

(Revised)

## The National Criminal Procedure (Code) Act, 2017

Date of Authentication:

16 October 2017

**Act Number 37 of the year 2017**

### An Act Made To Amend And Consolidate Laws Relating to Procedures of Criminal Cases

#### **Preamble:**

Whereas, it is expedient to make the procedural law simplified and timely, by amending and consolidating the laws in force relating to procedures on investigation, prosecution, filing, proceeding, hearing and adjudication of criminal cases and other procedures related thereto, and execution of judgments on such cases;

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

#### **Chapter-1**

#### Preliminary

1. **Short title and commencement:** (1) This Act may be cited as the "National Criminal Procedure (Code) Act, 2017".  
(2) Section 192 of this Act shall commence on such date as appointed by the Government of Nepal by a notification in the Nepal Gazette, and the other Sections, on 17 August 2018.
2. **Definitions:** Unless the subject or the context otherwise requires, in this Code,-

- (a) "court" means the Supreme Court, High Court or District Court, and this term also includes any other court, judicial body or authority empowered by law to proceed, hear and adjudicate any specific type of criminal cases;
- (b) "investigating authority" means an authority designated under this Act or competent authority under law to make investigation into any offence, and this term also includes an investigation team formed to investigate into any specific offence;
- (c) "Penal Code" means the National Penal (Code) Act, 2017;
- (d) "complaint" means a plaint to be filed in a court, and this term also includes a charge-sheet in relation to any offence under Schedule-1 or Schedule-2, and a report thereon in relation to any other case;
- (e) "offence" means an act punishable by the Penal Code or other Act;
- (f) "law" means a law for the time being in force;
- (g) "grave offence" means any offence punishable by a sentence of imprisonment for a term of more than three and less than ten years;
- (h) "heinous offence" means any offence punishable by a sentence of imprisonment for life or for a term of more than ten years,
- (i) "place" means a house, shed, cow shed, elephant shed or tent, and this term also includes a motor vehicle, vessel, aircraft, and other place or means of similar nature;

- (j) "judge" means the authority of a court to proceed, hear and adjudicate a case, and this term also includes an authority competent to proceed, hear and adjudicate a criminal case;
- (k) "police office" means a police office authorized to investigate into any offence set forth in Schedule-1;
- (l) "criminal case" means a case related to an offence under Schedule-1, Schedule-2, Schedule-3 or Schedule-4, and this term also includes any other case, except a case on any of the following matters:
- (1) A case related to a legal right, status, post, family relationship or property,
  - (2) Establishment of relationship, or divorce,
  - (3) Fee, remuneration, salary, allowance or wage,
  - (4) Partition, succession, donation, gift, will, guardianship, curatorship, parental authority, adoption,
  - (5) Any right or claim under any contract, quasi-contract or unlawful enrichment,
  - (6) Any right or claim relating to tort, quasi-tort or defective product,
  - (7) Servitude,
  - (8) Compensation, or
  - (9) Any other right or liability of civil nature.
- (m) "case" means a criminal case;

- (n) "adjudicating authority" means an authority empowered by law to proceed, hear and adjudicate a case, and this term also includes, in the case of a person taken in custody, a court nearby the place where the person is taken in custody;
- (o) "Local Level" means a Village Body (*Gownpalika*) or Municipality;
- (p) "government attorney" means the Attorney General, Deputy Attorney General, Joint Attorney, Deputy Attorney, District Attorney or Assistant District Attorney, and this term also includes an officer designated by the Attorney General to act in the capacity of government attorney.

**3. Special legal provisions, if any, made not to be affected:** (1) If a separate Act provides for special provisions on the prosecution, investigation, trial, hearing, execution of judgments or any other proceeding of, or jurisdiction to try cases on, any specific offence, such matters shall be governed by such Act and shall not be affected by any provision contained in this Act.

(2) This Act shall govern the matters of procedures on which special legal provisions have not been made pursuant to subsection (1).

## **Chapter-2**

### **Provisions Relating to Information on Commission of, and Investigation into, Offences**

**4. First information report or information on commission of offence to be given:** (1) A person who knows that any offence set forth in Schedule-1 has been committed or is being committed or is likely to be committed shall, as soon as possible, make a first information report in writing or give information on such offence, verbally or through electronic means, along with whatever proof or evidence which is in his or her possession or which he or she has seen or known, to the nearby police office in the form referred to in Schedule-5.

(2) If a person making a first information report or giving information referred to in sub-section (1) does not give such information in writing, the concerned police employee shall set down all matters of information given by the person in the form referred to in Schedule-5, read out the same to, and cause it to be signed by, that person.

(3) If a person makes in person a first information report or gives information referred to in sub-section (1) to the concerned police office, or sends such information through any person or electronic means, such police office shall register such report or information and give that person a receipt thereof, in the form referred to in Schedule-6. If any person gives information through electronic means, acknowledgement of receipt of such information shall be given through the same means.

(4) Notwithstanding anything contained in sub-section (1), (2) or (3), if the police receives any report or information about the commission of any offence set forth in Schedule-1 from any other source or on his or her own, the police shall prepare a report along with the details set forth in Schedule-5.

(5) The police office shall enter the first information report, information referred to in this Section or the report referred to in sub-section (4) in a register in the form referred to in Schedule-7.

(6) Any first information report or information received pursuant to sub-section (1) shall be forwarded to the separate investigating authority, if any, specified by law in relation to such report or information, and, failing the specification of such separate investigating authority, to the concerned district police office.

(7) A person wishing to give information about any offence set forth in Schedule-2 shall give such information, in the form referred to in Schedule-5, to the office or authority empowered to investigate into that offence.

(8) The concerned office or authority shall register the information received pursuant to sub-section (7) and give a receipt thereof, in the form referred to in Schedule-6, to the person who gives such information.

(9) If it is not possible to immediately register the information referred to in sub-section (7) in the concerned office or authority, such information may also be given to the nearby police office.

(10) The concerned police office shall, if it receives any information pursuant to sub-section (9), register such information pursuant to sub-section (5) and forward it to the concerned office or authority not later than three days for action.

**5. Complaint against refusal to register first information report or information:** (1) If the concerned police office refuses to register a first information report made or information given pursuant to sub-section (1) of Section 4, the person making or giving such first information report or information may make a complaint setting out such matter, accompanied by the first information report or information, to the concerned district government attorney office or the police office higher in level than the police office required to register such first information report or information.

(2) If a complaint referred to in sub-section (1) is received, the concerned district government attorney office or police office shall maintain records thereof and forward such first information report or information to the concerned police office for necessary action.

(3) The concerned police office shall, in accordance with sub-section (3) of Section 4, register and take action on the first information report or information received pursuant to sub-section (2).

(4) If the office or authority referred to in sub-section (7) of Section 4 refuses to register any information referred to in that sub-section, the person giving such information may make a complaint setting out the matter, accompanied by the information of offence, to the Chief District Officer of the concerned district.

Provided that where the Chief District Officer himself or herself is designated as the investigating authority and refuses to register such information, such complaint may be made to the Ministry of Home Affairs.

(5) Upon receipt of any complaint referred to in sub-section (4), the concerned Chief District Officer or the Ministry of Home Affairs shall decide, within three days, as to whether or not to register such information, and give direction to the concerned office to take, or cause to be taken, action accordingly.

(6) Upon receipt of any direction referred to in sub-section (5), the concerned office or authority shall take action in pursuance of the direction.

**6. Arrangements to be made to prevent evidence from being concealed or destracted and prevent offender from escaping:** (1) If any police office or police employee gets information that any offence set forth in Schedule-1 has been committed or is being committed or is likely to be committed, such office or employee shall, as promptly as possible, make necessary and effective arrangements in order to prevent the offender from committing the offence or prevent any evidence related to the offence from being disappeared or destracted and prevent the offender from going away or escaping.

(2) If there is a likelihood of the concealment or destruction of any evidence related to the offence or the escaping or going away of the offender where immediate action is not taken pursuant to sub-section (1), such police office or employee may take necessary action

in that behalf, even by entering the area of another police office, as per necessity.

(3) In the event of a need for taking any action by entering the area of another police office pursuant to sub-section (2), such police office or employee shall give information thereof to the concerned police office or body and the higher police office.

