5. Annual report on income and assets -

(1) In an annual report on a form provided by the Council , a judge shall report to the Council the judge's income for the year and its source , and assets owned by the judge at the time of making the report , including assets held in trust for the judge.

(2) At the same time on a form provided by the Council a judge shall report to the Council the judge's wife's income for the year and its source , and the assets owned by the judge's wife at the time of making the report , including assets held in trust for the judge.

(3) At the same time on a form provided by the Council a judge shall report to the Council the judge's children's income for the year and its source, and the assets owned by the judge's children at the time of making report, including assets held in trust for the judge.

(4) A judge shall submit annual report within the month of SHARAVAN.

#### 6. Social Relations -

- (1) In the absence of opposite lawyer, a judge may not attend a function organized by a lawyer in his private capacity.
- (2) A judge may not attend a function organized by a person other than the state party, who has a case pending before the court.

#### 7. Responsibility to inform to the secretary -

- (1) While hearing an appeal or writ petition or a case, if a Supreme Court or an appeal court judge finds breach of a provision of this Act, shall immediately make an order to report the fact to the Secretary. Registrar or Administrative in charge of the court shall inform the secretary within seven days of the order.
- (2) A government attorney, if finds reasonable ground of breach of provision of this Act, shall report to the secretary.
- (3) A lawyer, if finds reasonable ground of breach of provision of this Act shall report to the secretary.
- (4) Registrar or administrative in-charge of the Supreme Court or Appellate court shall send a copy of supervision report prepared by the judge to the secretary within seven days of its submission to the court.
- (5) A person if finds reasonable ground of breach of provision of this Act by a judge shall inform to the secretary as soon as possible.

### CHAPTER - 3 IMPLEMENTING AGENCIES

#### 8. Responsibility of the Secretary -

When Secretary receives information that a judge may have violated a provision of this Act , the Secretary shall -

- (a) notice to the chairperson and Member of the council immediately.
- (b) accompany with the copy of information with the notice
- (c) include the matter into the agenda of next meeting of the Council.
- (d) implement the order of the Council.
- (e) collect information from concerned agencies to carry out the provisions of *this Act*; and
- (f) perform other duties prescribed under the provision of this Act and rules thereunder;

#### 9. Meeting of Council-

When the agenda of the Council contains an item concerning alleged misconduct of a judge, the Council shall –

- (a) designate a Member of the Council to investigate upon the information whether reasonable suspicion exists and report the findings to the Council ; or
- (b) if reasonable suspicion exist to believe that a judge has committed an act of corruption or other serious violation of The Code of Judicial Conduct , constitute a Committee of Inquiry provision to section 10 of this Act to investigate upon the matter and report the Council.
- (c) in case of minimum violation of Judicial Code of Conduct Council may –
  - i. order to stay a force leave not exceeding six month ; or
  - ii. order not to provide other facilities other than monthly salary ; or
  - iii. order to hold promotion as an appointment to the upper court.
- (d) In case of violation of criminal law under sub-section (3) (d) of Section 4 , the Council may order not to discharge the duty of a judge until and unless acquitted by the final decision of the court of law.

#### 10. Rules for meeting -

- (1) Council shall meet on fourth Monday of every alternate month regularly. Chairperson shall order the Secretary to call upon a special meeting if two of the Member of the Council make written request with proposed agenda.
- (2) Secretary shall prepare and issue an agenda to all members of the council so that they have forty-eight hours notice of the scheduled meeting.
- (3) Chairperson and two other members shall constitute the quorum.
- (4) Council shall make its decision by majority. Chairperson shall have the power to cast deciding vote.
- (5) Abstain vote shall count with the majority vote.

#### 11. Committee of Inquiry -

- (1) When Judicial Council finds reasonable suspicion of corruption against a judge , the Council shall appoint a Committee of Inquiry under the chairmanship of a judge of the Supreme Court.
- (2) Council may appoint other members of the committee from:
  - (a) Attorney general, or
  - (b) Chief judge of appeals court , or

- (c) Ex-judge of the supreme court , or
  - (d) Senior Advocate , or
  - (e) Senior government officer.
- (3) Secretary shall be the Member Secretary of the Committee.
- (4) Committee shall have power –
- (a) to issue and serve notice to the accused and witness of the case.
  - (b) to record the statement of the accused.
  - (c) to examine the witness.
  - (d) to enter into any place and collect evidence.
  - (e) to make search and seizure.
  - (f) to restrict the accused to leave the country
  - (g) to submit its finding to the Council.
- (5) Committee member shall have the authority of a Police Officer in investigating any commission or omission under this Act.
- (6) Committee shall have power to investigate a person involved in an act under this Act.
- (7) Committee may delegate its power to a special investigator or an investigating team to report the Committee.
- (8) Committee shall submit an investigation report to the council with facts , figures and suggestions.
- (9) Committee shall report the Council within three month of starting of investigation.

## 12. Special Prosecutor -

- (1) Council may appoint a special prosecutor or a team of special prosecutors to prosecute the case before the court under this Act.
- (2) Council may appoint a special prosecutor from -
  - (a) attorney General
  - (b) senior government Advocate
  - (c) senior Advocate
  - (d) advocate at least ten years of experience in the legal profession.
- (3) Council may appoint an in-charge among the special prosecutors.

## 13. Duty of the Special Prosecutor –

Special prosecutor shall have the duty to -

- (a) file the case before the court
- (b) appear before the court
- (c) produce evidence on behalf of the council and examine thereof

- (d) appeal against the decision if necessary.
- (e) regularly report to the council
- (f) carry out the orders of the Council

14. Power of special Prosecutor -

- (1) A special prosecutor shall have the power of a public prosecutor in a case under this Act.

15. Hearing before the council -

- (1) If council finds prima facie against the judge after receiving investigation report, the council shall provide an opportunity to the judge concerned, to be heard.
- (2) In the process of hearing council shall
  - (a) permit to produce written or verbal argument of the concerned person.
  - (b) not permit a lawyer to appear before the council in the hearing.
- (3) Secretary of the council shall record the hearing.

16. Decision of council after hearing -

After hearing, council shall decide:

- (a) whether to dismiss the case, or
- (b) whether to recommend for removal from the office, or
- (c) whether to recommend for removal from office and further prosecution before the court.

17. Reward to the informant -

- (1) Informant shall receive half of the fine collected from the accused under this Act.
- (2) No official can prosecute a person, nor a private person maintain an action for libel or slander against, nor a professional association discipline a person who in good faith pursuant to subsection (1) informs the Council or public prosecutor of a violation of this Act.

18. Submission of Annual report -

The Council shall submit an annual report to His Majesty on the works it has performed in accordance with the Constitution and this act. His Majesty shall cause such report to be laid before the Parliament.

CHAPTER - 4

SANCTION

19. Punishment -

- (1) If a judge is found guilty of corruption under this Act, the court shall award five year of imprisonment and a fine of double of the amount involved in the case.
- (2) A judge shall not receive pension and other facilities upon conviction of corruption other than provident fund.
- (3) A judge shall award three years imprisonment and a fine of double of the amount inform in the case to any other person engaged in corruption with the principal accused.

20. Suspension and cancellation of license -

If a person engaged in corruption charge holds license, permit, or any other document to allow a business or profession shall be

- (a) suspended from the date of inquiry.
- (b) cancelled if the accused is found guilty by the court.

21. Suspension from the post -

- (1) A judge charge with corruption under this Act shall not carry out the function of a judge from the date of filing the case before the court of law.
- (2) In case of constitution of an Inquiry Committee against a judge to investigate in the corruption charge, the Council may recommend to His Majesty to prevent the judge from performing the duty of a judge.

22. Disqualification -

A person punished in corruption charge under this Act shall not hold a post in the public office.

23. Sanction in other case -

- (1) If a judge is removed from the post on the ground of failure to discharge the duties of his office in good faith and incompetence shall not hold the post of judgeship.
- (2) Council shall take appropriate action mentioned in subsection 1(c) of Section 9 in case of minor violation of Code of Conduct.

24. Sanction in case of some criminal law violation -

If a judge violates any criminal law mentioned in sub section (1)(d) of Section 4 , shall

- (a) not continue to discharge official duty of the court.
- (b) face proceeding under the law as an ordinary citizen.
- (c) not hold an office of judgeship if convicted

25. Failure to submit Report -

- (1) Council shall issue a notice to the concerned court not to pay half of the compensation and other facilities in case of failure to submit wealth net report under Section 5 of this Act.
- (2) Council shall investigate if a judge does not submit wealth-net report within prescribed time.

26. Rule of Presumption -

The Council and the court shall presume the property of a judge or wife or child of the judge not confirmed with the legal source of income as earned from corruption.

27. Rule of burden of proof -

On trial against a judge on a charge of judicial corruption , if the prosecution prove that a judge's income or net worth have increased in a sum more than reasonable considering the judge's salary and probable expenses , or that the judge's standard of living exceeds a reasonable standard for a person receiving the judge's salary , the defendant judge shall have the burden of going forward with evidence to prove that the increase has a reasonable explanation , and the burden of persuasion upon that issue.

28. Exclusion from legal action -

If a lawyer or any other person engaged in corruption notifies to the council with supporting evidence of the act of corruption and agrees to help as an witness , the Council may not prosecute such lawyer or person in the same case.

CHAPTER - 5

ADJUDICATION

29. Trial -

A two judge bench of the Supreme Court shall hear the case of corruption under this Act.

30. Appeal -

A five judge bench of the Supreme Court shall hear the appeal.

31. Special Procedure -

Trial and appeal bench of the Supreme Court shall follow the procedure prescribed in Special Court Act in trying a case under this Act.

## CHAPTER - 6

JUDICIAL APPOINTMENT SYSTEM32. Special Procedures for Judicial Appointments -

- (1) At the order of the Council Secretary shall advertise from the eligible persons for the post of judgeship in radio and at least two national daily newspapers.
- (2) a person may apply for the post as prescribed in the advertisement by the Secretary.
- (3) Secretary shall make public all the names of the probable candidates with brief persona- vita at least in two national daily newspapers.
- (4) A person may supply information about a probable candidate enlisted in the probability list.
- (5) Secretary shall receive, collect and maintain the record of information in relation to the probable candidate.
- (6) Secretary shall submit a report to the Judicial Council analyzing all the information about a particular probable candidate received from different sources.
- (7) A Member of the Council may provide information about the probable candidate.
- (8) Secretary shall prepare an evaluation report of each probable candidate including both positive and negative factors in a form prescribed in the rules.
- (9) Meeting of the Judicial Council shall evaluate and analyze all the facts and information about the candidate.
- (10) Meeting of the Judicial Council shall recommend for a person whose record is –

(a) honest , (b) fair , (c) judicial temperament , (d) academically qualified and (e) experienced.

## CHAPTER -7

### SECRETARIAT

#### 33. Composition of the Secretariat -

(1) To support in carrying out the Constitutional and legal duties of the Council , the Council shall constitute a Secretariat.

(2) In the recommendation of the Council His Majesty shall appoint the Secretary.

(3) Secretary shall work as an administrative and managerial head of the Secretariat under the supervision of the chairperson of the Council.

(4) Secretary shall work for six years from the date of appointment.

(5) Secretary shall receive the same facility as received by the registrar of the Supreme Court.

(6) Judicial Service Commission shall make necessary arrangement in supplying gazetted officers in the Secretariat.

(7) Public Service Commission shall make necessary arrangement in supplying other non- gazetted staffs in the Secretariat.

#### 34. Qualification for the post of Secretary -

Council shall recommend for the post of Secretary from -

(1) special class officer of the judicial service , or

(2) gazetted first class officer with at least four years of experience in the post of judicial service.

## CHAPTER - 8

### MISCELLANEOUS

#### 35. Rule making -

The Council may frame necessary rules to carry out the objectives of this Act.

36. Repeal -

Judicial Council Act , 1990 has been repealed.

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## INTRODUCTION

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*Nepali courts have become fertile grounds for corruption. Most judges take bribes and advocates and the officials are involved in reaching money to them....For all the charge of the contempt of court is enough to shut their mouth .Even the chief justice accepts this fact that , "Efforts are on to control all sorts of irregularities in the court" A senior advocate says "corruption is the final say in the courts". A district judge says "so many irregularities in the judicial system have been exposed that now we are not in a position to say we are right". An ex- member of the judicial council says "political interference and nepotism are highly prevalent in the court ". Vested with the powers to take legal action against judges, there are rare examples of such actions taken by the (judicial) council. A client "is fighting a case since 32 years of age is now 54 but her case is still pending .... The cases are to be disposed within one year of registering of defense by the defendant in trial court and in ninety days on summary cases .But this does not happen in practice .A senior advocate says judges are indecent and lawyers live under the aegis of those (same) judges .An anonymous advocate says "now 17/18 judges deal with about 90 cases daily but not even 8 are disposed of." Ex-member of judicial council says "No one made demands for a court library while I was in the*

*judicial council but these demanding a motor-vehicle were many." Editor of a Weekly, who published a cartoon, was charged of the contempt of court and jailed. Judges change their date of birth and date of entrance into service and press has to remain silent.* (Shiva Gaunle, Kathmandu Today Falgun 1. 2054, Translated by Pramod Bhatta,)

Brief statement of the problem and the solution : -

Notoriously , some of the actors in the Nepalese judiciary have become extremely corrupt. Judges , lawyers , clients , court staffs participate ; the implementing agencies i.e. Judicial Council , CIAA and other concerning organization like house of Representatives , Bar Council and courts seem supine. This bill address one portion of the problem. It requires the Judicial Council to formulate a Code of Judicial Conduct to which judges must adhere ; and it prescribes changes in Judicial appointment process and in Judicial Council procedures to make the courts more effective in corruption cases , and the Council more proactive and more effective.

Fitting the problem into the large picture -

To ensure good governance the very nature of the judicial system must be free, fair ,independent and competent. As in other liberal democracies the constitution of the kingdom of Nepal has highly relied on the judiciary. "Independence of judiciary" has become one of the basic spirit of the constitution "to transfer the concept of the rule of law in living reality." The Judiciary constitutes the final arbitrator and the last resort of justice. The Constitution provides for different provisions needed for independent

judiciary. The proposed bill aims to address the problem of corruption in the judiciary in Nepal. A corrupt politician face problem in the next election, a corrupt official shall have to face punishment by his department or the judiciary. But who will judge a corrupt judge. A corrupt judge protects every other corrupt person, disregards human rights, breaches the legal norms. A judiciary should play a role model in the liberal democracy.

Judiciary resolves the issues of life, liberty and property. A judge has to dispense free fair and timely justice. Vested interest should play no role in justice system. A corrupt judge pollutes judiciary. In such situation no right remains right, no liberty remains liberty, no freedom remains freedom.

Newspapers and magazines write about corruption in the judiciary. Parliamentarians speak in the House about judicial misconduct and misbehavior. A parliamentary committee doubted a decision made by a division bench of the Supreme Court and wrote a letter to file the Review Petition to the concerned authorities. An ex-chief justice was not honored, as usual, by the Nepal Bar Association in his retirement from his office on the hidden ground. In 1999 , the Nepal Bar Association called a token strike requesting not to appear before any court to protest against the corruption in the judicial system.

Nepal also have some laws and organs to deal with the judicial corruption. Under article 87 of the Constitution The House of Representatives can impeach a Supreme Court Judge for reasons of incompetence, misbehavior or failure to discharge the duty of his office in good faith. But there remains a question about whether the supreme court

judges can be prosecuted or not in the corruption charge before or after the impeachment proceedings ?

Under Article 90 of the Constitution , Judicial Council can recommend to remove the appellate court or district court judge from the office for reasons for reasons of incompetence, misbehavior or failure to carry out the duties of the office in good faith. And if it is necessary and expedient to initiate proceedings for reasons of misbehavior Judicial Council can initiate proceedings against such judge. Judicial council Act, 1990 specifies the reasons for a removal. Misbehavior covers an "act of corruption under prevailing law."

Corruption, delay and other misconduct should not get momentum in judiciary. But it is often said that a senior corrupt judges protect junior corrupt judges. Corrupt judge gets opportunity to work in the corruption prone area . Non corrupt and quality judge remain behind in the promotion process. 'Corruption brotherhood' seems responsible for institutionalizing corruption within the judiciary.

Cases often face delay either for the purpose of bribery or on the suspicion of bribery. Judges sometimes provide opportunity to collect money to hand over them as bribe. When the other party finds some symptoms of bribery, then the party does not want the case to be decided by the same judge. Lawyers do not appear before that bench simply their client conveys the matter.

Judges exercise excessive discretionary power. An environment of impunity corruption brotherhood or a corruption network , further encourages corrupt actors.

There lacks effective sentencing policy in Nepal. Sometimes, judges bargain for a bribe, to lower the punishment. Degree of criminality is not often taken into account while sentencing the convicts. In most of the decisions, judges simply mention the name and do not mention the arguments made by the lawyers. They mostly do not interpret the facts to fit in the law or Vice Versa. Many more cases are decided on mere technical ground. Upper court judge do not pass any remark against the lower court judge.

People do come before the judiciary with the hope of justice. When winner wins the case after bribing, certainly that client loses faith on judiciary. Similarly, when looser loses the case simply because not fulfilling the demand; again judiciary suffers faith. This process leads to lose of legitimacy of the formal judicial system.

Present day judiciary can not limit itself within the four corners of the traditional cases like murder, rape, theft or other general property and family issues. The social problems of poverty, exploitation, powerlessness of common majority also come under judicial scrutiny as an individual or group case. Judiciary can create competitive environment in the society to save the merit.

Corruption seems as an top down process to mean when the judge indulges himself in corruption the lower staffs may imitate the same behavior.

Judiciary has a role to provide group justice through public interest litigation to minimize many human sufferings. An active judiciary can help to control lawlessness in the system. Present day judiciary has a significant role to play in the developmental sector. Judiciary has to set trends to figure out itself as an pro bono and pro-development institution.

Judicial corruption damages value system of the society and democratic institutionalization process. Furthermore, it has become one of the responsible factors in creating apathy in the public towards democratic values. As one lawyer and now a member of parliament observed that the "next revolution in Nepal could be against the judiciary." We have to develop a system, through law to make the courts transparent, accountable and non-corrupt. The proposed bill comprises part of the process.

To check judicial corruption it has become necessary to improve appointment systems , to ensure fair sentencing system , to develop effective and efficient supervisory system , to develop effective and reliable information system , to develop transparency and make accountable to the implementing agencies.

#### Proposed Methodology -

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The social problem of judicial corruption is of specific nature. Corruption occurs in the dark and like in other victimless crime the system badly suffers and actors always win. Most appropriate methodology which will fit into this situation may be the problem solving methodology. This methodology consists of the following steps each accompanied by relevant facts :-

(a) Identification the social problem.

- (b) Explanations of difficulty and analysis of the causes of behaviors by using analytical factors such as rule, opportunity, capacity, communication, interest, process and ideology.
- (c) Identification of the solution to solve the problem.
- (d) Supervising and monitoring.

The introductory part of this research has briefly identified the problem of judicial corruption and fit that into the social problem. The second part will deal in detail with the nature and scope of the difficulty, its history foreign experience with corruption and identification of whose and what behaviors constitute the difficulty. The third part of the research report will describe the explanation and a suggested legislative theory try to analyze the causes of corrupt judicial behaviors by using the ROCCIPI check list. Final part of this report deals with the proposed bill's detailed measures designed to overcome the causes of corruption in the judiciary.

