

The National Civil (Code) Act, 2017 (2074)

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The National Civil (Code) Act, 2017 (2074)

Date of Authentication:

16 October 2017

Act Number 34 of the year 2017

An Act Made To Amend And Consolidate Civil Laws

Preamble: Whereas, it is expedient to make timely the civil provisions contained in the Country Code and other laws, by also amending and consolidating such provisions, in order to maintain morality, decency, etiquette and convenience as well as economic interest of the public by maintaining law and order in the country and maintain harmonious relationship between various castes, races and communities, by making just provisions in the economic, social and cultural fields;

Now, therefore, the Legislature-Parliament under clause (1) of Article 296 of the Constitution of Nepal has enacted this Act.

Part-1

Preliminary

Chapter-1

General Provisions

1. Short title and commencement: (1) This Act may be cited as the "National Civil (Code) Act, 2017".

(2) It shall come into force on 17 August 2018 (first day of the month of Bhadra of the year 2075).

2. Definitions: Unless the subject or the context otherwise requires, in this Act,-

- (a) "court" means the Supreme Court, High Court or District Court, and this term includes a court, other judicial body or authority authorized by law to proceed and adjudicate any specific type of civil cases,
 - (b) "law" means a law in force for the time being,
 - (c) "person" means a natural person and this term includes a legal person,
 - (d) "law-suit" means a statement of claims, and this term includes any other kind of complaint, claim, counterclaim or equivalent petition,
 - (e) "minor" means a child who has not attained eighteen years of age,
 - (f) "Local Level" means the Rural Municipality (*Gownpalika*) or Municipality,
 - (g) "property" means any movable or immovable property,
 - (h) "heir" means a person who is in the order of priority for succession pursuant to Section 239.
3. **Not to prejudice special legal provisions:** Where a law in force provides a separate provision in any matter regulated by this Act, no provision of this Act shall affect such a matter.

Chapter - 2

General Principles of Civil Law

4. **Principles and provisions applicable generally:** The principles and provisions referred to in this Chapter shall generally be applicable to the matters of civil law.
5. **Ignorance of law not to be excused:** The ignorance of law shall not be excused. Every one shall be presumed to have the knowledge of law.
6. **Act against public interest not to be carried out:** No one may carry out any act in such a manner so that it may be against public interest.
7. **Act contrary to law to be invalid:** Any act contrary to law shall be invalid.
8. **A wrongdoer to bear liability for loss or damage:** (1) A person who causes loss or damage to another person by committing a wrong while doing, or causing to be done any act shall bear the liability for such loss or damage.

(2) Every person shall himself or herself bear the consequences of any wrongful act committed by him or her.

(3) Except as otherwise provided for in this Act or law, the concerned person shall bear compensation to perform the liability referred to in sub-section (1).

(4) Determination of the Compensation shall be as provided for in the law.

- 9. Act causing nuisance to other not to be done:** No person shall do, or cause to be done, any act that causes nuisance, annoyance or damage to prestige, reputation or property of another person.
- 10. Not to enjoy benefit of wrong:** No person shall be entitled to enjoy benefit accrued from his or her own wrong.
- 11. Act against interest to be invalid:** Any act done against the interest of a person who is under one's own guardianship, curatorship, subjection or influence or likely be under influence shall be invalid.
- 12. Personality to be recognized:** Every person shall recognize other person's personality.
- 13. Good neighborhood to be maintained:** Every person shall maintain so good neighborhood as not to cause damage, loss to the community or neighbors of his or her residence.
- 14. Not to be relieved from civil liability:** No person shall be relieved from a civil liability under the law merely on the ground that the proceeding of criminal offense is initiated or not initiated against him or her.
- 15. Custom or tradition contrary to law not to be recognized:** No custom or tradition contrary to law shall be recognized in the dispensation of justice.
- 16. Applicable to foreigners as well:** Except in cases where the subject, context or nature requires application of any legal provision only to a Nepali citizen, this Act or other provisions concerning civil law shall be equally applicable to a foreigner as well.

Chapter - 3

Provisions Relating To Civil Rights

- 17. To be equal before law:** (1) Every citizen shall be equal before law.
- (2) No citizen shall be deprived of equal protection of law.
- 18. Discrimination not to be made:** (1) No discrimination shall be made in the application of general law on grounds of origin, religion, color, caste, race, sex, physical condition, disability, condition of health, marital status, pregnancy, economic condition, language, region, ideological conviction or on similar other ground.
- (2) No person shall discriminated in any public and private place on grounds of origin, religion, color, caste, race, sex, physical condition, disability, condition of health, marital status, pregnancy, economic condition, language, region, ideological conviction or on similar other ground; and no person shall, on such ground, be prevented from using service, amenities or utilities of public use or from entering into a public place or public religious place or from performing religious act according to his or her will.
- (3) No person shall be discriminated on ground of sex with regard to remuneration and social security for the same work.
- (4) In appointing any citizen to a governmental or public office, he or she shall be appointed only on the basis of the qualifications determined by the law. In so appointing, no citizen shall be discriminated on grounds of origin, religion, color, caste, race, sex, physical condition, disability, condition of health, marital

status, pregnancy, economic condition, language, region, ideological conviction or similar other ground.

- 19. Discrimination not to be deemed where special provision is made:** Notwithstanding anything contained in Sections 17 and 18, any special provision made by law for the protection, empowerment or development of the citizens that are socially or culturally backward women, *dalit*, **indigenous, indigenous nationalities, Madhesi**, Tharu, Muslims, oppressed class, backward class, minorities, marginalized, peasants, workers, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, pregnant women, the incompetent or helpless, backward region and also economically indigent Khash Arya shall not be considered to be a discrimination.
- 20. Guarantee of freedoms and rights:** (1) No person shall be deprived of personal liberty except in accordance with law.
- (2) Every citizen shall, subject to law, have the following freedoms and rights:
- (a) To express one's opinion and expression,
 - (b) To assemble, hold assembly, conference peacefully without arms,
 - (c) To form union and association,
 - (d) To move and reside in any part of Nepal,
 - (e) To practice any profession, employment, industry, business,

- (f) To obtain education of his or her choice or in his or her mother tongue,
- (g) To earn, use, transfer property and carry out any other transaction of property,
- (h) To profess and practice his or her religion practiced from time immemorial, subject to the compliance of public morality and traditions,
- (i) To preserve and promote the language, script or culture of his or her community,
- (j) To operate a religious place and religious trust, by maintaining independent existence of his or her religious community,
- (k) To protect or maintain privacy of his or her body, residence, property, document, correspondence or information.

21. Right to privacy deemed to be violated: (1) If any person commits, save in accordance with law, any of the following acts without obtaining consent of the concerned person, he or she shall be deemed to have violated the right to privacy:

- (a) Entry into any person's residence,
- (b) Opening a person's correspondence or using it, taping or recording or listening the discourse, speech, sound through the medium of telephone or other technology,

- (c) Watching, publishing, broadcasting or disseminating activities, behaviors of personal life of a person,
- (d) Taking figure or photograph of a person,
- (e) Imitating other's name, figure, photograph, sound and making the same public.

(2) Notwithstanding anything contained in clause (d) or (e) of sub-section (1), if a person commits any act referred to in the said clauses for literary or artistic purpose or public interest, the right to privacy shall not be deemed to have been violated.

- 22. Right to make contract:** Every citizen shall have the right to make a contract subject to the law.
- 23. No taxation except in accordance with law:** No tax shall be levied on and collected from a person's property or income save in accordance with law.
- 24. Not to employ in work against will:** No person shall be employed in a work against his or her will.
- 25. Property not to be acquired, requisitioned, auctioned or forfeited:** (1) The State shall not acquire, requisition, or otherwise create any right in, the property of anyone, except in accordance with law for the purpose of public interest.

Provided that this provision shall not apply to a property earned illegally.

(2) No property of anyone shall be auctioned or forfeited except in accordance with law.

26. Complaint may be filed: (1) A person who is arrested or detained or any one on his or her behalf may file a petition in the Supreme Court, High Court or District Court for the writ of *habeas corpus*.

(2) If a person files a petition in more than one court, the petition filed in the higher court shall be maintained.

(3) If a person commits or there is sufficient suspicion that he or she is going to commit any act in contravention of this Chapter, the person aggrieved from such an act may, for the enforcement of his or her right, file a petition in the High Court or District Court having territorial jurisdiction.

(4) If it is found from inquiry into the petition filed pursuant to sub-section (1) that the person has been arrested or detained against law, the concerned court shall order to release him or her immediately.

(5) If it is found from inquiry in respect of the petition filed pursuant to sub-section (3) that the respondent has caused some damage or is about to cause damage to the petitioner's right, the concerned court may issue an order requiring the respondent to refrain from committing, or causing to be committed, any act damaging the petitioner's right, and where some act has already been committed, from committing, or causing to be committed, the remaining act, or to do any act.

27. Compensation to be awarded: (1) If, from the examination of the complaint filed pursuant to Section 26, the respondent is found to have maliciously committed any act causing damage to the complainant, the concerned court shall, having regard to the

circumstances, order the respondent to pay reasonable compensation to the complainant.

(2) If an official or employee working in a governmental or public body is held to have knowingly violated the civil rights referred to in this Chapter, such an official or employee shall personally bear the amount of compensation referred to in sub-section (1).

28. Compensation for filing false complaint: (1) If a person is held to have filed a complaint with the intention of knowingly causing pain or loss or damage to a person, the concerned court shall order the person so filing the false complaint to pay a reasonable compensation to the respondent.

(2) The compensation to be awarded under sub-section (1) shall include the costs incurred by the respondent for defense before the court, court fees and legal practitioner's cost.

29. Statute of limitation: A person aggrieved from any act done or action taken under this Chapter may make a lawsuit any time in the case of arrest or detention, and within a period of six months after the date on which such an act or action was done or taken, in the other cases.

Part - 2

Law Relating to Persons

Chapter – 1

Provisions Relating to Natural Persons

30. **To be recognized as person:** Every person shall, immediately after birth, be recognized as a person and be entitled to exercise rights under law until he or she survives.
31. **Right to Name:** (1) Every person shall, immediately after birth, have right to name and be entitled to use the given name respectfully.
(2) Every person shall have the right to defend his or her name, reputation and prestige and such right shall not be transferable to others.
(3) No person shall be allowed to abuse another's name.
32. **To attain competency:** (1) Every person who attains eighteen years of age shall be considered to become a major, and shall, in the same capacity, be considered to be legally competent.
(2) A person who is competent under sub-section (1) may, subject to law, exercise, bear and discharge any right, obligation and duty whatsoever.
33. **To be considered incompetent:** (1) Notwithstanding anything contained in Section 32, a person who has not attained ten years of age, or even if attained that age, is unable to protect his or her right and interest for the reason of unsoundness of mind shall be considered to be legally incompetent.

Explanation: For the purposes of this Act, the term "unsoundness of mind" means the condition of being incapable, due to physical and mental ill health, of knowing the act done by oneself in general understanding and consequences thereof.

- (2) An incompetent person does not have to bear any type of legal obligation, and while exercising a right, it has to be exercised, or cause to be exercised, only with the consent of the guardian or curator or through the guardian or curator, as the case may be.
- (3) In executing a document on behalf of an incompetent person, it shall be executed, or caused to be executed, through his or her guardian or curator, as the case may be.
- 34. To be considered quasi-competent:** (1) A person who has attained ten years of age but not completed eighteen years of age shall be considered as a quasi-competent person.
- (2) A quasi-competent person may, subject to law, exercise, bear and discharge any right, obligation and duty whatsoever.
- (3) A quasi-competent person shall, in exercising a right, obtain the consent of the guardian or curator or exercise the right through the guardian or curator, as the case may be.
- (4) In executing a document by a quasi-competent person, it shall be executed in the presence of his or her guardian or curator, as the case may be.

- 35. To be according to court decision:** If a dispute arises about a person's competency, incompetency or quasi-competency, it shall be settled according to the decision of the court.
- 36. Physical examination or change of organ may be made:** (1) Any person may, subject to law, get his or her body examined, treated or transplanted or collected any organ or part or a sample of his or her body.
- (2) If a person is so incapable that he or she cannot express his or her consent, his or her guardian or curator, as the case may be, for the interest of such a person, carry out, or cause to be carried out, the act referred to in sub-section (1).
- 37. Power to specify method of one's cremation, obsequies rites or funereal acts:** (1) Any person may, while he or she is alive, specify the manner of cremation, obsequies rites or funereal acts to be carried out after his or her death.
- (2) If a person has specified the manner of cremation, obsequies rites or funereal acts pursuant to sub-section (1), his or her successor shall carry out his or her cremation, obsequies rites or funereal acts accordingly.
- (3) If a person has not specified the manner of his or her cremation, obsequies rites or funereal acts pursuant to sub-section (1), his or her successor shall conduct such person's cremation, obsequies rites or funereal acts according to the prevailing custom and tradition.
- 38. Power to donate corpse or organ:** (1) Any person may express in writing his or her will to donate, after his or her death, his or her

corpse or any organ of body or any part thereof to a person for the purpose of using, or causing to be used, such corpse or organ for a particular work.

(2) If a person has expressed his or her will pursuant to sub-section (1), his or her successor shall use the deceased's corpse, part of the body or a portion thereof according to the will of the deceased.

(3) Notwithstanding anything contained in sub-section (2), if the person accepting such corpse, organ or any part thereof is not available or if it is not possible to detach such corpse, organ or any part thereof, cremation, obsequies rites or funereal acts of such corpse shall be conducted pursuant to Section 37.

39. To be considered address of residence: (1) If a person's address of residence needs to be determined, the address given by him or her for that purpose, where he or she has so given, and if not so given, the place of his or her permanent residence within Nepal shall be considered to be the address of his or her residence.

(2) If a person does not have residence or his or her residence is not traced out pursuant to sub-section (1), the place of his or her abode for the time being shall be considered to be the address of his or her residence.

(3) If a person does not have a residence or his or her residence is not traced out pursuant to sub-section (1) or (2) and the person has carried on any trade, business, employment or transaction, the place where he or she has so carried on trade,

business, employment or transaction shall be considered to be the address of his or her residence.

(4) Notwithstanding anything contained in sub-section (1), (2) or (3), where the address of a person's residence is changed, the place where he or she is residing for the time being shall be considered to be the address of his or her residence.

(5) If the residence of an incompetent or quasi-competent person needs to be determined, the place of his or her permanent residence and if such place is not traced out, the place where his or her guardian or curator resides shall be considered to be the address of his or her residence.

(6) Notwithstanding anything contained elsewhere in this Section, if a person considers any address as the place of his or her residence for a particular purpose, such a place shall be considered to be the address of his or her residence.

- 40. Presumed to be dead:** (1) If a person disappears without any notice for a period of consecutive twelve years or if a person for whom it is natural to have information about such disappeared person has not received any information about him or her for the last twelve years, such a person shall, except in cases where an evidence establishing that he or she is alive is received, be deemed to be dead.

Provided that in the following circumstance, such a person shall be deemed to have died after the completion of the following period:

- (1) In the case of a person having attained eighty years of age, five years,
 - (2) In the case of a soldier deputed to war-field, four years after the cessation of the war;
 - (3) In the case of a person traveling by an aircraft, ship or other vehicle that met with an accident, three years after the date of such accident.
- (2) Notwithstanding anything contained in clause (3) of the proviso to sub-section (1), if a person dies in an accident and there is no evidence of another person meeting with the same accident to remain alive, such a person also shall be deemed to have died at the same time.
- (3) Where more than one person are dead at one and the same time in an accident, each person so died is deemed, except as otherwise proved, to have been died at the same time.
- Provided that where, for a particular purpose, a question that which of the persons died first in such an accident requires to be settled, the person who was older by age at the time of death shall, unless otherwise proved, be deemed to have been died first.
- (4) If the concerned person files a petition stating that any person has disappeared without a notice or died due to a disaster or accident and requests for a judicial declaration on such person's death, disclosing therewith the date, place, cause of death and basis thereof, the court may, after examining the evidence, make an order of judicial declaration on the death of such a person.

(5) If a person already declared dead pursuant to sub-section (4) comes back alive and files a petition in person to get the judicial declaration made earlier to be annulled or if his or her successor files a petition for amendment to the previous judicial declaration on death for the reason that the date of death of such deceased happened to be different than the date referred to in the judicial declaration, the court shall, having examined into this matter, annul or amend the judicial declaration made pursuant to sub-section (4).

Provided that-

- (1) Where a living wife has concluded another marriage after such declaration, the matrimonial relationship with the person declared to be dead cannot be re-established.
 - (2) There shall be no adverse effect on the legal right of the person declared to be dead.
 - (3) The act that has already been carried out pursuant to the previous judicial declaration shall not be prejudiced by virtue of the establishment of a new date of death.
 - (4) The right, interest or concern of the person provided by law shall not be affected by any act done or action taken pursuant to clause (3).
- 41. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit as follows:

- (a) In the case of the circumstance referred to in Section 36, within three months after the date on which such act was done or action taken,
- (b) In the case of the circumstance referred to in subsection (5) of Section 40, within one year after the date of knowledge of such an act or action,
- (c) In any circumstance other than that referred to in clauses (a) and (b), within six months after the date on which such an act was done or action taken.

Chapter-2

Provisions Relating to Legal Persons

42. Legal person to acquire competency: (1) A body corporate incorporated pursuant to law shall obtain legal personality, and obtain legal competency in the same capacity.

(2) In order to obtain legal competency pursuant to sub-section (1), any body shall be registered in accordance with law.

(3) Except where a separate provision has been made by law for registration pursuant to sub-section (2), an application shall be made to the competent authority, setting out the following matters:

- (a) Name of the body corporate,
- (b) Head office of the body corporate, and address of such office,
- (c) Objectives and functions of the body corporate,
- (d) Details of the capital structure, if any, of the body corporate,
- (e) Other necessary details.

(4) After the registration of a body corporate pursuant to sub-section (2), such a body shall be deemed to have been incorporated.

(5) A legal person shall have a corporate personality and use a separate seal for its activities.

