

## THE NATION NEEDS CHILD WELFARE

by

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The legal status of the Nepalese children was more or less defined as far back as 1853 when, for the first time, Nepalese customary laws and social and religious usages were codified to bring uniformity in penal laws on the basis of crime and caste. The code, which is known as the *Mulki Ain*, was amended and modified several times prior to the introduction of the *Panchayat system*. After the introduction of Panchayat system the code was amended three times. Amendments were carried out in 1963 which did away with discrimination on grounds of caste; and also determined procedural rules, offences and penal provisions related to child offences on a rational basis.

Indeed, with the advent of the Panchayat democracy in this country, children have been receiving increasingly greater attention at official and non-official levels. While the *Mulki Ain* provided important laws relating to care, protection and guidance of the Nepalese children, the activation of Nepal Family Planning Association by private individuals and establishment of Family Planning and Maternity and Child Health Project by His Majesty's Government are testimony to the growing of the need for child welfare. The formation of Nepal Children's Organization and establishment of *Bal Mandirs* in various parts of this country is a remarkable development in the field of child welfare activities.

Constitutional safeguards do exist for the protection of the interests of Nepalese minors. Traffic in human beings, slavery and forced labour are prohibited. Moreover, the Constitution enjoins on the State to aim at the promotion of the welfare of the people by setting up a society which is democratic, just, dynamic and free from exploitations.

### Identity of Child

The family unit is found in all societies at all stages of social development; even in some species of animal and in the family, children are primary members in addition to their parents. In every family there are the factors of sex-drive, reproductive urge and economy, and these factors motivate all families to some degree. Family exerts influences and is in turn influenced by broader social life through customs and laws, taboos and mores.

The social control of the state over family cannot be questioned in principle. Apart from legislative measures, the state can influence and control the family in very many ways. However, the nature, extent purpose value and limitation of such control and influence are open to discussion.

All societies recognize at least three age groups: child, adult, and elder. Because of the need for various types of social legislation based on age distinctions, the drawing of precise lines identifying age groups and giving them a legal status or function has become increasingly necessary in modern culture. Since the scope of this article is limited to the legal aspect of Nepalese children, it is worthwhile to note here that in the contemporary culture, four divisions viz., *infant*, *pre-school child*, *child*, and *youth*, are recognized in the lower age groups. The term *infant* is customarily used to mean a child under the age of one. *Pre-school child* covers the ages of two to five, inclusive. The word *child* tends to be used in the literature in two ways, one general and the other specific. As a general term, the word means a young person ranging in age from birth to fifteen to *term* of age. Specifically, the term *child* is used for children sixteen year from 6 to 14 years, inclusive. In recent years, the word *youth* has been used for the range of 15 to 24, inclusive. The conception of the Nepalese child, formulated and laid down for the first time in the first codification of the laws of the realm, does not differ widely from this modern division of age groups. However, in this country, a large part of child legislation as embodied in the *Mulki Ain* aims to protect infants and children from legal rather than social hazards. The *Mulki Ain*, in essence, is a penal law, and as such, it deals largely with the nature of offences including juvenile offences. It prescribes specific punishment in accordance with the gravity of the crime and the age of the offender. For the purpose of punishment, the *Mulki Ain* defines child in Chapter II, Article 1, thus: (a) Child under eight years of age shall not be liable for any crime and shall not be punishable as such; (b) Child from 8 to 12 years of age shall be liable to reprimand only in lieu of fine; in cases involving imprisonment the child may be liable to imprisonment for only two months; (c) Child between the age of 12 to 16 years shall be punished in accordance with the penal provision applicable to adults and elders; (d) Any person who causes a child to commit crimes shall himself be liable for punishment.

However, there are specific age limits for specific offence as defined in the *Mulki Ain*. For instance in case of juvenile theft, the code provides that a child under 16 years of age committing theft shall not be criminally liable for theft (Part IV, Art. 16); a girl who by false representation of her virginity marries shall be criminally liable provided she has attained the age of 14 years. In other words, considerable variations exist in definition of childhood about matters as age of adoption, rape, marriage, legal transaction, safeguards of proprietary right, partition and the like. Existence of such variations is, however, not peculiar to Nepalese laws only. In the United States there is great diversity in laws. It should be noted however that in the United States most of these laws have been enacted on a state basis and as such variations are unavoidable. In summarising it is found that:

a) most laws require 12 to 14 years as consent for adoption, b) legislation specifying rape chiefly includes 16 to 18 years; c) the parents' consent for marriage is required for girls in most states up to 18 years, and boys up to 21 years; d) the most frequently established age for juvenile court jurisdiction is now 18 years. In short, child protective legislation covers, with few exceptions, the first 15 years of life. More recent legislation has advanced the ages by one or more years to protect children from being treated as adults too early. 1

#### Laws for Modern Age

In Nepal there is no specific law relating to child welfare, such as the *Children Act*, 1948 of India or *Child welfare laws* as enacted in Britain or Japan. Historically speaking, the necessity of such laws was no doubt of limited nature. Now with opening of the isolated ancient Kingdom of Nepal to the influences of the modern world and higher aims of economic development, industrialization and modernization, comprehensive social legislation for children is urgently required.