## Chapter - 2

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### THE DIFFICULTY

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#### Mini Introduction -

This part of the research report first describes the nature and scope of corruption in the judicial system. It describes the behaviors of the judges and other role occupants whose behaviors negatively affect the justice system. It discusses who have benefit or suffer as a consequence of those behaviors. And whether there are comparable situations in foreign countries for same enlightenment on the behavior of these role occupants in those countries shall form the focus in this situation.

#### Superficial Manifestation of the Problem -

Judicial corruption not only affects social fabric and moral values , it further leads towards arbitrariness. 'Bribery' affects tax system. Bribe payer does not pay tax. And that money one does not invests on productive sector. Similarly, one do not invest bribe money openly. Such money becomes black money and is often used for illegal and

non-productive activities. Corruption in judiciary kills the value of justice from the root. It , further ,destroys the whole constitutional and legal system. It creates the environment of corruption -brotherhood within the system. Justice goes beyond the access of the common people. Unnecessarily , corrupt judges invite attack against the judiciary.

In Nepal there are different laws and organizations which deal with corruption. The Constitution itself expects free , fair and competent judiciary. It empowers House of Representatives to initiate the proceedings of impeachment and take proper action against the Supreme Court judge. Judicial Council , another Constitutional organ deals with lower court judges in relation to corruption. CIAA , a constitutional body investigates on corruption against senior officer of the judiciary. Special Police Department and Chief District Officer are the other systems to deal with corruption in the lower level of judicial bureaucracy under the 'Prevention of Corruption Act, 1960. Appeal hearing body has been empowered to hear a case of bribery under Muliki Ain 2020 (1963). Departmental action can be taken to the civil servants under the Civil Service Act , 2047 (1990). Bar Council takes action against a lawyer who breaches code of conduct. A conference of Supreme court judges and chief judge of the appellate court judge has recently passed a Code of Conduct for the judges. This Code empowered to the judicial council to some extent. There are so many laws and so many organizations to control corruption but corruption is spreading dangerously.

Whose and what specific behavior constitute the difficulty -

Law can only change the social behaviors. Simply the mechanisms within the system do not consequence its result. Even then without law and institutions , behaviors can not be shaped in a positive line. Law can stop judicial corruption by changing problematic behavior of the social actors that constitute the problem. For the sake of changing behaviors , we have to identity whose and what specific behaviors constitute the difficulty.

#### Role occupants -

#### Judges -

Judges decide the case relating to life , liberty and property of person. They impose punishment to the culprit. They declare innocent to an accused.

Corruption seems a behavior with top-down process. It simply means if leadership in an organization is clean others on the bottom line learn the same behavior. And if the leadership is corrupt in an organization the subordinates also imitate the same behavior. Judges are on the top of the judicial structure. Judges have the authorities to exercise their judicial discretionary power in the decision making process. They have a role of the state paid agent to impart justice on the issues of life , liberty and property. When judges deny bribe the judicial environment becomes positive. Judicial corruption prevails simply because judge accept bribe or delay justice for the same.

A corrupt judge not only damages justice in the particular case in which bribe was accepted , it has more side effects on the system. A corrupt judge may delay the case to wait money or goods , misinterprets law , becomes so technical that he develops

professionalism in searching minor human error (loop holes , lacuna) in the law. When a judge in the court of record is corrupt then his behavior directly creates more difficulty in the whole system of precedent (stare deices). It is simply because his misinterpretation even if he accepted bribe also becomes law in other similar cases the party suffers the justice.

A corrupt judge not only accepts bribe on his own. A corrupt judge provokes to lawyers , staff members and others whom he thinks weak for bribery. The others feel protected and may expand this behavior simply because they have relationship with the judge. A corrupt judge may be soft to other corrupt people in the sense he will not simply convict any one engaged in corruption.

#### Lawyer / Attorney / Law practitioner

‘KANOON’ a noted law magazine published an special issue about some unethical behaviors of the lawyers. So far re-called an article in Kanoon by an investigating journalism group unearthed some facts that some lawyers flourished their profession simply because they have had unethical relationship with some corrupt judges. It is also blamed in Nepal that some lawyers arrange grand parties to the judges with the clients.

Some lawyers say that sometimes client do come to get back their file simply because another lawyer trying his best to offer bribe to the judge. Some incident show that the corrupt judges and the corrupt lawyers have a nexus in relation to bribery. It is

sometimes said that some court decisions are written in the law office by the corrupt lawyers. Corrupt lawyers may offer a lot of gift to a corrupt judge in social functions like marriage , birthday , etc.

Lawyers have direct contact with their party , and lawyers have easy access with those corrupt judges in their private home or corrupt lawyers may have close contact with the corrupt bureaucrats and they can arrange the dark-room meetings for corruption.

#### Court Staffs -

Court staffs also play vital role to corrupt the judiciary. They contribute to corruption in the judiciary in two ways. First , they accept bribe to do or not to do something for which they have responsibility. Secondly , they may approach judges on behalf of the client to bribe judge and receive some percentage out of total bribe money. An appointee of a particular corrupt judge may work as an agent of the judge for the deal. The other corrupt staffs develop cordial relation with the corrupt judges. They work as a bridge between a corrupt judge and party. Corrupt staffs hinder the judicial process from proceedings in a timely manner. They may ask for money to do or not to do anything of their authority.

#### Clients -

Clients also live in the same environment of the same society. When stories of corruption published in media they know all about the corrupt behavior of the other role occupants. When they contact to a lawyer they simply ask him whether he can offer a bribe to the sitting judge or not. Any how , a client wants to win the case. A client tries to make contact with the judge through lawyer , or through court staff or retired court staff. If a client fails to do so he tries to find out the relatives or friends of the corrupt judges.

#### IMPLEMENTING AGENCIES

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##### Judicial Council -

Judicial Council had been alleged as a dysfunctional organization. Two members resigned from their membership almost for the same reason. Though , it is a high sounding constitutional structure to investigate corruption against appellate and district court judges. People inform about it. Lawyers do the same. Media digs the fact. But the Council has not shown its performance. Judicial Council has been under constant controversy right from its establishment. Vested with powers not only to appoint , transfer or promote but also to take legal actions against judges , one can find rare examples of such actions taken by the Council.

Record system in the Council seems very poor. Council do not meet regularly in a calendar. There seems no particular accountability of the Council in connection with

the complain made against the judge. There seems no transparent system about what do they do of the complains against the judges. Even they do not publish a report on that. The whole process seems confidential.

Judicial Council has to recommend a qualified person for judgeship. Council has to analyze all the information and start investigation against the corrupt judge. Council has to play a pro-active role to control corruption. Council has to make surprise visit to check judicial corruption. Council should show openness in its process. It has to publish annual report of its activities.

Commission for the Investigation of Abuse of Authority. (CIAA) -

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CIAA has a responsibility to deal with the Civil Servants on corruption and improper conduct. Often this organization also seems dysfunctional. No case has been filed by this Commission against any senior officials of the court. In all most all the cases of corruption filed by the Commission the accused is acquitted by the court. CIAA do not investigate corruption case properly. CIAA highly depends upon the statement of the accused. Due to lack of expert and technical support their case often fail before court of law.

Foreign experience concerning the nature of difficulty -

Corruption exists in industrialized as well as in the developing countries.

Different examples of the judicial corruption are found in the judicial history. Media reports judicial corruption of the day.

In two hundred years of United States judicial history prior to 1980 , no sitting federal judge was even prosecuted and convicted of crime committed while in office. Judges who were accused of serious wrong doing resigned rather than face an impeachment. Even among those judges who were impeached or who after impeachment were convicted and removed , the impeachment charges generally did not involve allegations of violations of the criminal law.

In 1930 , a number of criminal investigations were initiated against federal judges for corruption while in office. None of these cases , however , resulted in the prosecution and conviction of a sitting federal judge. Again , the resignation of the judges forestalled impeachment. In 1971 , judge Otto Kernar became the first federal judge to be indicted and convicted while in the bench. He resigned his judgeship before serving his criminal sentences , thus avoiding impeachment proceedings.

Since 1980 , five sitting judges have been indicted and four convicted , of crimes committed while in office. Judge Alece Hasting was the first sitting federal judge to be prosecuted for corrupt behavior in office. He was indicted and in February 1982 tried and acquitted. In 1983 , judge Harry Claiborne indicated an misconduct in office including bribery and income tax violations. Judge Walter Nixan indicted in 1985 for taking an illegal gift. Eventually he was convicted of perjury and sentenced to five years in prison. He refused to resign , he was impeached and removed in 1988. Judge Robert

Agcilar was tried in 1990 on various offences and was sentenced to six month in prison. Judge Robert Collins was indicted in 1991 for bribery , conspiracy and obstruction of justice and was ultimately convicted on all three court

In USA , it is not believed that there is significant corruption with in the federal judiciary. Nevertheless , the prosecution of five federal judges resulting four convictions , in less than ten years is trouble some and unacceptable.

Removal of judges in Australia is made by an "address" where by Governor General removes a judge upon an address by both House of the Australian Parliament. In this system no actual trial is needed for removal. Removal in Australia , may occur for a judge's 'misbehavior' or 'incapacity'.

In Canada , judicial council , composed of judges recommends on the removal of judges for age , infirmity , misconduct , failure to execute his office and for having been placed in a position incompatible with the due execution of office. Upon address' by both houses of the Parliament , the Governor General may remove federally appointed judges.

#### History of the difficulty -

Late Prithivi Narayan Shah , who in 1850 B.S.unified Nepal from a lot of petty states , was a very dynamic and justice spirited king of the kingdom. In his DIVAYA UPADESH (Great Saying) , he says to include honest and good people in the decision

making process. In his opinion 'bribe takers and bribe givers are the big enemies of the state'. He ordered not to include money collected by the court in the national revenue.

King Surendra Bir Bikram Shah promulgated a code called MULIKI AIN in 1910. In this code there was a separate chapter called "HAAKIM KA NAUMA KARAUNE KO MAHAL" to mean chapter dealing with to speak in against of the chief of the office (boss or decision maker). So far we recall under this AIN people could speak or file petition against the decision maker. There was a system that the judge himself has to pay fine if his decision was reversed by the appeal. Similarly, the second man in the office could make dissenting opinion with the judge. Dissenting opinion was also sent to the appeal. Every year the worst decision maker used to be dismissed. There was high sense of accountability among the judges.

A law teacher and law practitioner published a research article about standard of the decision of the supreme court. He simply stated that some of the decisions of the Supreme Court were objective, logical, rational and many of the decisions were poor in writing and subjective and not supported by the logic. The apex court found him in contempt.

The concern of fair justice led to constitute a Royal Commission, headed by Sardar Ishori Raj Mishra, found that there was corruption in the judiciary. Citing this source, Nepal Bar association made a petition before the His Majesty that it has become necessary to check corruption prevalent in the judiciary. In Panchyat period also, no judge was prosecuted for corruption. But, they were sacked on other hidden grounds.

The 1990's constitution made judiciary powerful but it could not develop sense of accountability of the judges. Many judges misused the free , fair and independence constitutional value of the judiciary. Though these values were made stronger for the institutional development of the judiciary but unfortunately many judges started to use these values for their personal interest. As we already mentioned Bar Association denied to organize a program to regard the chief justice upon his retirement. And President of Nepal Bar association drew attention in a public meeting toward impeachment process of the constitution to clean judiciary from the top.

#### Who benefits and who suffers -

A few corrupt judges and corrupt officers make money selling justice in cash or kind. Some corrupt lawyers also make money from the present situation. A client who wins the case may also benefit. In clients side only those who can purchase justice can harvest the benefit.

Clients who lose case due to corruption comprise the primary private sufferers. A lawyer who honestly prepares and argues the case also suffers frustration. Other honest judges also suffer simply because , media and public often make allegations against the judiciary in general not the person. The client who wins the case also suffers to some extent because if there was fair judiciary within the system , he might win the case without offering a bribe. Biggest sufferer , in fact , is the judiciary itself because people do not faith a corrupt organization. And ultimately governance system may loose legitimacy because of corrupt judicial actors.

### Mini - Conclusion -

As in other developing countries the problem of corruption is a cancer. And Nepalese judiciary also suffers allegation of corruption for the corrupt behavior of the individuals.

Nepal has several laws against corruption but the responsible agencies have done almost nothing to enforce them.

Superficial manifestation of the difficulty indicates the depth of the problem and how far it has affected the overall image of the independent judiciary.

The history of difficulty in fact can not be traced out on judicial corruption , because it has been a dark -time (secret) business , even then King Prithivi Narayan Shah made an statement that bribe givers and bribe takers are biggest enemies of the nations as early as 18th century. The next part of this report (part-iii ) provides evidence as to the causes of the relevant actors problematic behaviors based on the ROCCIPI check.

## Chapter - 3

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EXPLANATIONS

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Mini - Introduction -

In the preceding chapter we identified the role occupants and their problematic behaviors which directly or indirectly influence the integrity of the judiciary by accepting , instigating , bargaining , intermedeating and providing bribes. We tried to trace the history of problem and fit in this problem in the context of comparative law. As well as the report sought to asses the primary beneficiary and sufferer of the prevailing system.

In this part we will try to analyze the causes for the problematic behavior of the concerned role occupants. The report will use the legislative theory's ROCCIPI agenda , which broadly construed , purports to explain why people behave as they do in the face of a law. For each sets of role occupants we will at first discuss the existing rules with regard to the role occupants. Secondly , we will analyze the non- legal factors namely capacity , communication , interest , process and ideology , that seem to influence the behavior of the role occupants. Thirdly , we will discuss the causes of the implementing agency's failure to take action against the corrupt behavior in the judicial system. Finally , we will summarize the causes of all those problematic behaviors to lay a basis for legislative measure logically likely to overcome the social problem of judicial corruption.

### Role Occupants -

#### Role occupants # 1. Judges -

Judges , the primary role occupants of the judicial system play a prominent role in relation to the social problem of judicial corruption in a court of law. They make decision on the issue of life , liberty and property. A judge exercises discretionary power in the decision making process. The law itself provides discretionary power to them.

### Rules -

House of Representatives has the power to impeach the judges of the Supreme Court under article 87 (7) for reasons of incompetence , misbehavior or failure to discharge the duties of the office in good faith. By a two third majority of its members the House must pass a resolution and His Majesty must approve the resolution to remove a Supreme Court judge from the post. Article 87 (9) prescribes that the Supreme Court judge cannot perform his duties until the completion of the impeachment proceedings.

The preamble and several other provisions of the constitution aim to ensure independent judiciary. Under Article 93 of the Constitution , Judicial Council has to recommend and advise to His Majesty in relation to disciplinary actions against and dismiss the judge of the appellate and district courts. Article 91 (3) states as the grounds for action are (a) incompetence or (b) misbehavior or (c) failure to carry out the duties of the office in good faith. When such recommendation is accepted by His Majesty the appellate or district court judge can not remain in the post. In case of misbehavior further legal proceedings may be initiated against the judge.

Judicial Council Act 2047 (1990) describes the details of incompetence , failure to carry out the duties of office in good faith and misbehavior. Under Sub-Section 4 (a) of Section 4 A , misbehavior covers 'corruption'. The word 'corruption' has not been defined in this Act. It refers to other prevailing law on corruption. Prevention of corruption Act 2017 (1960) provides for a detail of corrupt activities including bribery , embezzlement and misappropriation.

#### Opportunity -

Judges exercise high degree of independence in the coverage of independent judiciary. Constitution and other statutes guarantee their privilege and other terms and conditions of services. Executive has no role to play about any action against the judge. High values of the judicial independence not only protect the institution but the actors within it. Some corrupt judges have taken it as an advantage for their personal interest. A judge may use the weapon of contempt of court for self protection if any body in the society opens mouth about the corruption.

Lack of jury system provides them opportunity to decide in both question of fact and question of law. A judge has a power to decide whether an accused is guilty or not and he fixes punishment to him. A judge has an authority to choose any punishment from a range. And the range of punishment in all most all crimes is often very high. A corrupt judge has every opportunity to misuse this power. Nothing compels a judge to justify the choice of a particular punishment from the range possible under the existing law and which opens the door for corruption.

### Capacity -

Article 87 and 90 of the Constitution prescribes criteria for judicial appointment. Judicial Council often recommends to appoint judges from minimum range of the qualification. Due to earlier appointment of junior law persons for the post of judgeship at present senior lawyers deny for judgeship. Similarly , the judges of lower courts do not receive promotion in the ground of merits. Corruption brotherhood works and corrupt judge gets more chance for promotion. A less competent, less experienced and less qualified person's behavior leads to the corrupt activities.

### Process -

In a judicial decision making process inputs come from the client and their lawyers. Formally speaking courts are open and transparent. A lawyer or client can produce evidence and facts basically in the original jurisdiction. New evidence are often denied in appeal. A judge can make orders time and again for evidence collection and examinations. When the inputs in a case do not meet the standard of evidence law then clients and lawyer become very much active to influence the judge in the process. A judge can influence witness examination in favor of one party if one is already bribed.

In the output process , often judges do not write logical decisions. They do not even mention what the lawyer argued. They often simply mention their name or put one

or two lines. In a criminal case , a judge often do not logically prove why did he choose that particular punishment from a big range.

Feed back process of a judicial decision often do not occur in Nepal. Firstly , Appeal courts and District courts do not publish their decisions. Supreme court publishes only about 10 - 15% of their decisions. Secondly , Press and Academic often fear contempt of court to analyze and critique court decisions. Thirdly , poor performance of legal research institutes do not help in the feedback process. Bar Association , Law Institute and Non governmental Organizations in the legal field also have not shown concern on feedback process.

#### Communication of law - x

#### Interest -

Corrupt judge take this profession as a measure to make money. A judge receives more facility than his counter part in the bureaucracy , but again , not sufficient to meet the basic needs of the family. A judge know how much one receives after the retirement. A dark future of the old age , without state sponsored social security , may encourage a judge towards corruption.

A judge can easily calculate all the cost and benefits of the environment. A judge knows who investigates the offence and who prosecutes and decides the case. A judge knows a weak implementing system do not catch , investigate , prosecute and convict. A lower court's corrupt judge finds himself safe when he makes good relation with the

upper court's corrupt judge. Corruption brotherhood helps every corrupt judge , to make more money , to protect other corrupt people from conviction and to protect themselves if needed.

### Ideology -

A judge as a part of the society perceives corrupt behavior in other branches of government. Media often disclose saga of corruption of politician , technocrats and other bureaucrats. A judge also finds corruption a common phenomenon. A culture of corruption undoubtedly instigates toward corruption.

Present recruitment and promotion system may lead a judge toward frustration. Lack of competitive environment , disregard to meritocracy , excessive role of nepotism and favoritism and over political color frustrates the system. Frustration with the system may lead to immoral , unethical , illegal and unwanted behavior.

### Role Occupants # 2. Lawyers : -

Lawyers , though not recruited by the judiciary , play a role of officer of the court. In all input , conversion , out put and feedback process lawyer has a great role to play in the judicial system. Positive role leads to justice and negative role leads to judicial corruption.

### Rules -

Under section 11 of the Bar Council Act 2050 (1993) the Discipline Committee of the council should investigate against a lawyer upon any information which alleges that lawyer violated the provisions of Act , the rules and code of conduct made under the Act. Discipline Committee may exercise the power to cancel the license or to suspend the license or to warn the lawyer depending upon the nature of the activity of the lawyer.

Bar Council , basically an Organization of lawyers may remain reluctant to take actions against their fellow person.