(6) A body incorporated pursuant to this Section shall be an autonomous and body corporate with perpetual succession, and

may, in the same capacity, subject to law, carry out as a person the following functions:

- (a) To acquire, hold, earn, possess, dispose off, sell or otherwise manage a property,
- (b) To execute a contract, exercise rights and discharge obligations under the contract or to assume any kind of right or obligation in any other way,
- (c) To frame statute or bye-laws required to operate its own functions, proceedings or business,
- (d) To appoint necessary employees to carry out its functions,

Provided that the commissions, institutions or bodies referred to in clause (g) of Section 44 shall not be allowed to appoint employees.

- (e) To open branches or other offices, subject to its statute and bye-laws,
- (f) To open an account in a bank or financial institution and to operate the account,
- (g) To carry out other functions according to law.

(7) A legal person may sue or initiate other legal action and may also be sued or subjected to other legal action by its name.

43. To obtain legal competency upon incorporation: (1) A legal person shall, upon its incorporation, obtain legal competency to carry out civil and commercial acts and transactions, in addition to the acts mentioned in Section 42.

(2) The legal competency obtained pursuant to sub-section (1) shall continue to exist until the legal person is liquidated, dissolved or wound up in accordance with law.

44. Legal competency deemed to be acquired, *ipso facto*:

Notwithstanding anything contained in Section 42, the following body, as a legal person, shall be deemed to have, *ipso facto*, obtained competency:

- (a) The State of Nepal,
- (b) The Government of Nepal,
- (c) The Federal Parliament or Legislature-Parliament,
- (d) A court, constitutional body or any office thereunder,
- (e) A Ministry, Secretariat, Department of the Government of Nepal and any other government office,
- (f) A Province,
- (g) The Province Government or Provincial level Government offices,
- (h) A Provincial Assembly,
- (i) A Rural Municipality, Municipality or District Assembly or Local Level government office under such a body,
- (j) A commission, committee or similar other body set up in accordance with law by the Government of

Nepal, Provincial Government or Local Level Government,

- (k) A corporation, corporate body or body set up in accordance with law,
- (l) Any organization established for public purpose such as a shrine, temple, deity place, *Chaitya*, monastery, mosque, church, public rest house, public inn, and graveyard remained in operation from the time immemorial and in possession of a property,
- (k) A community school, college or university established for public purpose.

45. Address of location of legal person: The address of location of a legal person shall be as specified at the time of incorporation of the body corporate, and where such address is not so specified, the address where its headquarters or registered office is located and where such office or address also is not specified, the address where the main administrative office or transaction and business of such a body corporate is located shall be considered to be its address of location.

46. Management and operation of legal person: (1) A legal person shall, except as otherwise provided by law, be managed and operated in accordance with the provisions set forth in the statute of such a person, and where such provisions is not made, it shall be managed and operated by one or more directors.

- (2) The legal person shall be responsible for the management and operation made by the director or directors pursuant to sub-section (1).
- 47. Operation of business of legal person:** (1) In operating business on behalf of a legal person, the business shall, except as otherwise provided by law, be operated by the decision of directors of such a person.
- (2) In operating business pursuant to sub-section (1), the director may delegate powers to any director or other person to operate any business.
- 48. Right or liability to devolve upon merger of legal person:** (1) If a legal person is, for any reason, merged with another legal person, the right or liability of such person shall be as specified at the time of such merger.
- (2) If not specified pursuant to sub-section (1), the right or liability of the legal person to be merged shall devolve on the legal person with which such a person is merged.
- 49. Legal person may become agent:** A legal person may, subject to law, act as an agent of any other person.
- 50. Not to participate in decision-making in case of conflict of interest:** (1) A member or director of any body or institution shall not take part in the decision making process on a matter involving his or her personal interest.
- (2) If a decision is affected by the conflict of interest under sub-section (1), such a decision shall be void.

- 51. Legal person to be liable:** If a loss or damage is caused to a person from an act done and action taken by a person on behalf of a legal person, such a legal person shall be liable and bear compensation therefor.

Provided that if any loss is caused by doing an act beyond the objective or competency of the legal person or dishonestly, the director or a person doing such act shall personally be liable therefor.

- 52. Assets or liability to be settled:** If a legal person is dissolved for any reason, the assets and liabilities of such a person shall be settled in accordance with law.
- 53. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within three months after the date of knowledge of such an act or action in the cases of Section 50 and within six months after the date on which such an act was done or action taken, in the other cases.

Chapter-3

Provisions Relating to Bankruptcy of Natural Persons

- 54. Bankruptcy proceedings may be initiated:** (1) If a person's debts and other liabilities to be borne by him or her exceed his or her assets, bankruptcy proceedings may be initiated for payment or recovery of debts or settlement of liabilities from such assets.
- (2) Notwithstanding anything contained in sub-section (1), no bankruptcy proceedings may be initiated in the following circumstances:

- (a) If a person who has regular income or is certain to earn income in the future proves that his or her income can pay or set off debts or other liabilities in a certain period or the creditor is satisfied in such matter,
- (b) If a person likely to be a bankrupt asks for a period of up to five years specifying the period of time to repay the debts of creditors and sources thereof from the date of origin of conditions necessitating the commencement of bankruptcy proceedings in order to enjoin or cause to be enjoined from initiating that proceedings,
- (c) If the creditor does not agree to initiate, or cause to be initiated, bankruptcy proceedings.

Explanation:

- (1) For the purposes of this Chapter, the term "assets" means the concerned person's property

standing for the time being or to be earned or likely to be earned up to the time prior to the completion of bankruptcy proceedings pursuant to this Chapter.

- (2) For the purposes of clause (c), the term "creditor" means, where there are more than one creditor, creditors or a group of creditors who hold fifty percent or more debts out of the total debts of the person likely to become bankrupt.
- (3) If a debt or claim of a creditor is settled from the assets of a person under this Chapter, such a person shall be deemed to become a bankrupt.
- (4) The court shall send the record of the person being bankrupt pursuant to sub-section (3) to the bankruptcy administration office established for that purpose.
- (5) The bankruptcy administration office shall update the records referred to in sub-section (4).
- (6) Any person declared bankrupt pursuant to sub-section (3) shall not be required to repay debt or fulfill the obligation other than the debt or obligation he or she has to pay or fulfill and settle under this Chapter.
- (7) Notwithstanding anything contained in sub-section (6), the following obligation shall be fulfilled from the trade, business or transaction he or she starts after his or her declaration of being bankrupt:

- (a) Tax, fee or charge to be paid to the Government of Nepal,
- (b) Amount of penalty or fine to be paid according to the order of a court,
- (c) Amount to be paid for the embezzlement of property of the person under his or her guardianship or curatorship,
- (d) Amount to be paid for the goods stolen,
- (e) Amount to be paid for the embezzlement of property of a trust.

(8) Notwithstanding anything contained elsewhere in this Section, if any person becomes bankrupt, he or she may carry on any trade, business or transaction other than any act or activity he or she is prohibited from doing or taking in that capacity according to law.

55. Petition to be filed to initiate bankruptcy proceedings: (1) A person who is likely to become a bankrupt may himself or herself, or a creditor or group of creditors having claim of at least twenty-five percent or more of the total debts if the amount of debts is disclosed and, if the amount of debts is not disclosed, a creditor or group of creditors having claim of more than five hundred thousand rupees borrowed by such a person, may file a petition in the court, in order to initiate bankruptcy proceedings.

(2) In filing a petition by a person likely to become a bankrupt for bankruptcy pursuant to sub-section (1), the petition shall specify the following details:

- (a) Actual statement of his or her total assets and value thereof,
- (b) Statement of total amount of debts borrowed by him or her, interest accrued thereon and details of the creditor or creditors having lent such debts, along with their addresses,
- (c) If he or she has to discharge other liabilities, details thereof,
- (d) The reason for the failure to repay or discharge debts and other liabilities.

(3) In filing a petition by a creditor or group of creditors for bankruptcy pursuant to sub-section (1), the petition shall specify the following details:

- (a) Evidence indicating that the borrower is likely to be a bankrupt,
- (b) Statement of the assets of the borrower and approximate value thereof, to the extent of the petitioner's knowledge,
- (c) Statement of the petitioner's claim, and if the petitioner has knowledge of other creditor's debt or claim, such debt or claim,
- (d) Details including addresses of the creditors.

(4) Prior to filing a petition pursuant to sub-section (1) to initiate bankruptcy proceedings, a creditor or group of creditors shall give a notice to the borrower indicating that the borrower shall

repay his or her debts or discharge other liabilities within a period of at least three months and that in the event of failure to repay the debts within that period, a petition shall be filed in the court to initiate bankruptcy proceedings.

- 56. Notice to be given to creditor:** (1) If a petition is filed by a borrower pursuant to Section 55 to initiate bankruptcy proceedings, the court shall issue a notice of thirty-five days and serve the same on the creditor or group of creditors whose debts the borrower has specified as due and payable and publish the notice in any national daily newspaper.

(2) The notice to be published pursuant to sub-section (1) shall also contain a statement inviting any other person having any type of claim, if any, over the assets of the person whose assets is under bankruptcy proceedings to make a claim with evidence within the time-limit as specified in the same sub-section.

(3) The claim made within the time-limit referred to in sub-section (1) or (2) by the creditor or group of creditors or by other person shall be considered to be the final claim made against the assets of the borrower, and the bankruptcy proceedings of his or her assets shall commence on the same basis.

- 57. Notice to be given to borrower:** (1) If a petition is filed by a creditor or group of creditors pursuant to Section 55 to initiate the bankruptcy proceedings of the assets of the borrower, the court shall serve a notice, along with a time-limit of thirty-five days, on the borrower to appear before the court, along with a reply whether or not the bankruptcy proceedings require to be instituted, and if

there exists any ground for not instituting the bankruptcy proceedings, and evidence thereof.

(2) If a notice is served on the borrower pursuant to sub-section (1), a notice shall be given to the other creditor or claimant to submit a claim in that respect within a period of thirty-five days and such a notice shall be published in any national daily newspaper.

(3) The claim of a person who fails to submit a claim within the period referred to in sub-section (2) shall not be valid after that period.

(4) The fee to be incurred in publishing a notice in a national daily newspaper pursuant to sub-section (2) or sub-section (1) of Section 56 shall be recovered from the concerned petitioner.

(5) The fee recovered pursuant to sub-section (4) may be awarded to be paid by the debtor in the course of bankruptcy.

58. Order to be given to initiate bankruptcy proceedings: (1) If a petition is filed in the court pursuant to Section 55 to initiate the bankruptcy proceedings, the court shall make order as to whether it would be appropriate to initiate the bankruptcy proceedings in respect of that petition or not.

(2) If an order is made to initiate the bankruptcy proceedings pursuant to sub-section (1), the court shall, at the request of the person likely to become bankrupt himself or herself or of the creditor, order any other family member of such a person to maintain status quo of the assets of the person in respect of

whose assets the bankruptcy proceedings are to commence, for the purpose of bankruptcy.

(3) If the court thinks that the assets of the person likely to be bankrupt may be embezzled or may not be properly managed if such a person or his or her family member is allowed to manage the assets, the court may, on the basis of the petition by the party or *suo motu*, entrust the responsibility for management of such assets to any of the following persons:

- (a) A person licensed as bankruptcy professional pursuant to law,
- (b) A bankruptcy trustee appointed pursuant to law,
- (c) The concerned ward committee of the Local Level,
- (d) Such an officer employee of the court or law practitioner as designated by the court.

(4) The Local Level, trustee or person designated pursuant to sub-section (3) shall manage the assets of the person likely to become bankrupt, in accordance with the order of the court.

59. Transaction to be, *ipso facto*, stayed or void: (1) If a court makes an order, pursuant to sub-section (1) of Section 58, to initiate the bankruptcy proceedings in relation to the assets of a person, any of the following acts cannot be carried out after the making of such an order, and if any of such acts has already commenced or is being carried out but not completed, such act shall, *ipso facto*, be stayed:

- (a) To transfer in any manner to any person the title to, bail, pledge, mortgage or to lease or rent in any

manner for a period exceeding one year, the assets of a person who is likely to become bankrupt,

(b) To attach, or execute the pledge, mortgage of, the assets of the person likely to become bankrupt pursuant to the judgment of a court,

(c) To repay debt or discharge liability of any creditor from the assets of the person likely to be bankrupt.

(2) Any deed, contract, dealing, transaction or arrangement executed in contravention of the provision set forth in sub-section (1) shall, *ipso facto* be deemed to have been void.

60. Opportunity to be provided to reconcile sum of debts: (1) If the court has made an order to commence the bankruptcy proceedings pursuant to sub-section (1) of Section 58, the Local Level, trustee or person, as the case may be entrusted with responsibility to manage property pursuant to sub-section (3) of the same Section shall, after the assets, debts and other liabilities of the borrower are ascertained, call a meeting of the debtors, creditors or other claimants.

(2) In the meeting called pursuant to sub-section (1), the creditor or claimant shall be provided with a reasonable opportunity to waive his or her claim wholly or partly from all or any of the assets of the borrower or to reconcile sum by taking amount lesser than his or her claim, by mutual understanding between the person likely to become bankrupt and the creditor or other claimant.

(3) In making reconciliation of sum pursuant to sub-section (2), an arrangement may be so made that a creditor pays the

debt or claim of some or most creditors and submits a lump sum claim against such a person.

(4) If the parties reach mutual understanding pursuant to sub-section (2) or (3) or the concerned parties agree, for any reasons, to stay the bankruptcy proceedings for the time being, a joint petition may be filed in the court accordingly.

(5) If a petition is filed for staying the bankruptcy proceedings pursuant to sub-section (4), the court shall make an order to stay as requested the bankruptcy proceedings for a period not exceeding the period set forth in clause (b) of sub-section (2) of Section 54.

(6) If an order is made pursuant to sub-section (5), the bankruptcy proceedings in respect of the assets of such a person cannot be instituted until the expiry of that period.

61. Priority order of paying debt or liability: (1) In carrying out or causing to be carried out the bankruptcy proceedings of the assets of a person pursuant to this Chapter, the debts to be paid or liabilities to be discharged by such a person shall be settled, on the basis of the following priority order, from the assets of such a person:

- (a) Costs incurred in the carrying out of the bankruptcy proceedings,
- (b) The liability of the secured creditor, who has provided debt against a pledge or mortgage, to the extent of such pledge or mortgage,

- (c) Tax, fine to be paid to the Government of Nepal or other government charges and dues,
- (d) Debts of the creditors other than those referred to in clause (b),
- (e) Claim of the claimants other than those referred to in clause (b), (c) or (d).

(2) In paying or setting off debts or liabilities pursuant to sub-section (1), if there are more than one creditor or claimant of the same priority order, the debt or claim shall be paid or set off pro rata basis from the assets bankrupted in proportion to the debt or claim of each creditor or claimant.

(3) In paying the debts of the secured creditors pursuant to clause (b) of sub-section (1), if, after recovery of his or her debts from the assets pledged or mortgaged to him or her, there remains any portion or sum of such pledge or mortgage, other creditors or claimants may make claim over such portion or sum.

Provided that if the secured creditor's debts cannot be fully recovered from such assets, he or she cannot claim other property.

62. Debt of creditor who shows excess debt not to receive priority:

Notwithstanding anything contained in sub-section (1) of Section 61, if it is held that, by a collusion between a person likely to become a bankrupt and any creditor, and being guided by a malafide motive to cause loss to another creditor or claimant, more debts or claims have been shown from any transaction which has never happened nor been carried on, the debt or liability of such a

creditor shall be paid or set off only after the debt or liability of other creditor or claimant is satisfied.

63. Property to be set aside: (1) Prior to effecting bankruptcy of the assets of a person pursuant to this Chapter, the following property shall be set aside and the bankruptcy proceedings shall be carried out from the remaining assets:

- (a) Any property that remains as the personal property of a person other than one who is likely to become a bankrupt,
- (b) Clothes up to three pairs and shoes up to three pairs being worn or to be worn by the person who is likely to become bankrupt and an undivided family member of that person,
- (c) One set of cooking and dining utensils, pots and cups, one set of bedding materials and reasonable number of furniture required for the undivided family member of the person likely to become a bankrupt,
- (d) Medicines and health-related equipment required to the person likely to become a bankrupt and the undivided family member of that person,
- (e) Books necessary to carry out study and teaching,
- (f) Food necessary for subsistence for a period not exceeding three months to the persons referred to in clause (b),

(g) One set of tools or instruments related to the profession and employment of the persons referred to in clause (b).

(2) Notwithstanding anything contained in clause (b), (c), (d), (e), (f) or (g) of sub-section (1), the total value of the properties referred to in these clauses shall not exceed one hundred thousand rupees.

64. Assets not to be concealed: (1) A person who files a petition pursuant to Section 55 for commencing the bankruptcy proceedings of his or her assets shall submit an exact inventory of his or her total assets.

(2) In submitting an inventory pursuant to sub-section (1), if he or she hides or conceals such assets with mala fide intention of causing loss or damage to the creditor, a separate lawsuit may be instituted against him or her.

(3) If assets are hidden or concealed pursuant to sub-section (1), and such assets are discovered before the completion of the bankruptcy proceedings, the proceedings referred to in sub-section (2) of Section 61 shall be carried out in respect of the creditor and the claimant having so discovered the assets and the other creditor and claimant as well.

(4) If any creditor or claimant discovers any assets pursuant to sub-section (3) after the completion of the bankruptcy proceedings, ten percent amount of the assets so discovered shall be provided to the creditor or claimant who has so discovered the assets if such creditor or claimant has already satisfied the sum

according to his or her claim at the time of bankruptcy proceedings, and if his or her claim has not been so satisfied, his or her sum shall be caused to be satisfied from such assets and the remaining assets shall be distributed pursuant to the said sub-section to the other creditors and claimants.

Provided that if the creditor or claimant is the successor or relative of the bankrupt person, he or she shall not be entitled to such facility.

(5) If the assets hidden or concealed pursuant to sub-section (2) remain after payment to the creditor or claimant pursuant to sub-section (4), such assets shall be returned to the concerned person.

65. Status of bankruptcy to be terminated: (1) The status of a bankrupt person falling under bankruptcy shall remain for a period of twelve years from the date on which he or she became a bankrupt.

(2) Notwithstanding anything contained in sub-section (1), if a bankrupt person pays all liabilities payable to the creditors at the time of bankruptcy, he or she may file a petition in the court to terminate the status of bankruptcy along with the evidence thereof.