(4) If the concerned authority comes to know, on his or her own initiative or on information made by any one, that any offence set forth in Schedule-2 has been committed or is being committed or is likely to be committed, such authority shall take action referred to in sub-section (1) or (2).

Provided that if any police employee receives information about such offence and the concerned investigating authority is not available for the time being, such police employee shall take action referred to in sub-section (1) and send the statements of such action, together with the person, if any arrested, to the investigating authority.

(5) Any police employee or investigating authority may ask any body, authority or person to render assistance in preventing the disappearance or destruction of any evidence related to the offence or in arresting the offender; and it shall be the duty of such body, authority or person to render necessary assistance wherever such assistance is so asked for.

(6) If a police employee sees a person committing an offence in his or her presence or at a time when the police employee is there in search of clues upon receipt of a notice, information or

clue that such offence has been committed or is being committed or is likely to be committed, the police employee shall immediately arrest the person committing such offence.

(7) The police employee shall take possession of exhibits and other proofs, evidence or things related to the offence, if any, found on the spot and execute a deed thereon, as required, in the presence of the eye witnesses, if any, present on the spot.

(8) Such thing, place or spot shall be protected as it is until the completion of the execution of such deed pursuant to sub-section (7).

(9) Where it is not possible to immediately seize or take possession of the exhibits and other evidence or things related to the offence obtained pursuant to sub-section (7), the concerned police employee may make a request to the Local Level or any other office to safely retain such exhibits or things, and the concerned Level or office shall, when so requested, take custody of such exhibits or evidence and give a receipt thereof.

Provided that the goods not related to the offence shall be immediately returned to the concerned person.

**7. Information to be given to concerned police office:** (1) If the any police office knows, from the contents of information received by it in relation to any offence set forth in Schedule-1 or on its own initiative, that such offence has been committed or is being committed or is likely to be committed in the area of another police office, such police office shall, as soon as possible, send such

information to the concerned police office, and inform the informant to appear in the concerned police office, as required.

(2) Notwithstanding anything contained in sub-section (1), if there is a possibility that the offender may escape and any exhibits or evidence related to the offence may disappear due to the non-availability of the investigating authority for the time being because of geographical remoteness or any other cause, the competent investigating officer of the concerned police office receiving such information shall make preliminary investigation into the offence committed in such area and send details of such investigation to the concerned police office.

(3) Such authority shall, prior to making preliminary investigation pursuant to sub-section (2), give information to the concerned police office and the one level higher police office.

**8. Collection of proof and evidence upon making investigation:** (1) Upon receipt of any information that an offence set forth in Schedule-1 has been committed or is being committed or is likely to be committed, the concerned police office shall, as soon as possible, designate a police employee whose rank is at least assistant sub-inspector as the investigating authority and give information thereof to the concerned government attorney office and the higher police office; and the investigating authority so designated shall conduct investigation into such offence.

Provided that a police employee whose rank is at least police inspector shall be designated to investigate into any of the following offences:

- (a) Offences set forth in Chapter-1, Chapter-12, Chapter-17, Section 219 of Chapter-18, Sections 230, 231, 232, sub-section (4) of Section 233, Section 235, sub-section (4) of Section 238 of Chapter-19, Section 244 of Chapter-20, Sections 256, 257 and 258 of Chapter 22, of Part-2 of the Penal Code,
- (b) Offences related to narcotic drugs, human trafficking and transportation and foreign exchange,
- (c) Any other offence so specified by the Government of Nepal by a notification in the Nepal Gazette, taking into account the gravity of the offence.

(2) The investigating authority shall, in conducting investigation under this Section, prepare a deed on the scene of crime containing the following matters, as far as practicable, in such manner as to demonstrate the actual description of the offence and the place where the offence was committed:

- (a) The date and time when the offence was committed,
- (b) The address, description and sketch of the place where the offence was committed,
- (c) The circumstance of such place and its connection with the offence or offender,
- (d) The exhibits or evidence found or seen at or around the place where the offence was committed, and any other significant matters related to the offence.

(3) After preparing a deed on the scene of offence pursuant to sub-section (2), the investigating authority may, as far as

practicable, take a photograph of such place and of any finger print or foot print, mark or other exhibits seen or found at such place or any other important matter that may be helpful in establishing the guilt.

(4) In preparing a deed on the scene of crime pursuant to sub-section (2), thumb impressions as well as identity disclosing details of the offender or accused person, if present, shall also be taken.

(5) The investigating authority shall take possession of the exhibits, evidence, object or article related to the offence, if any found.

(6) The authority taking possession of any exhibits, evidence, object or article pursuant to sub-section (5) shall give a receipt thereof to the concerned person.

(7) Investigation into any of the offences set forth in Schedule-2 shall be conducted by the authority, if any, specified by law to that effect, and, failing the specification of such authority, by the concerned chief district officer or officer level employee designated by him or her.

(8) The authority specified pursuant to sub-section (7) shall, in conducting investigation into such offence, fulfill the procedures set forth in sub-sections (2), (3), (4), (5) and (6).

(9) In conducting investigation into any offence committed on the same occasion pursuant to this Chapter, investigation into all cases that may be instituted from the acts done on such occasion shall be conducted at the same time.

- 9. Power to arrest person related to offence:** (1) The police or investigating authority may arrest any person related to an offence if such person is found or caught in the course of committing the offence.
- (2) If, in the course of investigation into any offence, it is necessary to arrest any person immediately in accordance with this Chapter, an application, along with the reason for such arrest, and the details disclosing the identity of the person to be arrested, as far as practicable, shall be made to the adjudicating authority for permission to issue a warrant of arrest.
- (3) If an application is made pursuant to sub-section (2) and the reason for arrest appears to be reasonable, the adjudicating authority may, on the same application, give permission to issue a warrant of arrest.
- (4) The form of a warrant of arrest shall be as referred to in Schedule-8.
- (5) The order referred to in sub-section (3) shall not be disclosed until the person to be arrested is arrested.
- (6) Notwithstanding anything contained in sub-section (2), if a person who is not arrested at once or there is a reasonable ground to believe that such person may abscond, escape or destroy the evidence, exhibits or proof, such person shall be arrested immediately upon issuing an urgent warrant of arrest in the form referred to in Schedule-9, and the matter shall be submitted to the adjudicating authority, along with the person so arrested, for permission.

(7) If any person is arrested upon issuing an urgent warrant of arrest pursuant to sub-section (6), no other investigation related proceedings related to such offence may be initiated without obtaining permission from the adjudicating authority.

(8) If the police is not available for the time being at the time of commission of any offence, any person who is present at the time of commission of that offence or who is eye witness thereto may prevent the person committing such offence from going away or escaping and hand him or her over to the nearby police office.

(9) If it is necessary to arrest a person pursuant to sub-section (1) or (6), such person shall, prior to arresting him or her, be informed of the cause necessitating his or her arrest and reminded, persuaded and ordered to surrender himself or herself.

(10) If, in spite of the remainder, persuasion or order under sub-section (9), any person does not surrender himself or herself but makes attempt to evade, escape or avoid arrest or confronts or attempts to confront in any manner, with or without the use of force, the police employee may use necessary force to arrest him or her.

(11) If a woman is to be arrested pursuant to this Section, the woman shall be arrested by a female police as far as possible.

Provided that if a female police is not available for the time being to arrest such woman, nothing shall bar the arresting of such woman by a male police employee in such manner as to respect her physical sensitivity and as not to undermine her dignity or prestige.

(12) A person who is arrested pursuant to this Section or his or her body may be searched.

(13) If there is a reasonable ground to suspect that any person to be arrested pursuant to this Section is residing in any house or place, that person may be arrested by making search of such house or place.

(14) If a person is arrested upon making search pursuant to sub-section (13), the body of such person may also be searched.

(15) The person who arrests such person or investigating authority shall take custody of any evidence related document or exhibits, evidence or any other thing found during the search made pursuant to sub-section (12) or (13), and give a receipt thereof.

(16) Notwithstanding anything contained elsewhere in this Section, if any person commits any offence under Schedule-1 or Schedule-2 in the presence of any police employee or authority or in any government office, the concerned police employee, authority or chief of office may, as required, arrest such person.