### Opportunity -

As a legal professional , a lawyer has close relation with the judge. A corrupt lawyer can make secret visits or may invite to a judge to deal with the case. A corrupt judge easily accept the offer. Easy access provide a lawyer an opportunity to pollute the judiciary. A lawyer deals directly with the client. When the client seeks to win his case at any cost , the lawyer has an opportunity to arrange a deal with judge and staff. In this secret deal nobody reports the case. Clients win the case , lawyers makes more money and establish a good relationship with the judge , and the corrupt judge makes extra money. This environment provides ample opportunity to a lawyer to indulge into corrupt activity.

A lawyer has easy access to the court staff. A corrupt lawyer may use a corrupt court staff to lure the judge. A lawyer has no risk to receive any money from the client.

A lawyer can charge any amount to his client and a client can pay any amount to his lawyer. Nobody knows about the fee of a lawyer. A lawyer receives his fee in cash. Nobody can distinguish from the currency note how much really comprise the fee and how much paid to bribe the judge.

A corrupt lawyer loses nothing but wins the case and confidence of the client as well as , makes extra money. No one can report such secret deal to the implementing agencies.

#### Capacity -

A law graduate after passing Bar Council examination can enter the profession. No law makes it compulsory to a fresh law graduate to work with a senior lawyer in a certain period of time. A pleader also can appear in the Bar Council examination for the advocate on his experience basis. In this way , under section 17 (1) (c) of Nepal Bar Council Act 2050 (1993) a person without any law degree can practice as an advocate even in the Supreme Court , simply if he pass the Bar council examination. Few years before a case came to public that out of 40 pass mark , Examination Committee gave 11 grace mark in the Bar Council examination. Prior to Nepal Bar Council Act ,2050(1993) a graduate could directly apply to the Supreme Court for license.

A less academic and non-experienced lawyer may find it difficult to run his profession in a professional way. This difficulty may lead him to the corrupt activities. And one may lure for client to bribe the judge so that the client could win the case.

Incapacity of a lawyer does not help to prepare for argument , to study foreign law , and to study more literature rather it instigates to use the backdoor.

#### Process -

As already mentioned , a lawyer has a big role to play in input , conversion , output and feedback process of a court case. In a case process , first a lawyer receives all inputs from the client and processes it to produce before the court as an primary output. The primary output of the lawyer becomes input to the court. In this total processing mechanism a lawyer comes very much closer to the client , to the court staff and even to the judge. In between the lawyer finds out to the weak person to whom he has to bribe and to whom he has to use to bribe the judge.

#### Communication of law - x

#### Interest -

Due to good communication of law a lawyer can easily compare the conviction and acquittal rate in the corruption cases. A corrupt lawyer can easily calculate that a corrupt judge protects him simply because that lawyer can disclose all the information against him.

A corrupt lawyer easily calculates that no one will inform to the implementing agency. Because , client wins the case , judge gets the extra money , other people do not know about it. A lawyer finds himself in a safest position to bribe the judge.

### Ideology -

Lawyers find themselves in a safe position in regard to any legal action. Because of their free and independent profession lawyers have very good relations with political , legal and other social elite.

Bar Association may also try to protect them from legal action. Often in almost arrest of any lawyer Bar Association issue Press Statements in favor of the lawyer.

### Role Occupants # 3 Court Staffs -

Court staff appear very close to the judges ,lawyers and clients. Court staffs play big role in the conversion process of a court case. They play vital role in executing court orders.

### Rules -

Under Article 98 of the constitution of the Kingdom of Nepal CIAA may investigate any "improper conduct or corruption by a person holding any public office."

Prevention of Corruption Act , 2017 (1960) also covers "public servant" in relation to the offense of corruption. This Act prohibits some behavior and provides for sanctions , and prescribes procedures of the Special Police Department as an Organization to investigate corruption under the Act. Bribery , embezzlement , misappropriation of

public property , avoid legal duty for illegal profit or loss and preparation of faulty document constitute corrupt behavior under this act.

Commission for the Investigation of Abuse of Authority Act , 2048 (1991) provides procedural provisions to the Commission. Furthermore , it states substantive part of "improper conduct" which does not constitute crime but simply means unwanted and improper behavior of public office holder.

CIAA and Special Police Department (SPD) commonly use 'Prevention of corruption Act , 2017 (1960) as their substantive law.

By virtue of the nature of the crime , CIAA has difficulty in getting information about judicial corruption. In the corruption process , a judge , a lawyer , a client and a court staff link-up themselves in such a way that no one discloses the information.

#### Opportunity -

Court staffs have easy access to judge , lawyers and clients. They know about corrupt judge and corrupt lawyer. Client and corrupt lawyer may contact them so that they could approach them to the corrupt judge. It seems comparatively difficult to reach to the judge. Clients and lawyers may prefer to use corrupt staffs in bribing the judge..

Judges and staffs may have other informal relations. A corrupt judge might have appointed a corrupt staff or might have transferred him there to fulfill his personal interest.

#### Capacity -

A law graduate can enter into judicial service as an officer after appearing Public Service Commission (PSC) examinations. They receive a short term pre-service training. In law college they study few laws and mostly the theoretical aspects. A short term pre-service and in service training can not provide them to sufficient input for their job.

Some corrupt judge appoint their household servants in peon, and promote them to the upper post. Such staff do not know any law, court practice and process. But corrupt judge use them as an agent for corruption. Such fellow goes to the courts, contact with client and lawyers.

A capable staff thinks about his career. A less capable staff do not find himself in merit or competition. He seeks protection for his betterment. A corrupt judge uses him and helps him too.

#### Process -

Court staffs play an important role in case processing. They receive input from the clients and lawyers. They produce it before the judge. In conversion process the staffs play vital role. Witness are often examined by the staff in the name of judge. Statements are noted down by the staffs. Staffs carry out the court order. Notices are

also served by them. In out put process their role seems less. But a corrupt staff makes good support with corrupt judge. A corrupt staff maintains good relation with corrupt lawyer and tries to help the bribe-giver in every process.

#### Communication of law -

After law graduation senior staffs enter into the judicial service so they know the law. Junior staffs may not hold law degree. Both of them needs training to carry out their job efficiently.

#### Interest -

Court staff can easily predict the legal and judicial environment. They also know the strength and weakness of the organizations related to investigation , prosecution and adjudication. They know the conviction rate in white collar crimes.

A staff knows how much he receives on his retirement and further knows the amount of his provident fund. One can calculate all the costs and benefits of the environment. Besides that he knows no one will likely inform in corruption deal to the implementing agency simply because a judge , a lawyer , a staff and a client all are in win - win situation. He further knows that corrupt judges protect him , corrupt lawyers help him. Weak judicial system helps him to bribe the judge and to corrupt himself.

#### Ideology -

A court staff , as a part of the system , perceives the whole system. When he finds a judge corrupt , his senior or his colleges corrupt , he makes up his mind and leads him toward corruption. When merit and quality counts less in promotion then he frustrates himself. Besides that , when one finds his good support with big heads in his office then he jumps to corruption.

#### Role Occupant # 4 : Clients :-

Clients enter into the court with inputs in the judicial process. Clients have claims and counter claims in which they seek decision of the court. Clients want to win the case simply because the case affects their life or liberty or property. To win a court case , a client may seek to use for both legal and illegal means. As a legal means he supplies facts , information and evidence through the lawyer. As an illegal means a client tries to influence to court staff and even a judge. He offers bribe to the staffs to get their help in the conversion process. And he bribes to the judge to get his help in the out put process. Clients may use a lawyer as an intermediary in the bribing process.

#### Rules -

Prevention of Corruption Act , 2017 (1960) provides substantive rules in relation to corruption. As a general rule on corruption it does not directly address the peculiar nature of judicial corruption. Many of the provisions of the said Act deal with public servant. Clients of a case do not belong to public servant under that Act. Section 4 of the Act , prohibits to accept any bribe by a person to hand over that bribe to a public servant.

### Opportunity -

Lawyers and other clients often informally tell the name of corrupt judges. Corrupt court staffs directly ask for bribe from the clients. If they can not directly offer for bribe they talk about their financial problem with the clients. A client ultimately understands his indirect offer for bribe. When a client comes closer to the staff he starts talking about corrupt judge. A corrupt staff may offer him to make approach with the judge.

A client who suffers from any legal problem generally contacts a lawyer at the outset. A corrupt lawyer tells him a tale of corrupt judge. He starts washing the brain of his client that bribery is the common phenomenon to win the case.

While roaming in the court premises a client gets every opportunity to know about the corrupt judge , corrupt staff and corrupt lawyer. Other clients tell him their stories how they bribed the judge , how they bribed the staffs and how their lawyer helped them in bribing.

Big houses , to mean wealthy people often keep them in close contact with the judges. They supply gifts even to the judges and senior court staffs in social occasions and festivals.

Drug dealers , girl traffickers and tax avoiding people may have close contact with the corrupt judges. Corrupt lawyers might organize parties to develop nexus between high profile criminals and the judges.

Corrupt judges and corrupt staffs easily accept private offers which also helps to a client to corrupt the judiciary.

#### Capacity -

When a client enters into the vicious circle of net working of bribery he finds himself in a position that often bribery is the ultimate means to win the case. At least corrupt lawyer tells him this story. A corrupt lawyer may instigate him saying that he bribed same judges earlier. And when the client enters into the court premise court staffs start to tell similar stories.

In such situation rich clients of a big case try to contact the judge. Big houses can easily pay the handsome amount. Mostly in revenue cases corrupt judge and party may bargain directly or through a corrupt lawyer or a corrupt court staff.

In a drug case the accused or family members of a drug case may offer a handsome amount to a corrupt judge. Similarly , in a case where government is a party , courts often decide the case in favor of the private person. Since Public Prosecutor can not offer a bribe even to the corrupt judge.

Even a poor fellow in high penalty crime and principal offenders in most crimes offer bribe to the judge even taking credit from their friends or relatives. Sometimes one may sell ornaments of the wife or paternal or other property to bribe the judge.

Anyhow a client has to win the case. Therefore, a rich client bribes from own purse and a poor fellow sells his property.

Process -

Clients play vital role in the input process. Basically all the facts and evidence can not enter into the court with out help of the clients. In this input process plaintiffs and defendants both the parties , who constitute the role of client ,supply those information.

Clients choose their lawyers. A client can choose a corrupt lawyer so that he could help him in every process even by bribing the corrupt judge and corrupt staffs.

In most cases clients appear before the court in the conversion process. He may pay to the staff in witness examination process. So that he could manipulate the statement of the witness in his favor. Presence of client or his lawyer or representative is essential in the witness examination process.

Client has sensitive concern in the out put process. Court decision or output directly affects the life , liberty or property of the client. Client wants decision in his favor so makes his best effort to influence the judge even offering bribe from any channel.

Communication of law -

Mostly clients do not know law. They hire lawyer to represent their case. Even wealthy clients hire lawyers and a lawyer teaches all the loopholes and tricks to the clients. A lawyer may tell his client about how to evade law. When a corrupt lawyer

who emphasizes the weakness of corruption law and potential role of bribery it actually stimulates the client to behave corruptly.

#### Interest -

A client always wants to win the case. A court case to a client is a question of life, liberty or property which directly affects him. When a client do come in the corrupt lawyer's contact he starts telling the client all the plus and minus of bribing the judge. Again when a corrupt judges accepts bribe paid by the client, then the client easily know that he can bribe the other judge if he is caught in the corruption case.

Due to regular contact with the legal systems and actors within, a client can calculate costs and benefits of bribery. He might know the weakness of implementing agency, judicial attitude towards corruption cases through the lawyer and court staffs.

#### Ideology -

Sometimes a case may become a matter of prestige to the client, that is called as "battle of moustache." In such situation clients do want to win their case. To win such case or to satisfy their super ego they become ready to sell even paternal property.

A client wants to win a case to have more property in the property case. In criminal case, he wants to win the case to exercise own personal liberty. Connection in criminal case may badly affect one's prestige in the society. And sometimes, in crimes against moral turpitude, a clients wants to win the case to maintain eligibility in public

works. In this way , a client finds himself in a difficult position if he loose the case. That is why he mostly prepares himself to bribe the corrupt judge.

#### Implementing Institutions and their behaviors : -

In Nepal different Organizations work to check corrupt activities in the state system. Different laws address the problem. Even in judicial sector , different laws remain in the law books , different institutions make pretension of their working. Why does anti-corruption law remain symbolic and why does corruption control mechanism fails to work ? Why corruption culture increases day by day ? Why anti-corruption organization fail to win public trust ? These questions certainly seek answer.

#### Judicial Council -

##### Rules -

Article 93 of the Constitution empowers Judicial Council to make recommendations and give advice to His Majesty concerning disciplinary action including dismissal of judges. Under Article 91 (3) Judicial Council has prime responsibility to recommend against an appeal court or district court judge on the ground of incompetence , misbehavior or failure to carryout the duties of the office in good faith to His Majesty. In case of misbehavior Council may recommend for further proceedings to prosecute the judge. The judge can not remain in his post if so recommended by the Council.

Before making any recommendation the judge facing such charge shall have right to get reasonable opportunity to defend himself.

Under Article 93 of the Constitution Council has to constitute a Committee of inquiry under the chairmanship of Supreme Court judge for the purpose of recording the statement of the judge , collecting evidence and submitting its finding. Judicial Council Act 2047 (1990) defines "incompetence, misbehavior or failure to carry out the duties of the office in good faith" separately.

No law makes Council accountable to any other body in performing its duty. It does not have to publish a report of its activities. Individually neither chairperson nor any other member has any responsibility towards the duty. Rather Council works in block or group. Jurist members often point out that the Supreme court judges constitute the majority in the decision making process. Jurist member always finds himself in minority.

Nobody knows whom they recommend for judgeship. Nobody knows how they collect information about a judge and all most all the activities of the Council remain secret. High secrecy may not make anyone responsible and accountable. The statute does not provide any room for transparency in its working pattern. Rather Section 4 of the Act requires secrecy of the records.

Opportunity -

Judicial Council seems reactive institution. Council mostly waits information to take any action against the judge. Members of the Council remain busy in other business. Chief justice , other senior Supreme court judges and Minister for justice often engage in their main official functions. Council does not seem active in collecting facts and information.

#### Capacity -

Only five officers other than Secretary serve in the Judicial council including some junior staffs. Although the Council's jurisdiction extends to all 75 District Court and 16 Appeal Courts. Council even lacks necessary physical facilities. Staff do not get sufficient logistic support. They do not get the special training they need to do their job.

Council do not have any special investigator , special prosecutor to investigate and prosecute a case of alleged judicial corruption. Government advocates argue on behalf of the Council in the court of law.

#### Communication of the law - x

#### Interest -

No rule makes Council's member personally responsible or accountable for Council action. Lack of personal responsibility and accountability through rules might cause inaction in the Council. Main job of the member of the Council , other than jurist keep them busy elsewhere.

Ideology -

Chief Justice and senior judges of the Council know that very soon they will retire from the post. They might not want to take action against their juniors. Some corrupt judge might have benefited to a member of the Council. In such situation that member may argue in favor of the corrupt judge.

CIAA -Rules -

CIAA has been empowered to investigate or make inquiry against improper conduct or corruption by a person holding any public office. Article 98 of the Constitution does not provide any jurisdiction to any official in relation to whom constitution itself separately provides for such action.

CIAA has its own procedural law and that is CIAA Act , 2048 (1991). Section 4 (3) prohibits CIAA to investigate against "judges." But court staffs do come under the jurisdiction of this Commission. for the purpose of CIAA Act 2048 (1991) the word 'corruption' mean that act which is punishable by Prevention of Corruption Act 2017 (1960). Prevention of Corruption Act , 2017 (1960) does not define the word 'corruption.' Instead the Act prohibits in particular a set of activities bribery , embezzlement and misappropriation. Here we basically concerned with bribery and bribery in relation to court cases.

### Opportunity -

CIAA also seems a reactive institution in its practice. It basically depends on news media and other outside information to initiate any action against an official. CIAA does not have any mechanism to collect information of corruption committed by the court staffs. Corrupt official commit corruption in a secret manner. Third party may not exist there . Chances of getting information about this crime seem very rare. A client who bribes to the officials do not inform to the CIAA.

### Capacity -

Judicial corruption by court staffs may happen in all courts , i.e. district , appeal and Supreme. CIAA has its office only in Capital City. CIAA does not have sufficient budget to run its investigation activities. CIAA lacks sufficient staffs. Civil servants who do not want to go out side of the Capital get transferred into the Commission. Mostly frustrated people are posted or transferred there. CIAA staff needs special training to deal with investigation of white collar crime. CIAA even suffers physical facility and other logistic support. Few law officers from Ministry of Law and Justice and Attorney General office are deputed to the Commission. After investigation by the Commission the case is defended by the government attorneys. Attorney General makes decision on whether to make appeal or not.

### Communication of Law -x

Interest -

CIAA staffs often do not enter into the court premises. So far we know till now no case has been filed against any court officers by this organization. Commissioners or officials may fear that they may have to face contempt case if they tried anything against court staffs. Even staffs of CIAA may have interest to get transfer to other corruption prone areas. CIAA often does not provide special incentive to the staffs. Without active help of staffs Commissioners may not find themselves able to work in a effective and efficient way.

Process -

CIAA highly depends on outsiders to get information in relation to the corruption. CIAA gets information mostly from the press. But in case of judicial corruption even media often do not come to the front. They may fear of contempt of court. In relation to judicial corruption CIAA might not get sufficient inputs. If , CIAA receives inputs , they may start investigation. Government officers who working in CIAA scrutinize and proceed investigation.

In its conversion process CIAA may ask for certification from the concerned party. CIAA may keep in custody in some reasons i.e. chances of distracting evidence , or creating hurdles in the investigating process. After completion of investigation , officials in CIAA submit it to the Commission. On the basis of processing of input Commission decides whether to prosecute or not to some body in a particular case. In

this out put process they heavily rely on information , facts or evidences and their truthfulness or gravity.

#### Ideology -

Minimum chances of career development may cause frustration in the staffs , and frustrated staffs may not help effectively or efficiently to the Commission.

#### Mini - Conclusion -

In this explanation part iii , we identified the behaviors of the key role players which contributes to perpetuate the social problem of judicial corruption. Since all the actors play their role to corrupt the judiciary. Other role occupants to the problem of judicial corruption are identified as lawyers , court staffs and clients of the cases. We explained their behavior in a ROCCIPI model. We slightly discuss about the behavior of implementing institutions in this part for reference.

The next part will discuss the alternative solutions that logically seem likely to overcome the causes of those problematic behaviors.

## Chapter -4

### PROPOSAL FOR SOLUTIONS

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#### Mini Introduction -

In the light of the explanations that seem consistent with the facts discussed in the previous chapter , the final chapter weighs the advantages and disadvantages of alternative proposals for reducing judicial corruption. In particular this chapter focuses on the proposed statute's implementing strategies and assesses its likely social costs and benefits. It also describes the further measures to ensure monitoring and evaluation of law's implementation after its implementation and its impact in overcoming the social problem of judicial corruption.

#### Non Preferred Solutions : -

##### 1. Maintaining Status Quo -

Maintaining Status Quo might constitute one course of action. But non-action does not help in solving problems. Rather it could help to exploit the system more.

Status Quo may continue to damage the credit of judiciary. Therefore , at present to maintain Status Quo seems most worst alternative.