(3) The court shall make an order to summon the presence of all creditors who were either partially paid or unpaid at the time of bankruptcy of such a person within a period of fifteen days, excluding the time required for journey, to have a hearing on the petition filed pursuant to sub-section (2).

(4) If, in hearing the petition filed pursuant to sub-section (2), it appears that the bankrupt person has satisfied all the debts and liabilities remained unpaid at the time of bankruptcy, the court may annul the order made at the time of his or her bankruptcy.

(5) If an order is annulled pursuant to sub-section (4), the status of the bankrupt person shall be deemed have been terminated after one year from the date of the annulment of such an order.

66. Statute of limitation: A person aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit within the following period from the date of accrual of the cause of action for the commencement of the bankruptcy proceedings:

- (a) In matters under Section 54, within three years from the date of accrual of the cause of action,
- (b) In matters under Sections 62 and 64, within two years from the date of knowledge thereof,
- (c) In the matters other than those referred to in clauses (a) and (b), within six months from the date of commission of such an act or action.

Part-3

Family Law

Chapter-1

Provisions Relating to Marriage

- 67. Marriage deemed to be concluded:** If a man and a woman accept each other as the husband and wife through any occasion, ceremony, formal or other act, a marriage shall be deemed to have been concluded.
- 68. Marriage to be inviolable social bond:** (1) Marriage shall be a permanent, inviolable and holy social and legal bond, which is based on free consent and established to start conjugal and family life between a man and a woman.
- (2) The marital bond referred to in sub-section (1) shall subsist until extinguished pursuant to Section 82.
- 69. Freedom of marriage:** (1) Every person shall, subject to law, have the freedom to conclude a marriage, establish a family and spend a conjugal life.
- (2) A marriage must be made, or caused to be made, public irrespective of the manner used to conclude it.
- (3) Every person's family life shall be inviolable.
- 70. Marriage may be concluded:** (1) Subject to this Chapter, a marriage may be concluded between a man and a woman on the following conditions:
- (a) If the man and the woman agree to accept each other as husband and wife,

- (b) If the man and the woman are not relatives, punishable by law on incest,
- (c) If matrimonial relationship of both the man and the woman does not exist,
- (d) If both have attained twenty years of age.

(2) Notwithstanding anything contained in clause (b) of sub-section (1), nothing shall bar the conclusion, or causing the conclusion of, a marriage within the relationship that is allowed to marry in accordance with the practices prevailing in their ethnic community or clan.

71. Marriage not to be concluded: (1) No one shall conclude, or cause to be concluded, marriage with a man or a woman, as the case may be, who is not in a condition where marriage can be concluded pursuant to Section 70.

(2) No one shall conclude, or cause to be concluded, marriage with a man or a woman on any of the following conditions, by way of misrepresentation:

- (a) One who has contracted human immunodeficiency virus (HIV) or Hepatitis 'B' or similar other incurable severe disease,
- (b) One who has already been proved to have no sexual organ, to be impotent or to have no reproductive capability,
- (c) One who is dumb or has lost hearing capacity, being fully blind or is suffering from leprosy,

- (d) One who is of unsound mind,
- (e) One who is already a married,
- (f) One who is a pregnant,
- (g) One who has been convicted of a criminal offense involving moral turpitude by a court and sentenced for the same.

(3) A person who is aggrieved from the conclusion of marriage by way of misrepresentation pursuant to sub-section (2) may get such a marriage voided and claim a reasonable compensation from the person who concludes, or causes to be concluded, marriage by misrepresentation.

72. Marriage to be void: (1) A marriage concluded on any of the following conditions shall, *ipso facto*, be void:

- (a) A marriage concluded without consent of the man or the woman,
- (b) A marriage concluded between the relatives, punishable by law on incest.

(2) A marriage concluded pursuant to sub-section (1) shall be invalid *ab initio*.

(3) Notwithstanding anything contained in clause (b) of sub-section (1), a marriage concluded pursuant to sub-section (2) of Section 70 shall not be void.

73. Voidable marriage: (1) If a marriage is concluded in any of the following circumstances and any person who concludes such a

marriage does not accept it, the person may get such a marriage voided:

- (a) If the marriageable age set forth in clause (d) of sub-section (1) of Section 70 has not been completed,
 - (b) If the marriage has been concluded, or caused to be concluded, by way of misrepresentation pursuant to sub-section (2) of Section 71.
- (2) Notwithstanding anything contained in sub-section (1), a marriage shall be void only with the consent of the woman if she is pregnant or has delivered a baby as the consequence of the marriage.

74. Marriage to be deemed concluded if child is born from physical intercourse: (1) Notwithstanding anything contained in sub-section (2) of Section 69, if a woman is proved to have delivered a child by conceiving pregnancy from physical intercourse with a man, marriage between such a man and a woman shall, *ipso facto*, be deemed to have been concluded.

(2) Notwithstanding anything contained in sub-section (1), no marriage shall be deemed to have been concluded between a man and a woman in any of the following circumstances even if a child is born from physical intercourse with the man:

- (a) If a woman gives birth to a child by conceiving pregnancy as the consequence of rape,
- (b) Except in case of the relationship of under sub-section (2) of Section 70, if a woman delivers a

child by conceiving pregnancy from a physical intercourse with a man within the relationship punishable by law on incest.

- 75. No lawful rights of child already born to be prejudiced:** There shall be no prejudice in the lawful rights of a child already born from a marriage if the marriage becomes void pursuant to Section 72 or the marriage is got voided pursuant to Section 73 or of the child born in any of the circumstance referred to in sub-section (2) of Section 74.
- 76. Marriage to be registered:** (1) Both husband and wife shall get their marriage registered by filing an application in the authority specified by the Government of Nepal by a notification in the Nepal Gazette.

Provided that in the circumstance referred to in sub-section (1) of Section 74, both or either of husband and wife may file an application for the registration of marriage.

(2) A husband and wife residing outside Nepal may file an application for the registration of marriage in the Nepali embassy or consulate general located in the country in which they have been residing.

(3) If an application is filed pursuant to sub-section (1) or (2) for the registration of a marriage, the concerned authority shall, after registering the marriage in the marriage book maintained in the office, issue the marriage registration certificate, in the form as specified by the Government of Nepal, to the applicant, within fifteen days of the filing of the application.

Explanation: For the purposes of this Chapter, the term "concerned authority" means the marriage registering authority.

(4) If the marriage cannot be registered according to the application filed pursuant to sub-section (1) or (2), the concerned authority shall give the applicant information, specifying the reasons therefor, within seven days of the filing of the application.

(5) If any one party does not appear for the registration of a marriage according to the application filed pursuant to the proviso to sub-section (1), the concerned authority shall register the marriage after inquiring into such a party.

(6) If, in making inquiry pursuant to sub-section (5), the other party expresses disagreement to the registration of marriage, the concerned authority shall not register the marriage and inform the applicant that the decision on that matter shall be made as decided by the court.

(7) The concerned authority shall safely maintain the records of the details of the registration of marriage under this Section.

(8) If a couple who have already concluded marriage prior to the commencement of this Act but have not registered the marriage may, if they so desire, get their marriage registered pursuant to this Section.

Provided that the marriage of such a couple shall not be deemed to be legally invalid merely for the reason that such marriage is not registered.

77. Marriage by registration: (1) Notwithstanding anything contained in sub-section (2) of Section 69 and Section 74, if a man and a woman desire to conclude marriage by registration, they shall file an application in the concerned District Court, if they are in Nepal, and in the Nepali embassy or consulate general, if they are outside Nepal, specifying therein their name, surname, age, address, profession, name of their father, mother, grand-father, grand-mother, whether previously married or not, if married, the details of the dissolution of marriage and also the name of at least two witnesses.

(2) In order to file an application pursuant to sub-section (1), either the man or the woman or both must have resided since at least fifteen days ago in the concerned district if the application has to be filed in the District Court, and, if the application is to be filed in the embassy or consulate general, in the country in which such an embassy or a consulate general is situated.

78. Decision to be made as to whether marriage is capable of being concluded: (1) If an application is filed pursuant to Section 77 for the conclusion of a marriage by registration, the concerned authority shall make, after making necessary inquiry, a decision within seven days of the filing of the application, as to whether or not the marriage is capable of being concluded.

(2) Notwithstanding anything contained in sub-section (1), if the concerned authority based in a foreign country has suspicion about the proposed marriage, the authority shall submit the matter to the Government of Nepal and settle the matter according to the decision of the Government of Nepal.

- 79. Deed of consent to be prepared:** If a decision is made pursuant to Section 78 to the effect that marriage is capable of being concluded between the applicants, the concerned authority shall prepare a deed of consent for marriage, also recording the matters specified in the application and a statement to the effect that the parties to the marriage have consented to accept each other as husband and wife, cause the contracting parties and witnesses present to affix their signature and thumb impression on the deed in his or her presence and also sign the deed.
- 80. Provisions relating to registration of marriage:** (1) After the deed of consent has been signed pursuant to Section 79, the concerned authority shall register such a marriage in the registration book, which has to be signed by such an authority and also by the parties to the marriage and witnesses present.
- (2) Once the marriage is registered pursuant to sub-section (1), the concerned authority shall issue a marriage registration certificate, in the form specified by the Government of Nepal by a notification in the Nepal Gazette, to the parties to the marriage registration.
- (3) Marriage shall be deemed to have been concluded between the applicants from the date on which the marriage registration certificate is obtained pursuant to sub-section (2).
- 81. Provision relating to use of surname by married woman:** (1) A married woman may, after marriage, use the surname used by her father or mother or the surname of her husband or both the surnames.

(2) If a question arises as to the surname of a married woman, except as otherwise proved, she shall be deemed to have used the surname of her husband.

(3) If the marriage of a woman who has used the surname of her husband is dissolved, she may, if she so desires, use the surname used by her father or mother.

82. Matrimonial relationship deemed to be terminated: In any of the following circumstances, the matrimonial relationship between the husband and the wife shall be deemed to have been terminated:

- (a) If marriage is annulled pursuant to Section 72 or 73,
- (b) If marriage is dissolved according to law between husband and wife,
- (c) If the wife concludes another marriage before effecting divorce pursuant to law.

83. Re-marriage may be concluded: Notwithstanding anything contained elsewhere in this Chapter, a man or a woman may remarry in any of the following circumstances:

- (a) If the matrimonial relationship between husband and wife is terminated pursuant to Section 82,
- (b) If husband or wife dies,
- (c) If husband and wife are separated upon partition in accordance with law.

84. Statute of limitation: A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within three months after the date on which such act was done or action taken.

Chapter-2

Provisions Relating to Consequences of Marriage

- 85. To be considered husband and wife:** After the conclusion of marriage between a man and a woman, they shall, so long as such matrimonial relationship subsists, be considered each other's husband and wife.
- 86. Relation and obligation of husband and wife:** (1) The husband and wife must have mutual love and good faith.
- (2) The husband and wife must establish and spend conjugal life by living together, except as otherwise arranged through mutual understanding.
- (3) The husband and wife must help, protect and respect each other.
- 87. Husband's home to be considered residence:** Except where a separate residence is fixed by mutual understanding of the husband and wife, the husband's home shall be considered to be the wife's residence.
- 88. To be considered each other's agent:** Except as otherwise provided for in the law or except where there is a legal dispute between the husband and wife, the husband and wife shall be considered as each other's agent in the general household affairs.
- 89. To provide, or cause to be provided, maintenance in accordance with reputation:** The husband and wife shall provide, or cause to be provided, maintenance cost and health care to each other according to their reputation and capacity.

- 90. Household affairs to be managed by consent:** (1) The husband and wife of an undivided family shall manage the household affairs by mutual consent according to their property, income and capacity.
- (2) Except as otherwise provided in the law, the husband or wife shall obtain each other's consent in selling or otherwise transferring a property registered in his or her name.
- 91. Not to preclude from exercising profession, business or occupation:** The husband or wife or any member of the family shall not preclude each other from exercising a profession, business or occupation of their respective skill, qualification or ability.
- 92. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within three months after the date on which such an act was done or action was taken.

Chapter-3

Provisions Relating to Divorce

- 93. Divorce may be effected by consent of both:** If both the husband and wife so desire, they may divorce the relationship of husband and wife at any time.
- 94. Husband may effect divorce:** The husband may effect divorce in any of the following circumstances even without consent of the wife:
- (a) Except where the husband and wife are living separately after obtaining their partition share or separating **bread and board** in accordance with law, if the wife has been living separately for three or more consecutive years, without consent of the husband,
 - (b) If the wife deprives the husband of maintenance costs or expels him from the house,
 - (c) If the wife commits an act or conspiracy likely to cause the grievous hurt or other severe physical or mental pain to the husband,
 - (d) If the wife is proved to have made sexual relation with another person.
- 95. Wife may effect divorce:** The wife may effect divorce in any of the following circumstances, even without consent of the husband:
- (a) Except where the husband and wife are living separately after obtaining their partition share or separating bread and board in accordance with law, if

the husband has been living separately for three years or more consecutively, without consent of the wife,

- (b) If the husband deprives the wife of maintenance costs or expels her from home,
- (c) If the husband commits an act or conspiracy likely to cause grievous hurt or other severe physical or mental pain to the wife,
- (d) If the husband concludes another marriage,
- (e) If the husband is proved to have made sexual intercourse with another woman,
- (f) If the husband is proved to have raped the wife.

- 96. Petition to be filed for divorce:** The husband or wife, as the case may be, desiring to get the relationship divorced shall file a petition in the court.
- 97. Mediation to be made between husband and wife:** If a petition is filed for divorce pursuant to Section 96, the court shall, to the extent possible, remind and convince both the parties and conciliate them.
- 98. Divorce to be effected:** If the court fails to make conciliation between the husband and wife even after reminding and convincing them pursuant to Section 97 and deems appropriate to get the relationship divorced rather than to continue it any longer, the court shall effect divorce between them.

Provided that if the husband and wife do not agree to conciliate between them despite being reminded and convinced by

the court to that effect, the court shall effect divorce after one year of the filing of the petition.

99. Partition of property to be effected before divorce: (1) If divorce is to be effected because of the husband, the concerned court shall, if the wife so demands, cause partition to be effected between the husband and wife before effecting divorce.

(2) If a petition is filed by the wife for divorce on the ground referred to in clause (b), (c), (d), (e) or (f) of Section 95, divorce is deemed to be effected because of the husband, for the purposes of sub-section (1).

(3) If a property in common is registered in the name of both husband and wife or either of them, then such property shall be partitioned between them according to law, prior to effecting divorce.

(4) If the husband himself has not obtained partition from his father or other coparceners, the court shall, by causing both the parties to disclose the coparceners, and if there are other coparceners who are entitled to partition, by inquiring such coparceners as well, cause partition to be apportioned between the husband and wife.

(5) If it appears that it may take a long time to effect partition pursuant to sub-section (1), (3) or (4), the court may effect divorce between the husband and wife and order the husband to provide the wife with monthly expenses as alimony according to the property and income of the husband until the partition is effected.

Provided that if such a woman concludes another marriage before effecting partition, she shall not be entitled to a partition share.

(6) Notwithstanding anything contained elsewhere in this Section, if a petition is filed for divorce on the ground referred to in clause (b), (c) or (d) of Section 94, the husband shall not be compelled to provide partition share or alimony to the wife pursuant to this Chapter.

- 100. Order to pay lump sum amount or alimony:** Notwithstanding anything contained in Section 99, if the wife who effects divorce desires to obtain from the husband a lump sum amount or annual or monthly alimony or expense, instead of the partition share, the court may order the husband to provide such a wife with a lump sum amount or annual or monthly alimony or expense on the basis of his property or income.

Provided that if such a wife concludes another marriage, it is not required to provide such amount or alimony.

- 101. Order to provide maintenance costs:** If the wife, who has not obtained partition from the husband for there being no property for partition under Section 99, desires to receive maintenance costs from the husband and the husband has income, the Court may order the husband to provide maintenance costs to the wife according to the income of the divorced husband.

Provided that:

- (1) If such a wife concludes another marriage, it is not required to provide such costs,

(2) If the income of the wife is higher than that of the husband, it is not required to provide such costs.

102. To be according to agreement: Notwithstanding anything contained elsewhere in this Chapter, if there exists a written agreement between the husband and wife on the partition share or alimony to which the wife is entitled upon divorce, it shall be according to such agreement.

Provided that no agreement which is against the interest of a minor may be made.

103. Previous child or husband to obtain property: On the death of a divorcee woman, her son, daughter, if any, shall be entitled to her property, and if not, the previous husband shall obtain the property received by her from such a husband, and the successor on her mother's side shall obtain the other property.

104. Statute of limitation: A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within three months after the date of accrual of the cause of action or knowledge of such an act or action.

Chapter-4

Provisions Relating to Relationship of Mother, Father and Son and Daughter

105. Maternity or paternity to be determined from mother or father:

(1) If it is required to determine a person's maternity or paternity, it shall be determined on the basis of his or her mother or father, as the case may be.

(2) In determining paternity pursuant to sub-section (1), the person who was the husband of his or her mother at the time of birth of such a person shall be presumed, unless otherwise proved, to be a father of such a person.

106. Child presumed to be born from married husband: Unless otherwise proved, a child born in any of the following circumstances shall be presumed to be born from the married husband:

(a) Born after one hundred eighty days from the date on which the marriage was concluded,

(b) Born within two hundred seventy-two days from the date on which the husband died or divorce was effected.

107. Paternity may be denied: (1) Except as otherwise agreed upon between the husband and wife, the paternity of a child born to the wife before one hundred eighty days of the conclusion of marriage may be denied by the husband and by the successor to the husband where the husband had already died before the birth of such child.

(2) Notwithstanding anything contained in sub-section (1), where a man concludes marriage with a woman with knowledge or having reasonable ground to know that she was pregnant before the marriage, the paternity of a child cannot be denied merely on the ground of his or her birth before that period.

108. Son, daughter or paternity to be claimed: (1) If a child whose paternity or maternity is not determined has to be claimed as one's own son or daughter, such claim shall be made within a period of two years of the child being born or being identified.

(2) In claiming the paternity of a child born without the paternity being identified, a claim shall be made within a period of two years of the birth of such child.

Provided that no claim may be entertained if such child is already dead.

109. Paternity of child born from artificial insemination to be of father: A child born from the use, with consent of the husband and wife, of artificial insemination system from semen of another person shall be considered to have been born from the married husband and his or her paternity shall be determined accordingly.