The social legislation which has been enacted in this country, such as the *Factory Act* 2016 B. S., the *Beggary (Prevention) Act*, 2018 B. S. are quite inadequate to meet the needs of proper care, protection and guidance of the Nepalese children who constitute more than forty per cent of the population. There are of course other laws which are too permissive in character, such as those having to do with the operation of motor vehicles, voting, citizenship, and the like. Legislation of such kinds also requires the designation of some age limit above or below which a particular law, function, or else responsibility does not apply. However, it would be of interest to note that the *Factory Act* distinguishes between a child in the age-group of 14 to 18 years and one below 14 years of age. Similarly, the *Beggary (Prevention) Act* distinguishes between two age-groups, but it defines those under 16 years of age as "Children" and those above the age of 16 as "adults" for the purpose of the Act. The *Motor Vehicles Act* gives the minimum age for the operation of motor vehicles at 18 years. For the purpose of inoculation the Nepalese law specifies small-pox inoculation to be given to children before the age of twelve. According to the *New Education Plan* the age limit of primary school-going children has been reclassified from 5 to 11 to 6-8 years. Meanwhile voice has been raised that minimum age for marriage must be raised and child marriage should be considered as a state crime. There is a critical need for comprehensive child legislation, as well as a need for improvement in the existing social laws pertaining to children.

Nepal is in the throes of modernization. Among its deficiencies is clear-cut unequivocal legislation pertaining to the three basic groupings of dependent children, productive adults, and dependent elders. It should be that underlying all demands and

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1 The Sociology of Child Development, James H. S. Bossard & Eleanor Stoder Boll,

discussion on the sociology of development lies the concept of a social process which is one of conflict, involving shifting balances between functional age groupings' 1. And changes in any one of the three groups corresponding by effect the status of the other two.

"The status of childhood is not an independent development, capable of modification, at will and without regard to the size and status of all the elements in the population. The status of children in any society and at any particular time is a phase or product of the larger process of the interaction between the age groupings of the entire society. Not that child status is entirely a matter of the entire society. Not that child status is entirely a matter of the arithmetic of population; the role of other factors, ideological, traditional, social, psychological, and cultural must be recognized." 2.

### Patterns of Welfare

In U. K. the term 'child' or 'children' was understood to mean legitimate child or children before the passing of Legitimacy Act of 1926. Since the coming into effect of this Act, which adopted into English law the Roman law doctrine of 'post-legitimation,' certain categories of illegitimate children have been given legal status. However, in statements, deeds or wills alike, a 'child' is generally a legitimate child unless the context indicate otherwise. There are exceptions to this rule particularly in connection with national insurance or family allowance.

Modern English law prescribes care for children who are: (i) deprived of normal home life; (2) in need of care and protection; (3) beyond parental control; (4) handicapped in mind and body; (5) suffering from mental illness. The care of these children is shared by local authorities, voluntary organizations or state institutions.

Care may last until the age 18 or may be extended to 21, if necessary. Children under 17 may be brought before the *Juvenile courts*. As defined, these children usually fall into bad association through lack of parental control, fail to attend school, or who are the victims of violence or immorality. Such children may be sent to an *approved school* or committed to the care of a *probation officer* or other fit persons. Children beyond parental control if under 17, may be brought before the Juvenile courts and dealt with as children in need of protection. Handicapped children may, under the Education Act of 1944, be provided with treatment and medical examination. Further assistance to children between 16-21 may be provided by the local authorities under *National Assistance Act* of 1947.

Foster care of children until age 15 is now regulated by the provisions of the *Children Act* 1958. The age may be extended to eighteen. The *nurseries and Child Minor's Regulation Act* of 1948 regulates homes providing day care for children.

The employment of children is regulated by the *Children and Young Persons Act* of 1933, the *Education Act* of 1944 and various acts relating to factories and shops and mills.

Various rules protect children in criminal proceedings. Provisions include separating children from adults, notification of proceeding of the parents, guardians or local authorities; of children during court trials. Corporal punishment was abolished by the *Criminal Justice Act* of 1948. Charge against children are usually heard in juvenile courts and detention is prescribed in institutions other than the prisons.

The tendency of U.S. laws has been to enlarge the rights of child or the measure of protection offered him against malusage, exploitation or hazards to health, and need for well-being.

The majority of U.S. laws pertaining to children are found in states rather than in federal statutes. However under the *Social Security Act* of 1935 federal grants-in-aid and Federal Children's Bureau have been created.

*Children's Court* in U.S. is a tribunal for juvenile offenders usually characterized by distinctive procedures and distinctive methods of treatment of children found to be delinquent.

In other countries, the upper limit of children subject to the juvenile court varies between 16 to 21 but the Nepalese provision includes only those below the age of 18.

Despite serious problems which have beset the rapid acceptance of the juvenile court throughout the world, it remains one of the most valuable social inventions of the modern period.

#### Recommendations:

- 1) *Commission* to study the problems relating to Nepalese Children should be formed and on its recommendation, enactments should embrace all aspects of Nepalese child welfare and development.
- 2) For the continuing safeguard of the interests of Nepalese Children, a *Juvenile Court* after the model of a British Court; or a *Family Court* after the model of Canadian Court should be established, with the objective of making legal remedy available to all children in Nepal.

- 3) To pursue *research* in this field, a *Children's Bureau* for the specific purpose of effecting Research and Planning in the field of child development should be constituted. This Bureau should coordinate its activities with the Maternity and Child Health Department of His Majesty's Government.