### 2 Reducing discretionary power of the judges -

Power corrupts and excessive power corrupts excessively. But it is very difficult to run a government system without discretionary power to its officials. Justice does not seem a mechanical adjustment. Application of human mind seems a must in the justice system. To reduce discretionary power may create havoc in the country. People may think it as an attack to the independence of judiciary. Judiciary may react it. Corruption may be the problem created by few judges. A democratic government can not attack an institution instead removing few corrupt judges from their post.

### 3. Introducing Jury system -

Judges in Nepal decide on fact , on law and on sentencing. Nepal do not have jury system. Introduction of jury system may decrease judges power at least in criminal case. At present it may not be a feasible solution simply because people are not familiar with this system. But jury system may better work to decrease judicial corruption. For this purpose media and academia should work hard to carry out the pros and cons of jury system in the people. Therefore , jury system can work as a means of controlling judicial corruption with popular support of the system in future.

### Preferred Solutions -

### 1. Improving the appointment systems -

Before making any appointment of a judge , Judicial Council has to make public all name of the probable candidates. This measure may help the Council to collect important information about the possible appointee. This device may encourage to all law persons to remain honest and morally , ethically and academically sound. Because this device may create competitiveness among the probable candidates it may encourage meritocracy.

### 2. Ensuring fair sentencing -

Judicial Council should issue sentencing guidelines to overcome with the problem of excessive discretionary power in the criminal substantive law. Sentencing guidelines will control judges latitude to choose any punishment from the margin without explaining the decision. They should prevent judges from arbitrarily deciding on sentences and to curb corruption by limiting the judge's room to bargain with a bribing party.

### 3. Developing effective and efficient supervisory system -

Judicial Council has to develop both regular and sudden supervising system in the appeal and district courts. Such monitoring system may create sense of accountability among the judges. In such system supervisors have to meet with lawyers , clients and local social workers and collect reaction about the judge. After such supervision a supervisor must publish a report about the activities of the judge. Such report has to

cover all important information relating to the behavior and performance of the concerned judge.

#### 4. Developing effective and reliable information system -

Government Attorney and other law practitioners has to inform to the Judicial Council if they find any thing about misconduct , misbehavior , incompetence and other prohibited and unwanted activities committed by the judges. This legal duty may make responsible to the law persons and such compulsory mechanism may make accountable to the judge. Law must offer special prize or incentives to such informants. Not only this other whistle blowers , who inform anything about judicial corruption must get incentives. As well as , such whistle blower and witness should get protection from the system.

#### 5. Making more accountable and transparent to the Judicial council -

Judicial Council has to develop regular and calendar based meetings to evaluate all the information gathered in the Council Secretariat. Council should react on those information as soon as possible. When Council starts effective working then judges may have psychological effect that Council may take action against them. Council has to publish its evaluation report so that public could react on it.

#### 6. Preparing and submitting annual report -

Judicial Council has to prepare an annual report covering all its activities under the Constitution and governing laws. This report has to submit to His Majesty. The Law Justice and Parliamentary Affairs Committee of the Parliament will discuss and react upon the report. This system may make the Council more accountable. Council's accountability may make more responsible to the judges.

#### 7. Submitting wealth-net report -

Every judge has to submit his property statement before the Council. That report at the outset must show paternal property and their earning separately. Besides that a judge has to inform to the Judicial Council when he receives more than Rs. 1000/- or its worth property at a time other than regular salary from his office. They have to show bank accounts , their investment in Shares and Debentures. A judge has to report all property of other members who are in the same family.

#### 8. Strengthening Judicial Council -

To supervise and monitor the activities of the judges the Council has to work promptly , effectively and efficiently. For this purpose Council may need more funds, sufficient and trained manpower , adequate physical facility and reasonable support. Council may need special investigators and prosecutors. Council must develop record system and communication system as well.

#### Cost and benefit -

### Benefit -

Once the proposed solution come into operation the clients who directly or indirectly compelled to purchase justice will get relief. In this sense public at large will get benefit from free , fair and timely justice.

Concerning state Institutions will gain trust from the people. All the courts , Judicial Council and CIAA will gain public faith. To maintain legitimacy such institutions seek public faith. Credibility is one of the great assets to such institutions.

A corrupt judiciary can not check or control corruption , as a rule adjudicating mechanism , in other state mechanism. When other mechanism engage them in to corruption and there lacks efficient mechanism to control it than foreign donors and aid agencies also hesitate to invest money in such environment. So a less corrupt judiciary may help to create an investment friendly environment.

Suggested solutions try to create an environment of acceptability in the implementing agencies and will push the actors to fulfill their responsibility. They may help in institution building of concerned organization.

### Costs -

The Constitution of the Kingdom of Nepal guarantees free , fair , independent and competent judiciary. Corruption in judiciary directly violates these constitutional values. Violation of Constitution from inside the judiciary seems non-repairable cost to

the state system. Judicial corruption frustrates rule of law , it negates life , liberty and property of the citizen.

Free , fair and impartial justice by an independent and competent judge needs to all and everyone in a modern civilized nation. Corrupt judiciary creates cloudy environment both inside and outside of the country. Such environment frustrates foreign investment and negates national development.

Turning to solutions , it needs no extra financial burden to improve appointment system.

To ensure fair sentencing guidelines Council has to constitute a study team to study and draft sentencing guidelines. Rs. 3,00,000|- may need to prepare such guidelines and to supply it to all judges. Government has not to expend this amount every year. For effective and efficient supervisory system Council may need about 5,00,000|- every year. To make judicial council more accountable and transparent , Council may not need extra money. To prepare and submit annual report Judicial Council may need Rs. 30,000|- each year.

Submission of wealth net report is the duty of a judge. Council has to maintain its record and has to use it if necessary. So no extra money needs to implement this solutions. To strengthen Judicial Council seems a regular task. In this context , Council has to choose its priorities and prepare a work plan , computerization of office , other logistic , trained manpower may cost about Rs. 20,00,000|-. Government could cut down same post in other agencies and may create new posts in the Council.

For amendment of anti-corruption law no extra burden will come to the government. All the concerned agencies will work as usual. And finally , it cost nothing in developing a system to pay lawyers fee by a check in their bank accounts.

In this way the estimated financial cost does not seem unaffordable to a government to achieve above mentioned benefits.

Implementing measures the Bill proposes -

Judicial Council , CIAA and Parliament itself has to play a fundamental role as implementing agencies to check judicial corruption. All these organizations have to sensitized themselves against judicial corruption to meet the objective of the proposed Bill.

Parliament and its concerning Committee must supervise the situation. Members of Parliamentarians have to speak about non-performance of the Judicial Council and CIAA if so happen. House or Law Justice and Parliamentary Affairs Committee should pass strictures against non-action of the Constitutional organs like CIAA and Judicial Council.

Judicial Council has to meet in a regular interval of time to scrutinize and analyze all information against the corrupt judges. Prompt action of the Council may play effective role to curb judicial corruption. An equipped , informed and capable Secretariat of Judicial Council may play efficient and effective role to implement the provisions of the bill.

Pre-appointment screening system may help to recruit honest and qualified law persons in the judiciary. A weak person may weaken the institution. But a qualified and honest person may strengthen the institution.

Proposed bill tries to make accountable to the Judicial Council through responsible and transparent system. Proposed inter-organizational communication system may help to all organizations to implement the proposed bill in a effective manner. All the implementing agencies have to come closer and co-operate each other to achieve the proposed objectives of the bill. Though executive branch may not have direct role to play in implementing this bill. Even than executive should provide logistic support and other needed help to the implementing agencies.

Bar Council has to develop a mechanism to control non-ethical behavior within the members of the Bar. Bar has to issue notifications to report about corrupt behavior of any judge or court staff to the Council as soon as possible. Bar has to support 'pay by check' provision of the proposed bill.

Attorney General also has to issue orders to all government attorneys to report all information about judicial corruption to the Judicial Council immediately. Parliamentary Committee, who has a role to discuss about the proposed report submitted by the judicial Council, has to play a vital role in implementing this bill. Ultimately, in democracy, peoples representatives has to play a role of watch dog of institutions and further a role of guardian of rule of law, justice and welfare of the people at large. In committee they can warn the implementing agencies and if they became dysfunctional committee can react it.

### Monitoring Performance -

Some people raise a question who will judge the judge and who will police the police. Again here , we can say who will judge the judge of the judge and who will police the police of the police. Parliament , Judicial Council and CIAA themselves are Constitutional Organizations. Under the constitutional mechanism CIAA has to report to the Parliament. As we proposed , judicial Council also has to report to the Parliament. Effective role of the parliament or its Committee may develop sense of responsibility in these to organizations. When parliamentary committee starts to question the responsible persons of these Organizations , it may create sense of accountability on them.

When the government translates proposed measures (bill) into law , Judicial Council has to play an effective role in monitoring the behavior of the judges. Under this system Council could get more information , Council could have better internal mechanism through this bill. Council has been made more accountable. So let us hope it will feel responsibility to control judicial corruption.

### Mini - Conclusion : -

In this solution chapter iv , we suggested some alternative solutions to the identified social problem. Though all the solutions addressed in this part may not be addressed in the proposed bill , but the state system has to come toward to implement these other solutions thorough other measures. As we concluded that the judges are the

prominent role occupants to the judicial corruption. Due to same reason we have focused about the problematic behavior in this chapter too.

In this chapter we have tried to find out the winners and losers of the game. As well as proposed implementing measures and cost and benefit of alternative solutions have also been discussed in this chapter.

Chapter -V

CONCLUSION

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"Bribery is universally shameful .... In no country do bribe takers speak publicly of their bribes , or bribe givers announce the bribes they pay. No newspaper lists them. No one advertises that he can arrange to bribe. No one is honored precisely because he is a big briber or a big bribed."

(John T Noonan , Jr.)

Demands for judicial accountability continue to grow world wide ....Judicial corruption certainly exists; I know of no country that is completely free of corruption , will its insidious effect of undermining the rule of law.... The challenge to all governments... is to eradicate judicial corruption without intruding on the independence of the judiciary..... Both judicial independence and judicial accountability are vital for maintaining rule of law..... Judicial independence should not protect a judge from investigation and censure for a valid charge; judge should not be immune from the demands of justice for misdeeds. Indeed , there are several valid reasons for censure or removal of a judge , such as bribery , other corruption , commission of a felony and senility. (Judge J. Clifford Wallace)

This research report explained the social problem of judicial corruption. Some historical facts and foreign experiences were also traced in the paper. It provided an opportunity to the reader to understand whose and what behavior constituted the difficulty of judicial corruption. Subsequently through the explanation section we tried to explain and analyze the situation by using ROCCIPI check list. In the solution section

first we identified the alternative solutions and preferred solutions. There after , we analyzed cost and benefit of alternative solutions.

Finally , at the next step of this process we tried to bring a law into effect so as to remedy the problem more effectively and efficiently.

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# A RESEARCH REPORT ON CHILD LABOR IN NEPAL

## **Chapter 1**

### **Introduction:**

*"The right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." (Article 32(1) of the UN Convention on the Rights of the Child 1989)*

#### **Drama in real life**

##### **Cops' son enslaved –an episode**

"Khusheshwor Chaudhary, a 16 years old boy (14 when he was under captivity) was rescued from a carpet factory alongwith 75 other children recently. Khusheshwor happened to be son of a policeman .Khusheshwor ran away from home and became trapped by a cruel employer who did not allowed him to communicate with anyone and forced him to work in a dark, congested and cold room 14 hours a day. The parents made optimum efforts to trace Khusheshwor whereabouts. But the patience of parents to ever catch a glimpse of Khusheshwor was broken as no information about their son was received.

The local police raided the factory on the information given by one child worker who fled from the factory. The police freed 75 children. The father came to know about his son when he saw the news published in a newspaper with the photograph of the rescued children. The emotion-choked father met his lost son, son hugged each other and burst into tears. Reflecting on the terrible experience the boy underwent for 14 months, Khusheshwor said, " I shall never repeat such a mistake again." Once I reach home and talk with my mother, I will join the school." (Nepal Implementation Report 1998-99, ILO-IPEC)

There are 6.23 million children of 5-14 years in Nepal. This comprises 29.17 of the total estimated population of the country. Of all children aged 5-14 years, some 42% (2.6 million) children are found to be regularly working and 1.7 million children are found to be economically active.<sup>1</sup>

### **1.1 Brief statement of the problem and the solution:**

Child labor is now recognized as a serious social problem in Nepal. It is rooted in the history of the country, its agrarian structure, low level of development the poverty of the people.<sup>2</sup> The harsh living conditions, exploitative social relation and frequent natural disasters in the countryside force families and in even children to leave home on their own and migrates to urban areas in search of work. The growth of labor intensive industries such as manufacture of carpet and rapid urbanization has provided

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<sup>1</sup> Bhim Raj Suwal, Child Labor Situation in Nepal, Central Department of Population Studies, T.U., 1998 p.7

<sup>2</sup> Designing a National Framework of Action Plan, Child Labor in Nepal ILO Office, 1996, p.7

a market for child labor. Children often work under highly exploitative and hazardous conditions that are harmful to their physical, mental and moral development. Child laborers are physically, socially and economically exploited; and unaware about the dangers inherent in their labor, because most of them are illiterate and uneducated. In brief, working children in Nepal often come across the following problems:

- a) too young to work;
- b) health hazardous working conditions;
- c) low wages and long working hours;
- d) work at night;
- e) lack of basic education opportunity;
- f) separation from parents;
- g) abuse and neglect;
- h) physical , mental and emotional exploitation;
- i) no rest and entertainment;
- j) not having their basic needs;
- k) inappropriate child rearing atmosphere;
- l) lack of adequate parental love, care and understanding; and
- m) lack of social security and attention.

The Constitution of the kingdom of Nepal 1990, the Labor Act 1992 and the Children's Act 1992 prohibit the employment of child at any place and employment of minors in hazardous work. They make the employment of children below the age of 14 years a penal offence. Nevertheless, 42% (2.6 million) are found to be regularly working and 1.7 million children are found to be economically active.

Despite legal prohibition child labor exist everywhere in Nepal. No area of labor market seems free from child labor exploitation. All these happens because of

failure to enforcement of the laws. There is lack of co-ordination among the various organizations and lack of monitoring performance and evaluation of the implementing agencies such failure to implementation has been occurred in practice. Lack of transparency, accountability, punishment and reward system the officials working in the implementing agencies never shown their interests to implement the laws seriously.

In poor country like Nepal, Where 42% of the people are living under the poverty line, the alternative to work may be suffered acute hunger or starvation, so alternative to work is very harsh. In this context we may not think in the light of absolute elimination of child labor from the country, because it will not solve the problem. But, it may one of the cause of collapse of many industries due to banning on child labor, which causes adverse affect on the economy of the country. So, this research report and bill will focus on elimination of child labor under the age of 14 years child by prohibiting them at work and it will allow the child in between of 14-16 years old at work other than hazardous.

By changing in problematic behavior the problems towards child labor may be eliminated. The bill have proposed aims to take the following steps to eliminate and regulate the child labor:

- (a) Introduce a compulsory education program up through primary levels and conduct awareness program to buildup awareness among the parents and children about the ill effects of child labor.

- (b) Strengthen institutional capacity to implement national legislation with regard to child labor.
- (c) Strengthen the capacity of non-governmental organization to address the problem of child labor and to mobilize the civic society against it.
- (d) Introduce compulsory registration system of child employees.
- (e) Protect children from the worst forms of labor and sexual exploitation in the country.
- (f) Provides sanctions to prevent employer from employing children and establish child welfare fund to conduct various programs regarding elimination of child labor.

### **0.2 Fitting the problem in to the larger picture :**

Nepal is predominantly an agriculture country and child labor is not a new phenomenon in an agriculture predominant country. Over four fifths of the country's population directly depend on agriculture.<sup>3</sup> The remaining people are engaged in other occupations, mainly related to the production and service sector. Despite being an agriculture based country, quite a big majority of Nepalese farmers is either landless or is having a marginal ownership of land. The land holding system of Nepal is very unscientific and based on inequality.<sup>4</sup> Such a situation has caused survival crisis to a majority of families in Nepal. Fragmentation of cultivated lands, unemployment and a low literacy rate, which is 40% (1991), are other contributing

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<sup>3</sup> Population Census,1991, Central Bureau of Statistics, HMG/Nepal.

<sup>4</sup> Gauri Pradhan, Children at Risk, Realities and challenges.

factors for pushing rural population to engage themselves mostly in labor intensive subsistence.

In Nepal, 42% of the people are living under the poverty line.<sup>5</sup> The country's position in the worldwide human development index is 144<sup>th</sup> (1999) out of 174<sup>th</sup>.<sup>6</sup> A higher percent of the population live in rural areas than in urban areas. Since 80% of the Nepalese population live in the rural areas, poverty in Nepal remains mainly a rural phenomenon.<sup>7</sup> In rural areas, a child constitutes an integral part of the family workforce engaged in both formal and informal sectors. Children also may enter the labor force to earn an additional money for family subsistence. In this way, child labor, bonded child labor or children in debt bondage have become a part of Nepalese agricultural system.<sup>8</sup> Gradually, this process has been adopted in other areas like industry, mines, domestic service, plantation etc.

The influx of rural children has aggravated the child labor situation in urban areas of Nepal. The majority of child laborers in urban Nepal are migrant and the numbers are ever increasing. Migration of children causes separation of children from family and education and they have to often work under exploitative and hazardous conditions. Nowadays, child labor is considered a global issue. In 1995 at least 120 million of the world's children between the ages of five and fourteen years engaged in full time paid work.<sup>9</sup> Many of them worked under hazardous and unhygienic conditions and

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<sup>5</sup>World Bank Report 1999.

<sup>6</sup> Ibid.

<sup>7</sup>Nepal Implementation Report 1998-99, ILO-IPEC.

<sup>8</sup>Gauri Pradhan, Children at Risk, Realities and Challenges.

<sup>9</sup> Kauhik Basu, Child Labor: Cause, Consequence, and Cure, with remarks on International Labor Standards, Journal of Economic Literature VOL. XXXVII sept.1999.

more than ten hours a day. Now most of the third world countries face the challenges posed by child labor. Almost half of the world's child labor problems exist in south Asia.<sup>10</sup> Because of this growing poverty, famines, unfair economic relations and social injustice the children of this region are forced to take on a major burden of survival.

So as to it is recognized as a serious social problem in Nepal and it is also considered as a form of human exploitation. Children working at a young age not only lose their childhood but come across obstacles in their development process.

The Constitution of the Kingdom Of Nepal, Labor Act, Children's Act and His Majesty's Government of Nepal extremely prohibit the worst forms of child labor. But, unfortunately the numbers of children working long hours and in hazardous conditions continue to increase. To understand and resolve the child labor problem we must realize that there are worse things that can happen to children than having to work. In very poor regions, the alternative to work may be suffered acute hunger or starvation. Indeed, when child labor occurs as a mass phenomenon, it is likely that alternative to work is very harsh. So , until or unless we can change the socioeconomic structure of the society we may not be able to prevent this situation. The rights of child : concern of all is the philosophy of the rights of the child movement .<sup>11</sup> This is an integral inherent part of the broader social movement . The essence of the rights of child movement is to ensure a better and safe future to every child . If children are not protected today , our future will not be safe . Because ,

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<sup>10</sup> ILO Report 1995.

<sup>11</sup>Burden on childhood 1997.

children are the future and pillar of nation and the real future belongs to the children . Hence , it is an utmost need to herald the message of the rights of the child in the rural and remote areas where a majority of children are deprived of their basic rights . So to eliminate the problems of child labor and to protect the child rights and interests against any kind of exploitation , this report proposes a bill to change the causes of behaviors of the social actors towards child labor .