110. To be according to court's decision: If there arises a dispute as to the maternity or paternity of a person, its settlement shall be as decided by the Court.

111. To obtain name and surname: (1) Each person shall, after birth, obtain the name as designated by his or her mother or father according to his or her religion, culture, usage or tradition.

(2) If the mother or father of a person is not available for the time being or is not likely to be so available, the person shall obtain the name as designated by the guardian or curator taking care of him or her.

(3) Each person shall, after birth, be entitled to use after his or her name the surname designated with the consent of his or her father and mother or failing such consent, the surname of his or her father.

Provided that a person whose paternity is not traced out shall be entitled to use after his or her name the surname of his or her mother.

(4) Notwithstanding anything contained in sub-section (3), a person may, if he or she so wishes, use the surname of his or her father or mother or of both.

(5) If a dispute arises as to the surname of a person, he or she shall be considered, unless otherwise proved, to have used the surname of his or her father.

(6) Notwithstanding anything contained elsewhere in this Section, a person whose both father and mother are not traced out shall be entitled to use after his or her name the surname given by the guardian taking care of him or her.

- 112. Name of mother, father, grand-father and grand-mother may be mentioned:** (1) If the name of mother, father and grand-father, grand-mother is required by law to be mentioned in a formal act, legal act and proceeding or deed, any person shall be entitled to

mention the name of his or her mother, father and grand-father, grand-mother.

(2) If the father of a person who has to mention the name of his or her mother, father and grand-father, grand-mother pursuant to sub-section (1) is not traced out, the person may mention the name of his or her mother and the mother's grand-father, grand-mother, and even where the mother's name is not traced out, it shall be sufficient to mention, setting out that matter, the name of the guardian or curator if he or she is a minor, and only his or her name if he or she is a major.

113. Birth of son, daughter to be registered: (1) If a son or daughter is born to a couple, the mother or father shall file an application, within three months of the birth of such a son or a daughter, before the authority specified by the Government of Nepal by a notification in the Nepal Gazette, for the birth registration.

(2) If one intends to file an application for the registration of a son or a daughter after the expiry of the time-limit referred to in sub-section (1), such fee as specified by the Government of Nepal by a notification in the Nepal Gazette shall be charged.

(3) If an application is filed pursuant to sub-section (1) or (2), the concerned authority shall, after entering the details in the birth register maintained in the office, issue a certificate of birth registration in the form as specified by the law to the applicant.

(4) The details to be entered in the register under sub-section (3) shall include the concerned person's name, surname, date of birth (year, month, instant and day as well) and place of

birth, and the name, surname and address of his or her mother, father and grand-mother and grand-father, as well.

(5) The concerned authority shall forward the details entered, pursuant to sub-section (3), in the register maintained in the office up to the last day of every month to the District Administration Office, within a period of fifteen days of the first month thereafter and the said Office shall also enter such details up to the end of every month in the birth register maintained in the office for that purpose and forward the same in every three months to the Ministry specified by the Government of Nepal by a notification in the Nepal Gazette.

(6) The concerned Ministry shall enter the details received pursuant to sub-section (5) in the birth register maintained for that purpose and maintain up-dated details each year.

114. Obligation to care and maintain: (1) The mother and father shall jointly care and maintain their every minor.

(2) In caring and maintaining pursuant to sub-section (1), the father and mother shall provide for maintenance, health care, education, sports and entertainment and other necessary arrangements, according to their financial condition and capability.

115. To be under custody of mother or father: (1) Notwithstanding anything contained in Section 114, if matrimonial relationship between a husband and wife is extinguished in accordance with law, a minor born from them shall remain in the custody of the mother or the father as provided herein below:

- (a) In the case of a minor who has not attained five years of age, under the custody of the mother, if she so desires irrespective of whether or not she has concluded another marriage,
- (b) In the case of a minor above five years of age, except where the mother has concluded another marriage, under the custody of the mother, if she so desires,
- (c) In the circumstance other than that referred to in clause (a) or (b), under the custody of the father.

(2) Notwithstanding anything contained in sub-section (1), where the husband and wife have entered a separate agreement on the custody of a minor at the time of divorce or judicial separation, the agreement shall apply to the custody of the minor.

(3) Notwithstanding anything contained in sub-section (1), while deciding as to which of the father and the mother has the custody of a minor above ten years of age, the opinion of the concerned minor may also be obtained.

(4) Notwithstanding anything contained elsewhere in this Section, if the mother or father, under whose custody a minor is living, dies, the surviving father or mother shall take the minor under his or her custody without any delay.

Provided that if the mother has already concluded another marriage, she is not obliged to take a minor above five years of age under her custody.

(5) Notwithstanding anything contained elsewhere in this Section, if the husband and wife, who get separated in accordance with law, have a minor, the maintenance, education and health care of such a minor shall be according to the agreement concluded, if any, between the husband and wife in that respect, and in the absence of such an agreement, it shall be as follows:

- (a) In the case of a minor below five years of age, the minor shall be under the mother's custody,
- (b) In the case of a minor who is of five years of age or above five but below ten years of age, the minor shall be under the father's custody,
- (c) In case of a minor having attained ten years of age, the minor shall be under the mother's or the father's custody, with whom the minor desires to live.

116. Obligation to take necessary care and provide maintenance: (1)

The father or mother, as the case may be, who takes the custody of a minor pursuant to Section 115, shall take care of and maintain such minor, and, in so taking care of and maintaining the minor, the father or mother, as the case may be, shall do so in accordance with the provisions referred to in sub-section (2) of Section 114.

(2) Notwithstanding anything contained in sub-section (1), if the income of the father or mother who does not take the custody of a minor is higher than that of the father or mother who takes the custody of the minor, such a mother or a father shall provide such a minor with such expenses, for the purpose of maintenance, education and treatment of the minor, as agreed upon between such

father and mother and in the absence of such agreement, as specified by the court.

117. Facility of visit to be provided: (1) In cases where matrimonial relationship is extinguished or the mother or father are living separately in accordance with law, the minor shall be allowed to visit, from time to time, the father if he or she is living under the mother's custody and the mother if he or she is living under the father's custody, or with the consent of the mother and father, to stay with either of them for some time.

Provided that if it appears that the interest of the minor is likely to be prejudiced in availing the facility of such visit or stay, the court may issue an order prohibiting such visit or stay.

(2) The frequency of visit to, or the period of stay with, the father or the mother, as the case may be, pursuant to sub-section (1), shall be as fixed by the concerned mother and father and, in the absence of such fixation, shall be as ordered by the court.

(3) If a minor is living with his father or mother pursuant to this Section, the father or mother taking the custody of the minor shall take care of and maintain him or her in accordance with sub-section (2) of Section 114.

118. Rights of son, daughter remain to exist: (1) Notwithstanding the matrimonial relationship between the husband and wife is extinguished pursuant to this Chapter, the legal rights of the son, daughter born from them vis-à-vis the father, mother and the obligation of the father, mother vis-à-vis him or her shall remain in existence.

(2) In spite of the father and mother of a person being incapable of becoming husband and wife in accordance with this Act, the legal rights of the son, daughter born from them vis-à-vis the father, mother and the obligation of the father, mother vis-à-vis him or her shall remain in existence.

119. Prohibition on living separately without consent: (1) A son, daughter shall not, without consent of his or her father or mother, live separately from his or her father or mother.

(2) Notwithstanding anything contained in sub-section (1), a son, daughter may live separately from his or her father, mother in the following circumstance:

- (a) If he or she is separated from his or her father, mother, with or without obtaining partition according to law,
- (b) If he or she concludes marriage,
- (c) If he or she attains at least twenty one years of age, or
- (d) If he or she is already employed.

120. Minor not to work as labor: A minor who is allowed to be engaged in a work as a labor according to law cannot work as a labor without consent of the mother, father, other guardian or curator.

121. Decision of father, mother taking custody of minor to prevail: If there arises a dispute between the father and mother, who cannot conclude marriage between them or whose matrimonial relationship is extinguished pursuant to this Act, on any matter to be decided in

respect of the right and interest of a minor born from such father and mother, the decision made by the father or mother, as the case may be, with whom such a minor is living shall prevail.

- 122. Son or daughter to honor, respect and care mother, father:** (1) Every son or daughter shall treat his or her mother, father with honor and respect.

(2) Every son or daughter shall, according to his or her financial and social status, provide necessary care, maintenance, medical treatment or attention to his or her mother, father, notwithstanding living in an undivided family or separately in accordance with law.

- 123. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within the specific statute of limitation, if any, provided in this Chapter for making such lawsuit, and within six months after the date on which such an act was done or action taken, in the other circumstances.

Chapter-5

Provisions Relating to Parental Authority

124. To be under supervision and control of father and mother: (1)

A minor son, daughter shall live under the supervision, oversight, control or authority of their father and mother.

(2) A minor living under sub-section (1) shall obey lawful order or direction given by his or her father, mother.

125. Parental authority to be exercised jointly: (1) The mother and

father shall, jointly and with their mutual consent, exercise such authority over, fulfill such responsibility and duty towards, their son and daughter as required to be exercised and fulfilled under this Chapter.

(2) Notwithstanding anything contained in sub-section (1), the following mother or father, as the case may be, shall, in the following circumstance, exercise such authority and fulfill such responsibility and duty as to be exercised and fulfilled pursuant to the said sub-section:

- (a) If either of the father and mother dies, the surviving mother or father,
- (b) If either of the mother and father is of unsound mind, the mother or father of sound mind, during the period of existence of such state of mind,
- (c) If the matrimonial relationship between the mother and father is dissolved or they have been living separate according to law, the mother or father who has taken the custody of the minor,

- (d) If the father of a minor is not traced out, the mother.

126. Rights, responsibilities and duties of person exercising maternal and parental authority: The rights, responsibilities and duties of the father or mother who is entitled to exercise the parental authority pursuant to this Chapter shall be as follows:

- (a) To keep the minor with him or her, provide company to the minor and watch the minor's works, actions and behaviors,
- (b) To provide food and clothes and to teach him or her to eat, wear and labor,
- (c) To provide affection, fondness and love,
- (d) To inculcate in him or her social dignity, decency, morals, rites, culture, customs and to educate him or her to behave accordingly;
- (e) To provide moral education based on social values such as honesty, self-confidence, self-reliance, integrity, labor and discipline,
- (f) To vigil physical and mental health, to provide and cause to be provided medical treatment,
- (g) To provide opportunity, according to necessity, for sports and entertainment,
- (h) To make available read-worthy and message-oriented educational materials,

- (i) To guide to remain loyal to the family, society, community, nation and state,
- (j) To prevent from bad habits, bad association and obscene matter,
- (k) To teach to obey order, honor and revere,
- (l) To do, or cause to be done, such other act whatsoever as may be required for the development of physical, mental and intellectual personality.

127. Prohibition on discrimination: The mother or father shall not make discrimination between their children, in any manner, in the maintenance, education and upbringing, sports, medical treatment, entertainment, facility or household work of their children on the ground of son or daughter or between sons or between daughters.

128. Special care to be taken: (1) If any son or daughter is physically or mentally handicapped or disabled or has contracted a deadly disease such as human immune-deficiency virus (HIV) or Hepatitis B, the mother, father shall take special care of, and provide special treatment and protection to, such a son or a daughter.

Explanation: For the purposes of this Chapter, the term "physically or mentally handicapped" means a physically or mentally impaired person who himself or herself is unable or incompetent to carry out daily work.

(2) In order to make the son or daughter as referred to in sub-section (1) financially self-reliant in the future by having arrangements for providing special medical treatment, the mother and father shall make, according to their financial condition and

capacity, arrangements for imparting special education or training to such son or daughter.

- 129. Power to cause minor to improve conduct and habit:** If the mother or father consider it necessary to make the minor, who is under their supervision, oversight, control or authority pursuant to this Chapter, improve his or her behavior, habit, conduct and character, they may do such acts as they think appropriate vis-à-vis such a minor and make him or her improve his or her behavior, habit or conduct.

Provided that the minor shall not be subjected to any treatment that entails physical or mental pain.

- 130. Authority deemed to be provided to exercise right:** If the mother and father appoint a teacher for the education and upbringing of their son or daughter or admits the child into an educational institute for any kind of education, the teacher so appointed or the headmaster or teacher of such an institute shall be deemed to have been given the authority to exercise the rights as referred to in Section 129 in respect of education and upbringing.

- 131. Guardian or curator may also exercise parental authority:** If a minor is living with the guardian or curator for the reason that both of his or her mother and father have died or disappeared or his or her mother has concluded another marriage following the death of his or her father or both of his or her mother and father have become of unsound mind, his or her guardian or curator, as the case may be, may exercise such paternal authority and fulfill such responsibilities and duties as required to be exercised and fulfilled by the mother and father under this Chapter.

132. Power to restrict parental authority: (1) If a complaint is filed by a person or a child welfare organization incorporated pursuant to law specifying that a person who is entitled to exercise the paternal authority pursuant to this Chapter has committed any of the following acts against a minor and, if the allegation is proved from an inquiry into the matter, the court may prevent such a person from exercising such authority:

- (a) Subjecting a minor to cruel, inhumane or torturous punishment or treatment,
- (b) Neglecting, disregarding or abusing the minor from time to time,
- (c) Engaging a minor in an immoral or sexual profession,
- (d) Employing a minor in a work likely to endanger the body, life or health,
- (e) Causing loss and damage to a minor's property by spending it against his or her interest or selling such property to others with the intention of taking it subsequently,
- (f) Compelling a minor to abandon family life by making him or her a *Sanyasi*, fakir, monk, nun, *Paschar* or in similar other way,
- (g) Engaging a minor in begging, except while observing a religious or cultural rite,

(h) Causing a minor to do any other act constituting an offense under law.

(2) If a restriction is imposed pursuant to sub-section (1), the court shall appoint a guardian according to law, authorizing him or her to exercise the parental authority in respect of such a minor.

(3) If the guardian is appointed to exercise the parental authority pursuant to sub-section (2), such a guardian may exercise the parental authority under this Chapter in consonance with the interests of the minor.

(4) If the person, who is prevented from exercising the parental authority pursuant to sub-section (1), makes a petition in the Court, making an undertaking not to repeat the act referred to in the said sub-section, the court may lift the restriction imposed on him or her and revoke the appointment as referred to in sub-section (2).

133. Termination of parental authority: (1) The parental authority which the mother and father are entitled to exercise over their son or daughter child pursuant to this Chapter shall be deemed to have been terminated in any of the following circumstances:

- (a) If the son or daughter attains eighteen years of age,
- (b) If the son or daughter lives separately after getting an employment.

Provided that where any son or daughter is physically or mentally handicapped, the parental authority over him or her shall, except in cases

where he or she lives separately by concluding marriage, not be terminated.

- 134. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within six months after the date on which such an act was done or action was taken.

Chapter-6

Provisions Relating to Guardianship

- 135. To be considered guardian:** A person who is appointed or liable under this Chapter to protect the rights and interest of, or protect an incompetent or quasi-competent person shall be considered to be a guardian.
- 136. Priority order of guardian:** (1) Subject to the other Sections of this Chapter, a person in the following priority order shall, *ipso facto*, be a guardian of an incompetent or quasi-competent person:
- (a) Husband or wife living in a joint family,
 - (b) Father or mother,
 - (c) Son, daughter or widow daughter-in-law living in a joint family,
 - (d) Separated husband or wife,
 - (e) Separated son, daughter or widow daughter-in-law,
 - (f) Grand-father or grand-mother,
 - (g) Grand-son or grand-daughter,
 - (h) Elder or younger brother or elder or younger sister,
 - (i) Grand-father, grand-mother on the mother's parent side, maternal uncle, maternal aunty.
- (2) Notwithstanding anything contained in sub-section (1), the following person shall be a guardian in the following circumstances:

- (a) Where there are more than one person in one priority order eligible to be a guardian, the person mutually agreed upon by them, and in the absence of such agreement, the person as designated by the court,
- (b) In the case of a person of sound mind and having attained ten years of age, a person chosen by him or her,

Provided that in so choosing the guardian, a deed shall be executed to that effect and certified by the court.

- (c) In the case of a minor of a couple whose matrimonial relationship has been extinguished in accordance with law, the father or mother who maintains him or her,
- (d) If any person who is in the first priority order declines to be a guardian, becomes of unsound mind or does not act in the capacity of a guardian, the person who is in the next priority order.

Provided that if a person in the next order is to so become a guardian, the person shall get it certified by the court that he or she is the guardian.

137. Other person considered to be guardian: Notwithstanding anything contained in Section 136, if guardianship to an incompetent or quasi-competent person is provided by a person other than the one referred to in that Section, the person so

providing guardianship shall be considered to be a guardian of such a person.

Provided that the person who so becomes a guardian shall get it certified by the court that he or she is the guardian.

138. Organization considered to be guardian: (1) If a child, who is living in an organization, such as a child welfare house, orphanage, child home or children's organization, registered pursuant to law with the object to have welfare of and protect rights and interests of children, has no other guardian, such an organization shall be considered to be his or her guardian.

(2) In doing any act or taking any action on behalf of a minor living in an organization referred to in sub-section (1), the chief of such an organization shall do such an act or take such an action.

Explanation: For the purposes of this Chapter and Chapter-7 of Part-3, the term "chief" means the chief executive officer of that organization or the chairperson, general manager, managing director or other officer acting in that capacity.

139. Guardian may be appointed by court: (1) Notwithstanding anything contained in Section 136 or 137, the court may, in the following circumstances, appoint a particular person as the guardian, specifying the reason therefor:

(a) If the concerned ward committee of the concerned Local Level files a petition in the court for the appointment of guardian in cases where any person declines to be a guardian pursuant to Section 136,

(b) If the stakeholder files a petition in the court for the appointment of guardian.

(2) In appointing a guardian pursuant to sub-section (1), the court shall consider whether or not the rights, interests or protection of such incompetent or quasi-competent person may be secured.

(3) In appointing a guardian pursuant to sub-section (1), the court shall also obtain the consent of the person to be appointed as the guardian.

(4) After appointing a guardian pursuant to sub-section (1), the court shall give a written notice thereof to the person to be guardian and the Local Level.