**10. Preliminary investigation report to be forwarded:** (1) The investigating authority or police employee designated to investigate into any of the offences set forth in Schedule-1 or Schedule-2 shall conduct preliminary investigation immediately after a first information report or information as to the commission of such offence has been registered pursuant to Section 4.

(2) Such investigating authority or police employee shall, after the commencement of the preliminary investigation pursuant to sub-section (1), forward a report thereof to the district government attorney office within three days.

**Explanation:** For the purposes of this Chapter, the term "preliminary investigation" means the description of the scene of offence, deed on the scene of crime, search or seizure deed or deed of examination of corpse in the case of homicide, and, in the case of other offence, report, deed or other necessary description required to be prepared depending on the nature of such offence.

(3) The government attorney may, upon receipt of a preliminary report pursuant to sub-section (1), give necessary instruction, accompanied by the reasons, to the investigating authority if the attorney thinks, on studying the report, that it is expedient to give such instruction to conduct further investigation into any matter in connection with the offence.

(4) It shall be the duty of the concerned investigating authority to comply with the instruction given pursuant to sub-section (3).

**11. Power to abate deceptive, false or fabricated information:** (1) If, also upon inquiring into the concerned person or informant in relation to the first information report or report received as to any offence set forth in Schedule-1 or Schedule-2, it appears that it is unnecessary or meaningless to conduct investigation into such offence by the reason that such report or information is deceptive, false or fabricated, the concerned police office shall send a report setting out that matter to the concerned government attorney office not later than three days in general cases.

(2) Upon receipt of a report pursuant to sub-section (1), the concerned government attorney office may abate the investigation into such offence for the time being subject to the conducting of

investigation as and when additional evidence is found if there is no reasonable ground to conduct such investigation immediately or give direction, accompanied by the reason, to the investigating authority to conduct further investigation if, upon studying the nature of commission of offence on that occasion, it thinks appropriate to conduct investigation immediately.

(3) If the government attorney office gives direction to conduct investigation pursuant to sub-section (2), the concerned investigating authority shall conduct investigation into such offence.

**12. Power to form special team to conduct investigation:** (1) Notwithstanding anything contained elsewhere in this Chapter, if the Inspector General of Police or the pertinent superior authority of the investigating authority is of the opinion that it is appropriate to form a separate investigating team to conduct investigation into any offence set forth in Schedule-1 or Schedule-2 of this Act by the reason that such investigation cannot be conducted by the designated investigating authority alone in view of the gravity of that offence, the Inspector General of Police or such superior authority may form an investigating team consisting of his or her subordinate employees.

(2) Notwithstanding anything contained in sub-section (1), if it is required to form an investigating team consisting of other persons also, in addition to his or her subordinate employees, the pertinent superior authority of such investigating authority or the Inspector General of Police may, in consultation with the Attorney General on that matter, form an investigating team consisting of experts as well, and cause such investigation to be conducted by that team.

(3) If an investigating team is formed pursuant to sub-section (1) or (2), such team shall conduct investigation, in exercise of the powers conferred to the investigating authority under this Chapter.

(4) If an investigating team is formed pursuant to sub-section (1) or (2), the concerned investigating authority shall hand over to such team the details of investigation conducted by him or her.

(5) The investigating team formed pursuant to sub-section (1) or (2) shall conduct investigation and submit its report to the concerned government attorney and give information thereof to the concerned police office, as well.

(6) If, upon receipt of a report pursuant to sub-section (5), the government attorney considers it necessary to give necessary direction to conduct further investigation on any matter related to the offence, he or she may give necessary direction, accompanied by the reason therefor, to the investigating team.

(7) It shall be the duty of the concerned investigating team to comply with the direction given by the government attorney pursuant to sub-section (6).

**13. To hold in detention:** (1) A person who is arrested in accordance with this Chapter shall be held in detention.

(2) A person shall be detained pursuant to sub-section (1), only upon serving on such person a warrant for detention in the form referred to in Schedule-10, setting out the place where such person was arrested and the reason for holding in detention.

(3) If any person is detained pursuant to sub-section (1), there shall be prepared his or her records containing, inter alia, his or her name, surname, age, address including street, father's name, mother's name, citizenship certificate or other identity card, if any, disclosing his or her identity, and failing such certificate or card, driving license, passport, telephone number, if any, and duplicate copies of similar documents setting out his or her real identity.

(4) For the purposes of sub-section (3), the investigating authority may, as required, also take his or her photograph and thumb impressions of both hands, with palms.

(5) After the preparation of the records pursuant to sub-section (3), the concerned police office or investigating authority shall give information, based on such records, about his or her detention to the person specified by the person held in detention to receive such information.

(6) If a person arrested pursuant to this Section intends to consult a law practitioner, the investigating authority shall allow him or her to consult such law practitioner.

**14. Period during which one may be held in detention for investigation, and procedures relating thereto:** (1) After a person has been arrested under this Chapter for investigation into any offence, the person shall be produced before the adjudicating authority as soon as possible within twenty-four hours.

(2) No person shall be held in detention in contravention of sub-section (1).

(3) If it is necessary to hold any person in detention for a period exceeding that set forth in sub-section (1), the investigating authority shall make an application for remand, accompanied by the reasons and grounds for such detention, to the adjudicating authority through the government attorney office.

**Explanation:** For the purposes of this Section, the period required for the journey from the place of arrest to the police office or from the police office to the court for the purpose of producing the person arrested before the adjudicating authority within twenty-four hours shall not be counted.

(4) The application made by the investigating authority to the adjudicating authority pursuant to sub-section (3) shall clearly state the charge made against the detained person, grounds of such charge, reason for detaining him or her for investigation and details according to his or her deposition, if made.

(5) A person who is produced for a remand for detention pursuant to sub-section (2) may, if he or she so wishes, make an application to the adjudicating authority for the physical examination of his or her body.

(6) If the investigating authority requests for a remand for detention of a person pursuant to sub-section (3), the adjudicating authority may remand such person in detention for a maximum period of twenty-five days at one time or several times if, upon studying the relevant documents and also upon hearing the pleadings of the legal practitioner concerned, if considered necessary, the adjudicating authority thinks that it is necessary to keep on detaining such person for investigation.

(7) Notwithstanding anything contained in sub-section (6), both the investigating authority and the government attorney may submit to the adjudicating authority a report, along with the reason, that investigation into any offence related to assault on the President, espionage, giving provocation to the desertion of a soldier, waging war against the State of Nepal, assistance to the army of a state involved in a war against Nepal, explosives, kidnapping or hostage-taking, out of the offences under Schedule-1, cannot be completed within the period given under sub-section (6).

(8) If a report referred to in sub-section (7) is submitted, the adjudicating authority may, having regard to the status of investigation, remand the accused person in detention for a maximum of additional fifteen days at one time or several times.

Provided that no person accused of any offence may be held in detention for a period exceeding the term of imprisonment that is imposable on him or her if he or she is held guilty thereof.

(9) In issuing a remand order pursuant to sub-section (6) or (8), the adjudicating authority shall execute a memorandum, accompanied by the reasons therefor.

(10) Notwithstanding anything contained elsewhere in this Section, if the investigating authority, in view of the nature of the offence, thinks it reasonable to conduct investigation without holding in detention a woman with pregnancy of more than seven months, a child, and a person over 75 years of age, such authority may conduct investigation by remanding such woman, child or person on recognizance, and executing a memorandum to that effect, accompanied by the reasons therefor.

**15. Power of investigating authority to release person held in detention:** (1) If it does not appear necessary or appropriate to keep on detaining a person held in detention in the course of investigation under this Act, the investigating authority may, with the consent of the government attorney or by executing a memorandum, accompanied by the reasons therefor, where it is not possible to obtain such consent for the time being, remand such person on bail/bond or guarantee or personal guarantee furnished by any reliable person or on recognizance to appear on appointed days.

(2) In remanding any person on bail/bond, or on recognizance to appear on appointed days pursuant to sub-section (1), a deed shall be caused to be executed by the person so released, covenanting that he or she shall appear when it becomes necessary to institute the case against him or her.