### ***1.3 The methodology proposed for this report:***

Law can not directly solve social problems it may only help to change problematic social behaviors. This paper uses a problem solving methodology in examining the issue of child labor in Nepal. Problem solving methodology, by requiring the use of data at every step, dictates an analysis based on reason informed by experience.<sup>12</sup> This report will focus on the causes of the problematic behaviors that comprise the problems relating to the child labor. To justify the bill's proposed measures the uses of problem solving methodology requires structuring available information to identify the nature and scope of the social problems and whose and what behaviors comprise these problems. Explain the causes of these specific behaviors; and demonstrate that the proposed bill's detailed measures logically seem likely to alter or eliminate those causes. The first chapter of this report summarized the problem relating to child labor within Nepalese socioeconomic context. As suggested by the problem solving methodology, the main body of this report will fall into three additional chapters. Chapter ii will identify the nature and scope of existing illegal

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<sup>12</sup> Seidman, Anne and Robert, *State and Law in the development Process*, Ch. 5.

employment of the children and describe whose and what behaviors contribute to perpetuating these problems. Chapter iii will expose and explain the causes of the relevant social actors problematic behaviors, Chapter iv will describe the bill's detailed measures and show that in the context of Nepal's available resources logically those measures seem likely to overcome the problems arising from the exploitation of the children.

## *Chapter 2*

### **The difficulty**

#### **2.1 Mini introduction:**

This chapter first describes the characteristic of existing child labor problem that persist in the Nepalese labor market. It also defines the social actors behaviors and that have contributed to continuing child labor in the face of constitutional and legislative prohibitions. This chapter will specify who have benefited or suffered as a consequence of those behaviors. It will also review the possible lessons suggested by similar behavior comparable in foreign countries. In short this chapter will;

- (a) Examine the superficial manifestation of the problem, indicating its scope in Nepal,
- (b) Consider the history of the child labor in Nepal,
- (c) Examine foreign experience with child labor, and
- (d) Examine the role of parents, guardians, employers and implementing agencies and the extent to which violate the children's basic fundamental rights.

## 1.2 *The nature and scope of child labor in Nepal:*

A child is classified as a 'laborer' if the child is 'economically active'. Governments and international organizations usually treat a person as a economically active or gainfully employed, if the person does work on a regular basis for which he or she is remunerated or that results in output destined for the market .<sup>13</sup>

Nepal has a population of 18,491,097 (1991 census) in which children of 0-14 years age group constitute 42.4% of the total population. The economically active population in 1991 was 56.6% of the total population. Of the 10-14 years age group 22.85% was economically active.<sup>14</sup> The number of working children is higher among girls. Of all working children, 55% are girls and are paid less than the boys. Of all children aged 5-14 years, some 39% do not attend schools and 70% of these children are girl children.<sup>15</sup> Farming, plantation , cattle grazing and agriculture bonded labor are most common forms of child labor in rural areas whereas factory works, domestic service, construction work are common in the urban areas. Parents, Employers, Children, Ministry of Labor, Child Welfare Board, Ministry of Education, Police, Village Development Committee and Municipality are responsible for increasing number of child labor in Nepal. Because of problematic behavior of these role occupants the problem of child labor becoming serious day by day.

Child labor in Nepal has two distinct dimensions :

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<sup>13</sup>Kaushik Basu, *Child Labor: Cause, Consequence, and Cure*, with remarks on International Labor Standards, *Journal of Economic Literature* VOL. xxxvii , sept. 1999, p. 1085

<sup>14</sup>An Overview and A Proposed Plan of Action, *Child Labor in Nepal* VOL. ii ILO, 1996, p.5

<sup>15</sup> *Nepal Implementation Report 1998-1999*, ILO- IPEC.

One is connected with the rapid urbanization and the growth of industries. In this , children are engaged in various occupations, such as the manufacture of carpet , the construction of roads and buildings , quarrying and mining as well as working in domestic service .

The other dimension is in traditional areas of work , such as agriculture , animal husbandry , hand looms , potteries , grocery shops and other family operated business .

According to the national population census of 1991, about 532,000 between the age of 10 –14 years are economically active . But, the actual number of working children in Nepal is much higher than this because children below 10 years also work in Nepal . The official data regarding child labor between the age of 5 – 14 years remains scare , but an unofficial estimates show an even higher number of child labor in Nepal . According to CWIN, an NGO which did pioneering studies in the field , the total number in child laborers was 5.7 million. It also concluded that out of a total of 300,000 child workers in carpet industries, 50% were children below 16 years of age . According to the survey of the CWIN's the distribution of child labor is as given below (table) :

An estimated figure of child laborers in Nepal:

Table two: Main area of child labor:

<b>Area</b>	<b>Number</b>	<b>Percentage</b>
<i>Agriculture and cottage Industry</i>	4,902,000	86.0%
<i>Service</i>	342,000	06.0%
<i>Commerce and</i>	171,000	03.0%

<i>small scale Business</i>		
<i>Industry</i>	136,800	02.4%
<i>Construction</i>	34,200	06.0%
<i>Others</i>	114,000	02.0%
<i>Total</i>	5,700,000	100%

Source: CWIN 1992

In Nepal, child laborers have to work long hours under very difficult circumstances . The average working day is 12 hours long , for which children are woefully unpaid . Children’s wages remain far below those of adults . For example , a child carpet laborer on an average earns about Rs.400 a month in addition to free food and shelter , while a stone quarry child who labors in brick kilns earns about Rs .1050 a month in addition to a temporary shelter and child in domestic service earns Rs. 50 to 500 with food , cloth and shelter . Whereas an adult unskilled, semi skilled, skilled and highly skilled laborers are getting RS1000, RS1050, RS1160 and RS1350 per month as basic salary respectively.<sup>16</sup>

*Map of Nepal:*

*Photographs of child labor :*

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<sup>16</sup> Child Labor in Nepal, VOL. II, An Overview and A Proposed Plan of Action , International Labor Office, 1995

*child working in the stone queries*

*Child working in the brick kilns*

*child working in the carpet industries*

*child working as porter*

Most of child laborers have to cope with chronic health problems. Child laborers , especially in the carpet industry , are reported to have developed respiratory

diseases, poor eye sight , ENT and gastro intestinal problems , malnutrition , anemia and skin problems .<sup>17</sup>

Some child laborers working in the formal and informal sectors, have experienced severe physical and sexual harassment . Police revealed number of cases of physical and sexual abuse of the child laborers .

Mainly children are heavily used at work in Kathmandu , Biratnagar, Birgunj , Janakpur, Jhapa, Pokhara, Chitawan, and Heatuad ; the main industrial towns of Nepal . Since there is no national survey study on child labor it is difficult to give accurate statistics on child labor using on that towns . However , it is estimated that 5.7 million children are directly involved in different forms of child labor in Nepal . The largest number of working children is found in the agriculture sector , followed by the service sector , industry , plantation , construction and other informal sectors. In industry carpet , garment and brick kilns are the biggest employers of child labor in Nepal.

### ***2.3 History of the child labor and attempts to resolve it :***

Child labor has been accepted as an integral part of the Nepalese economy and society from long time ago. Children in Nepal start working at a very young age. For many children in Nepal, the work day starts at dawn and extends late into the evening. Every day is a day of labor for these children; they are deprived of their

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<sup>17</sup> Annotated Bibliography on Child Labor in Nepal ILO- IPEC and foundation for Economic and Social Changes, 1999, p.6.

basic rights to protection, participation and development .<sup>18</sup> The exploitation of child labor system has not changed and children are forced to work in the discriminatory labor system. Slavery like bonded labor , forced labor , inconsistent and non existent wages and long working hours exist in the child labor system. Traditionally the children of sweeper community may join their parents in sweeping roads , the children of kamiyas (bonded labor ) who inherit the debt of their parent must work for the landlords; and in western Nepal Badi community's children must enter the community's profession of providing entertainment and prostitution at a very early age.

His Majesty's Government of Nepal has shown positive signs of commitment towards eradicating child labor at the international , regional and national levels . As a result HMG/ Nepal has promulgated the following legislation and ratified the following conventions and resolutions :

***Interim constitution 1950 :***

For the first time the Interim Constitution of the Kingdom of Nepal 1950 reflects concern for protection of children. It places an obligation on the state to make special laws for children . It also prohibited human trafficking and forced labor with the exception of compulsory service required by the state for public benefit . It prohibited the employment of a child below the age of 14 years old in industries , mines or in hazardous work .

***Constitution of the kingdom of Nepal 1958/1962 :***

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<sup>18</sup>Annotated Bibliography on Child Labor in Nepal , ILO- IPEC, FESC, 19999, p. 1.

The succeeding Constitution of the kingdom of Nepal 1958 and the Constitution of Nepal 1962 also contained similar provision for protection of children .

***Factory and Factory worker's Act 1959 :***

Employment of child labor in hazardous areas has been prohibited by the Factory and Factory Worker's Act 1959.

***Constitution of the kingdom of Nepal 1990 :***

The Constitution of the Kingdom of Nepal 1990 has also clearly stated that traffic in human beings , slavery and serfdom or forced labor an any form are prohibited . It also prohibits the employment of minors in factories , mines and in any other hazardous work.

***Nepal parties to the UN and SAARC Convention :***

Nepal has ratified the Convention on the Rights of the Child (CRC) 1989 and ILO Minimum Age Employment Convention (ILO convention No. 138). On the basis of these convention Nepal has enacted the labor Act 1992 and the Children's Act 1992.

Nepal has also signed the 1992 Colombo Resolution of the SAARC countries calling for progressive and accelerated elimination of child labor.

***Labor Act / Children's Act :***

In 1992 in pursuance of the mandate given by new constitution the parliament has enacted the Labor Act and the Children's Act. The Labor Act defines a child as a person who has not attained the age of 14 years , and a minor as a person who has attained the age of 14 years but not completed the age of 18 years . It prohibits

the employment of children below the age of 14 years in enterprises . The Children's Act which was enacted to safeguard the interests of the children, contains a number of provisions regulating child labor. These provision unlike, those of the Labor Act, apply to all children irrespective of wherever they work. It defines a child to be a human being below the age of 16 years and prohibits the employment of children below the age of 14 years. It also prohibits employment of any children between the age of 14 and 16 years as a laborer at night and in any work which is likely to be harmful to the child's health or hazardous to child's life .

Although there exist several laws for promotion and protection of the children's rights. Many provisions of these laws remain unimplemented, and violations of the rights of children still continue . The child labor problem still grows day by day and everywhere employers still exploit the children.

#### ***2.4 Foreign experience concern the nature of difficulty :***

Historically , the problem of child labor first appeared in Europe in the 16<sup>th</sup> century. This was first expanded in different forms and areas in the 17<sup>th</sup> century. As industry expanded in 18<sup>th</sup> and 19<sup>th</sup> century more children entered at high risk areas for example in Germany ,France and the U.K., the children had to work in factories : cotton mill , glass and match making and brick kilns.<sup>19</sup> In Norway and Sweden in contrast the children mainly went to work in farming , herding and fishing.

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<sup>19</sup>Gauri Pradhan, *An Overview of the Child Labor Problem in Nepal*, child Labor in Nepal VOL. 1, ILO Office, 1995,p.41.

For centuries , child labor appeared as a normal practice by society in most part of the century . Until less than fifty years ago the developed countries such as U.K. ,Germany ,U.S.A. Japan , France , Sweden , Portugal ,Belgium; many children worked in the factory , mines , cotton and carpet industries , domestic service etc.<sup>20</sup> Child labor remains as a global issue . More than 250 million children between the age of 5 to 14 still worked as laborers in more than 100 countries.<sup>21</sup> Table provides the estimated % of economically active children between 10-14 years of age in south Asian countries .

Table2: Percentage of children employed as laborers in some South Asian countries.

Bangladesh	30.12
Bhutan	55.10
India	14.37
Nepal	45.18
Pakistan	17.67

Source: ILO-IPEC Report

The children in many countries in Asia share the common pain and problems of child labor in their every day life . Trough out Asia the ILO estimates 150 million children engaged in child labor . Statistics have revealed that almost half of the world's child labor problems persist in South Asia .Because of growing poverty , famine , unfair economic relations and social injustice , the children of this region are forced to take on a major burden of their family survival .

In India employers use child labor for long hours at low wages in various industries especially in the textile and sports goods making industry. The number

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<sup>20</sup>Ibid.

<sup>21</sup> ILO Report 1997.

of child laborers in India constitutes 60 to 115 million , the largest number in the world .<sup>22</sup> Pakistan too employs children in carpet knitting industry, agricultural sector and domestic service . One revealed that 3.3 million children under the age of 14 years engaged labor in various industries .

The ongoing globalization process seems to contribute to growing child labor by providing ready access to areas of cheap labor that are rife with the above described conditions . In the third world countries child labor increasingly offers an attractive incentive to transnational firms seeking to keep labor costs down in the highly competitive global market .

### ***1.5 Whose and what specific behaviors constitute the difficulty :***

Law can not directly solve social problems it may only help to change laws to problematic social behaviors . Simply passing laws that prohibit child labor , like Nepal's Labor Act and the Children's Act, apparently proves ineffective.. Government can only try to use law to eliminate child labor by changing the problematic behaviors of the relevant social actors , which contribute to the problems . For this reason , the remaining of this chapter identifies and describes whose and what specific behavior comprise the difficulty .

#### ***a) Parents / Guardians:***

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<sup>22</sup> A Research Report On Employment of Children in Central Province , Presented by Sri Lankan Participant in Legislative Drafting Training Program Conducted in Boston University in 1998.

By sending children to work, the parents do not allow children to continue their education and seem to deprive the basic rights of education , nutrition and entertainment .

Guardians are responsible for taking care of children , may instead require them to work for other employer . They do not take care of children as they may have promise with their parents and send children at work for money .

***b)Children:***

Most of the children left home and migrated to urban areas from rural areas in search of work because of family disharmony, famine, starvation and poverty.

***c)Employers :***

Despite legal prohibition , employers employ children at unskilled work for lower pay than they would have to pay adults laborers . Employers also encourage the parents to send their children for work . As a result, laborers work in various formal and informal sectors like carpet and garment industries , confectionery , brick kilns , roads and building construction , transportation and stone quarries .

***d)Ministry of Labor :***

Lack of manpower and other adequate facilities the factory inspector and the labor officers are not able to inspect or observe the formal sectors on time to time . Lack of transparency, accountability, punishment and

reward system the official working in the labor ministry never feel serious to implement the laws.

**e) *Child Welfare Board :***

The Children's Act, enacted to safeguard the interests of the children , contains a number of provisions on child labor, provides for the establishment of the central child welfare board and a district child welfare board for each district as a implementing agencies .A person or organization preparing to engage a child of 14 to 16 as a laborer should send the details and obtain approval from district child welfare board. However, in no district the child welfare board perform this task.

**f) *Ministry of Education :***

A lack of access to educational facilities and schooling is often connected with the incidence of child labor . The government of Nepal is committed to a policy of making basic and primary education accessible to all school children of ages 6 – 10 by the year 2000 . For this Ministry of Education has different divisions , directorates, district education offices which help to formulate , implement , monitor and evaluate education policies and programs. Even though primary education is free and a tremendous growth in the education sector is visible , children in remote areas in the country do not still have access to basic education . Ministry of Education seems to failure to aware the people about the advantage of education.

**g) *Village Development Committee / Municipality:***

Nepal is a country of villages . There are 4000 village Development Committee and 42 Municipality constituted under the Local Self Government Act. The president /Mayor, vice president deputy Mayor and the members of the VDC and Municipality are elected by the local peoples as their representatives for the period of five years . They are responsible to carry on developmental activities and look after the other day to day affairs of the villages and town . They have very easy access to each family of the village and town. But they are not taking interest to take action against exploitation of children and aware the people about the importance of education.

**h)Police :**

Police may investigate the issue relating to child labor only upon receiving the complaint by someone . But, police never shown their interest to take over the issue being proactive.

***1.1 Who benefits and who suffers from the present situation :***

In the present situation employers benefit by employing cheap child labor to get more profit . Employers never feel any risk of increasing facilities and wages as the child do not cry for their rights and in this way they are getting much benefit .

Parents and guardians are also getting benefits by earning extra income by employing their children .

Children suffer from the present situation . They always overworked under exploitative and hazardous conditions from morning to night for low wages . They are deprived of their basic right and loosing their childhood without proper care , love and education .

The country also suffer from the present situation . The child labor problem may become an obstacle the development process of the country and it may create many crimes and social evils in the society . Uneducated child laborers will contribute to lowering the country's literacy standards and it will aggravating future unemployment problems.

### ***2.7 Mini conclusion :***

Despite legal provision in relation to control the child labor , child labor exists everywhere in Nepal . The implementing authorities have neither effectively implemented the law nor formulated plans of action for the implementing laws, already in the books, for limiting the employment of children and protecting their rights.

Designing the bill to change the relevant social actor's problematic behaviors requires first, the identification of the factors that causes those behaviors. The proposed bill must provide detailed measures that would alter or eliminate those causes , through enabling them to behave in the way bill prescribes.

## Chapter 3

### **Explanations:**

#### **3.1 Mini Introduction :**

The preceding part described that what constitutes the difficulty and identified the relevant social actors whose problematic behaviors comprise at difficulty. In this chapter the report will focus on the problem of child labor in terms of the various legal and non legal factors influence the relevant actors' problematic behaviors . The next chapter 4 will propose detailed measures to solve the problems manifested by the difficulty in order to overcome the causes of those behaviors for the development and protection of children's welfare .

#### **3.2 *The state of existing laws as it presently bears on the behaviors identifies in the difficulty chapter :***

The Constitution of the Kingdom of Nepal prohibits the employment of minors in factories , mines and in any other hazardous work.<sup>23</sup> It places on an obligation on the state to make special provisions to safeguard the rights and the interests of children .

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<sup>23</sup> Article 20 of the Constitution of the Kingdom of Nepal 1990.

In pursuance of Constitutional mandate the Parliament has enacted the Labor Act 1992 and the Children's Act 1992 . Both Acts prohibit child labor . The Labor Act only applies to the formal sector whereas the Children's Act applies to all children wherever they may work .

**The Labor Act 1992:**

Section 5 of the Labor Act state ' no child shall be employed in any enterprise' and section 2 (h) defines child as a person who is below the age of 14 years. Section 2 ( i) of this Act consider a person who is between 14 and 18 years of age as a minor and as per the section 5 (2) a minor may ordinarily be employed for the period of 6 a. m. to 6 p.m. Rule 43 of the Labor Rules 1993 prescribes that minor who have not attained the age of 16 years shall not be employed on hydraulic or other dangers machines or the operations hazardous to health. Section 4(2) of the Labor Act says , regarding employment of minor worker the employer shall notify the details to the labor office. Section 57 of this Act provides a fine of between Rs.1000 to Rs.5000 to any person who acts in contravention of the provisions of this Act, or the Rules or written orders or directives issued under this Act. Section 56 of this Act provides a fine of between Rs.500 to Rs.2000 to any one who causes obstruction of any government officials engaged in any function or proceeding under this Act , or does not submit a register or other document which the government official wishes to have produce before him or does produce or allow him to examine any worker or employee whom he wishes to examine or to have produce before him in connection with the inquiry relating to violation of the labor laws .