140. Supervisor may be designated: (1) If a guardian is appointed by the court pursuant to Section 139, the court may, if it considers necessary to inquire into the acts and actions of such a guardian, designate any person as the supervisor.

(2) The supervisor designated pursuant to sub-section (1) shall make necessary inquiry into the acts and actions of the guardian and submit a report thereof to the court.

(3) If the guardianship is terminated pursuant to Section 148, the state of supervision shall also be, *ipso facto* deemed to be, terminated.

141. Disqualifications for guardian: None of the following persons may become a guardian:

(a) An incompetent or quasi-competent person,

- (b) A person proved to have done an act against the rights and interests of an incompetent or quasi-competent person,
- (c) A person sentenced by a court to imprisonment for a term of three years or more.

Provided that this clause shall not be deemed to prevent a person who is in the priority order under sub-section (1) of Section 136 from being a guardian.

- (d) A person deemed disqualified to be a guardian by a court.

142. Maintenance and care of incompetent or quasi-competent person: (1) The guardian shall make arrangements for the maintenance, health, education, entertainment and care of an incompetent or quasi-competent person under his or her guardianship from the property belonging to such a person, if any, and if such property is not available, from the property belonging to the guardian himself or herself.

(2) The arrangements for the maintenance, health, education, entertainment and care of an incompetent or quasi-competent person, pursuant to sub-section (1), shall be made from the movable property belonging to such a person, if any, and where there is no such movable property or where arrangements for the maintenance, health, education, entertainment and care cannot be made from that property, his or her immovable property may be sold for that purpose with the prior permission of the court.

Provided that it is not required to obtain permission of the court to sell the immovable property where a person in the priority order under sub-section (1) of Section 136 is the guardian.

143. Property to be supervised, protected and managed properly: (1)

The guardian shall supervise and protect the property belonging to the incompetent or quasi-competent person under his or her guardianship.

(2) The guardian may carry on any business or transaction by investing the property belonging to the person under his or her guardianship.

144. To maintain books and accounts accurately: (1) The guardian shall maintain accurately the books and accounts of expenditures incurred in the maintenance, health, education and care of the incompetent or quasi-competent person under his or her guardianship, and of the incomes and expenditures made in the course of the management of the property belonging to that person and the inventory proving the ownership of such property.

Provided that it is not required to maintain such books and accounts where a person in the priority order referred to in sub-section (1) of Section 136 is a guardian.

(2) The guardian shall submit the books and accounts maintained pursuant to sub-section (1) and the inventory proving the ownership of that property to the incompetent or quasi-competent person within one year after the date on which that person has attained majority pursuant to law or the date on which that person has notified in writing the court that he or she is competent to carry out business.

(3) If an incompetent or quasi-competent person dies when he or she was under guardianship, the guardian shall submit the books and accounts and the inventory proving ownership of that property referred to in sub-section (1) to that person's nearest successor within six months after the date of his or her death.

- 145. Power to institute legal action or defend case:** The guardian may, for the protection of the rights, interests of an incompetent or quasi-competent person under his or her guardianship, institute a legal action against such a person or defend a case filed against him or her.

Provided that the guardian is not allowed to so renounce a claim or plea in relation to a civil case instituted upon the incompetent or quasi-competent person being its plaintiff or defendant or execute a deed of compromise in any case as to cause an adverse effect to him or her.

- 146. Power to act on behalf of incompetent or quasi-competent person:** Subject to the provisions contained elsewhere in this Chapter, the guardian may carry out such act on behalf of the incompetent or quasi-competent person as may be carried out by that person according to law.

- 147. Act may be carried out only in consonance with terms:** Notwithstanding anything contained elsewhere in this Chapter, if a person is designated as the guardian for an incompetent or quasi-competent person with specification of certain terms, such a guardian shall have the authority to carry out acts only in consonance with such terms.

148. Termination of guardianship: (1) A guardianship shall be deemed to be terminated in any of the following circumstances:

- (a) If a petition filed by the guardian stating that he or she is unable to be a guardian is accepted by the court,
- (b) If the guardian or the incompetent or quasi-competent person under guardianship dies,
- (c) If the incompetent or quasi-competent person becomes a competent,
- (d) If, at the request of the incompetent or quasi-competent person under guardianship, the court removes the guardian.

(2) If a guardianship is terminated pursuant to sub-section (1) and the person who was the guardian and the person who was under guardianship are surviving, the person who had worked as guardian shall continue to maintain and take care of the incompetent or quasi-competent person under his or her guardianship until another guardian is appointed.

(3) If a guardianship is terminated pursuant to sub-section (1), the statute of limitation, time-limit or appointed date for appearance in relation to any legal proceedings required to be carried out by the guardian pursuant to this Chapter shall not be deemed to have been expired, from the date on which the guardianship is so terminated until another guardian is appointed.

149. Guardianship not to be transferred to successor: If a guardianship is terminated upon the death of the guardian pursuant to Section 148,

the right, authority and responsibility vested in him or her in the capacity of a guardian shall not be transferred to his or her successor.

Provided that in cases where another guardian is required to be appointed for an incompetent or quasi-competent person, he or she shall, in the capacity of the successor to the guardian, maintain and take care of such incompetent or quasi-competent person until another guardian is appointed.

- 150. Power to recover expenses:** If any guardian has arranged the maintenance, health, education, sports, entertainment and care of the incompetent or quasi-competent person under his or her guardianship from his or her own property, the guardian may recover the amount of expenses so incurred from the property belonging to the incompetent or quasi-competent person under his or her guardianship.

Provided that such expense cannot be so recovered where a person in the priority order referred to in sub-section (1) of Section 136 is the guardian.

- 151. Amount of loss and damage may be recovered:** If the guardian knowingly, deceitfully, fraudulently or dishonestly causes loss and damage to the property belonging to the incompetent or quasi-competent person under his or her guardianship in such manner as to or not to benefit himself or herself, the incompetent or quasi-competent person aggrieved therefrom may recover the amount of loss and damage caused to him or her from such a guardian.
- 152. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within six months after the date of knowledge of such act or action.

Chapter-7

Provisions Relating to Curatorship

- 153. To be curator of minor:** (1) If any minor does not have any guardian as referred to in Chapter-6 of this Part, any person may act in the capacity of curator of such a minor for the maintenance, health, education, care of, and protection of property belonging to, him or her, until the minor attains eighteen years of age.
- (2) Notwithstanding anything contained in sub-section (1), a person may appoint any one as a curator for the maintenance, health, education and care of his or her minor.
- 154. Curator of person of unsound mind:** (1) If a person of unsound mind does not have any guardian as referred to in Chapter-6 of this Part, any other person may act in the capacity of curator for the maintenance, care of, and protection of property belonging to, him or her.
- (2) If there is no curator or the curator cannot be ascertained under sub-section (1), the person under whose custody, supervision or oversight the person of unsound mind is living for the time being shall be the curator of such a person.
- 155. Mother to become curator of minor:** Notwithstanding anything contained in Section 153, if the father of any minor below ten years of age has died or disappeared or become of unsound mind or is in abroad and the mother of such a minor is alive, she herself shall be the curator of that minor even though she has concluded another marriage.

156. Body corporate to become curator: (1) If any person who has no guardian under Chapter-6 of this Part is under the supervision, protection or custody of a body corporate, such a body corporate shall be the curator of such a person.

(2) If a body corporate referred to in sub-section (1) becomes a curator, the chief of such a body corporate shall exercise the authority of a curator.

157. Court may appoint curator: (1) If any person has no guardian under Chapter-6 of this Part or no one acts as his or her curator, the concerned ward committee of the Local Level may file a petition, stating the details thereof, in the court for the appointment of a curator.

(2) In filing a petition pursuant to sub-section (1), the concerned ward committee of the Local Level shall set out the names, surnames, addresses and professions of the potential persons who could be appointed as the curator and also submit, along with the petition, a deed of consent given by such potential persons to act as the curator.

(3) If a petition is filed pursuant to sub-section (1), the court shall make an order to appoint any one appropriate person, out of the persons whose names are submitted pursuant to sub-section (2), as the curator.

158. Qualifications of curator: Any person other than a person who is disqualified for being a guardian pursuant to Section 141 may become a curator.

159. Curator to take custody of property: (1) The curator shall take custody of, manage and operate, the property belonging to the person under his or her curatorship.

(2) The curator shall arrange for the maintenance, education and medical treatment of the person under his or her curatorship, to the extent possible in view of his or her capacity, from the property taken into custody by him or her.

160. Power to use property: A person who becomes a curator may spend all the returns obtained from the property under his or her custody for the maintenance, health of the person under his or her curatorship and for the education of such a person, if he or she is a minor.

161. Power to spend immovable property with court's permission:

(1) If the movable property belonging to the person under his or her curatorship is insufficient to meet the expenses required for the maintenance, education or medical treatment of that person, the curator may file a petition, setting out the matter, in the court for permission to sell the immovable property or any part thereof for that purpose.

(2) If, upon inquiring into a petition filed pursuant to sub-section (1), it considers the reason for selling such immovable property to be reasonable, the court may grant permission to so sell the immovable property or any part thereof as it considers appropriate.

162. Property to be taken care of and protected rationally and carefully: (1) A curator shall look after of and protect the property

belonging to a person under his or her curatorship rationally and carefully.

(2) The concerned curator shall be liable for any kind of loss or damage to the property belonging to the person under his or her curatorship because of his or her failure to so look after and protect the property pursuant to sub-section (1).

Provided that the curator shall not be liable for any loss or damage to such property due to a disaster.

(3) If a complaint is filed with allegation that the curator has failed to look after of and protect the property pursuant to sub-section (1), the court may remove the concerned person from curatorship.

163. Transfer of title, *ipso facto* to be void: If a curator sells any immovable property belonging to the person under his or her curatorship to himself or herself or to any of his or her family members, with ulterior motive to disentitling such a person to that property or the title thereto happens to be transferred to him or her in any manner, such transfer of title shall, *ipso facto*, be void.

164. Curatorship to be terminated *ipso facto*: (1) Curatorship shall be deemed to have been terminated *ipso facto* in any of the following circumstances:

- (a) In the case of a minor, if he or she attains eighteen years of age,
- (b) In the case of a person of unsound mind, if he or she becomes of sound mind,

- (c) If custody of the minor is taken by the mother or father or both,
- (d) If the guardian of a minor or person of unsound mind is appointed,
- (e) If the court removes a person from curatorship pursuant to sub-section (3) of Section 162,
- (f) If the curator has no qualification referred to in Section 158,
- (g) If the curator or the person under curatorship dies.

(2) If curatorship is terminated pursuant to sub-section (1), the curator shall immediately return to the concerned person the property taken into custody in the capacity of curator.

165. Custody of property may be handed over: (1) Notwithstanding anything contained elsewhere in this Chapter, if a person is unable to protect and manage the property under his or her title, ownership or possession on his or her own, for the reason that he or she has to go elsewhere by leaving the place where he or she resides, he or she may appoint any person as a curator to that end and hand over the custody of such property to that other person.

(2) If the custody of property is handed over to any person pursuant to sub-section (1), the person taking the custody of such property shall protect and manage the property and return the property to the person handing over its custody as and when the handing over person so requires.

- 166. Requirement to certification by court:** One who becomes a curator pursuant to Sections 153, 154 and 165 shall get that matter certified by the court.
- 167. Application of other provisions:** The provisions contained in Sections 144, 145, 146, 147, 149, 150 and 151 shall also apply *mutatis mutandis* to the curator and the person under curatorship.
- 168. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within six months after the date of knowledge of such an act or action.

Chapter-8

Provisions Relating to Adoption

- 169. To be deemed adopted son or adopted daughter:** If a person accepts a son or daughter of another person as his or her son or daughter, such a son or a daughter shall be deemed to be an adopted son or daughter.
- 170. Adoption to be effected in a manner to protect the best interests of child:** In effecting adoption pursuant to this Act, adoption shall be effected in a manner to protect the best rights and interests of the child.
- 171. Prohibition on adoption by person having child:** (1) No person having his or her own son shall adopt a son and no person having his or her own daughter shall adopt a daughter pursuant to this Chapter.

(2) Notwithstanding anything contained in sub-section (1), if a son or daughter does not live with a man or woman who is living separately by the reason of judicial separation, such a man or a woman may adopt a son or a daughter.

Explanation: For the purposes of this Chapter and Chapter-9 of this Part, the term "judicial separation" means a circumstance where a person obtains partition in property according to the order of the court or lives separately according to law or lives separately after separation of bread and board from other coparceners.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a person who has a biological son or daughter makes a petition in the court for the adoption of another child, disclosing

therein his or her financial capacity to make arrangements for the maintenance, health care, education and care of the child, and if, upon inquiring into such a petition, it appears that the petitioner has such status, the court may grant permission to him or her to adopt such child.

172. Adoption may be effected: (1) The following person may effect adoption of a child:

- (a) A couple to whom no child has been born even up to ten years of the marriage,
- (b) An unmarried woman having completed forty-five years of age, a widow, divorcee woman or judicially separated woman, having no son or daughter,
- (c) An unmarried man having completed forty-five years of age, a widower, divorcee or judicially separated man, having no son or daughter.

(2) Notwithstanding anything contained in sub-section (1), the following person cannot effect adoption:

- (a) One who is of unsound mind,
- (b) One who is convicted by the court of a criminal offense involving moral turpitude,
- (c) One who does not have financial capacity to afford maintenance, health care, education, sports facility, entertainment and care of the minor.

(3) In effecting adoption by the husband or wife living in a joint family pursuant to this Section, they shall obtain each other's consent.

173. Adoption not to be effected: (1) No one shall effect adoption of any of the following persons:

- (a) One who has completed fourteen years of age,
- (b) One who is the only son or daughter,

Provided that this provision shall not apply to the circumstance referred to in sub-section (3) of Section 175.

- (c) One who has been once adopted as a son or daughter,

Provided that this provision shall not apply where the adoption is annulled according to law.

- (d) One who is in higher degree of relationship than the person adopting the son or daughter,
- (e) One who is not a citizen of Nepal.

Provided that the provision of this clause shall not apply to a non-resident Nepali citizen who has obtained a foreign citizenship.

(2) Notwithstanding anything contained in clause (a) of sub-section (1), if the person to be adopted is a person within the relation of three generations or a son or daughter born to the ex-husband of the wife, that person may be adopted even though he or she has completed fourteen years of age.

174. Difference of age between adopter and adoptee: (1) The age difference between the adopter and the adoptee shall be at least twenty-five years.

(2) Notwithstanding anything contained in sub-section (1), no age restriction shall apply to the adoption of a person within the relation of three generations.

175. Consent to be obtained for adoption: (1) In effecting adoption of a child, the adopter shall obtain written consent of both father and mother of such a child, if both of them are surviving, and of the surviving father or mother, as the case may be, if either of them is surviving.

(2) Notwithstanding anything contained in sub-section (1), if the father and mother are separated because of the dissolution of matrimonial relationship between the husband and wife or judicial separation, and a child living with such a father or mother according to the agreement made at the time of such dissolution or judicial separation is intended to be adopted, the adopter shall obtain consent of the person with whom, out of the father and the mother, the child has been living.

(3) Notwithstanding anything contained in sub-section (1), adoption of a child whose father and mother are not traced or surviving or a child whose father and mother are surviving but who has been maintained or cared by a person or organization following the conclusion of another marriage either by his or her father or mother may be effected by obtaining written consent of the person or organization so maintaining or caring the child.

(4) While adopting a child above ten years of age pursuant to sub-section (1), (2) or (3), written consent of such a child shall also be obtained.

(5) Written consent referred to in sub-section (4) shall be executed by the concerned child in the presence of his or her father, mother or guardian or curator exercising the maternal and parental authority.

(6) Before obtaining consent pursuant to this Section, information shall be given to the person putting a child up for adoption, guardian or curator and the child about, *inter alia*, the meaning, legal status and consequences of adoption.

(7) No financial inducement of any type shall be made in obtaining consent pursuant to this Section and such consent requires to be given voluntarily.

176. Adoption deemed to have been effected by couple themselves: If adoption was effected by the husband or wife living under judicial separation and, subsequent thereto, the husband and wife have lived jointly, the adoption effected before living so jointly shall be deemed to have been effected by the couple.

177. Procedures for effecting adoption: (1) If a person is desirous of adopting a child, he or she shall make a petition to the concerned court, along with a duly executed deed of adoption, in fulfillment of the legal requirements.

(2) If, upon inquiring into the deed of adoption received pursuant to sub-section (1), the concerned court finds that permission may be given to the petitioner for adoption, it shall issue

an order granting permission for adoption and shall authenticate such deed.

(3) If, upon making inquiry pursuant to sub-section (2), the court finds that permission cannot be given to the petitioner for adoption, it shall issue an order accordingly and give information thereof to the petitioner.

178. Entitlements and rights of adopted son or daughter: (1) The entitlements, rights, obligations and responsibilities of an adopted son or daughter shall be the same as that of a biological son or daughter of the adoptive person.

(2) Even if a son or daughter is born to a person who has already adopted a person, the equal status of such adopted son or adopted daughter to that of biological son or daughter shall not be prejudiced thereby.

179. Surname of adopted son or daughter: An adopted son or daughter may use the surname of either or both of the adoptive father and mother.

Provided that-

(1) If an adopted son or daughter so desires, he or she may use also the surname of his or her biological father or mother.

(2) If the adoption is annulled, his or her surname shall be that of his or her biological father or mother.

180. Not allowed to claim partition share of father and mother: An adopted son or daughter shall not be entitled to claim partition share in the property belonging to his or her biological father and mother.

Provided that-

- (1) If the adoption is annulled, he or she may claim partition share in the property belonging to his or her biological father and mother,
- (2) If an adopted son or daughter has already obtained his or her partition share at the time of effecting adoption, he or she may receive such property as well.

181. Adoptive person's obligations: (1) The obligations of an adoptive person shall be as follows:

- (a) To make arrangements for the maintenance, health care, sports, entertainment and proper education of the adopted son or daughter according to his or her reputation and capacity as if he or she were his or her biological son or daughter,
 - (b) To protect the rights and interests of the adopted son or daughter,
 - (c) To exercise the authority as referred to in Chapter-5 of this Part.
- (2) If the adoptive person does not fulfill the obligations under sub-section (1), the adopted son or daughter may live separately by obtaining his or her partition share.