(3) A person who furnishes personal guarantee pursuant to sub-section (1) shall cause the person released on his or her personal guarantee to appear at such time as appointed by the investigating authority or government attorney office.

(4) If a person who furnishes personal guarantee fails to cause such person to appear at the time appointed pursuant to sub-section (3), he or she shall be liable to a fine of five thousand rupees.

(5) Where investigation has been conducted by remanding a person on recognizance to appear on appointed days, the investigating authority shall give information thereof to the government attorney and the higher police office.

**16. Deposition and interrogation:** (1) The investigating authority may take deposition from the accused in relation to any offence under Schedule-1 or Schedule-2 in the presence of the government attorney.

(2) In taking deposition pursuant to sub-section (1), the government attorney shall have the right to ask necessary matter as required to be set out in relation to the offence.

(3) The investigating authority shall interrogate, as necessary, any person, who is believed, based on a reasonable ground, to have knowledge of any important matter in connection with any offence under Schedule-1 or Schedule-2.

Provided that if it is required to interrogate any child or any person who is physically incompetent, such child or person may be interrogated at his or her abode.

**Explanation:** For the purposes of this Section, the term "physically incompetent" means a physically incompetent person such as one who cannot make movement, who is with visual impairment or who is of elderly age.

(4) The investigating authority shall, if interrogation is made pursuant to sub-section (3), record the matters interrogated in the form referred to in Schedule-11 and attach the same with the concerned case-file.

(5) If it is necessary to have a document executed by a child or physically incompetent person pursuant to this Section, it shall be executed in presence of his or her guardian or other person available.

(6) If any person who is to make deposition or be interrogated pursuant to this Section is not able to present before the investigating authority for the reason of physical illness or it is not appropriate to cause his or her presence before such authority for the reason of his or her security, the investigating authority may take statement of or interrogate such person through video conference.

(7) The investigating authority shall, if statement is taken or interrogation made pursuant to sub-section (6), arrange for maintaining the records thereof.

- 17. To answer question asked:** The concerned person shall assist in investigation by giving answer, to the best of his or her knowledge, to any question asked by the investigating authority in connection with any offence being investigated under this Chapter.

Provided that no person shall be compelled to give any answer which might be of self-incriminatory nature.

- 18. Power to make search:** (1) If, in conducting investigation into any offence under Schedule-1 or Schedule-2, the investigating authority has a reasonable ground to suspect that any document, exhibit, evidence, accused or other person connected with such offence is in any place, the authority may search such person or place and seize such document, exhibit or evidence.

(2) Prior to making a search pursuant to sub-section (1), there shall be served on the person residing for the time being in the house to be searched a notice in writing, accompanied by the reason for making search, in the form referred to in Schedule-12.

(3) In making a search pursuant to sub-section (1), it shall be made upon executing a deed in the form referred to in Schedule-13.

(4) The investigating authority shall get the concerned house owner or person to search him or her as well, prior to entering into such place in order to make search pursuant to sub-section (1).

(5) In making a search of a house or room where only women reside or stay pursuant to sub-section (1), such search shall be made by entering into such house or room, being accompanied by another woman also, as far as possible.

Provided that in searching the body of a woman, such search shall be caused to be made by a female police or by any other woman if such police is not available for the time being.

(6) The employee making search shall prepare a deed in duplicate containing the description of the objects connected with the offence found during search, the scene and circumstance thereof, give one copy of the deed to the concerned person and retain the other copy in the case-file.

(7) If a person or place to be searched is located in the area under jurisdiction of another police office, the investigating authority may make a request in writing to such police office to make search of such person or place.

(8) If a request is made pursuant to sub-section (7), a police employee of that police office whose rank is at least assistant sub-inspector of police shall search such person or place, prepare a deed

referred to in sub-section (1) and send it to the authority making such request.

(9) Notwithstanding anything contained in sub-section (7), if the investigating authority thinks that any evidence could be concealed or destroyed in the event of making a request in writing to such police office, the investigating authority himself or herself may go to the place or site where the person to be searched is staying and search such person or place pursuant to this Section and shall give information thereof to the concerned office or police office.

(10) If the authority making search pursuant to this Section wishes to take with him or her any object connected with the offence and found in the course of making search, he or she may do so only after giving a receipt thereof to the concerned person.

(11) Except where there is a reasonable ground to believe that any exhibit or evidence may be concealed or destroyed or the suspected person may flee or escape if search of any place is not made immediately, the search of a house owned by any person shall be made any time from the sunrise to the sunset.

(12) Where the authority making search seeks an entry into any house or place in the course of making a search pursuant to this Section, the owner of the house or place or the person who has taken charge of such house or place or any other person residing there for the time being shall allow such authority to enter into such house or place, by opening its gate or door or in any other manner, and if such entry is denied, the authority making search may enter into the house or place by breaking the key, if any, or breaking or demolishing only such parts of the windows, doors, roofs, walls etc. of such house or

place as may be necessary to enter into such house or place and in such manner as to cause minimal loss or damage as far as possible.

(13) If, for any reason, it is not possible for a person who has entered into any house or place to exit from it in a normal way after making search pursuant to this Section, the person may exit from it by breaking or demolishing any such part of its windows, doors, roofs, walls etc. as may be necessary to exit from it and in such manner as to cause minimal loss or damage as far as possible.

(14) Search must be made without carrying any objects other than the clothes put on by the authority making search and any employee deputed to assist the authority in making search and the persons in whose presence the search is made pursuant to sub-section (5) of Section 16 and the items to be used in the operation of search; and the concerned person may, if he or she so wishes, search the body of any such authority, employee or other persons prior to the commencement of the operation of search.

(15) The authority who is competent to search any person, house or place pursuant to this Section shall, prior to making such search, show his or her identity card to the concerned house owner, place owner or person to ensure that he or she is the authority competent to make such search.

- 19. Requirement of presence in executing deeds:** (1) The investigating authority shall, in preparing a deed on the scene of crime, describing the real and actual facts of the scene of such offence, prepare it in accordance with sub-sections (2), (3) and (4) of Section 8.

(2) In preparing a deed on the scene of crime pursuant to sub-section (1) or searching any person, object or place or examining the corpse, in the case of homicide, or, in the case of commission of any other offence, in preparing necessary deeds depending on the nature of such offence, such deed or deeds shall be executed in the presence of at least two local people available at that place and one member of the Local Level or if no such member is available, one employee of the government office, if any, and the accused persons who are found out as well as the informant.

Provided that such deed on the scene of crime shall not be considered as unduly executed by the reason only that it has not been executed in the presence of the accused or the informant.

(3) In making a search of any place under the ownership or charge of a person, the search shall be made in the presence of such person also, if available.

**20. Examination of corpse to be made:** (1) If information is received that a person is dead due to culpable homicide or accident or suicide or in an unusual situation or in any other suspicious circumstance, the investigating authority shall immediately go to the place where the corpse is located and examine the corpse.

(2) In examining the corpse pursuant to sub-section (1), a deed containing, as far as practicable, the following matters, in the form referred to in Schedule-14, and take photographs of the corpse and the concerned scene in a manner to describe the actual situation of the corpse:

(a) The identifying description of the corpse,

- (b) The circumstances of the place where the corpse is located and of the corpse,
- (c) If any wound, injury, bruise, abrasion or mark is seen on the corpse, the description of each wound, injury, bruise, abrasion or mark including the part where such wound, injury, bruise, abrasion or mark is seen, the number, length, breadth, depth and description thereof,
- (d) Description of the instrument causing such death and the related description seen on the corpse, other than those mentioned in clause (c),
- (e) Any such other sign or symptom seen on the corpse that could be helpful in finding out the cause of death,
- (f) Description of other significant matters, if any.

(3) The concerned investigating authority shall, upon examining the corpse pursuant to sub-section (1), send the corpse to a government medical doctor or an expert designated in that behalf by the Government of Nepal or a licensed medical doctor for post-mortem, at the government expenses.

(4) The Government of Nepal shall make available to the concerned police office such expenses as required for post-mortem pursuant to sub-section (3).

(5) A report of post-mortem conducted pursuant to sub-section (3) shall be prepared in the form referred to in Schedule-15.

