

Child Care and protection Act 2011 (Review)

As per the letter No. 09/2016/2544 dated 25/02/2016, by the chairperson of the Women Children and Youth Committee of the National Assembly of Bhutan to the Bhutan Centre for Media and Democracy regarding the involvement of youth to review the Child Care and Protection Act of Bhutan 2011, 17 youth representatives of the Youth Initiative (YI) gathered at the Youth Centre, DYS in Paro on April 31, 2016.

We also interviewed some of the youth who were below 18 years who came in conflict with the law and who felt that they were not protected.

After reviewing the Act, the youth came up with the following recommendations:

1. Child Welfare Committee to be established in every Dzongkhag.
2. Justice to be provided to the victim of child trafficking.
3. Confidentiality of the record of the child in conflict to be maintained.
4. Since the Act has been adopted from the Juvenile Act of India, 2015, it cannot be coherent to the Bhutanese context. Need to consider the Bhutanese context.
5. Arrest and imprisonment of a child or youth becomes a barrier to opt N.O.C even after serving the term of sentence which prevents them from getting a job. (Based on discussions with the victims)
6. Children are not aware of this act (Child Care and protection Act) and whether the institutions such as schools and media are making them understand is a big question.
7. Measures needs to be implemented to avoid child depression and suicide. Acts to hold the parents accountable especially the divorced parents.
8. Coordination and communication between the media houses and other essential stakeholders to comply with the act. Example: Act says not to disclose the record of the child in conflict, but media does.
9. Consensual sex under 18, only boys penalised. (183 penal code of Bhutan) (Sex education fails in reality). Reformation required considering the reality.
10. To encourage surrendering of child or youth in conflict with law, the police and justice department should consider incentives. (reducing the penalty).

Remarks by RENEW and NCWC

- There is a need to have a separate bench for child at the court.
 - The biggest loophole is that many of the concerned institutions are failing to implement some of the acts.
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Child Care and protection Act
**Comments bulleted and italicised*

Chapter 3. Prevention of child offence

Role of Central and Local Government

24. The Central and Local Government shall disseminate and create awareness on the rights and responsibilities of the child and relevant child law.

- *Are they really implemented? The involvement of media (BBS) and schools are equally important.*
- *The Central Local governments should be specifically mandated to carry out awareness and information dissemination programs on child care and protection. Although the Act says it's their role, it does not mention frequency of the programs to be conducted. Evidence and reports of the programs conducted should be submitted to concerned authorities.*
- *Educational institutions should also be specifically mandated to carry out such programs on a yearly basis. Evidence and reports of the programs should be submitted to concerned authorities.*
- *These activities can be a part of the Compact the local government signs with the Government or they can include it in the list of their annual activities. This way educating people on child care and protection will be enhanced.*
- *Local authorities should be mandated to have adequate infrastructural facilities for sports etc, for children's sports and organize events for children to keep them engaged and distracted from undesirable activities. (may not be appropriate)*

Role of Education institution

26. Education institution shall care for and protect the child through, among others, the following measures:

- (a) Work with families and communities to promote understanding about children;
- (b) Enhance the academic and social image of children;
- (c) Rehabilitate children in difficult circumstances and children in conflict with the law;
- (d) Provide continuing education to children who have dropped out of schools, children in difficult circumstances and children in conflict with the law; and
- (e) Equip children with information and skills to deal with personal safety
 - *Specification required. How are they implemented and who monitors it(Accountability).*

Chapter 4 Institutions and Competent Authority

39. The Court shall be presided over by a judge having knowledge of child psychology and child welfare.

- *Need to have a judge with a knowledge of child psychology in this case.*

40. Till such time where there is no separate Child Justice Court, the regular Court shall exercise the powers and discharge the duties as prescribed under this Act

- *Review and specify in view of the article 39 in accordance with the child constitution.*

41. The Court shall notwithstanding anything contained in any other law for time being in force but save as otherwise expressly provided in this Act have the power to deal exclusively with all proceedings under this Act relating to a child in difficult circumstances or a child in conflict with the law.