182. Obligations of adopted son or daughter: The obligations of the adopted son or daughter shall be as follows:

- (a) To make arrangements for the maintenance, health care and care of the adoptive person according to

his or her reputation and capacity as if such person were his or her natural father or mother,

- (b) To protect, look after and properly manage the property of the adoptive person,
- (c) To protect the rights and interests of the adoptive person.

183. Facility of visit and making correspondences to be provided:

The adoptive person shall provide facility to the adopted son or daughter to make visits to, and correspondence with, his or her biological father and mother, from time to time.

184. Adoption to be void: If a person effects adoption in contravention of Section 171, sub-section (1) of, and clauses (a) and (b) of sub-section (2) of Section 172, Sections 173, 174 and 175, such adoption shall *ipso facto* be void.

185. Voidable adoption: (1) If an adoptive person fails to fulfill the obligations referred to in Section 181, any adopted son or daughter may have the adoption annulled.

Provided that if such adopted son or daughter has already received a partition share, he or she shall not be entitled to have the adoption annulled.

(2) An adoptive person may have the adoption annulled in any of the following circumstances:

- (a) If the adopted son or daughter fails to fulfill the obligations referred to in Section 182,

- (b) If the adopted son or daughter expels him or her from home or subjects him or her to physical or mental torture, from time to time,
- (c) If the adopted son or daughter misuses his or her property,
- (d) If the adopted son or daughter leaves him or her and lives separately without his or her consent for three years or more.

(3) The provisions of clauses (a) and (d) of sub-section (2) shall not apply to the married adopted daughter.

186. Termination of adoption: (1) If adoption is annulled pursuant to Section 184 or 185, the relationship between the adoptive person and the adopted son or daughter shall be deemed to have been terminated.

(2) If the relationship between the adoptive person and the adopted son or daughter is terminated pursuant to sub-section (1), the entitlements, rights and obligations vested in him or her in the capacity of adopted son or daughter shall also be terminated.

Provided that no facilities already enjoyed, rights acquired or exercised and obligations fulfilled in the capacity of adopted son or daughter during the validity period of adoption shall be prejudiced.

187. Statute of limitation: A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within one year after the date on which such an act was done or an action was taken.

Chapter-9

Provisions Relating to Inter-Country Adoption

- 188. Inter-country adoption deemed to be accepted:** If any foreigner accepts a minor of a Nepali citizen or of a foreigner domiciled in Nepal as an adopted son or daughter, it shall be deemed to be accepted as an inter-country adoption.
- 189. Adoption not to be effected without obtaining permission:** (1) No foreigner shall be allowed to hold any minor of a Nepali citizen or of a foreigner domiciled in Nepal as an adopted son or daughter, without obtaining permission from the Government of Nepal.
- (2) Permission for adoption under this Chapter shall be granted only to the citizens or married couple of those countries which are opened by the Government of Nepal, by a notification in the Nepal Gazette, for inter-country adoption in Nepal.
- 190. Best interests of minor to be ensured in granting permission for adoption:** (1) Prior to granting permission to a foreigner for adoption, the Government of Nepal shall consider whether or not the best interests of the child will be ensured, his or her human rights will be protected and such a child will be abducted, sold, trafficked or otherwise abused.
- (2) Permission for adoption under this Chapter shall be granted only if, upon considering the matters pursuant to sub-section (1), it appears appropriate to grant permission to a foreigner to adopt a child.

191. Child eligible to be given for adoption: Any of the following children having stayed in a children home for at least six months may be given to a foreigner for adoption:

- (a) Orphan children who, upon death of both father and mother, are not under protection of any one,
- (b) Voluntarily abandoned children.

Explanation: For the purposes of this Chapter,-

- (1) "Children home" means a child welfare home and orphanage established in accordance with law, with the objective of protecting the rights and interests of children, and this term includes a children home or *Balmandir* established by the Government of Nepal.
- (2) "Orphan child" means any of the following child certified as an orphan by the District Administration Office:
 - (a) A child found unclaimed by the police, and whose father or mother is not found,
 - (b) A child left unclaimed in a hospital or health institution,
 - (c) A child whose father and mother are not traced out,
 - (d) A child whose father and mother are both dead and who has no property for maintenance.

- (3) "Voluntarily abandoned children" means the following children who have been surrendered to the custody of a children home, through the District Administration Office, by the following person, upon being unable to make arrangements for their maintenance and education, by executing a deed relating thereto:
- (a) In the case of a child whose father is dead or disappeared and mother has concluded another marriage, such a mother,
 - (b) If more than one child have born, and the mother is not financially able to afford their maintenance or education because the father is dead, disappeared or of unsound mind, in the case of such children, their mother,
 - (c) If more than one child have born, and the father is not financially able to afford their maintenance or education because the mother is dead, disappeared or of unsound mind, in the case of such children, their father,
 - (d) In the case of an orphan child who has no property, his or her guardian or curator.

192. Foreigner eligible for adopting son or daughter: (1) Permission may be granted to the following foreigner for the adoption of any child of a Nepali citizen or of a foreigner domiciled in Nepal:

- (a) A couple from whom no child is born even up to ten years of their marriage,

(b) An unmarried woman a widow, divorcee woman or a judicially separated woman who has completed forty-five but not fifty-five years of age, having no son or daughter,

(c) An unmarried man a widower, divorcee or a judicially separated man who has completed forty-five but not fifty-five years of age, having no son or daughter.

(2) Notwithstanding anything contained in sub-section (1), no permission may be granted to the following foreigner for adoption:

(a) One who is of unsound mind,

(b) One who is convicted of a criminal offense involving moral turpitude, by a court of Nepal or the concerned country.

(3) Notwithstanding anything contained in sub-section (1), where the law of a foreign country provides that a citizen of that country may adopt more than one child, he or she may adopt a child despite that he or she has a child.

(4) Notwithstanding anything contained elsewhere in this Section, a person of the country that prohibits a Nepali citizen from adopting a child or provides discrimination between the rights of an adopted son or a daughter and the rights of naturally born son or daughter shall not be permitted to adopt a child from Nepal.

193. Provision relating to Inter-country Adoption Board: (1) The Government of Nepal may, by a notification in the Nepal Gazette, form an Inter-country Adoption Board so as to act as the central

agency for the purpose of making recommendation for granting permission to a foreigner for adoption of a child pursuant to this Chapter or designate any government body to perform such function.

Explanation: For the purposes of this Chapter, the term "Board" means the Inter-country Adoption Board, and this term includes the government body designated to perform such function.

(2) The Board referred to in sub-section (1) shall be so formed as to include one child right worker who has worked in the field of the rights of the child for at least fifteen years.

(3) Other functions, powers and duties of the Board, in addition to those mentioned elsewhere in this Chapter, shall be as follows:

- (a) To frame policies on inter-country adoption and recommend the same to the Government of Nepal,
- (b) To make coordination between the various agencies on matters of inter-country adoption,
- (c) To prevent undue financial and other advantage likely to be exchanged while giving or taking adoption,
- (d) To make available any information required by the central adoption agencies or other relevant public agencies of other countries about the condition of adopted sons or daughters,
- (e) To prevent child abuse, exploitation, trafficking or kidnapping likely to happen in effecting adoption

and to protect Nepali children from any other practice likely to harm them,

- (f) To make recommendation to the Government of Nepal to fix the charges applicable for adoption,
- (g) To specify the form of application to be filed for adoption,
- (h) To make arrangements for maintaining confidentiality of records of the minors desirous to be adopted, their biological father and mother or adoptive father and mother,
- (i) To carry out such other functions relating to inter-country adoption as may be required.

(4) Other matters including the procedures relating to the meeting of the Board shall be as determined by the Board itself.

194. Application to be filed for adoption: (1) A foreigner or couple qualified under Section 192 and desirous of adopting a Nepali minor or a minor of a foreigner domiciled in Nepal shall make an application to the Board, accompanied by the following documents, through the embassy of his or her country in Nepal and where no such an embassy is situated in Nepal, the embassy designated for Nepal or the central agency of the concerned country which gives permission for adoption:

- (a) The applicant's birth registration certificate,
- (b) The applicant's recently taken photograph,
- (c) A photocopy of the applicant's passport,

- (d) A document certifying the applicant's marital status,
- (e) A certificate issued by a licensed medical doctor on the applicant's health,
- (f) A certificate issued by the governmental body of the concerned country, indicating that the applicant is of good character and has not been convicted by a court of a criminal charge involving moral turpitude,
- (g) A document that certifies the applicant's property and income source,
- (h) The applicant's social, psychological and home study report,
- (i) Age, sex and other details of the child sought for adoption,
- (j) A letter of consent issued by the government of the applicant's country for making adoption in Nepal,
- (k) A letter of guarantee issued by the government of the concerned country or by the embassy of that country based in Nepal or designated for Nepal indicating that according to the law of the applicant's home country, the status of the person to be adopted is equal to that of the applicant's biological son or daughter,

(1) A letter of guarantee issued by the government of the applicant's home country, embassy of that country based in Nepal or designated for Nepal indicating that, according to the law of the applicant's home country, the applicant is qualified to make adoption and has the financial capacity to bear all responsibilities including maintenance, health care, education and protection of the minor to be adopted.

(2) The documents referred to in sub-section (1) shall be written in the English language or translated into the English or Nepali language by a competent body.

(3) If it is found, from an inquiry into the application received pursuant to sub-section (1), that it is appropriate to grant permission for adoption according to the applicant's request, the Board shall, by keeping confident the applicant's name and address, forward the details relating thereto to the selection committee.

(4) The application to be made pursuant to sub-section (1) shall be accompanied by the application fee as determined by the Government of Nepal, on the recommendation of the Board.

195. Provisions relating to selection committee: The Government of Nepal shall form a selection committee, by a notification in the Nepal Gazette, for the purpose of making recommendations to the Board as to which of minors may be appropriate for adoption by any foreigner or foreign couple, after selecting the person or couple desirous of making adoption, and the minor.

- 196. To make recommendation by selecting person effecting adoption and child:** The Board shall, based on the minor's details according to the applicant's details and relevant matters received pursuant to sub-section (1) of Section 194, and also having regard to the applicant's request, ascertain what type of minor is appropriate for being adopted by which applicant and recommend the name of the applicant and the minor to the Board.
- 197. Permission to be granted for adoption:** (1) If the Board considers, from an inquiry into the recommendation received from the selection committee pursuant to Section 196, that it is appropriate to grant a minor as recommended for adoption by a foreigner, it shall make according recommendation to the Government of Nepal.
- (2) If, upon an inquiry into the recommendation made by the Board pursuant to sub-section (1), it thinks reasonable to do so, the Government of Nepal shall, according to the recommendation of the Board, grant permission for the adoption of such a minor by the foreigner.
- (3) After permission has been granted pursuant to sub-section (2), the Government of Nepal shall issue a certificate relating thereto for that purpose.
- (4) After the certificate has been issued pursuant to sub-section (3), inter-country adoption shall be deemed to have duly been effected from Nepal.
- (5) Notwithstanding anything contained in sub-section (2), if, prior to granting permission for the adoption of any minor by a foreigner, the father, mother or other guardian of the minor desires

to take his or her minor back, such a minor may not be granted for adoption.

(6) If the Government of Nepal grants permission for the adoption of any minor by a foreigner pursuant to sub-section (2), the applicant shall appear in person and take over the concerned minor.

Provided that if the applicant is a couple and either of them is unable to appear in person, the other spouse may take over such a minor on the basis of the certified deed of consent executed by the absent spouse.

(7) After permission has been granted for the adoption of any minor by a foreigner pursuant to this Section, the Government of Nepal shall give information thereof to the central agency responsible for inter-country adoption situated in the country of the adoptive person and also to the embassy of the concerned country designated for Nepal, if any.

(8) A foreigner or couple making application for adoption may, if not satisfied with any decision made by the Government of Nepal, make an appeal to the concerned High Court.

198. Special provision relating to selection of families for minors in need of special care: (1) Notwithstanding anything contained elsewhere in this Chapter, the Board may accord priority to those applicants who have applied for the adoption of minors in need of special care and select families to that effect.

Explanation: For the purposes of this Section, the term “minors in need of special care” means those minors, out of orphan

minors or voluntarily abandoned minors, who are in need of special care due to physical or mental condition, unusual or abnormal growth or more age.

(2) The Board shall determine as to whether any minor is a minor in need of special care or not.

(3) Notwithstanding anything contained in sub-section (1), if, in selecting the families and the minors in need of special care pursuant to that sub-section, any detail relating to the age, sex and health of the minor as demanded by a family in the first order of priority does not match, those minors in need of special care who match to the details as demanded by such family may be selected respectively.

(4) The other procedures on the selection of families for minors in need of special care and classification of such minors shall be as prescribed by the Government of Nepal.

199. Special provision relating to permission to be granted for adoption: (1) Notwithstanding anything contained elsewhere in this Chapter, if any renowned foreign citizen desires to adopt any minor as referred to in Section 191, he or she may make an application to the Board, along with a formal recommendation by the head of state, head of government or foreign minister of the concerned country.

Explanation: For the purposes of this Section, the term “renowned foreign citizen” means any of the following persons:

(a) Head of state or head of government of a foreign country,

- (b) Chief of an international intergovernmental organization,
- (c) A laureate of the noble prize,
- (d) A person or entrepreneur who has an income of more than three hundred thousand US Dollars a year.

(2) If the Board considers, from an inquiry into an application received pursuant to sub-section (1), that it is reasonable to grant a minor as demanded by such a foreign citizen for adoption, it shall make recommendation to the Government of Nepal, Council of Ministers, accordingly.

(3) If a recommendation is made pursuant to sub-section (2), the Government of Nepal, Council of Ministers may give permission to such a foreign citizen to adopt the minor demanded by him or her.

(4) Any foreign citizen making adoption pursuant to this Section shall, upon making such adoption, comply with the other provisions set forth in this Chapter.

200. Details to be forwarded: A foreigner who makes adoption pursuant to this Chapter shall each year forward details relating to the arrangements he or she has made for the maintenance, education, health and care of the adopted minor until such minor attains the age of majority according to the law of the concerned country, in each six months for a period of two years and thereafter in each year to the Government of Nepal through the Nepali Embassy or Consulate based in his or her country or Nepali mission abroad, and if such mission is not situated there, through the Embassy of Nepal related to such a country.

201. To monitor: (1) The Board may itself monitor as to whether a foreigner who has adopted a Nepali minor has made arrangements for the maintenance, health, education and care of such minor until the minor attains the age of majority, or for that purpose, form, as per necessity, a sub-committee consisting also of a representative of the Nepali Embassy or Consulate based in the concerned country.

(2) The Board or sub-committee referred to in sub-section (1) may, for that purpose, carry out monitoring by visiting the place where the child is residing.

(3) The Board or sub-committee shall submit a report of monitoring conducted by it under sub-section (2) to the Government of Nepal.

(4) The report referred to in sub-section (3) shall contain, *inter alia*, a statement whether the best interests of the adopted Nepali minor have been served when he or she is residing with the adoptive person or not.

(5) If the report received pursuant to sub-section (3) contains a statement that the best interests of the adopted Nepali minor have not been served when he or she is residing with the adoptive person, the Government of Nepal shall, also taking opinion of the concerned minor if her or she is able to express his or her opinion or is above ten years of age, bring that matter to the attention of the Government of the concerned country through the diplomatic channel.

(6) If the condition of the adopted Nepali minor is not improved even after the attention drawn pursuant to sub-section (5),

the Government of Nepal shall, by a notification in the Nepal Gazette, remove such a country from the list of countries opened for their citizens to make inter-country adoption from Nepal.

- 202. Case may be filed:** A case may be filed in the court of the concerned country for the annulment of adoption, by a minor adopted as an adopted son or daughter within one year after the date on which the minor attained majority, on the grounds of failure to make arrangements for proper maintenance, health, education and care of him or her, and by the Nepali Embassy or Consulate based in the country where the adopted son or daughter is residing within one year after the date on which the adoptive person failed to make such arrangements.
- 203. Provisions of the Act to be applicable:** (1) Provisions contained in Sections 173, 174, 175, 178, 179, 180, 181 and 183 in relation to adopted sons or daughters shall also apply to the sons or daughters adopted by foreigners pursuant to this Chapter.
- (2) Provision of Section 191 shall not apply for the adoption of the minors of foreigners domiciled in Nepal.
- (3) The Government of Nepal may, on the recommendation of the Board, make necessary Guidelines for the implementation of the provisions contained in this Chapter.
- 204. Statute of limitation:** If a separate statute of limitation for making a lawsuit is specified in this Chapter, the lawsuit may be made accordingly, and if such statute of limitation is not specified, a person aggrieved from any act committed or action taken under this Chapter may make a lawsuit within one year after the date on which such an act was done or action was taken.

Chapter-10

Provisions Relating to Partition

- 205. To be deemed coparcener:** For the purposes of apportionment of a property in common, the husband, wife, father, mother, son and daughter shall be deemed to be coparceners, subject to the other Sections of this Chapter.
- 206. Equal entitlement to partition share:** (1) Each coparcener shall have equal entitlement to partition share.
- (2) If a woman coparcener is pregnant at the time of partition, and the baby to be delivered by her is to become a coparcener, partition shall be made by treating also such would be born baby as a coparcener and only after setting aside his or her partition share of property.
- (3) If the pregnant woman under sub-section (2) does not deliver a live baby, the partition share set aside for such a baby shall be divided equally between the other coparceners.
- 207. Son and daughter born from couple whose matrimonial relationship is dissolved to obtain partition share:** A son and daughter born to a couple who cannot conclude a marriage or whose marriage cannot be considered valid or whose matrimonial relationship is dissolved according to law shall obtain their partition share from such a father and mother.
- 208. To obtain partition share from mother:** (1) A son and daughter whose father is not traced out shall obtain their partition share from the property belonging to their mother only.

(2) A wife kept without making public or a son and daughter born from her shall not be entitled to claim a partition share after the death of the husband or father.

209. To obtain partition share from part of father or husband: (1) A son and daughter child or wives of brothers living in an undivided family shall obtain partition share only from the part of their respective father or husband, as the case may be.

(2) If the husband, father or mother dies before effecting partition, his wife or his or her child shall obtain the partition share to which the husband, father or mother is entitled.

(3) If a person has more than one wife, they shall obtain their respective partition share only from the part of the husband.