(6) Notwithstanding anything contained in sub-section (3), if, after the execution of the deed on examination of the corpse pursuant to sub-section (1), it does not appear, from such

examination of corpse, that the death was caused as a result of the commission of any offence or in a suspicious circumstance, and the investigating authority concludes that the post mortem of the corpse is not necessary, he or she shall execute a memorandum thereon, setting out the reasons for the same, in the presence of distinguished local persons and retain the memorandum in the case-file.

(7) If it is not possible or seems impossible to examine the corpse because of the corpse being decayed or rotted, the concerned investigating authority shall execute a deed setting out that matter, in the presence of local distinguished persons.

Provided that if, in spite of the corpse being decayed or rotten, there is a situation that the cause of death can be found out by other examination of the corpse or any of its parts, such other scientific examination may be carried out.

(8) After the completion of post mortem or execution of the deed pursuant to sub-section (6), the concerned police employee shall hand over the corpse to the successor to the deceased and get a receipt from the latter.

(9) If the successor refuses to receive the corpse pursuant to sub-section (8) or no successor is present or the successor cannot be identified, the concerned police employee shall perform the last rites and rituals of the corpse at government expenses.

(10) If the investigating authority deems it appropriate to be accompanied by the concerned expert in the course of examining the corpse or conducting post mortem or collecting any other proof or evidence, he or she may also be accompanied by such expert.

- (11) If the expert or medical doctor examining a corpse or conducting the post mortem pursuant to this Section thinks that it is necessary to conduct the post mortem by a team consisting of more than one expert in order to find out the real cause of death or the investigating authority thinks that it is necessary to have the post mortem conducted by a team of experts in order to find out the cause of death of a person, the post mortem may be conducted by such team.
- 21. Examination of physical evidence to be made:** (1) If the investigating authority thinks, in view of the nature of any offence, that evidence related to that offence can be obtained if the examination of the blood, semen, hair or any other part of body of the concerned person or arms, thing or object, DNA or any other matter is conducted in order to find out the offender, he or she may cause the examination of such blood, semen, hair or other part of body, arms, thing, object, DNA or any other physical evidence to be conducted by a government medical doctor or recognized laboratory.
- Provided that if it is required to examine any bodily organ of a woman, such examination shall be caused to be conducted by any female doctor, if available, and by a male doctor in the presence of a woman if such female doctor is not available.
- (2) The concerned person shall assist the investigating authority in the provision of a sample of blood, semen, hair or organ, arms or object required for the examination pursuant to sub-section (1).
- (3) The concerned doctor or laboratory shall prepare a report of examination conducted pursuant to sub-section (1).

**22. Examination of injury:** (1) If any person sustains any injury, wound, bruise, abrasion etc. on his or her body in an incident that happened because of hurt and makes application for the examination of injury or the investigating authority so requests, the government doctor or health worker shall examine his or her injury, wound, bruise, abrasion etc. and prepare a report of such examination in the form referred to in Schedule-16.

(2) If, in addition to that mentioned in sub-section (1), a person held in detention in the course of investigation or any other person on his or her behalf makes an application, accompanied by the reasonable ground, stating that evidence may be found, upon the examination of his or her body, that he or she has been subjected to hurt or torture or any other offence has been committed to him or her, the court may order that physical examination of such person be conducted by a government doctor or a doctor or health worker designated by the Government of Nepal.

(3) Even in conducting physical examination pursuant to sub-section (2), injury examination referred to in sub-section (1) shall also be conducted.

(4) The concerned doctor, expert or laboratory shall provide a report of examination conducted pursuant to Sections 20, 21 and this Section to the concerned office or investigating authority not later than three days after the date of such examination, excluding the time required for journey.

(5) If it appears that a person held in detention was subjected to hurt or torture as referred to in sub-section (2), the court shall order the concerned police office to have treatment of the

person so subjected to hurt or torture, provide an interim relief to him or her and take, in accordance with law, departmental action against the person who so subjected him or her to hurt or torture.

(6) If the investigating authority does not write to the government doctor or health worker for the examination of injury pursuant to sub-section (1), the concerned person may make a petition explaining that matter to the court, and the court may, if such petition is made, send a precept to the government doctor or health worker for such examination.

**23. Expert opinion may be obtained:** (1) The investigating authority may, if he or she so deems necessary, be accompanied by any expert in the course of investigation or seek opinion of any expert on any matter connected with the offence.

(2) It shall be the duty of the concerned expert to give his or her opinion if he or she is so asked pursuant to sub-section (1).

(3) The expert opinion given pursuant to sub-section (2) shall be recorded in the case-file.

(4) If any expert referred to in this Section is a non-governmental person, the Government of Nepal shall provide expenses to be incurred in the obtaining of his or her service.

(5) Notwithstanding anything contained elsewhere in this Section, if the investigating authority, for the reason of the sensitivity or complexity of any case, considers appropriate to do so, and makes recommendation for obtaining the opinion of the medical board or any other expert in such case, the Government of Nepal may form such board.

- (6) If a board is formed pursuant to sub-section (5), the board shall give opinion on that matter.
- 24. Identification to be made:** (1) If it is necessary to identify any person in connection with any case, a police employee whose rank is at least assistant sub-inspector of police shall cause such identification to be made.
- Provided that the proceedings of a case shall not be affected substantially by the reason only that such identification has not been made.
- (2) In having identification pursuant to sub-section (1), the person to be identified shall be kept in a place where such person cannot be seen and looked, and at least four persons who resemble to such person in age, color or physical structure shall, as far as practicable, be dressed uniformly, with whom such person shall be kept together, and every person making identification shall make identification separately.
- (3) The form of identification shall be as referred to in Schedule-17.
- (4) The matter as to whether the person making identification was able to make identification pursuant to sub-section (2) shall be recorded and retained in the case-file.
- (5) A police employee whose rank is at least assistant sub-inspector of police may cause to be made the identification of any exhibit, thing or object connected with any case, by executing a deed on identification.

**25. Police diary to be maintained:** (1) Every police officer conducting investigation under this Chapter shall maintain a police diary, in the form referred to in Schedule-18, in which every proceeding made by him or her in the course of investigation shall be recorded immediately.

(2) Such police officer shall record the following matters in the diary maintained pursuant to sub-section (1):

- (a) The date and time of receipt of information about the offence, and the resume thereof,
- (b) The activities carried out by him or her in the course of investigation,
- (c) The place or scene which he or she has visited in the course of investigation,
- (d) The exhibits, proofs, evidence or other necessary things found in the course of investigation,
- (e) Details of the person, if any, arrested in the course of investigation,
- (f) The name, address of each person whom he or she has interrogated in the course of investigation, and matters stated by such person in relation to the offence,
- (g) Nature of the person arrested or inquired,
- (h) Other relevant fact or information obtained in the course of investigation of the offence.

(3) The government attorney or court may, as required, procure and examine the police diary maintained pursuant to in sub-section (1).

(4) The authority higher than the concerned investigating authority may, if he or she so wishes, inspect the matters set forth in the diary maintained pursuant to sub-section (1) and also give necessary direction in connection with the investigation.

**26. Advice, opinion may be sought in relation to investigation:** (1) The concerned investigating authority may, in conducting investigation pursuant to this Chapter, seek advice or opinion of the government attorney on any matter.

(2) If advice or opinion is sought pursuant to sub-section (1), the concerned government attorney shall give his or her advice or opinion.

(3) If, in giving advice or opinion pursuant to sub-section (2), the government attorney deems that it is necessary to carry out further investigation into any matter or to collect further evidence or to seize any exhibit, evidence or to inquire any person into any matter, the government attorney may direct the investigating authority to do, or cause to be done, accordingly.

(4) It shall be the duty of the concerned investigating authority to comply with the direction given pursuant to sub-section (3).

**27. Power of the Attorney General to give direction in the course of investigation:** (1) The Attorney General may obtain necessary

information about the investigation undergoing into any criminal case to be filed by the Government of Nepal.

(2) If, upon having information pursuant to sub-section (1), the Attorney General is of the opinion that investigation into any criminal offence which is a state case is insufficient or that any special measure, method or mode required to be adopted or followed have not been adopted or followed during investigation into such offence or that further investigation should be conducted into such offence, he or she may, at any time, give direction to the investigating authority or the departmental head of that authority in respect of the investigation.