The existing provision of the Labor Act requires the labor officer and factory inspector to inspect enterprise and to detect the employment . But, it does not have power to instruct the parents or guardians to furnish information about employment of children .The Labor Act

does not make any provision for parents and guardians to submit information to labor office in relation to employment of their children . The penalties prescribed for violation of the provisions of the Labor Act are mild and may not act as a deterrent .

**The Children's Act 1992 :**

Section 2 (a) of the Children's Act 1992 defines a child as boy and girl below the age of 16 years . Section 17 of this Act lays down that a child who has not attained the age of 14 years shall not be employed in any work as a laborer and it also prohibits the employment of a child between the age of 14 and 16 years as a laborer at night from 6 p.m. to 6 a.m. Section 18 prohibits engaging a child in work which is likely to be harmful to the child' health or hazardous to the child's life . Section 25 prohibits a guardian to engage a child in work which requires more labor than his physical capacity . Section 46 says a person or organization engaging a child of 14 years or above as a laborer should send a photograph and the particulars of the child in the prescribed form to the District Child Welfare Board . Section 48 requires a corporate body or an industrial enterprise to obtain the approval by the child welfare officer as well as the parents or the guardians of the child before employing a child of 14 years or above as a laborer . This Act also does not have any provision for parents and guardians to furnish an information to District Child Welfare Board in relation to employment of their children. In case any person who commits an offence in contravention to section 17 ,18, 46 or 48 will receive a prison for a term which may extend to three months or pay a fine up to three thousand rupees under section 53 of the Children's Act. The Children's Act does not specify a form of controlling and regulating mechanism .

**Anomalies and deficiencies in the legislation on child labor :**

1. The Constitution of the Kingdom of Nepal 1990 requires that no minor shall be employed to work in any factory or mine or engaged in any other hazardous work . The constitution does not define the word minor . It is therefore necessary to examine various legislation to explain the meaning of the word. Under the civil code 1963 , any transaction carried out by a minor below the age of sixteen years is void . The legal age for marriage with the consent of parents is 16 years for a girl and 18 years for a boy . the contract Act 1966 allows a person who has attained the age of 16 years to enter into a contract . The Labor Act on the other hand , defines a child to be a T person who has not attained the age of 14 years and a minor to be a person who has attained the age of 14 years but has not completed 18 years . The Act prohibits the employment of children in an enterprise . The Children's Act which defines a child to be below 16 years of age also prohibits employment of children below 14 years of age , as a laborer .

It would appear from the above analysis that existing legislation on child labor fall short of the constitutional obligation concerning admission of children to employment in a factory or a mine or in any other hazardous occupations. Besides, they are in conflict with the Contract Act as a person below 16 years of age cannot enter into a valid contract of employment .

2. The Labor Act prohibits the employment of persons below 18 years of age in certain specified jobs. The prohibition does not extend to various other kinds of work which are likely to be hazardous to the safety , health or morals of young person . The ambit of the

provision of the Children's Act is larger. It prohibits the employment of the children (i.e. persons below 16 years), which is likely to be harmful to their health or hazardous to their life. This, however, leaves out young persons between 16 and 18 years of age. Further no guidance is provided in this Act as to what constitute hazardous work and the procedure to determine it.

3. The provision concerning the protection of minors at work in the Labor Act and the Labor Rules relate to night work, the maximum hours of work and the maximum weight of load that may be carried. The Children's Act also deals with night work, the maximum hours of work and has, in addition provisions on rest intervals. Neither of the Acts has, however, any provision on medical examination to ascertain the fitness of young persons for employment. The Children's Act, on the other hand, applies to all types of work places. It is also concerned with both the employment of a child as a laborer as well as the work done by a child. However, its provision relating to the work done by a child are concerned only with physical effects of work on the child. The Act does not prohibit or regulate work which is detrimental to the education and mental growth of a child.

### 3.3 **Foreign experience as to possible causes of the behaviors at issue :**

In most of the third world countries; especially in our neighboring countries; despite of legal prohibitions parents persist in requiring their children to work for wages to support their families. For example; in India, Pakistan and Sri Lanka poverty forced parents to send their children to work to earn additional income for family subsistence.

Present labor laws of these countries empower government implementing agencies to act against employers of children. India has committed itself to act against child labor . Article 24 of the Indian Constitution states that ‘ No child below the age of 14 years shall be employed to work in any factory or mine or employed in any hazardous employment .<sup>24</sup>The government of India has enacted the child labor Act in 1986. Pakistan has also enacted a strict law prohibiting child labor in formal sector, but it does not cover informal sector. Sri Lankan Employment of Women, Young and Children Act 1956 describes employing children under the age of 12 years old as an offence . This Act provides for a person who employ children under the age of 12 years will receive three months jail sentence or 1000 rupees fine or both.<sup>25</sup>

Although the laws prohibit child labor in India , Pakistan and Sri Lanka , but these countries still face a serious child labor problems. This experience supports that prohibiting child labor by law only will not help to solve this problem.

### 3.4 Non legal factors affecting the primary role occupant's behaviors :

To explain the causes of each set of role occupant's problematic behaviors, this section first look at the existing legal provisions and then interrelated non- legal factors likely to influence their decisions as to whether and how to obey them .

#### i)Parents /Guardians :

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<sup>24</sup> Article 24 of the Constitution of India.

<sup>25</sup> Srilankan employment of Women, young and Children Act1956.

The existing Labor Act and the Children's Act prohibits the employment of children under the age of 14 years and consider it as an offence . Neither the Labor Act nor the Children's Act impose any obligation to the parents or the guardians of children to furnish any information to the labor office or the child welfare board or the child welfare officer regarding employment of their children .Section 25 of the Children's Act prohibits a parents or guardians to engage a child in work which requires more labor than his physical capacity can bear or which may hurt his religious or cultural usage. Section 48 of the Children Act requires a corporate body or an industrial enterprise to obtain the approval by the child welfare officer as well as the parents of the child before employing a child of 14 years or above may work as a laborer. Those who fails to comply with this section shall be punished pursuant to provision of section 53 . Since the law does not require the parents or guardians to furnish any information and in this way they are faraway from abiding the legal provision in relation to prohibition of child labor . As parents or guardians does not bear legal obligation , they will not inform the labor office or child welfare board , about employment of their children , because they need additional income for family subsistence .

**a) Opportunity and Capacity :**

Parents or guardians send their children at work for wages, because they have the opportunity to do so to earn cash for the family needs. Most parents or guardians in the rural and urban poor areas think that sending children at work is not only an additional income but also a reduction of a hungry stomach to be fed in the family. They can easily send their children for work , because the children also like to work

for their family , to feed their younger brothers and sisters who suffer from starvation

**b) Communication of the Law :**

Most of the parents or the guardians do not have sufficient knowledge about the ill effect of child labor , due to illiteracy . They also do not know about the legal provisions that prohibit child labor .

**c) Interest :**

The whole family members knows that employment elsewhere will give them money to overcome the problem of starvation . So, whenever their children reach to the age of 9 or 10 years old , they used to send them for domestic services or other informal sector to work and earn for home . Most of the parents or guardians can not go elsewhere to work , because they should have to look after the home and other children . So, they easily send their children to work for money .

**d) Ideology :**

In the rural areas , most of the parents or guardians regard their children as ‘ economic assets’ and send them out to work , no matter how hard the job would be . Parents or guardians do not care about their children’s education or their childhood , because they themselves have to work for their families when they are at the same age . They also think children have responsibility to earn money or food to feed their

family .They only think , parents have discretionary powers to send their children to work for wages.

ii) **Children :**

The Labor Act and the Children's Act do not prescribe punishment for children because they decide to work for wages instead of attending school. They have come with their own initiative .

a) **Opportunity and Capacity:**

Children have capacity to go to work for wage , because their parents allow them to go .

As a cheap laborer they have capacity to get unskilled job in a cheap labor market .

Sometimes because of family disharmony the children ran away home and go in search of work in the urban areas . There are nearly 500,000 children in Nepal who have migrated from rural areas to urban centers.

b) **Communication of Law :**

Children do not know about the legal provision in relation to child labor . Neither parents nor any other organization warn them about ill effect of child labor and disadvantage of abandon education .

c) **Interest :**

Children can earn money and spend some of it for their personal requirements.

***d) Ideology :***

Children also feel responsible to support their family , when they hear their little sisters and brothers cry for food. When their parents can not fulfill their demands and requirements at school they leave school and go to work . They do not understand the ill effect of child labor and inherent danger to their life . They never feel importance of education for their potential future in their lives .

***iii) Employers :***

Section 4(2) of the Labor Act requires an employer shall have to notify to the labor office about the employment of any child worker with specifying the details of job, remuneration and service conditions of concerned worker. Employers also liable to submit any information , document or register to the factory inspector or the government employee designated by the labor office .

Section 48 of the Children's Act , requires the employer to obtain the approval by the child welfare officer and the parents or the guardians of the child before employing a child of 14 years or above .

Despite all these legal provision , employers will like to employ child under the age of 14 years , because of cheap docile labor . They seldom inform to labor office or child welfare officer when they employ the children in between of age 14 and 16 years old.

***a) Opportunity and Capacity :***

Because of poverty , socio- economic exploitation , unequal distribution of land and unemployment parents and child have no alternatives other than go to work in formal and non- formal sector . Parents send their children to work for wage in their work places . Children often report job , because of family disharmony . Employer encourage to employ child as they are cheaper in comparison of adults workers and neither implementing agencies monitor child labor , nor other labor conditions in the formal or informal sectors. In western Nepal the children of the tharu community often trapped by the landlords in virtual slavery under a bonded labor system .<sup>26</sup> The children have to work for the landlord along with their parents to pay off the debt owed by the parents .

***a) b) Communication of Law :***

Although the employers have a good knowledge of the relevant laws , but employers do not hesitate to employ the children, because they know that implementing agencies seldom intervene unless it will not become a serious public concern.

***b) c) Interest :***

Employers can get higher profit by employing a child at work , because they have to pay much low wage in comparison to the adults worker. They are getting much benefit by employing children as they are uncomplaining , and the child never refuse to overwork and never demand other facilities.

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<sup>26</sup> Designing a National Framework of Action Against child Labor in Nepal, ILO Office, 1996,p.3.

**c) d) Ideology :**

Employers never care about children's rights and childhood. How to make more profit is only one their ideology and for this they always exploit the children by engaging them at hard work with low pay . For the cheap labor they do not hesitate even to engage the child under the age of 10 years at work .

**Implementing Agency :**

**1. Ministry of Labor :**

The Ministry of Labor is responsible for the formulation, co-ordination, and implementation of the policy of the government and laws relating to labor. It is the apex body for the labor administration . Department of Labor functions under the supervision and control of Ministry of Labor . It is entrusted with matters relating to labor administration and enforcement of labor legislation. Under the Department of Labor there are nine labor offices throughout the kingdom of Nepal. These are located at the main industrial city/ town e.g.;Kathmandu, Biratnagar, Birgunj, Jhapa, Janakpur, Hetauda, Pohkara, Butwal, and Nepalgunj. As per the Labor Act labor offices deal with industrial relation matters and inspection of enterprise for enforcement of labor legislation concerning health and safety at work , minimum wage, minimum age for employment .

The factory inspector is responsible for overseeing the safety and health of workers . Pursuant to section 67 of the Labor Act he has been empowered to enter the premises of a

factory , examines the structure , plants and equipment and raw materials from the viewpoint of safety and health and provide guidance to employers and issue appropriate orders .There are three or four factory inspectors are working under a labor office.

In 1995 , the Ministry of Labor has opened a special section for enforcement of the provisions on the minimum age for admission to employment in the carpet industry .

Despite legal prohibition and provisions , child labor exist everywhere in Nepal . The implementing agencies are fail to implement the labor law effectively.

a) **a) Opportunity and Capacity :**

Labor officers and factory inspectors are empowered by law to enter the premises of a factory and examine the factory from the point of view of safety and health. They have also powers to provide guidance to employers and issue appropriate orders. They are responsible for the maintenance of harmonious industrial relation, welfare of workers, their safety and health at work , minimum age for employment and inspection of enterprise for enforcement of labor legislation.

The labor office may fine of between Rs.500to Rs.2000 to those person , who causes obstruction of any government employee engaged in any function or proceeding under the Labor Act or does not submit a register or other document which the government employee wishes to have produce before him.

The Department of Labor may also fine of between Rs. 1000 to Rs.5000 to those person who acts in contravention of the provision of the Labor Act or Rules or written orders or directives issued under the Labor Act .

Despite all these powers and sanctions provisions labor officers and factory inspectors and Department of Labor seems failure to achieve the goal regarding prohibition of child labor . Only nine labor offices can not monitor and implement the law in 75 districts throughout the kingdom of Nepal. Lack of adequate manpower and other physical facilities the labor officers and factory inspectors are not able to inspect the premises of the factory on time , and they do not have capacity to inspect the informal sector ,because the Labor Act does not applies to informal sectors.

b) **Communication of Law :**

As a law implementing agency the Department of Labor, labor offices and factory inspectors have a very good knowledge of the labor legislation , but they do not go on with those activities due to lack of facilities and manpower . One of the main reason of being inactive for the enforcement of the law is no parents, guardians, child, and any other person or organization have never shown their interest to file complaint against the employment of child .

c) **Interest :**

Officers engaged in enforcement of the law relating to child labor might not interested to implement, because they are not getting any rewards or facilities for eliminating or controlling these problems . As no one is complaining for engaging a child as a laborer , they may not interested to fulfill their responsibilities in this regard .

d) **Process :**

As there is no system of registration of employment of child and no parents , guardians and children or any other person or organizations have never filed complaint or furnish any information regarding the child labor the implementing agencies are not able to take necessary action in this regard . Similarly , the Labor Act does not empower the implementing agencies to monitor and enforce the laws in informal sector. Thus , the problem regarding child labor is becoming more and more serious. And, exiting law enforcing process of implementing agencies does not help to change behaviors of role occupants of child labor activities . They may only punish or issue directives or orders to control the problem, but they may not take any action to reform the behavior of the role occupants.

***e) Ideology :***

Unless law requires otherwise implementing agencies' officials thinks that their responsibilities regarding child labor only begin when some one complain. They will never prefers to take off the problem from the point of view of prevention of child labor .

***1. Child Welfare Board :***

The Children's Act 1992 provides for the establishment of the Central Child Welfare Board and a District Child Welfare Board for each district , as a implementing agencies to enforce the provision of this Act .

Any person or organization engaging a child of 14 years or above as a laborer should send the details and have to obtain an approval from the district child welfare board , before employing any child at work . This board has a duty to maintain a list of children working as laborers and has given the power to approve the engagement of children.

The Children's Act rather emphasizes to protect the interests of child and other welfare matters than prohibition of child labor or regulate the child labor without exploitation . Because , the Children's Act neither prescribes an adequate enforcement system nor its provide any other rights to regulate and take any action against the child employers .

The Central Child Welfare Board only concerned with the activities relating to policy of children's rights and interest. The District Child Welfare Board are responsible to enforce the provision of child welfare and protection of this Act. But, in many district still this board has not been established, the establishment of the board is suppose to be under process. In this way , the Act has not being implemented in many district .

**a) Opportunity and Capacity :**

The Children's Act does not prescribe an adequate enforcement system, because it does not provide for a government enforcement system and relies on the initiative of a private person to take the cause of a victimized child before a court of law . The District Child Welfare Board has the duty to maintain list of children working as laborers and has been given the power to approve the engagement of children above 14 years of age . It may for the these

purposes call for information from the employers. However, neither the members of the Board nor the child welfare officers who work under the Board have the normal power of an inspection or to enter a workplace . For this reason child welfare Board and child welfare officers have not capacity to implement the law in real sense .

**b) Communication of Law :**

Central Child Welfare Board will advise and assist to government on the policy matter relating to interest of child and protection of child rights . District Child Welfare Board and child welfare officer should have to implement the Children's Act. So, as a law implementing agencies Child Welfare Board and child welfare officers have a good knowledge of the law . Since , the law does not prescribe an adequate enforcement system , and does not empower the inspection right, the implementation part of the law became very poor .

**c) Interest :**

Since, the Board and child welfare officer have no power to inspect or take action against illegal child labor, they became inactive and not interested to implement the law .

**d) Process :**

As there is no system of registration of employment of child and no parents, guardians and children or any other person or any organizations have never field complaint or furnish any information regarding child labor , the implementing agencies are not able to take necessary

action in this regard . Similarly, the Children's Act does not empowers the implementing agencies to monitor the laws by inspecting the working places . Thus , the problem regarding child labor is becoming more serious. And, the exiting law enforcing process of implementing agencies does not help to change behaviors of role occupants of child labor activities . They may only maintain a list of children working as laborers, but they may not take any action to reform the behavior of the role occupants

*e) Ideology :*

Implementing agencies thinks that they are only responsible for maintain a list of working child . They think they should not have to think as a implementing agencies in relation to regulating child labor affairs to overcome the problem of child labor .

*3. Ministry of Education :*

His Majesty's Government of Nepal is committed to a policy of making basic and primary education accessible to all school children of ages 6-10 by the year 2000 . The Ministry of Education is responsible for the formulation , co ordination , and implementation of the policy of the governments and laws relating to education . The Ministry of Education believe that education should be looked upon as the most important intervention against child labor.

*a) Opportunity and Capacity :*

The Ministry of Education has different divisions , directorates and district education offices (in 75 districts ) which help to formulate , implement , monitor and evaluate policies and

program relating to education . Education Inspector responsible for monitor the academic activities of the school in each district . Ministry of Education has made the primary education free in public schools . The government contributes 64 percent of the costs and the community bears the rest of the school running expenses for the primary education . Government is also encouraging the parents to send their children to school for their bright future . The Ministry of Education under the Basic and Primary Education Projects and the Primary Education Development Project are providing technical and financial inputs for the construction of primary school in villages since 1992.

b) **Communication of Law** :

The official working under the Ministry of Education have a very good idea of the law relating to education . They are also enforcing the laws in relation to providing the education within the limited resources. But, they might not have any idea about the labor laws and children's right.

c) **Interest** :

Since, there is no legal provision regarding compulsory education up to primary level , the officials working under the Ministry of Education are not able to enforce the laws in relation to providing the primary education.

d) **Ideology** :

The officials , responsible to enforce education laws only thinks to enforce the legal provision regarding education laws. They might not feel their responsibilities to eliminate the child labor problem.

#### **4.Village Development Committee / Municipality :**

The Local Self Government Act empowers the VDC / Municipality as a responsible authority to look after the matters relating with villages or town. It is entrusted to take care the developmental and non developmental activities of villages and towns.

##### **a) Opportunity and Capacity :**

VDC / Municipality have a very easy access to the people residing in their jurisdiction , because they were representative of the local peoples. So as to they can maintain a very good record of school going children and the children who is working as a laborer. They are also responsible to keep the record regarding birth, marriage and death of the people residing in their own jurisdiction. But, the laws does not empower them to look after the matters related with the child labor.

##### **b) Communication of Law :**

The president/ mayor , vice president / deputy mayor and the members of the VDC / municipality may have a good knowledge of the legal provision of the Local Self Government Act , but they do not have any ideas about the labor laws.

c) **Interest :**

Since there is no legal provision which empowers to VDC / Municipalities to look after the matters related with eliminating the problem of child labor , they have never shown their interest in this regard.

d) **Ideology:**

In the absence of legal rights in relation to check and control the matters regarding child labor, they have never feel responsible in this regard. Without having a legal obligation , being a political authority they might not prefer to interfere the matters affects the personal affairs of the people residing their jurisdiction.