210. Latter wife or child to obtain partition share from part of husband or father: (1) If a person concludes another marriage or a child is born from the wife so married, after effecting partition between his wife, son, daughter or while he is living together with such a wife, son, daughter after mixing his partition share with that of them, such a wife, son or daughter shall obtain her or his partition share only from the part of the property of the husband or father, as the case may be.

(2) Notwithstanding anything contained elsewhere in this Chapter, if a person whose wife is surviving concludes another marriage before effecting partition, the partition shares of the other coparcener shall first be set aside and the woman who is so married shall be provided with a partition share from the part to which he is entitled.

211. Right to obtain partition share: (1) A husband, wife, father, mother, son and daughter having property in common shall make, according to their reputation and income, arrangements for the maintenance and medical treatment of the wife, husband, son, daughter, father and mother, as the case may be.

(2) If a person who is bound to make arrangements as referred to in sub-section (1) fails to make such arrangements, the coparcener is entitled to get separated by obtaining his or her partition share.

212. Separation may be effected at anytime: (1) If there is a mutual agreement between the coparcener, they may get separated at any time by obtaining their respective partition share.

(2) If the husband, father, mother or person acting as the head of family considers it appropriate for the coparcener to obtain their respective partition share and get separated rather than living in a single family, the coparcener may get separated by effecting partition at any time.

Explanation: For the purposes of this Act, the term “person acting as the head of family” means a person who has attained the age of majority pursuant to law and acts as the head of family or who has the responsibility to run the household affairs living in the joint family by engaging in farming, trade, business or any other work in various places.

213. Husband or wife may get separated by obtaining partition share: (1) Notwithstanding anything contained in Section 211, the

husband or wife may, in any of the following circumstances, get separated at any time by obtaining his or her partition share:

- (a) If the husband or wife expels the wife or husband from the house,
- (b) If the husband or wife causes physical or mental torture to the wife or husband.

214. Widow may effect separation by taking her partition share: (1) Notwithstanding anything contained elsewhere in this Chapter, a widow may get separated at any time by taking her partition share.

(2) If a widow concludes another marriage, the property obtained by her by way of partition share shall devolve on the son and daughter, if any, born to her from the previous husband and, if there is no such a son or daughter, she herself may retain such property.

220. Relinquishment of partition share: (1) Any coparcener may, by executing a deed to that effect, relinquish his or her partition share, with or without taking his or her partition share in part or taking some cash or kind only in consideration for his or her partition share.

(2) While executing a deed on relinquishment of partition share pursuant to sub-section (1), if a coparcener has husband, wife, or son or daughter having attained the age of majority, the deed on relinquishment of partition share shall be deemed to have been executed only when consent of such a husband, wife, son or daughter has been obtained.

Provided that the entitlement of a minor coparcener to partition share may not be relinquished.

(3) If a deed on relinquishment of partition share is executed pursuant to sub-section (1), it shall be deemed as if he or she received his or her partition share.

(4) A coparcener shall have to appear in person for executing a deed on relinquishment of partition share or for receiving his or her partition share.

Provided that if a coparcener is not able to appear in person, he or she shall, for that purpose, appoint an authorized attorney in accordance with law.

216. Partition to be effected: (1) In partitioning a property in common, a deed of partition shall be executed in writing between the coparceners, subject to this Chapter.

(2) In effecting partition pursuant sub-section (1), partition of property in common and debts in common shall be so made that partition shares thereof are equal.

Explanation: For the purposes of this Chapter, the term "debts in common" means any debts agreed to by the person acting as the head of family or by all coparceners or borrowed by the coparceners, who have attained the age of majority and live in the undivided family and carry on household work, farming, trade or any other work in various places or incurred in such transaction or incurred in transaction carried on by the other persons, who have attained the age of majority and live in the undivided family as to which such persons have consented in writing.

(3) Partition shall be effected by balancing both high value and less value properties, with the consent of all the coparceners, and failing such consent, by a lottery.

(4) If, in effecting partition, there arises a dispute on any property, partition shall be effected after the settlement of the dispute.

Provided that if it takes a long time for the settlement of such a dispute, the property in dispute may be kept as undivided property and the other properties may be partitioned.

217. Matters to be specified in deed of partition: The following matters shall be specified in the deed of partition:

- (a) Name, surname, age, address of every coparcener and that of his or her mother, father, grand-father and grand-mother,
- (b) Property to be received by the coparceners,
- (c) If the part of a coparcener involves debts, moneys receivable, amount of such debts and moneys,
- (d) If, upon partition, any coparcener is to live with another coparcener, that details thereof,
- (e) A matter to the effect that no coparcener has hidden or concealed any property subject to partition,
- (f) If any property is to devolve on a coparcener only, upon the death of the father, mother, husband or wife, details thereof,

- (g) If the partition share of any coparcener is to be entrusted to any one, details thereof,
- (h) Other necessary matters.

218. Deed of partition to be registered: (1) In effecting partition, a deed of partition shall be drawn up in presence of witnesses, bear signature and thumb-impression of the witness and the coparcener and registered in the concerned office, having duly fulfilled the legal requirements.

(2) Notwithstanding anything contained in sub-section (1), in cases where partition was effected in household making a balance between highly valuable and less valuable property, whether or not executing a deed of partition between any coparceners before 10 January 1978 (27 Poush 2034) and a coparcener has already taken his or her partition share and effected transmission thereof or the coparceners have individually possessed or sold or transacted their respective partition share of immovable property according to partition, partition shall be deemed to have been effected in spite of being the deed of partition not registered.

219. Prohibition of providing property without effecting partition:
(1) No person acting as the head of family shall, without effecting partition, provide a property in common to only a coparcener who has not taken partition share or who would be a coparcener.

Provided that-

- (1) That such a person may, with the consent of all the coparceners, provide any property to any coparcener.

(2) That such a person may, even without consent of the other coparceners, provide the property to the extent of his or her partition share, to any coparcener.

(2) In effecting partition pursuant to this Chapter, the other property shall be partitioned by setting off the property provided to a coparcener pursuant to clause (1) of the proviso to sub-section (1) for the partition share to which the coparcener is entitled.

220. Lawsuit to be filed by setting out inventory of property: (1) If a coparcener is desirous of getting separated by setting aside his or her partition share, he or she shall file a lawsuit, specifying therein the date of separation of bread and board from the other coparceners and setting out an inventory of such property and debts and assets held in his or her name and that of the other coparceners, to the best of his or her knowledge, as is liable to partition.

Explanation: For the purposes of this Section, the term "date of separation of bread and board" means the following date or day:

- (a) The date mentioned in the deed of separation of bread and board,
- (b) If there is no deed of separation of bread and board, the date as agreed between the coparceners on the separation of bread and board,
- (c) If no agreement is reached between the coparceners pursuant to clause (b), the day immediately before the day of filing a lawsuit,

(d) Except as otherwise agreed upon, in the case of a married daughter, the day of her marriage.

(2) If the deed of separation of bread and board is executed between any coparceners only, such a deed shall come into force only on the date of its registration.

(3) If the person filing a lawsuit pursuant to sub-section (1) is unable to submit the inventory of property, he or she shall also specify the reason therefor.

(4) If a lawsuit is filed pursuant to sub-section (1), the concerned person also shall submit a statement of defense, together with a statement whether the plaintiff is to be provided with a partition share or not and if he or she agrees to provide a partition share, together with an inventory of the property held in his or her name and the debts and assets.

221. Matters to be set out in inventory: (1) The following matters shall be set out in the inventory of the property to be submitted pursuant to this Chapter:

- (a) The place of location of land, plot No., area and approximate value thereof,
- (b) In the case of a house, place of location, plot no, area, **Kabal (rooms)**, **Naal (size)**, storey of the house, whether it is concretely built or mud made, and approximate value thereof,
- (c) In the case of a movable property, details and approximate value thereof,

- (d) In the case of cash, details thereof, and also details of bank balance, share, debenture, treasury bills, if any,
- (e) In the case of livestock, details and approximate value thereof,
- (f) In the case of gold, silver and jewelries, details and approximate value thereof,
- (g) In the case of a motor vehicle, details and approximate value thereof,
- (h) Details and approximate value of the properties, if any, other than those referred to clauses (a) through (g).

(2) If the value of any property is not set out pursuant to sub-section (1) or a dispute arises as to the value thereof, the court shall take the basis of the price fixed by the Land Revenue Office, in the case of an immovable property, and of the prevailing market price for the time being, in the case of a movable property.

222. Partition to be effected by taking inventory: (1) If it appears from the lawsuit filed or statement of defense submitted pursuant to Section 220 that partition requires to be effected and an inventory of property is submitted along with the lawsuit or statement of defense, the court shall effect partition, having the coparceners executed a deed stating, *inter alia*, that the property they have submitted is the only property to be partitioned and that they have not concealed or hidden any other property.

(2) If an inventory of property is not submitted along with the lawsuit or statement of defense, the court shall, by specifying a time-limit, require the coparceners to submit the inventory of the property and effect partition by causing the coparceners to execute a deed pursuant to sub-section (1), if the coparceners submit such an inventory within the time-limit so specified.

223. Partition to be effected on the basis of inventory received: (1) If a person who is to submit an inventory of property within the time-limit referred to in Section 222 fails to submit the inventory or has elapsed the time-limit without submitting a statement of defense, the court shall effect partition on the basis of the inventory of the property submitted by other coparceners.

(2) If the partition is effected pursuant to sub-section (1), no lawsuit may be entertained on the ground of dissatisfaction with the partition share.

(3) Notwithstanding anything contained in sub-section (2), if a lawsuit is filed for the partition of a property not set out in the inventory of the property submitted by the coparceners but discovered subsequently, the court shall effect partition of that property.

224. Power to take inventory by breaking padlock: If, because of the failure of a person to submit an inventory of the property required to be submitted by him or her, the inventory of property has to be taken by breaking the padlock of the house custody of which is taken by him or her, the court may, by opening the padlock in presence also of the person holding the key of the house, if he or she is present, and if not, in presence of at least two persons

including the person requesting for partition share and a representative of the concerned ward of the Local Level, take an inventory of the property found there, by maintaining a record thereof.

225. Partition to be effected when inventory produced: (1) If the person who has to submit an inventory fails to submit the inventory or lapses the time-limit by not submitting a statement of defense and the person filing a lawsuit requesting for the partition of property also fails to submit the inventory of property, the court shall, by causing the person filing the lawsuit to execute a deed of the same statement, abate the lawsuit subject to the condition that the partition shall be effected at the time when an inventory of the property is produced.

(2) If a lawsuit is abated pursuant to sub-section (1) and the person filing the lawsuit makes a petition subsequently, accompanied by an inventory, the court shall effect partition between the coparceners in accordance with law, on the basis of the previous case-file itself.

226. Prohibition of concealing or hiding property: (1) No person shall conceal or hide a property that is liable to partition.

(2) If a coparcener is subsequently held to have concealed or hidden any property which is held in his or her name and is liable to partition, at the time of effecting partition or at the time when asked by the court to submit an inventory, the coparcener so concealing or hiding the property shall have no right to obtain such property.

(3) The property concealed or hidden under sub-section (2) shall be partitioned between the other coparceners.

- 227. Partition share to be reimbursed:** If a coparcener is not allowed to own and possess any property falling in his or her partition share due to the property being defective under law, all the coparceners shall proportionately reimburse to him or her property equal to the defective property.
- 228. Partition share not to be exchanged:** Except in the case of mutual consent among the coparceners, no coparcener shall be entitled to exchange any property received by him or her by way of partition for the reason that after partition it is disordered, damaged or he or she does not prefer it.
- 229. Partition of pledged or mortgaged property:** (1) If a coparcener is found to have pledged or mortgaged a property that is liable to partition, the court shall, if all the coparceners so agree, effect partition of the property by causing the property to be released from, or on the condition of having an obligation to release it from, the property in common.
- (2) If all the coparceners do not agree pursuant to sub-section (1) and the court finds that the person acting as the head of family has pledged or mortgaged the property or that the other persons having attained majority living in the undivided family have, taking signature and thumb-impression also of the person acting as the head of family, pledged or mortgaged it, the court shall effect partition of the property by causing the property to be released from, or on the condition of having an obligation to release it from, the property in common.

(3) Save in the cases referred to in sub-section (1) or (2), if a coparcener is found to have pledged or mortgaged a property liable to partition, the court shall effect partition by causing the property to be released from, or on the condition of having an obligation to release it from, the property falling in his or her partition share.

- 230. Power to withhold property or income until partition is effected:** If one filing a lawsuit appears to obtain a partition share in a case of partition and, after the inventory of property has been submitted, makes a petition to the court, praying that the property to the extent of his or her partition share or income thereof be withheld, the court may withhold the property to the extent of his or her partition share or income of such property until partition is effected in the fulfillment of the legal requirements.
- 231. Partition to be so effected as to have provision of way or passage:** While effecting partition, if there is no access to way or passage to a house or land partitioned to a coparcener and if such way or passage can be managed from the land of other coparcener, partition shall be so effected that the concerned coparcener shall have to provide the way or passage for access to such house or land.
- 232. Debtor not to be specified without consent of creditor:** (1) Partition shall not be so effected as to give the responsibility of payment of the debt of joint family to a sole coparcener without consent of the creditor.
- (2) Even if the responsibility of payment of the debt is given solely to any coparcener contrary to sub-section (1), all the

coparceners shall pay the debt in common equally, if the creditor does not so agree.

- 233. Compensation to be paid if lawsuit filed by person not entitled to partition:** If a person who is not entitled to receive a partition share is held to have filed a lawsuit for receiving it, the court shall order the law-suit filing person to pay to the defendant a reasonable compensation, having regard to the amount in controversy, if set out from the case-file, and if such amount is not set out, to the status of such a person.
- 234. Partition share, money or expenditure may be awarded:** (1) If a person who is entitled to obtain a partition share, money or expenditure from any person according to the judgment, files, having failed to so receive, a petition in the court of first instance which has passed judgment in the case, the court shall, if the parties are the same, cause the partition, money or expenditure according to the judgment to be awarded as soon as possible.
(2) If the partition share, expenditure or money is not provided pursuant to sub-section (1), the person who has to provide the partition share, money or expenditure shall be caused to pay a reasonable compensation as well to the petitioner.
- 235. Statute of limitation:** A person who is aggrieved from any act done or action taken under this Chapter may make a lawsuit as follows:
 - (a) Any time, where partition has never been effected or a common general deed has been executed in effecting partition and even though there is no deed

where both the parties have enjoyed the property upon making calculation,

- (b) Within three months from the date of partition if one is not satisfied with such partition,
- (c) In case of concealing or hiding of property, till the life of the concerned coparcener,
- (d) In the cases other than that referred to in clauses (a), (b) and (c), within six months after the date on which such an act was done or action taken.

236. Partition deemed to be executed: (1) A partition effected pursuant to the law prior to the commencement of this Act shall be deemed to have been effected pursuant to this Act.

(2) Notwithstanding anything contained in sub-section (1), if a person has taken maintenance for living (*Jiuni*) in consideration for his or her partition share prior to the commencement of this Act, the person shall be deemed to have taken his or her partition share.

Chapter-11

Provisions Relating to Succession

237. Succession deemed to be opened: Upon the death of a person, succession to his or her property shall be deemed to be opened.

Explanation: For the purposes of this Chapter, the term "succession" means devolution of liabilities and rights in regard to debt, wealth and property of the deceased upon his or her heirs in accordance with law.

238. Heir entitled to succession: Where succession to a person's property is opened, his or her nearest heir shall be entitled to such succession.

239. Order of preference of heirs for succession: (1) The order of preference of nearest heirs for succession shall, subject to the other Sections of this Chapter, be as follows:

- (a) Husband or wife living in the undivided family,
- (b) Son, daughter, widow daughter-in-law living in the undivided family,
- (c) Father, mother, step mother, grand-son, grand-daughter, grand-daughter-in-law, on the side of son or daughter, living in the undivided family,
- (d) Separated husband, wife, son, daughter, father, mother, step-mother,
- (e) Separated grand-son, grand-daughter from the son's generation,
- (f) Separated grand-father, grand-mother,

- (g) Grand-father, grand-mother, elder brother, younger brother, elder sister, younger sister, widow elder brother's wife or younger brother's wife living in the undivided family,
 - (h) Uncle, aunt, nephew, niece, living in the joint family,
 - (i) Separated elder brother, younger brother, elder sister, younger sister, widow elder brother's wife or younger brother's wife.
- (2) So long as the person who is in the first order of preference referred to in sub-section (1) at the time when succession to one's property is open is serving the person in the subsequent order of preference shall not be entitled to succession.
- (3) If there are more than one heir in the same order of preference pursuant to sub-section (1), all of them shall equally be entitled to the succession.
- (4) If any heir in the order of preference entitled to succession does not intend to succeed, the other heirs in the same order shall be entitled to succession, and even any heir in that order of preference does not intend to accept succession, the heir in the successive order of preference shall be entitled to the succession.

- 240. Distant heir entitled to succession:** If a person dies when he or she was staying with any distant heir after taking his or her partition share of property in spite of having his or her nearer heir and succession to him or her is open, the heir with whom that person was so staying shall be entitled to his or her property succession.

- 241. Maintaining and caretaking heir entitled to succession:** If a nearer heir has not maintained and taken care of a person but a distant heir has done so, the distant heir who has so maintained and taken care of him or her shall be entitled to succession.
- 242. Separated heir entitled to succession:** (1) If a person dies when that person was staying with any heir who has lived separately, after taking his or her partition share of property, because an un-separated heir has not maintained and taken care of that person, such separated heir shall be entitled to the succession of that person.
- (2) Notwithstanding anything contained in sub-section (1), if a person dies when that person was staying with any heir only for few days, without taking his or her partition share of property, the heir with whom that person had so stayed shall not be entitled to succession of that person.
- 243. Maintaining and caretaking person entitled to succession:** Notwithstanding anything contained elsewhere in this Chapter, if another person has maintained and taken care of the deceased because the heir has not done so, the person who has so maintained and taken care of shall be entitled to such succession.
- 244. Not to be obliged to accept succession:** (1) Notwithstanding anything contained elsewhere in this Chapter, no person shall be obliged to accept a succession.
- (2) A person who declines to accept a succession shall give information thereof in writing to the concerned District Court within a period of three years of the devolution of succession.