(3) It shall be the duty of the concerned authority to comply with the direction given pursuant to sub-section (2).

**28. Records of first information reports to be maintained:** (1) The investigating authority, in making petition to the court for a remand to hold the arrested person in detention pursuant to sub-section (3) of Section 14, shall submit one copy of the first information report or information, which was made or given to the police office or the investigating authority, to the adjudicating authority through the government attorney.

(2) The adjudicating authority shall maintain separate records of the report or information referred to in sub-section (1).

**29. Power to forward the matter to the concerned body:** Notwithstanding anything contained elsewhere in this Act, if, in the course of investigating into any offence under Schedule-1 or Schedule-2, it appears that the offence has to be investigated into

under other law, the matter, accompanied by the progress details of investigation, may be forwarded to the concerned body or authority for investigation into it.

- 30. Investigation into offence committed outside Nepal:** (1) If there is a legal provision that a case can be instituted in a court of Nepal in relation to an offence that was committed or took place outside Nepal, investigation conducted into such offence by fulfilling the following procedures shall, notwithstanding anything contained elsewhere in this Act, be deemed to have been duly conducted under this Act:
- (a) Any investigation conducted in accordance with the provisions of the treaty, if any, concluded with any country providing that investigation into any criminal offence, in respect of which a case may be instituted in a court of Nepal, can be conducted by the competent authorities of each other country,
  - (b) Failing a treaty referred to in clause (a), any investigation conducted by the investigating authority designated in that behalf by the Government of Nepal, by obtaining, through diplomatic channel, consent of, and in cooperation with, the competent authority of the country where the offence was committed,
  - (c) In cases where any investigation cannot be conducted pursuant to clause (a) or (b), investigation conducted by the competent investigating officer of the country where the offence was committed,

- (d) In cases where even the circumstance referred to in clause (c) does not exist, investigation conducted by the investigating authority of the area where the accused was apprehended or of the area of his or her permanent abode if the accused is not apprehended.
- (2) If the report of or documents related to the investigation conducted pursuant to sub-section (1) has been executed in any language other than the Nepali language, authentic Nepali translation of such documents shall be submitted to the court.
- (3) If it appears from the investigation conducted pursuant to sub-section (1) that a case has to be filed against any person, the concerned government attorney shall frame a charge sheet and file the case in the court in accordance with this Chapter.
- 31. Investigation report to be sent:** (1) After the completion of investigation made into any offence under Schedule-1 or Schedule-2, the investigating authority shall prepare an investigation report, in the form referred to in Schedule-19, accompanied by the originals and duplicates of the documents, and exhibits and evidence contained in the case-file, setting out under which law any or all of the persons suspected of committing the offence shall be punishable if it appears that there is sufficient evidence to make indictment against such accused, and setting out the relevant matter if it appears that the offence has not been committed or in spite of the commission of the offence, the accused cannot be traced out or that there is no sufficient evidence to make indictment against any accused, and send such report to the concerned government attorney office.

(2) The report referred to in sub-section (1) shall be sent at least fifteen days in advance of the expiry of the statute of limitation under the relevant law in relation to a case not involving a detainee, and normally three days in advance of the day for filing a case, also having regard to the time required to make decision of whether or not to institute the case and the time required for preparing a charge sheet and filing it in the court, in relation to a case involving a detainee.

(3) Upon receipt of the case-file, together with the investigation report pursuant to sub-section (1), the concerned government attorney office shall study the case-file, evaluate the proofs and evidence collected in the course of investigation, and send it to the Attorney General for decision to or not to institute the case.

Provided that where the Attorney General has delegated his or her power to decide to or not to institute the case to the subordinate officer, such case-file shall be sent to the concerned officer.

**Explanation:** For the purposes of this Section, the term "subordinate officer" means the government attorneys under the Attorney General, and this term also includes, unless otherwise provided in the Constitution, any such officer or employee of the Government of Nepal as authorized by the Attorney General to institute any other case involving the Government of Nepal as the plaintiff.

(4) If, in studying a case-file in connection with making decision of whether or not to institute a case pursuant to sub-section (3), the government attorney deems it necessary to collect further proof and evidence or conduct further investigation or make further

interrogation with any person, the government attorney may direct the investigating authority to collect such proof and evidence or conduct such further investigation or make interrogation with such person and send the same.

(5) If the government attorney gives direction to conduct further investigation into the offence pursuant to sub-section (4), the investigating authority shall complete further investigation within fifteen days of the date of receipt of such direction.

(6) If the investigating authority thinks that further investigation referred to in sub-section (5) cannot be completed within the time specified in that sub-section and any person is held in detention, the investigating authority may release such person on recognizance, with or without taking guarantee undertaken by a reliable person.

(7) If the investigating authority submits a report, accompanied by the reason, to the government attorney under this Section that a case cannot be instituted against any person, and any person is held in detention in the course of investigation, the investigating authority shall keep holding such person in detention until the government attorney makes decision to or not to institute the case.

(8) Notwithstanding anything contained elsewhere in this Chapter, where decision has been made not to institute a case on any offence set forth in Schedule-1 because of the absence of evidence but any significant evidence is obtained subsequently, investigation into such offence may be conducted again and the charge sheet may be filed.

## **Chapter-3**

### **Prosecution and Filing of Cases**

- 32. To file charge sheets:** (1) If, on studying a case-file in the course of making decision to or not to institute a case pursuant to sub-section (3) of Section 31, and in view of the proof and evidence collected, the concerned government attorney considers that there is adequate evidence for instituting the case, the concerned government attorney shall, in relation to a case under Schedule-1 or 2, prepare a charge-sheet, setting out the following matters, in the form referred to in Schedule-20 and shall submit the charge sheet to the concerned court within the time limit:
- (a) Full name, surname, address, **description**, age, occupation or business of the accused,
  - (b) Name of the father, mother, husband or wife of the accused,
  - (c) Village Body or Municipality where the accused is residing, ward number, village, street, block number, if available,
  - (d) Description setting out the actual identity of the accused, his or her photograph, duplicate copies of his or her citizenship or passport, driving licence or other document indicating his or her actual introduction,
  - (e) Biometrics of pointing fingers of both hands of the accused,

- (f) If the accused is staying in a rented house, details including the name, surname and address of the house owner,
  - (g) The contents of the information related to the offence,
  - (h) The particulars of the offence,
  - (i) The details of exhibits and evidence in substantiation of the commission of the offence by the accused,
  - (j) The charge made against the accused, and the grounds thereof and reasons therefor,
  - (k) The relevant laws to be applied, and the reasons therefor,
  - (l) The demand for punishment to be imposed on the accused, and the reasons therefor,
  - (m) The amount of compensation, if any, required to be awarded to the person who has sustained injury from the offence,
  - (n) Particulars of other necessary matters, if any, related to the nature of the offence.
- (2) A charge sheet to be submitted pursuant to sub-section (1) shall be accompanied by the proofs, evidence, exhibits and objects collected in connection with the offence, and the accused if held in detention.
- (3) If the law gives any specific name to the offence alleged to have been committed by the accused, the charge sheet to be

submitted pursuant to sub-section (1) shall mention that name in connection with such offence.

(4) If the law in force does not give any name to the offence pursuant to sub-section (3), name shall be so given to the offence, also having regard to the elements of the offence according to the nature of the offence, that the accused can clearly understand the charge made against him or her.

(5) If information is received that the accused has already been sentenced for any offence or the accused should be liable to enhanced punishment by the reason that the accused has also been previously convicted of any offence, the charge sheet filed pursuant to sub-section (1) shall also mention the date of previous conviction of the accused, the name of the court awarding the punishment and the case or if such matter is discovered later, it shall be mentioned as and when so discovered.

(6) If the government attorney makes decision not to institute a case against any person in connection with any offence pursuant to sub-section (3) of Section 31 owing to the fact that the evidence and proof collected for the time being in connection with that offence are not sufficient enough to institute the case against that person, and if such offence also involves a matter of civil liability related to the loss of and damage to the personal property or amount of any person, the government attorney shall give information thereof to the informant or the victim of such offence, through the concerned investigating authority.