**5. Police :**

The Labor Act does not say anything about powers of police regarding child employment . But the Children's Act , Police Act and Police Rules empower the police to investigate and take necessary action against the child abuse .

a) **Opportunity and Capacity :**

Although , the Nepal police force does not have sufficient police force to monitor child abuse problem in informal sector , but the community police ( a special police sell established for community problem ) is working in urban areas to solve the various community problem including child abuse . Indeed Nepal police need more force if they inspect work places to detect child labor . Certainly , proactive action of police will create a fear among the employer of child labor to employ children and abuse them.

b) **Communication of Law** :

Police have a very good knowledge of law . As a law implementing agency , the community police can communicate the parents , guardians and children about the ill effect of child labor and abuse of child . In some urban areas the community police is educate and aware the people about all these thing . But , lack of police force they are not able to conduct such program in rural areas .

c) **Interest** :

In those areas , where the community police is not working , again on child labor matters the interest of police persuades them to remain silent due to busy engagement in other subjects and due to lack of facilities . Police may get rewards easily , when they enforce criminal law rather than detecting employers of children .

d) **Process** :

As there is no system of registration of employment of child and no parents , guardians and children or any other person or organizations have never field complaint or furnish any information regarding child labor the police is facing difficulties to take necessary action in this regard. Similarly the Labor Act does not empowers the police to monitor and enforce the laws in relation to eliminate the problems regarding child labor. And, the existing law implementing process of police does not help to change behaviors of role occupants of child labor problem .

e) **Ideology** :

Police thinks that their main responsibilities are concerned with only how to maintain law and order situation in the society . So, they often concentrate on criminal and civil disturbances issues, rather than thinking on other social problems .

3.5 **Mini – Conclusion** :

Despite the Labor Act 1992 and The Children’s Act ,1992 prohibits the child labor , the problems relating child labor is increasing day by day. The application of labor Act is limited to formal sector only . Even it does not extend to enterprises employing less than 10 persons except those located in industrial districts. This Act does not apply to agriculture and plantations except tea estate established under law . The entire informal sector which constitutes a sizable part of the economy is out side of its purview. On the other hand , the Children’s Act applies to all types of work places , but it does not prescribe an adequate enforcement system . The child welfare board and child welfare officer does not have power to inspect the working places and take necessary action against child labor .The causes of growth of child labor problems is related with various social actors behaviors . Parents send their children to work , because they need money to feed the family . Many house holders and employers related with formal and non formal sectors employs children , because they provide cheap labor . Ministry of Labor concentrate only on labor disputes related with formal sectors . Child Welfare Board only keep records of child employment and the law does not empower it to take any action against child labor activities .VDC and Municipality may help to eliminate the child problem in their jurisdiction , but the law does not empower

them to do so. Police only respond to complaints because they do not have facilities and manpower .

In this chapter we have analyzed the problematic behavior that constitute the difficulties specified under chapter 2 . Based on the explanations discussed in this chapter , in the following chapter 4 we will propose our solution with detailed measures of a bill logically likely overcome the causes of the role occupants problematic behaviors , thus inducing them to act in ways required to eliminate the child labor problems in Nepal .

## *Chapter 4*

### *Proposal for solution*

#### 4.1 *Mini Introduction* :

In the forgoing chapter we have discussed the possible causes for the problematic behavior of relevant role occupants . In this final chapter we first discuss the advantage and disadvantage of alternatives proposal for solution as incorporated into the proposed bill . It then outlines the difficulty in child labor problem . This chapter also outlines the

implementing strategies in the proposed bill and assesses its likely social cost and benefits . The proposed bill also includes measures to ensure monitoring and evaluation of its implementation in overcoming the social consequences of child labor problem .

#### 4.2 Alternative proposal for solution :

This research report identify the following alternative solutions that will help to eliminate or minimize the causes of problematic behaviors .

##### 1. Introduction of compulsory education for the primary level :

Education plays a very good role for the prevention of child labor , because it is essential in order to be liberated from all kinds of exploitation .An overwhelming majority of children in our society has been deprived of the right to education . Even now the education for the primary level is free , but parents have not shown their interest to send their children to schools . Therefor , to increase the number of school going children , an introduction of incentive program like providing food for education program is must . That will help parents to send their children to schools , because the parents will get relief from the burden of day meal .

##### 2.Build up social awareness program concerning child labor and the rights of child :

The main cause behind the backwardness is the social ignorance . Most of parents are poor and illiterate , therefore , living in a condition of sheet ignorance . This has made the parents indifferent towards their child's development . Most of the parents , guardians and children does not know about the ill effect of child labor . Even they does not know the high risk areas

of exploitation . If we build up social awareness program concerning child labor and the rights of child , the parents may not send their children to work .

3. Introduce village centered development program and prevent rural migration of children and family for urban areas :

Migration from rural areas to urban areas is one of the main cause of child labor . To prevent rural migration of children and family for urban an introduction of village centered development program is necessary . By introducing such development program the parents will have an alternative means of survival and that may minimize the child labor .

#### 4.3 Preferred Solution :

Existing Labor Act and the Children's Act have failed to avoid child employment . The Ministry Of labor and the Child Welfare Board are responsible to implement the laws relating to prohibition and prevention of child labor , but child labor exist everywhere in Nepal > It proven the failure of implementing agencies regarding enforcement of the laws towards prevention of child labor problem .

For the effective and successful implementation of legal provision towards prevention of child labor a new , separate and special legislative scheme needs to be required with the following objectives :

- a) the provision relating to employment and self employment of children and work done by children should be consolidated in one Act ;

- b) the provision of the Act should apply equally to work , employment and self employment ;
- c) labor inspection system should be extended progressively to cover all kinds of work places;
- d) there should be an effective and a single authority to enforce the law ;
- e) there should be clear provision to specify the minimum age for admission to different types of employment ;
- f) compulsory registration of child laborers in the labor office or village development committee or Municipality ;
- g) introduce fix minimum wages for working children;
- h) establish child welfare fund for the welfare and rehabilitation of children at risk can be met;
- i) provide strict sanctions and compensation provision for violation of law .

To keeping with the view on the above objectives of the new consolidated legislative scheme , this bill will introduce following solutions and empower the Ministry of Labor to implement bill's provisions . and, the bill will also suggest to repeal the provision relating to child labor of the Children's Act 1992.

**1. Empowering the implementing agency :**

a) Establish a high level co- ordination committee under the chairmanship of the Labor Minister to co ordinate the affairs relating to child labor with other Ministry and private sector.

b) Empowering labor officers and inspectors to deal with the provision of employment of children. For this , more labor offices should be created and more labor officers and inspectors should have to appointed . They need more physical facilities to deal with this problem . Labor officers and inspectors shall empower with the capacity to take prompt action against the users of child labor and they should also empower to take action against the violation of laws .

c) Empowering the Director General of the Department of Labor to settle dispute relating to disobeying the order and directives of the labor officers and inspectors by a brief inquiry . This will help to avoid unnecessary delay that needs for court procedure .

d) Empowering the Labor Minister to act as an appellant body and to revise decision imposed by the Director General of the Department of Labor . The Appellant court will be the final appellant body .

e) Empowering the village development committee and the municipality to register and monitor the activities relating to child employment . The bill will empower them to collect information and take necessary action against the employers of child laborers.

f)The bill will empower the police to take inquiry and investigate on child labor issues and give their assistance to labor offices or village development committee and municipality to control and prohibit the child labor problem .

g)The bill will empower the labor court to make a decision on the dispute relating to child labor . The decision of the labor court will be review by the Appellant Court .

**10. Implementation Provision :**

- a) The registration of employment of child shall be made compulsory. The parent, guardians and employers shall liable to furnish the information about employment of child to the concerned labor office and where such office is not exist , such information shall be furnish to concern village development committee or Municipality. This will help to get information regarding child employment and it will also help to government to formulate their annual plans and programs . On the of basis registration of employment the Department Of Labor shall updated and maintain the record of child employment .
- b) Establishment and enhancement of facilities of foster home . That will help to take care more children who need shelter in foster home.
- c) Suspend or cancel the registration of enterprises which use child labor for work . That will help to employers to avoid children employment .

#### **4. Funding :**

- a) Establishment of child welfare fund for the purpose of implementing child welfare activities . This fund will also use for social awareness program against child labor and payment of incentives for informants , who provide information regarding employment of children.

#### **2. Sanctions :**

- a) The bill will empower the labor office to enforce a fine up to Rs.5000 on employers who disobey the instructions, orders or directives given by labor officers or inspectors ,
- b) The bill will empower to Director General of the Department of Labor to enforce a fine up to Rs.10000 on employer or may suspend or cancel the registration of enterprises , who employ the children under the age of 14 years,
- c) The bill will empower the labor court to enforce a fine up to Rs.10000 who make physical injuries to the children by engaging him at hazardous work. Or 6 months jail sentence or both or prescribe certain amount for compensation on employer

#### **4.4 The winners and losers under the solution .:**

Parents and children will be winners under this solution , because parents will realize the necessity of continuous education of children. They will learn to manage without getting help

of their children's earnings and children can enjoy the childhood and continue with their studies.

Employers in the informal and formal sectors will be losers, because they will not be able to get cheap labor .

Country will benefit from having more skilled and educated labor force in the future .

Employment of adults instead of child in formal sector will help to reduce poverty of Nepal.

#### 4.5 *The implementing measures the bill propose :*

The bill will constitute a high level co ordination committee under the chairmanship of the Minister of Labor. This committee will responsible to co ordinate governmental and non governmental agencies in relation to enforce the legal provision of child labor . Further , The bill will introduce a child welfare fund to provide moneys that can use for incentive scheme which pay incentives for the people who provide information relevant to child labor and child care activities. Finance for the propose find will born from , fines enforce on employers , donations , country's annual budget and collection through child welfare tax. The bill will build up a system to collect , store and process information regarding the employment of children . Village development committee and Municipality will supply information relevant to child labor . Collection of information will be the main job of the village development committee and municipality . They can also take action against child employers , for this they may take police assistance . the Ministry of Labor , Department of Labor ,labor officer and inspector will attend to law implementing procedure . The bill will empower the Minister

of Labor to make regulation for funding , information collection procedure , criteria of the selection of beneficiaries for incentives, authorization and procedures of management .

The bill will empower the Minister to accept complains regarding disputes of employment of children and appeals from grievance parties and come to a decision and settle the problem.

The Minister will also act as an appellant body against the Department of Labor decisions

. He will issue regulation propose fund and its management procedures .

#### **4.7 Social cost and benefit of the solution :**

As soon as the proposed bill will come into force the implementing agencies will be able to enforce the laws in a effective manner . In this way the problem regarding child labor will certainly be reduce . The children will get an opportunity to go to school and may enjoy their childhood. School going children will get relief from the burden of hard work and physical , mental and sexual exploitation .Opportunity of education will certainly lead them on the path to bright future.

Parents will also know about the ill effect of child labor and benefit of education . For the bright future of their children they will prefer to send their children to school instead of work. In the future they will also get benefit with their educated and skilled children .

By reducing in the number of child labor , the country will also get benefit . It will also get relief from many social evils and crimes. The country will be benefited in its process of development by getting contribution of its educated and trained citizen.

Now , this research report is not able to analyze the cost to be incurred for enable the capabilities of implementing agencies in terms of enhance their physical and other resources including skilled and trained manpower. Further , it is not able to identify how much the government shall have to bear for the management of compulsory education up to primary level and how much expense will required to be estimate for the establishment of foster home to rehabilitate the child labor.

#### 4.8 **Impact the new law will have:**

- a) This solution will help to enhance the quality of life of the poor people in the rural areas. Parents get more income because they can get opportunity to involve in various incomes generating activities and it will lead to a comparatively good living standard. Children can go with their education and that will a future investment. Educated children will get better employment opportunities and better incomes.
- b) Employers may suffer for a short period but later they can employ skilled and educated laborers rather than unskilled children. Farmers, civil servants, businessman may face some difficulties to find domestic servants and cheap labor, but they may be able to find 14 years old children to go on with their business .to enhance the quality of life of the poor people in the rural areas. Parents get more income because they can get opportunity to involve in various incomes generating activities and it will lead to a comparatively good living standard. Children can go on with their education
- c) No possibilities of corruption, because of easy implementing procedure. Bill's provisions to accept public information will help to minimize corruption. The Director General's

powers to settle dispute and Minister's appellate powers may have an implication of corruption. But it will minimize, because these powers will be limited with only administrative matters. The bill does not contradict with other rules of laws, the constitution or human right laws. The bill will enhance the standard of living of vulnerable, e.g. women, children, poor and minorities, and give them more facilities to educate themselves. That alone will help them to get better employment opportunities.

e) The bill will provide a strict provision for supervision to be made by the implementing agencies. Inspector and labor officers shall have to inspect the working places on time to time and submit a report on it to Department of Labor and the Department will also be liable to inspect the working places as per requirement on a regular basis. Department of Labor has to submit a monthly report to the Ministry of Labor regarding implementation of labor laws. Finally, the Ministry of Labor has to submit an annual report to the Cabinet and the Parliament and also be liable to publish the report publicly.

#### 4.9 **Monitoring performance :**

The high level coordination committee will monitor the activities of implementing agencies and the officials working under this. It will also assess and evaluate performance of responsibilities of these agencies and officials and provide reward for best performance and take action against ineffective implementation performance. In this way, implementing agencies will be responsible to discharge their duties in an effective manner.

The Ministry of Labor shall submit an annual report regarding implementation of law to the cabinet and the parliament . the cabinet and the parliament shall have to assess the report and take necessary action in relation to failure of implementation . Effective role of cabinet and the parliament may develop sense of responsibilities in implementing agencies behavior and the officials working under this .

The Ministry of Labor shall publish the annual report for the transparency of its monitoring performance and the enforcing performance of the implementing agencies. By doing so, the public will get aware about all these things and public may evaluate the performance of concerned authorities. In this manner the implementing agencies will feel more responsible to discharge their assigned duties.

#### 4.10 *Mini conclusion* :

In the process of working towards elimination of child labor , it is essential that the problem is approached and tackled from different angles . Awareness needs to be created against all forms of child labor , particularly those considered extremely hazardous . Primary education should be made compulsory and various plans such as providing income generating program to people below the poverty line and the plan for effective implementation of law related with child labor can be introduce. The implications clearly support introduction of the proposed new legislation to eliminate the child labor problem in Nepal . The proposed bill's will help to gain better living condition and more peaceful social environment for rural areas.

### Conclusion

Child labor is a consequence of wide spread poverty and inequality in society. It is also a cause of poverty and thus became self perpetuating. But, the elimination of child labor cannot wait for the elimination of poverty. In view of the complexity of the problem, it must be dealt with by the society as a whole.

So, to break the vicious circles of poverty and child labor , the government should combat unemployment , pursue agrarian reforms, abolish bonded labor , remit the debt of the bonded persons and rehabilitate them socially and economically .

Secondly, we may say that lack of access to educational facilities and schooling is often connected with the incidence of child labor . Therefore , education may be looked upon as the most important intervention against child labor and establishment of compulsory education up to primary level definitely leads to the elimination of child labor.

Finally, the enforcement of child labor is found very poor and ineffective in the developing country like Nepal . In most of the developing countries, the abolition of child labor has been taken as a popular device rather a concrete action for the cause. Without its effective implementation , legislation to prevent and control child labor will not succeed.

This research report aims to demonstrate that the proposed bill will help to eliminate the problem of child labor under the age of 14 years old by introducing measures to correct the problematic behaviors of the relevant social actors especially the employers, parents, and above mentioned government implementing agencies. In this report difficulty chapter

identified how the problem exist and whose and what specific behaviors of social actors constitute the existing problems. The explanation chapter of this research report tried to identify the causes of the problematic behaviors of the social actors. The solution chapter proposed measures logically likely to overcome the causes of problematic behaviors and proposed solution for changing of problematic behaviors of social actors which causes the problems relating to child labor.

**A Bill made to provide for the matters relating to prohibition and regulation of**

**Child Labor**

**Preamble:**

Whereas it is expedient to protect and advance the best interests of children and minors; to coordinate in the best interests of children and minors the efforts to protect children and minors made by the several agencies of government and civil society concerned with the welfare of children and minors; to develop means for effectively implementing the provisions of this statute, in part by enlisting the aid of civil society and private individuals; and to develop long term plans for improving the social conditions that give rise to the pressure on parents and children to put children and minors to work;

Now, therefore, the Parliament has made this Act in the twenty- eighth year of the rule of His Majesty's King Birendra Bir Bikram Shah Dev.

## **Chapter 1 Preliminary**

### **1.Short Title and Commencement:**

- (1) This Act may called as the "Child Labor (Prohibition and Regulation) Act, 2057 (1999).
- (2) This Act shall come into force from such date as His Majesty's Government of Nepal may specify by a notification published in the Nepal Gazette.

### **2.Definitions:**

In this Act:

- (a) "Child" means a person who is below the age of 14 years.
  - (b) " Minor" means a person who has attained the age of 14 years but has not completed the age of 16 years.
  - (c) "Minor Worker" means a minor employed on the basis of remuneration to work in an enterprise and the term also includes the labor of minor used for all economically active work.
  - (d) "Hazardous work" means a work that threatens the health or physical or moral safety of a child, or work mentioned in schedule 1.
  - (e) "Enterprise" means a factory, organization, firm or a group established under the prevailing laws for the purpose of an industry, company, profession or service.
  - (f)"Employer" means a person who employs a minor worker under the provisions of this Act.
  - (g)"Manager" means a person responsible for performing the daily functions in the enterprise as administrative chief.
- h
- (h) "Remuneration" means wages given to the minor worker in cash or kind from the employers in consideration for their work.
  - (i) "Ministry" means His Majesty' Government, Ministry of Labor.
  - (j) "Minster" means Minister for labor.
  - (k) "Department" means Department of Labor.
  - (l) "Director General" means the Director General of the department.
  - (m) "Labor Office" means the Labor Office constituted under department pursuant to this Act.
  - (n) "Labor Officer" means the Labor Officer appointed under this Act.
  - (o) "Inspector" means the Inspector appointed under this Act.
  - (p) "Village Development Committee" means the Village Development Committee constituted under the Local Self Government Act,1998.
  - (q) "Municipality" means the Municipality constituted under the Local Self Government Act, 1998.
  - (r) "Labor Court" means the Labor Court established under this Act.

- (s) "Prescribed" or "as prescribed" means prescribed or as prescribed in the rules made under this Act.

**Chapter 2**  
**PROHIBITIONS ON THE EMPLOYMENT OF CHILDREN AND MINORS**

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**3. Child Labor:**

An employer may not employ a child as a laborer.

**4. Bonded Labor:**

An employer may not employ a child or a minor in payment of a debt owed by a person.

**5. Hazardous Work:**

An employer may not employ a minor in a hazardous employment, nor in an employment defined in schedule 1.

**6. Employment of a minor in a factory or mine:**

An employer may not employ a minor in work in a factory or a mine.

**7. Prohibition to engage a minor at work without consent:**

An employer may not engage a minor at work without having his consent.

**8. Minimum wage and maximum hours:**

(1) An employer shall pay a child or a minor employed by the employer at a wage not less than the minimum wage as set pursuant to Section .

(2) An employer shall permit a minor employed by him to work not more than six hours in twenty four.

(3) An employer shall grant a child or minor that the employer employs rest periods not fewer or shorter than those specified pursuant to Section .