- *Review the structure. Difficult to comprehend.*

Chapter 5. Child in Difficult Circumstances

- *Suggest including children of divorced parents in Child in Difficult circumstances.*
- *According to the Marriage Act if the child is left under the custody of the mother the father has to pay a certain amount on a monthly basis as per his status. There has to be a strict monitoring of children in such circumstances to assure their parents' divorce does not affect their upbringing.*
- *What about children who are born out of marriage? There has to be something in specific for their care and protection as well.*
- *There has to be protection for children in difficulties and others in terms of inheritance. What is a normal child entitled to inherit from his/her parents? What about children of divorced parents? What about children whose parents were not married and are not accepted?*

Child Welfare Committee

55. A Child Welfare Committee shall be constituted to advise the competent authority on matters relating to the establishment and maintenance of homes, mobilization of resources, provision of facilities for assistance, protection, education and training of children in difficult circumstances and for education, training and rehabilitation of children in conflict with the law and coordination amongst the agencies involved.

- *Competent authority committee is not mentioned or specified.*

Child Welfare Officer

63. A child in difficult circumstances taken into the care of the police under this Act shall be transferred to the child welfare officer within 24 hours after being taken into the care of the police excluding the time necessary for the journey from the place.

- *Is it implemented? Questionable.*

Rights of the child in conflict with law

73. Every child in conflict with the law shall not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

- *Implementation is a big question. (After interview with the victims)*

Assessment of child

86. A child shall be assessed by the probation officer before conducting any inquiry by the police. The police upon arresting a child or summoning a child for any matter shall notify a probation officer for assessment.

- *Implementation a big question. (As per the interview with victims)*

Barring the use of handcuff

113. No handcuff shall be used on a child of 12 years and below, and handcuffs may only be used on a child above 12 years if there is exceptional circumstance warranting such use.

- *What are the exceptional circumstances. To what degree?*

Production before a Judge

114. Any child arrested and detained with or without warrant shall be produced before a Court within twenty-four hours of the arrest exclusive of the time necessary for the journey from the place of arrest and the Government holidays.

- *As far as possible court must be avoided considering the social, psychological and educational aspect. And also to avoid stigmatization.*

Failure to comply with the bail order

116. If a child fails to comply with any order, the Court may upon inquiry into the reasons for the child's failure to comply with the order decide to:

- (a) Cancel the bail;
- (b) Alter the bail conditions; or
- (c) Make any other appropriate order.

- *Bail system should be banned or should be fair considering the fact that it is easier for the children of wealthy family to pay unlike the ones from poor family.*

Chapter 13 Rehabilitation and Reintegration

209. The female child in conflict with the law shall be handled by female health personnel, correction officers and social workers.

- *What is Correction officer (Can it be simplified)*

210. In the best interest and well-being of the institutionalized child, the parents, guardians or legal representatives shall have a right of access.

- *Right of access to what? Clarification required.*

Chapter 14 Offence Against Child

Employment of a child for begging

216. A person shall be guilty of the offence of employment of a child for begging, if a person employs or uses any child for the purpose of begging or causes any child to beg. The offence of the employment of a child for begging shall be a misdemeanor.

- *Implementation questionable. Who monitors it?*

Invasion of a child's privacy

219. Any person, institution or agency shall be guilty of the offence of invasion of a child's privacy if such person, institution or agency without specific consent of the child's parents or guardian publishes any article disclosing the identity of the child in conflict with law in any newspaper, magazine or newsletter or publishes or reports any proceeding regarding the child without authorization of the Court. The offence of invasion of a child's privacy shall be a petty misdemeanor and be liable to pay the amount of reasonable compensation as determined by the Court to the concerned child.

- *What about cyber bullying especially in the social media.*
- *Child labor-children should not be subjected to child labor. Can it be included and described in detail?*

Chapter 15 Post- Disposition

234. The child in conflict with law considered for early release must have served at least half the term of sentence.

- *Why? What does it serve. Clarification required.*

Chapter 16 Miscellaneous

One Stop Crisis Centre

238. In order to facilitate expeditious processing of offences against and to safeguard the best interest of the child, the government shall establish a one stop crisis centre in every major government hospital staffed by a police official, psychiatrist, social worker and a legal counsel.

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- *Implementation is questionable.*

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