(7) If, upon receipt of information referred to in sub-section (6), the concerned person may, notwithstanding anything contained

in the law in force, file a case, if he or she so wishes, within sixty days of the date of receipt of such notice, as if it were an offence under Schedule-4.

(8) If a case is instituted only against any person out of more than one person subjected to investigation pursuant to this Act or if investigation has been conducted as if it were a state case and the investigation discloses that such case cannot be instituted as a state case pursuant to this Act but can be instituted under other Act and decision is made to that effect or such case can be instituted as an individual case, the concerned government attorney shall immediately send information thereof to the concerned **High Court Government** Attorney Office and Office of Attorney General.

(9) Upon receipt of the information pursuant to sub-section (8), the **High Court** Government Attorney Office shall study such matter and decide to or not to institute the case, and if there appears a reasonable reason for instituting the case, it shall give direction, accompanied by the reasons therefor, to the concerned government attorney to institute the case; and upon receipt of such direction, such government attorney shall file a charge sheet or supplementary charge sheet and institute the case against those persons whom the case was not instituted against.

(10) If the **High Court** Government Attorney Office decides not to institute the case pursuant to sub-section (9), it shall give information thereof to the Office of Attorney General.

(11) Upon receipt of the information under sub-section (10), the Office of Attorney General shall be give necessary direction to

the concerned government attorney as to whether or not to institute the case.

(12) If information is received under sub-section (8) that case can be instituted under other law and such content is found reasonable, the **High Court** Government Attorney Office shall give information thereof to the concerned person.

(13) Except as otherwise provided in this Chapter, where a bail/bond or guarantee has been taken from any person in the course of investigation and, upon investigation, decision is made not to institute the case against him or her, the bail/bond or guarantee so furnished shall be returned to such person.

**33. Filing of charge sheet claiming for lesser punishment:** (1) Notwithstanding anything contained elsewhere in this Chapter, if the accused of any offence assists the investigating authority in the course of conducting investigation into such offence, the investigating authority may, in consideration for such assistance, recommend to the government attorney for a reduction in the sentence than can be imposed on such accused under the law.

(2) If a recommendation is received pursuant to sub-section (2), the government attorney may, also having regard to such recommendation, file a charge sheet with conditional claims, with a proposal for a reduction in the sentence that can be imposed on the accused.

(3) In filing a charge sheet pursuant to sub-section (2), the government attorney may file the charge sheet proposing for a reduction in the sentence as follows:

- (a) If the accused pleaded guilty of the offence in whole, before the investigating authority or prosecuting authority, a reduction of a maximum of twenty-five percent of the sentence that can be imposed on the accused,
- (b) If the accused pleaded guilty of the offence in which he or she was also involved and assisted in revealing detailed facts as to the offence and the other offenders or gang involved in the offence or the principal giving direction to commit the offence or in arresting the persons involved in the offence or, in the case of any organized offence or offence committed in a group, in locating the other persons involved in that offence or the place where criminal conspiracy of such offence was made, in seizing or forfeiting any motor vehicle, machine, equipment or other object or arms used for the commission of such offence, a reduction of a maximum of fifty percent of the sentence that can be imposed on the accused.

(4) In order to make a pray for the reduction in the sentence under sub-section (2), the documents contained in the case-file of the concerned case shall clearly demonstrate that such accused has rendered such assistance.

(5) Notwithstanding anything contained elsewhere in this Section, a pray cannot be made for the reduction in the sentence in any of the following offences or circumstances:

- (a) If the accused has once availed of the facility under this Section,
  - (b) If the accused was sentenced to imprisonment, a period of three years has not lapsed after the service of such sentence,
  - (c) If the accused has already been sentenced for the same offence in which he or she is accused of.
- (6) If, after the filing of a charge sheet praying for a reduction in the sentence pursuant to sub-section (2), the accused makes before the court a deposition that is different from the deposition which he or she has made before the investigating authority or the government attorney or furnishes hostile evidence or denies committing the offence or does not assist in judicial proceedings, such accused shall not be entitled to get the facility referred to in this Section.
- (7) In the case referred to in sub-section (6), the government attorney shall revoke the reduction of sentence proposed pursuant to sub-section (1) or (2) and make a petition to the court praying for additional sentence, and such petition shall be an integral part of the same charge sheet.

**34. Cases on minor offences of specific type may not be filed:** (1) If it appears that it is not practicable to file a case on any minor offence of any specific type or it does not substantially affect public interests, the government attorney may, with the approval of the Attorney General, decide not to file a case against such person.

(2) Prior to making decision pursuant to sub-section (1), the government attorney shall cause a bond to be executed by such accused undertaking not to repeat such offence in the future.

(3) For the purposes of this Section, the words "minor offence of specific type" means any of the following offences:

- (a) Offence related to pickpocketing involving the claimed amount of less than one thousand rupees, committed for the first time,
- (b) Offence of begging committed for the first time,
- (c) Any other offence punishable by a sentence of a fine not exceeding three thousand rupees or of imprisonment for a term not exceeding one month or both the sentences, committed for the first time.

(4) Prior to making decision not to institute a case pursuant to this Section, the government attorney shall forfeit the claimed amount of the offence.

(5) The claimed amount forfeited pursuant to sub-section (1) shall be provided to the person, if any, victimized from the offence and, failing such victim, to the victim relief fund established under law.

(6) If a case is not filed pursuant to sub-section (1) and such person commits any offence under this Act within three years from such date, such person shall be liable to the sentence to which the sentence that can be imposed on him or her for the previous offence shall also be added.

(7) Notwithstanding anything contained elsewhere in this Section, if the government attorney makes decision not to institute a case, the victim party who is not satisfied with such decision may file a case on his or her own behalf.

(8) If decision is made not to institute a case pursuant to sub-section (7), a notice thereof shall be given to the victim immediately; and, for that purpose, the statute of limitation under law shall be deemed to commence from the date of receipt of the notice of such decision.

(9) The concerned government attorney shall provide copies of the documents related to the investigation conducted pursuant to this Chapter to the person who files a case pursuant to sub-section (7).

35. **Additional claim can be made:** If, based on the other relevant additional evidence found after a case has already been filed in the court, it appears necessary to make a charge also against other accused in that case, in addition to the accused against whom the case has already been filed, or to make additional charge against the person who has already been made accused upon the filing of the case, the government attorney may, setting out the reasons therefor, cause further investigation to be conducted, and file a case, making additional claim against the other additional accused also.
36. **Alterations in charge sheets:** (1) If, by the reason that additional evidence has been discovered in any case already filed in the court, it appears necessary to alter the charge made previously in that case, the concerned government attorney may, with the permission of the Attorney General, make a petition, accompanied by the reasons

therefor, to the concerned court of first instance for alteration in the charge sheet.

(2) Upon receipt of such petition, the concerned court may, if the contents thereof appear to be reasonable, give order to alter the claim in the charge sheet in accordance with the petition.

Provided that an order to make such alteration shall be made before the concerned court of first instance passes judgment.

**37. Power to make order to correct minor errors:** (1) If it is required to correct minor errors in a charge sheet of a case filed in the court, the concerned government attorney may make a petition, accompanied by the reason therefor, to the concerned District Court.

(2) If, upon examination of the petition made pursuant to sub-section (1), it appears reasonable to correct the errors, the court may make order for the correction of such errors.

**Explanation:** For the purposes of this Section, the term "minor errors" means any typo, typing or printing related errors in the name, surname, age or address of the accused.

**38. Custody of exhibits, evidence and accused:** (1) In submitting a case-file, along with the investigation report, to the government attorney for prosecution, the investigating authority shall have the custody of the exhibits, evidence connected with the offence and the accused and shall, if the concerned government attorney so orders, produce the same before the concerned court at the same time.

(2) Except as provided in sub-section (1), the concerned police office shall, consequent upon the filing of a case in the court pursuant to this Chapter, produce before the concerned government

attorney office the additional proof, evidence, object, document or exhibit, if any, discovered in connection with the case, and such government attorney office shall, upon making necessary examination, submit such document, exhibit or evidence to the court.

- 39. To retain safely:** (1) If the government attorney makes decision not to institute a case pursuant to sub-section (3) of Section 31, he or she shall, as promptly as possible, return the exhibit, evidence and thing including the case-file to the concerned police office.