**9. Employer of minor domestic workers:**

An employer shall:

- (a) ensure that a minor domestic worker in the employer's attends school regularly;
- (b) pay minor's school fees.

### Chapter 3

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#### ADMINISTRATIVE PROVISIONS CONCERNING MINOR WORKERS

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#### **10. Approval for employment:**

- (1) The employer shall submit an application to the concerned labor office for an approval to engage the minor before employing at work, with specifying the details relating to working hour and types of work.
- (2) The labor officer shall make an inquiry upon the application received pursuant to sub-Section (1).
- (3) The labor officer shall provide an information of the approval for employment to the Employer, if he thinks reasonable to employ the minor at work, after making an inquiry pursuant to subsection (2).

#### **11. Health check up of minor:**

Upon receiving approval for the employment pursuant to section 6, before employing the minor the employer shall arrange for a registered medical doctor, designated by the labor office, to examine the health of the minor.

#### **12. Employment of minor worker:**

On the basis of recommendation of physical fitness made by the registered medical doctor pursuant to Section 7, the employer may employ the minor as a worker for the job mentioned in Section 6.

#### **13. Details of minor worker working in enterprise:**

The employer shall submit the following details about a minor worker to the Labor office within fifteen days of their employment in enterprise:

- (a) name, address age and photographs;
- (b) name and address of their parents or guardians;
- (c) date of employment;
- (d) assigned job ;
- (e) working hours;
- (f) residential arrangement;
- (g) physical fitness;
- (h) remuneration and other facilities;
- (i) Other details as prescribed.

**14. Provisions for minor worker working outside enterprise:**

- (1) An employer may employ the minor worker to engage at work outside of enterprise.
- (2) Within fifteen days of the employment of minor worker pursuant to sub-section (1), the employer shall submit to the labor office or the concern Village Development Committee or Municipality, the details mentioned in Section 9.

**15. Responsibilities to furnish an information:**

Within fifteen days of a minor's employment, the parents or guardians shall furnish information relating to employment of the minor to the labor office or concern Village Development Committee or Municipality.

**16. Responsibilities of Village Development Committee or Municipality:**

Within seven days of receiving such details or information pursuant to Section 10 and 11, the Village Development committee or Municipality shall furnish the information or details to the concern labor office.

## **Chapter 4**

### **Provision relating to condition of service**

**17. Confirmation of service:**

The employer shall responsible to employ the minor worker as a permanent worker; after their completion of One year of service period.

**18. Security of service:**

The employer shall not dismiss the minor worker from the service without having reasonable or appropriate grounds.

**19. Suspension or dismissal from the service:**

- (1) The employer shall suspend or dismiss the minor worker from the service, in case the minor worker commits one of the following activities:
  - (a) stolen of any property of the enterprise;
  - (b) dishonest in the transaction of the enterprise;
  - (c) absent in the work more than three days without information;
  - (d) accepts or offers bribes;
  - (e) imprisoned on being convicted on a criminal offence involving moral turpitude;
  - (f) destroyed intentionally any property of the enterprise; and
  - (g) consume alcoholic drinks while on duty.
- (8) Before suspension or dismissal from the service pursuant to sub-section (1), the employer shall provide minor worker an opportunity for explanation against the charge.

**20. Change of ownership shall not adversely affect:**

Any change in the ownership of enterprise shall not affect the terms or conditions of service of the minor worker.

**Chapter 5**  
**Working Hour**

**21. Working hour:**

The employer shall not deploy a minor worker in work of enterprise for more than 6 hours per day or 36 hours per week.

**22. Working time:**

The employer shall not deploy a minor worker in work of enterprise after before 6 a.m. or after 6 p.m.

**23. Intervals for refreshment and rest:**

- (1) After deploying a minor worker continuously for three hours in the work of enterprise, the employer shall provide a half an hour period of interval for refreshment and rest to minor worker.

- (2) The employer shall include the interval provided for refreshment and rest pursuant to sub-section (1) in the working hour of the minor worker.

24. **Attendance register:**

The employer shall keep a register of the minor workers' hours of work in the enterprise.

**Chapter 6**  
**Health and safety**

25. **Provision relating to health and safety:**

The employer shall make the arrangements in the enterprise as mentioned below:

- (a) to keep enterprise clean and tidy by clean daily including with germicidal medicines, necessary arrangements of proper drainage and coloring from time to time;
- (b) to make arrangements for adequate supply of fresh air and light as well as proper temperature in the working rooms;
- (c) to make arrangements of removal and disposal of solid waste during production process;
- (d) to make arrangements of prevention of accumulation of dust, fume or vapor and other impure materials in working room which would adversely affect the health;
- (e) to make arrangements of necessary preventive personal devices for protection of health from adverse effects of noise emanating during work process or from any other sources, and make provision which would produce less noise during the work process;
- (f) to avoid any congestion in the work room or work place leading to injurious to the health of minor worker and avail working space to each minor worker, according to the nature of job, or normally fifteen cubic meters and, the height above four meters from the floor surface;
- (g) to make provision for sufficient supply of pure potable water during the working hours;
- (h) to make provision for separate toilets for male and female minor workers at convenient place;
- (i) to declare as non smoking zone in all or some parts of the enterprise, according to the nature of its work; and

- (j) to conduct compulsory health check-up of the minor workers once every year in enterprise .

**26. Protection of eyes:**

The employer shall arrange necessary protective measures to protect the eyes of the minor workers from injuries.

**27. Provision for safety against fire:**

- (1) In each enterprise the employer shall make arrangements of necessary modern equipment for safety against fire.
- (2) The employer shall make provision for easy exit from the enterprise during emergency.
- (3) The employer shall make other essential provision in relation to safety from fire including fire-fighting devices.

**28. In relation to lifting of heavy weight:**

The employer shall not engage the minor worker in the works of lifting, loading or transporting of any load in enterprise, which is likely to cause physical injury or harm to the health of minor worker.

**29. Orders for arrangements of safety:**

If the enterprise has not make an arrangement of the health and safety as mentioned in this Act, the labor officer may issue a written order to the enterprise to make necessary arrangements of health and safety as per the provision of this Act within specified time.

**30. Powers to determine the standards:**

Ministry of labor may specify the standards of safety required under this chapter as per necessity, by publishing a notice in the Nepal Gazette and informing the Village Development Committees and Municipality.

**Chapter 7**  
**Welfare Provision**

**31. Welfare Fund:**

The enterprise shall open a separate account in a Bank to deposit an amount specified by the Department Of Labor, for the welfare and benefit of minor worker .

**32. Provision relating to compensation:**

In case any minor worker of the enterprise is physically wounded or seriously hurt or dies while employed by the enterprise, the employer shall provide the amount of compensation as prescribed to the minor worker or his family.

**33. Gratuity, provident fund and medical expenses:**

As prescribed by the Ministry the enterprise shall provide the facilities relating to gratuity, provident fund and medical expenses to the minor worker or his family.

**34. Leave:**

As prescribed by the Ministry the enterprise shall provide the public holidays, sick leave, special leave, leave with remuneration or without remuneration to the minor worker.

**35. Provision relating to residence:**

- (1) Each year the employer shall allocate the amount specified by the Ministry for the arrangements of residence for the minor worker.
- (2) The enterprise shall maintain a separate fund to deposit the amount allocated under sub-section (1).
- (3) As prescribed by the Ministry the enterprise shall operate the fund maintained under sub-section (2).

**36. Canteen:**

Where fifty or more minor worker engage in work at one time, the employer shall provide for a canteen.

**37. Vocational training:**

The employer shall arrange vocational training for the minor worker related to that worker's.

**38. Providence of school education:**

An employer employ of a minor worker for domestic service, shall provide an opportunity for the minor worker regularly to attend school.

## **Chapter 8** **Remuneration**

### **39. Minimum wage fixation committee:**

- (1) The ministry shall constitute a minimum wage fixation committee, consisting of labor expert and representative of the enterprise, for the recommendation of fixation of minimum wage of the minor worker.
- (2) The minimum wage fixation committee constituted under sub-section (1) shall submit a recommendation to the ministry in order to fixation of minimum wage for the minor worker with taking consideration of nature of job and market price of the country.
- (3) On the recommendation of minimum wage fixation committee the ministry shall fix the minimum wage for the minor worker.
- (4) The ministry shall publish a notification in relation to fixation of minimum wage in the Nepal gazette, for the information of general public.

### **40. Complaint against employer:**

- (1) The minor worker or the parents or guardians of minor worker may file a complaint against the employer in the labor office, if the employer does not provide remuneration to the minor worker for his work.
- (2) The labor officer shall make an inquiry on the complaint filed pursuant to sub-section (1).
- (3) The labor officer may order to employer to pay the amount of remuneration and amount equal to remuneration as compensation to the minor worker, if the labor officer found the employer does not provide remuneration to the minor worker; while making an inquiry pursuant to sub-section (2).

**41. Complaint against employer to the Village Development Committee or**

**Municipality:**

- (1) The minor worker or the parents or guardians of minor worker; working outside of enterprise, may file a complaint against the employer in the concerned Village Development Committee or Municipality, if the employer does not provide remuneration to the minor worker for his work.
- (2) The Village Development Committee shall make an inquiry on the complaint filed pursuant to sub-section (1).
- (3) The Village Development committee or Municipality may order to employer to pay the amount of remuneration and amount equal to remuneration as compensation to the minor worker, if it found the employer does not provide remuneration to the minor worker; while making an inquiry pursuant to sub-section (2).

**42. Appeal:**

- (1) The party dissatisfied with the order issued under section 36 or 37 may file an appeal to the Director General within thirty-five days of receipt of information of such order.
- (2) The decision made by the Director General on the appeal filed under sub-section (1) shall be final.

**Chapter 9**

**Appointment of Officers and other provisions**

**43. Appointment of Officers:**

The minister may appoint the labor officer and inspector as per necessity, by publishing a notice in the Nepal Gazette.

**44. Powers, duties and functions of labor officer:**

- (1) The labor officer shall have the following powers, duties and functions:
  - (a) to inspect the working place where the minor worker work, at any time;
  - (b) to examine the documents and details concerning with the minor worker;
  - (c) to examine and inspect the arrangement made by the employer in relation to the health and safety, welfare and benefit of the minor worker and in case such arrangement not

found in accordance with the provision of this Act, the labor officer may order to employer to perform as per the provision of this Act.

(d) to prepare the details relating to the minor worker, working within the jurisdiction and send it to the department in each month.

(e) to try to resolve the disputes arisen between minor worker and employer.

(3) the other powers, duties and functions of the Labor officer shall be as prescribed.

#### **45. Powers, duties and functions of inspector:**

(1) The inspector shall have the following powers, duties and functions:

(a) to inspect the working place where the minor worker work at any time;

(b) to examine the building, plant, machine health and safety measures of the enterprise.

(c) to examine the documents and details concerning with the minor worker;

(d) to examine and inspect the arrangement made by the employer in relation to the health and safety, welfare and benefit of the minor worker and in case such arrangement not found in accordance with the provision of this Act, the labor officer may order to employer to perform as per the provision of this Act.

(e) to prepare the details relating to the minor worker, working within the jurisdiction and send it to the department in each month.

(f) to try to resolve the disputes arisen between minor worker and employer.

(2) The other powers, duties and functions of the inspector of the labor officer shall be as prescribed.

#### **46. Removal from the employment:**

(1) In case of inspection of working place of the minor worker, if the inspector found a child being engaged in work, the inspector shall immediately hand over the child to his parents or guardians.

(2) If the parents or guardians of the child were not found or identified, the inspector shall hand over the child to the foster home.

- (3) The Village Development Committee and Municipality shall be responsible to inspect whether the children were being engaged or not in their own jurisdiction, on time to time.
- (4) The Village Development Committee and Municipality shall do in accordance with sub-section (1) or (2), if it found a child being engaged at work while making an inspection pursuant to sub-section (3).
- (5) The employer shall bear the all expenses incurred in course of handing over the child to the parents or guardians or the foster home.
- (6) The Village Development Committee and Municipality shall issue an order to the employer to remove the minor from work immediately; if it found the employer has been engaging the minor worker at work contravening the provision of this Act.

**47. Inspection report:**

The inspector shall submit an inspection report to the labor office with specifying the details related with inspection, within fifteen days of the inspection has been done under this Act.

**48. Powers, duties and functions of Director General:**

The Director General shall have the following powers, duties and functions:

- (a) to examine and inspect the working place, where the minor worker does work;
- (b) while making an inspection or examination of working place where the minor worker does work; if the Director General found the arrangements in relation to safety provided by the employer has not been followed under this Act, the Director General shall issue an order to the employer to make an arrangements of the safety as mentioned in this Act;
- (c) if the employer fails to arrange the safety measures in the working place where the minor worker does work as per the order issued under clause (b), the Director General shall order to close such enterprise or working place until such arrangements would not made pursuant to this Act;
- (d) to receive the details from labor office, Village Development Committee and Municipality in relation to the working children throughout the kingdom of Nepal and make it up to date.

**49. Appeal:**

- (1) The employer dissatisfied with the order issued by the Director General pursuant to section 44, may file an appeal to the minister within thirty- five days of receipt of information of such order.
- (2) The decision made by the minister on the appeal filed under sub-section (1) shall be final.

**Chapter 10**

**Co-ordination Committee**

**50. Constitution of co-ordination committee:**

A co-ordination committee consisting with the following members shall be constituted to do or cause to do necessary works in relation to welfare and benefit of children and to co-ordinate among the various authorities for the prevention of child labor:

- (a) Minister - Chairman
- (b) Secretary, Ministry of Education- Member
- (c) Secretary, Ministry of Finance- Member
- c (d) Secretary, Ministry of Women and Social Welfare- Member
- d (e) Secretary, Ministry of Local Development- Member
- e (f) One representative nominated by minister from
- f the NGO, working in the field of children's rights- Member
- g (g) Secretary, Ministry of Labor- Member-Secretary

**51. Powers and Duties of Coordinating Committee:**

**52. Power to issue an order or directives:**

- (1) The co-ordination committee shall issue an order or directives to the concerning authorities in relation to fulfill the objectives of this Act regarding prevention of child labor and protect the rights of the minor worker.
- (2) It shall be the duty of the concerning authority to follow the order or directives issued by the co-ordination committee pursuant to sub-section (1).

**Chapter 11**

**Children Welfare Fund**

**53. Children welfare fund:**

- (1) The ministry shall establish a children welfare fund for the prevention of child labor and to conduct the activities in relation to welfare and benefit of children.
- (2) The following amounts shall be deposited in the fund established under sub-section (1):
  - (a) the amount appropriated by His Majesty's Government;
  - (b) the amount obtained from the foreign government, corporate body or person;
  - (c) the amount obtained from national corporate body or person;
  - (d) the amount obtained from other sources.
- (5) The ministry shall operate the fund established under sub-section (1), as prescribed.

**Chapter 12**  
**Sanction and Compensation**

**54. Sanction:**

- (1) The labor court may punish a sentence of jail up to 6 months or fine RS. 10000 or both to the employer who employs the child or minor at work contravening the provision mentioned in section 3, 4 or 5.
- (2) The labor officer may punish a fine of RS. 5000 to the employer who commits the following acts:
  - (a) employs the minor at work without having an approval from labor office pursuant to section 6;
  - (b) employs the minor at work without having a health check-up pursuant to section 7 or employs the minor at work against the health check-up report;
  - (c) failure to submission of details pursuant to section 9 and 10;
  - (d) disobey the order issued by the labor office, inspector, Village Development Committee and Municipality.
- (5) The labor court or the labor officer may punish the sentence of jail or fine as double as mentioned in sub-section (1) or (2), to the employer who commits such acts again.

**55. Compensation:**

- (1) The labor court may order to employer to pay the reasonable amounts for compensation to the minor worker who suffers physical injury; while performing the duties.
- (2) Notwithstanding to sub-section (1) the labor court may order to employer to pay the reasonable amounts for compensation to the child engaged at work contravening the provision of this Act and suffers physical injury while performing the duties.

**56. Appeal:**

- (1) The parties dissatisfied with the decision made by the labor court pursuant to sub-section (1) of section 49 or section 50, may file an appeal to the appellate court within thirty-five days of receipt of information of such decision.
- (2) The parties dissatisfied with the decision made by the labor officer pursuant to sub-section (2) of section 49, may file an appeal to the Director General within thirty-five days of receipt of such decision.

## **Chapter 13**

### **Dispute Settlement**

#### **57. Complaint may be filed on the behalf of child or the minor worker:**

The parents' guardians or any organization working for the welfare of children may file a complaint against the employer on the behalf of the child or the minor worker to the labor officer or the labor court for contravening the provision of this Act.

#### **58. Establishment of Labor Court:**

The ministry may establish a labor court by publishing a notification in the Nepal Gazette, for the settlement of disputes relating with employer and minor worker.

## **Chapter 14**

### **Miscellaneous**

#### **59. Reward:**

- (1) If any one knows about the facts relating to employment of child or minor worker at work contravening the provision of this Act, may furnish such information to the labor office.
- (2) The labor officer shall provide an amount of RS. 500 as reward to the people, who furnish the information pursuant to sub-section (1), if in course of inquiry the labor officer found such information is true.

#### **60. Submission of Report:**

- (1) The ministry shall submit an annual report in relation to child labor and minor worker to the cabinet and the parliament. The ministry shall prepare such report on the basis of details provided by the labor office, Village Development Committee and the Municipality.
- (2) The ministry shall publish the report submitted pursuant to sub-section (1) for the information of general public.

#### **61. Power to frame Rules:**

- (1) His Majesty's Government may frame rules to implement the objectives of this Act.
- (2) Without prejudice to the generality of the powers conferred by sub-section (1), such rules particularly, may provide for any of the following matters:
  - (a) matters relating to the safety of the minor workers;
  - (b) conducting of operation of employment of services;

- (c) conducting of operation of training in order to enhance the efficiency of minor workers;
- (d) procedures relating to labor court;
- (e) provision relating to compensation;
- (f) compilation of statistics of minor worker; and
- (g) Compilation of information of labor market regarding minor worker.

**62. Amendment in Annex:**

The ministry may amend the annex as per necessity, by publishing a notification in the Nepal gazette.

**63. Amendment and Repeal:**

- (1) Clause (h) and (I) of section 2 and subsection (1) and (2) of section 5 of the Labor Act 1992 has been repealed.
- (2) The words "18 years" mentioned in clause (j) of section 2 of the Labor Act 1992 has been replaced by the words "16 years".
- (3) Section 17, 18, 46, 47 and 48 of the Children's Act 1992 has been repealed.

**Annex**  
**(Related to Section 5)**  
**Hazardous Work**

**The following work shall be considered as hazardous work to the minor worker:**

- 1. work related with pressure plants, or pneumatic or electromechanical and other machine operated presses, or power generator or the machine or equipment that transfer the power;
- 2. work related with milling machines used in metal industries, legit machines, and guillotine machines;
- 3. work related with circular or bend saws used in sawmill;
- 4. work related with casino or hotel or bar or water rafting,
- 5. Work related with manufacturing of chemical and explosive substances, glass, led, mercury,
- 6. Work related with gas welding, arch welding, electric welding or high voltage power,
- 7. Work related with bidy and cigarette making, dyeing of carpet or cloth,
- 8. Work related with producing of beer and alcoholic substances;
- 9. work related with manufacturing of bitumen, lubricating oil, chemical fertilizer and pesticide;
- 10. Work related with Electro plating, photo processing and x- ray machine;

11. Work relates with mining.

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