(3) If a person does not accept a succession within the period referred to in sub-section (2), such succession shall be deemed to have been devolved upon the other heir in the successive order of preference for succession.

(4) Even if a person does not accept a succession pursuant to sub-section (1), he or she shall have to conduct obsequies of the deceased in accordance with the rites and rituals.

245. Disqualified for succession: Notwithstanding anything contained elsewhere in this Chapter, if a person who kills, or causes the death of, another person with intent to serve any premeditation or with ulterior motive to obtain succession, the heir to the person who so kills or causes death shall be disqualified from the succession of the deceased or his or her heir.

246. Obligations and rights of person upon whom succession is devolved: (1) The obligations and rights of the person upon whom succession is devolved shall be as follows:

(a) To perform, or cause to be performed, funeral and obsequies rites of the deceased according to his or her rites and rituals,

(b) To repay the debt borrowed by the deceased to the creditor,

(c) To have right over the debt lent and investment made by the deceased.

(2) If the funeral and obsequies rites of a deceased has been performed by a person other than one who is entitled to the succession, the person so entitled shall pay the costs incurred in the

performance of funeral and obsequies rites of the deceased and additional twenty-five percent of such costs to the person who has performed such rites.

Provided that if any person has, instead of doing on his or her own, caused another person to perform the funeral and obsequies rites of the deceased, he or she shall be liable to pay only the actual costs incurred in the performance of such rites.

247. Creditor may recover debt: If succession to one's property is opened and one has creditors, such creditors may recover their debts and liabilities from the person upon whom succession has devolved.

Provided that no heir shall be obliged to pay debts and liabilities in excess of the deceased's property succeeded to by him or her.

248. Local Level to receive property under succession: (1) If succession to the property of a person is opened and he or she has no heir or his or her heir declines to accept such succession, the property of the dead person remaining after deducting the costs incurred in the performance of his or her funeral and obsequies rites and even after payment of debts due to his or her creditors shall be devolved on the Local Level.

(2) If a person dies and has no heir but has property, a person who performs his or her obsequies or maintains his or her books and accounts shall immediately give a notice thereof to the Local Level.

(3) If a notice is received pursuant to sub-section (2), the Local Level shall prepare an inventory of the properties of the

deceased in witness of at two local persons and forward the inventory, accompanied by a copy of the memorandum (Muchulka) executed to that effect, to the concerned district level administrative office.

(4) If a memorandum, along with the inventory of properties, is received pursuant to sub-section (3) and the address of the deceased is traced out, such an office shall send a notice in accordance with law to the heir of the deceased to appear to receive the property of the deceased within a period of three months.

(5) If the heir does not accept the property pursuant to sub-section (1) or the heir of the deceased does not appear within the time-limit referred to in sub-section (4) or the address of such heir is not traced out, such an office shall publish a notice in a national newspaper, inviting his or her heir, if any, to appear to claim the property of the deceased, within a period of thirty five days.

(6) If the heir of the deceased appears within the time-limit referred to in sub-section (5), the property that remains after deducting therefrom the expenses incurred in the performance of obsequies of the deceased or providing such expenses to the person having performed such obsequies, and ten percent of the property, shall be returned to the concerned heir.

(7) If no heir of the deceased appears within the time-limit referred to in sub-section (5) or his or her address is not traced out, the property that remains after deducting therefrom the expenses incurred in the performance of obsequies of the deceased, which amount is to be provided to the person having performed such obsequies, shall devolve on the concerned Local Level.

(8) The concerned heir or the office under sub-section (3) shall hand over the property receivable by the Local Level pursuant to sub-section (1) or (7) to the Local Level in accordance with law.

(9) The Local Level shall use the property that it has received pursuant to this Section for public interest.

249. Succession to property of foreigner died in Nepal: (1) If a foreigner who dies in Nepal has property without heir in Nepal, a person who performs his or her obsequies or maintains his or her books and accounts shall immediately give a notice thereof to the nearby Local Level.

(2) If a notice is received pursuant to sub-section (1), the Local Level shall prepare an inventory of the properties of the deceased in witness of at two local persons and forward the inventory, accompanied by a copy of the memorandum (Muchulka) executed to that effect, to the concerned district level administrative office.

(3) If a memorandum, along with the inventory of properties, is received pursuant to sub-section (2), such an office shall immediately give information thereof to the Federal Ministry of Home Affairs.

(4) If information referred to in sub-section (3) is received, the Federal Ministry of Home Affairs shall also send a notice, in accordance with law, through the diplomatic channel of the concerned country, to the heir of the dead person to appear to receive the properties of the deceased within four months.

(5) If information under sub-section (3) is received upon the death of a citizen of a country having no diplomatic relation with Nepal, the Federal Ministry of Home Affairs shall publish a notice in a national daily English newspaper for receiving such property within six months, and the Federal Ministry of Home Affairs shall also put such notice on its website.

(6) If the heir of the deceased appears within the time-limit referred to in sub-section (4) or (5), the property that remains after deducting therefrom the expenses incurred in the performance of obsequies of the dead person or providing such expenses the person having performed such obsequies, and ten percent of the property, shall be returned to the concerned heir.

(7) If no heir of the dead person appears within the time-limit referred to in sub-section (4) or (5) or his or her address is not traced out, the property that remains after providing the expenses incurred in the performance of obsequies of the deceased to the person having performed such obsequies shall devolve on the Local Level.

(8) The property received by the Local Level pursuant to this Section shall be used only for public interest.

- 250. Statute of limitation:** A lawsuit may be made within the statute of limitation, if any, set forth elsewhere in this Chapter, and in the other cases, within a period of three years after the date on which the succession is opened.

Part-4

Laws Relating to Property

Chapter-1

General Provisions Relating to Property

251. Deemed to be property: Any cash, goods or work shall be deemed to be a property if such cash, goods or action can be used or transacted in or the title thereto can be transferred by way of purchase, sale or otherwise or any benefit can be derived therefrom.

Explanation: Except otherwise provided for in this Act, the term "goods" means a physical property capable of being purchased or sold.

252. Property deemed to be in movable or immovable form: A property shall be deemed to be in either movable or immovable form irrespective of its physical or non-physical, tangible or intangible form.

253. Property deemed to be immovable: (1) The following property shall be deemed to be an immovable property:

- (a) A building or land or structure fixed thereto,
- (b) Any goods attached to a building or land permanently,
- (c) A mine, stone or mineral embedded in land,
- (d) Natural water, surface water and underground water,
- (e) A building or other structure so made permanently that it can float over a river, lake or pond,

- (f) A standing tree, plant or fruit tree or fruit or flower growing on such a tree, plant or fruit tree or crops in the land, or
 - (g) A movable property attached to an immovable property.
- (2) Notwithstanding anything contained in sub-section (1), if any structure, goods or any part thereof, fixed or attached to any immovable property gets or is detached or unfixed in any manner, the structure, goods or part so detached or unfixed shall be deemed to be a movable property.

254. Property deemed to be movable: The following property shall be deemed to be a movable property:

- (a) Cash or goods that can be transacted as cash or foreign currency,
- (b) Gold, silver, jewelry, *Ratna*, gold or silver ornament or precious stone,
- (c) Other good that can be moved from one place to another, except those referred in clause (a) or (b),
- (d) A bond, security, promissory note, bill of exchange, letter of credit or other negotiable instrument or a benefit derived therefrom,
- (e) Intellectual property,
- (f) A right in security,
- (g) A trade good-will or franchise,

(h) A property other than the immovable property.

255. Classification of property according to ownership: The property shall, according to the ownership and the form of use thereof be classified as follows:

- (a) Private property,
- (b) Property in common,
- (c) Joint property,
- (d) Community property,
- (e) Public property,
- (f) Government property,
- (g) Trust property.

256. Property deemed to be private property: (1) Any of the following properties owned by any person or properties accrued therefrom shall be deemed to be a private property of such a person:

- (a) Property earned by way of his or her knowledge, skills or effort,
- (b) Property acquired by way of donation, bequeath, or succession,
- (c) Property acquired by way of a lottery or gift,
- (d) Property acquired by way of remuneration, gratuity, pension, medical expense, provident fund, insurance or other social security,

- (e) Property acquired by way of intellectual property or royalty,
- (f) Property acquired in any manner whatsoever while living apart by separating bread and board in accordance with law or while managing one's accommodation at one's cost despite not so living apart,
- (g) Property earned or acquired by a woman prior to marriage or acquired from her parental side at the time of marriage or accrued therefrom,
- (h) Property so granted to a woman by the husband or with consent of all coparceners of the husband side that she will have exclusive right in it or movable or immovable property received from the relatives or friends of the husband side and property accrued therefrom,
- (i) Property which, according to law, is considered to be the exclusive private property of a person.

(2) Any person shall be entitled to exclusively deal with his or her private property, subject to this Act.

257. Property deemed to be property in common: (1) Any of the following properties or property accrued therefrom shall be deemed to be the property in common, irrespective of such property being owned by any coparcener whosoever, out of the coparceners, subject to Section 256:

- (a) Property inherited from ancestors,

- (b) Property owned by the coparceners except the private property,
 - (c) Property earned by the coparceners from the farming, industry, trade or business in common or property accrued therefrom.
- (2) Except where separated in accordance with law, any property earned by the husband or wife or property accrued therefrom shall be deemed to be the property in common of the husband **or** wife.
- (3) Notwithstanding anything contained elsewhere in this Chapter, any property earned by the parents for the purpose of partition between the parents and their children shall also be deemed to be the property in common.
- (4) The use of, and transfer of right in, the property in common and other provisions shall be as set forth in the other Chapters of this Act.

- 258. Property deemed to be joint property:** (1) Any property owned by two or more persons except the coparceners living in a joint family or property accrued therefrom shall be deemed to be a joint property.
- (2) The right or share of a joint holder in the joint property shall be as set forth in a deed setting out such rights and share, and failing such a deed, the holders of that property shall be deemed to have equal rights and share.

(3) The use and management of, transfer of title to, and other provisions relating to, the joint property shall be governed by this Chapter and the other Chapters of this Act.

- 259. Trees, plants or goods on boundary to be deemed joint property:** Except as otherwise proved, the trees, plants or goods lying on the boundary of two or more owners of adjoining lands shall be deemed to be the joint property of all owners.
- 260. Management, protection and maintenance of joint property:** (1) The management, protection and maintenance of a joint property shall be made as per the consent of the owners of that property.

(2) Failing consent between the owners in relation to the management, protection and maintenance of a joint property pursuant to sub-section (1), the management, protection and maintenance of the joint property shall be made according to the decision of majority members.

(3) Failing a majority opinion between the owners in relation to the management, protection and maintenance of the joint property pursuant to sub-section (2), the owner who has the largest right or share in that property shall make its management, protection and maintenance.

Provided that if the owners have equal right, all owners shall have to make management, protection and maintenance of such property on an equal basis.

(4) Expenses incurred in the management, protection and maintenance of the joint property, if any, made by any owner

pursuant to sub-section (2) or (3) shall be borne by all owners in proportion to their respective right or share.

(5) The owner who does not manage, protect and maintain the joint property pursuant to sub-section (4) shall pay the expenses incurred in the management, protection and maintenance of that property to the owner who has made such management, protection and maintenance within a period of one year.

(6) If any owner fails to pay the expenses incurred in the management, protection and maintenance of the joint property within the period referred to in sub-section (5), the owner who has made management, protection and maintenance thereof shall be entitled to purchase the right and share of that other owner in that property at the prevailing price. Such purchaser of the joint property may deduct management and maintenance expenses of his or her portion.

261. Prohibition of alteration in joint property without consent: Any alteration in a joint property or any change in its form may not be made without consent of all the owners of the joint property.

262. Legal action or defense may be made by any owner of joint property: (1) If it is necessary to institute a legal action against any person or defend a case in relation to the protection of a joint property, all owners shall make such institution or defense.

(2) If all owners are not available as referred to in sub-section (1), any owner may, on behalf of him or her or the other owners, institute legal action against any person or defend any case.

263. Separation of one's share from joint property: (1) Any owner of a joint property may separate his or her right or share therein from the other owners at any time.

(2) The separation of a joint property referred to in sub-section (1) shall be effected in accordance with the consent of all the owners.

(3) Notwithstanding anything contained in sub-section (1) or (2), if the separation of any joint property results either in a substantial loss to the other owners or in a disorder in the form of that property, such separation may not be made.

(4) If any joint property cannot be separated owing to the circumstance referred to in sub-section (3), the owners of that property shall sell such property and divide the proceeds of sale between them in proportion to their respective right and share therein.

(5) If any joint property cannot be sold in accordance with sub-section (4) or all the owners do not agree to sell it and any owner intends to buy such property, such an owner may exclusively own it by paying the price of that property to the other owners in the same proportion.

(6) If more than one owner intend to buy the joint property pursuant to sub-section (5), the owner who agrees to pay the highest price shall be entitled to purchase such property.

264. Provisions relating to community, public, government and trust properties: The provisions relating to, and ownership, use, management, and transfer of right in, and other provisions of, the

community, public, government and trust properties shall be as set forth in the other Chapters of this Act.

- 265. Statute of limitation:** A person aggrieved from any act done or action taken under this Chapter may make a lawsuit within six months after the date on which such an act was done or action was taken.

Chapter-2

Provisions Relating to Ownership and Possession

- 266. Ownership to be deemed:** If a person acquires the right in any property in accordance with law, his or her ownership in that property shall be deemed.
- 288. Right of owner:** Any person, in capacity of the owner of any property, shall have the following right, subject to laws:
- (a) To use the property,
 - (b) To sell or otherwise transfer the title to the property to any other person,
 - (c) To mortgage or pledge the property in any manner,
 - (d) To deal in the property,
 - (e) To take benefits of the property in any manner whatsoever,
 - (f) To make any kind of physical structure, wall or fence or delimit boundary, in his or her land or change the form of any property or otherwise protect it,
 - (g) To use his or her land or part below its surface or goods therein or sky above its surface,
 - (h) To destroy or dispose of property in any manner,
 - (i) To institute a legal action in any manner in relation to the acquisition or security of the property.
- 268. Possessory right to be deemed:** If a person holds a property with him or her lawfully with intention to possess the property, the person shall be deemed to have the possessory right over such property.
- 269. When possessory right can be acquired:** (1) The possessory right may be acquired over any property in the following manner:

- (a) By holding the property in the capacity of its owner,
 - (b) By acquiring the property owned by another person, in accordance with law,
 - (c) By obtaining consent to have possessory right.
- (2) Only the possessory right which is acquired in good faith, peacefully or openly shall be deemed to have been acquired lawfully.

270. Person competent to acquire possessory right: (1) A person may acquire the possessory right either in person or through his or her agent.

(2) A person who is incompetent or quasi-competent may acquire the possessory right through his or her guardian or curator.

271. Rights of possessor: (1) A person, in the capacity of a possessor, shall, subject to law, have the following rights:

- (a) To uninterruptedly possess the property in his or her possession, subject to the laws in force or the contract, if any, entered into in relation to the property,

- (b) To use any benefits of the property in his or her possession.

(2) In the event of acquisition of, by a person, the possessory right in bona fide over any property owned by anyone else, the person shall be entitled to reimbursement from the owner of that property for essential expenses incurred in the management, maintenance or care of such property while it was under his or her possessory right.

(3) Notwithstanding anything contained in sub-section (2), the former possessor shall be entitled to retain such property

with him or her unless and until the expenses referred to in that subsection are reimbursed.

(4) If a bona fide possessor of any property not in his or her ownership has attached any goods to such property, the possessor shall be entitled to detach or take out the goods so attached by him or her from the property without tempering with such property.

272. Circumstances when possessory right is extinguished: The possessory right of a person over a property shall be deemed to have been extinguished in any of the following circumstances:

- (a) If the person abandons the property,
- (b) If the person transfers the property,
- (c) If the property gets totally destroyed or becomes useless.

273. Adverse possessory right to be deemed: (1) Notwithstanding anything contained elsewhere in this Chapter, if any person has possessed any movable property or land owned by anyone else, since more than three years ago in the case of the movable property and thirty years ago in the case of the land as if the property or land were owned by himself or herself, that person shall be deemed to have adverse possessory right over such property or land.

Provided that:

- (1) No adverse possessory right may be acquired over a government, public, community or trust land despite the length of the period of possession.
- (2) Where a contract or other law provides for separate provisions in relation to any property or

land, such provisions shall be applicable to such property or land.

(2) If any person acquires the adverse possessory right over any property pursuant to sub-section (1), the person may obtain ownership over such property in his or her name.

(3) Notwithstanding anything contained in sub-section (1), if a property or land is possessed without knowledge of its owner, secretly or forcibly, this Section shall not apply.

(4) In computing the period pursuant to this Section, it shall be computed from the date of the commencement of this Act.

274. Compensation to be paid: (1) If any person possesses any property forcibly, with mala fide intention or secretly, the person shall return the benefits derived from that possession and such property to the concerned person and pay a reasonable compensation for any loss caused to the property due to his or her negligence in the course of possessing such property.

(2) If any property owned by anyone else is lost or damaged during the continuance of the possessory right of a person over the property, the person shall pay compensation for such property to the concerned person.

275. Statute of limitation: A person who is aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit within three months after the date of knowledge of commission of such act or action.

Chapter-3

Provisions Relating to Uses of Property

276. Prohibition of use, temperance or acquisition of other's property: (1) No person shall use other's property without consent of that other person.

(2) No person shall temper with other's property by closing the road or exit of the other person or doing any act or construction on the border of his or her land or otherwise.

(3) No person shall acquire other's property without consent of that person.

Provided that the Government of Nepal may, in accordance with law, acquire property of any person for public interest.

(4) No person shall enter other's house and compound without consent of any person except in accordance with law.

277. Property to be inviolable: (1) No person shall encroach or trespass other's property by way of overlapping, pressing or otherwise.

(2) If any person takes possession of other's property by way of any act referred to in sub-section (1), that person shall be deemed to have encroached or trespassed such property.

278. Safety measures to be adopted: A person shall, while doing any work on his or her house or land, adopt safety measures in order to avoid any loss or damage or effect to the neighbor's house or land in any manner.

Provided that, except where a business transaction is carried on by any neighbor, matters such as gas, smell, smoke or noise of