(2) The concerned police office shall safely retain the case-file, exhibit, evidence and thing received pursuant to sub-section (1) until the statute of limitation for instituting the case on such offence expires.

(3) If the exhibit, evidence or thing referred to in sub-section (1) is a property of any one, the police office shall return such property to its owner, upon having a deed executed by him or her with a bond to submit such property to the investigating authority or court as and when so required.

- 40. Copy or information to be given:** (1) The government attorney shall give the concerned investigating authority and the accused a copy of the decision, if any, made by him or her not to institute the case pursuant to sub-section (3) of Section 31 and a copy of the charge sheet, if he or she has made decision to institute the case.

(2) If, in any case under Schedule-1 or Schedule-2, the concerned government attorney makes decision to the effect that the evidence is not sufficient enough to institute the case, he or she shall give information of such decision to the concerned investigating

authority and the authority or office higher in level than such investigating authority.

41. **Notice to be given to informants or victims:** If decision is made not to institute a case in connection with any offence pursuant to sub-section (3) of Section 31, the investigating authority shall, as soon as possible, give information thereof, accompanied by the reason therefor, to the informant or victim.
42. **Concerned person to be made party:** (1) If, while proceeding with a case, in which the Government of Nepal is plaintiff, filed under this Act, it seems that the case does not fall under Schedule-1 or Schedule-2 but any other case may be instituted in accordance with law, the court shall make order to that effect and give information thereof to the concerned person.  
(2) If the concerned person agrees to take over/continue the case within two months from the date of receiving such information, that person shall be treated as the plaintiff and the case proceeded and adjudicated, based on the case-file of the same case in accordance with law.
43. **Filing of cases:** (1) The following authority or person may file the following case required to be filed under this Act in the concerned court:
  - (a) The concerned government attorney, in relation to a case related to any offence under Schedule-1 or Schedule-2, in the form of a charge sheet,
  - (b) The Government of Nepal, constitutional body, court or any public authority, in relation to a case related to any

offence under Schedule-3, in the form of a compliant or report,

- (c) The concerned person or one who has *locus standi* to file case, in relation to a case related to any offence under Schedule-4, in the form of a plaint.

(2) If a case is filed pursuant to sub-section (1), such case shall be deemed to have been filed under this Act.

**44. Exemption from sentence for making allegation or complaint:** (1) No person shall be liable to sentence for making any allegation or complaint in connection with any case under Schedule-1, Schedule-2 or Schedule-3.

(2) Notwithstanding anything contained in sub-section (1), if, after the case has been instituted in the court consequent upon investigation into the case based on the allegation or complaint made by any person, standing as a witness and showing any matter, evidence or proof to the belief of the Government of Nepal, police employee or other authority, such matter, evidence or proof turns out to be false or fabricated on the basis of a report, complaint or deposition made by any person or the deposition of any witness or informant or any other ground, the court may examine the evidence from the same case-file and do the following:

- (a) To sentence the witness who has made a false statement or fabricated deposition to imprisonment for a term not exceeding three months or a fine not exceeding five thousand rupees or both the sentences,

Provided that such sentence of fine or imprisonment shall not exceed half the sentence that may be imposed on the offender.

- (b) In the event of the court being of the opinion that the informant has made such false allegation or produced false or fabricated evidence being guided by premeditation or jealousy without the existence of any reasonable ground for making the allegation, to cause a reasonable compensation, in view of the nature and circumstance of the case, to be paid by such witness to the defendant to be acquitted, in relation to the same case.

Provided that if such person furnishes a reasonable reason for the report or witness made by him or her to be prejudicial, no compensation shall be awarded.

## **Chapter-4**

### **Jurisdiction of Court**

- 45. Offences to be tried by court having jurisdiction over area where offences committed:** The power to proceed and adjudicate any case related to any offence shall be vested in the court having jurisdiction over the area where such offence is committed.

Provided that the Government of Nepal may, in accordance with law, constitute a separate criminal court or criminal bench in any district for the proceeding and adjudication of such cases.

- 46. Offences connected with different areas to be tried by court having jurisdiction over any of such areas:** In the following circumstances, a court having jurisdiction over any area may proceed and adjudicate the case:

- (a) If any act constituting the offence is done partly in one area and partly in another, by a court having jurisdiction over any of such areas,
- (b) If any act is done in one area and the offence arises in another area as the consequence of such act, by a court having jurisdiction over any of such areas,
- (c) If different offences take place in different areas from the same event, by a court having jurisdiction over any of such areas where any of such offences takes place,
- (d) If an offence is committed in several areas but it cannot be determined in which area the act constituting the offence has been completed, by a court having jurisdiction over any of such areas,

- (e) In the case of any offence related to kidnapping or hostage-taking, by a court having jurisdiction over either the area where such offence is committed or the area where the kidnapped person or hostage is held, concealed or detained,
- (f) If the offence is one committed by or against any person performing a journey or one committed in relation to any goods being transported from one place to another, by a court having jurisdiction over either the area where the offence begins or the area where such person visits in the course of journey or the area where such goods are seized or traverse,
- (g) If the preparation or criminal conspiracy of any offence is made in one area but the act constituting that offence is accomplished in another area, by any court having jurisdiction over either the area where such preparation or conspiracy is made or the area where the act constituting such offence is accomplished,
- (h) If any offence is committed by means of any letter or other communication or information technology, by any court having jurisdiction over either the area where such letter, communication or information was sent from or the area where the same was received,
- (i) If an offence is committed along the boundary between two countries, by the court adjoining to such boarder,

**Explanation:** For the purposes of this clause, the term "boarder" includes the no-man's land along the boundary between two countries.

- (j) In the case of an offence related to property, by the court having jurisdiction over either the area where such offence is committed or the area where the property earned from the offence is concealed, purchased, sold or otherwise exchanged,
  - (k) In the case of any case related to any offence over which universal jurisdiction can be exercised by virtue of any law or any treaty to which Nepal or the Government of Nepal is a party, by such court as designated by the Government of Nepal.
- 47. Jurisdiction to try offences committed outside Nepal:** If the law in force provides for punishment in respect of any offence committed outside Nepal or on an aircraft or ship registered in Nepal, such offence shall be proceeded and adjudicated by the court of the district where the person accused of such offence is found and by the District Court of the area where such accused has permanent abode, if such accused is not found.
- 48. Proceeding and adjudication of cases filed in two courts or bodies:** (1) Where a case related to any offence, falling under the jurisdiction of more than one court, is filed in more than one court, the case on such offence shall be proceeded and adjudicated by the court in which it has been filed earlier, and, where the case has been filed on the same day, by the court designated by the court hearing appeals from such court where the courts are under the jurisdiction of

the same appeal hearing court, and by the court designated by the Supreme Court where the courts are under the jurisdiction of the different appeal hearing courts.

(2) Notwithstanding anything contained in sub-section (1), where a case related to any one offence, falling under the jurisdiction of the court and a quasi-judicial body, is filed in the court and the quasi-judicial body, such case shall be proceeded and adjudicated by the court.

(3) Where a case is one which falls under the jurisdiction of courts or judicial bodies of different types, the case shall be proceeded and adjudicated by the respective court or body competent under law, even if it is liable to joint proceedings under sub-section (1), and clause (a) or (c) of sub-section (2), of Section 54..

- 49. Cases under jurisdiction of both higher and lower courts to be tried by higher court:** If a case related to an offence falls under the jurisdiction of both the higher and the lower courts pursuant to the law in force or if a case related to a person or offence which is liable to joint proceeding under Section 54, being under the jurisdiction of both the higher and the lower courts, can be so filed or has been filed in such courts, the higher court shall have power to try such case.
- 50. Endorsement to be made in cases of lacking jurisdiction or failing to meet requirements:** (1) If, it appears to the court, from the contents of any charge sheet or complaint made to it, that the court is not competent to proceed and adjudicate the case complained or that the complaint does not meet the requirements, the court shall make an endorsement to that effect in that charge sheet or complaint.

(2) In the case of a complaint which is endorsed pursuant to sub-section (1) by the reason of the lack of jurisdiction, where the day on which such endorsement is made is the deadline of the statute of limitation, the proper court shall, notwithstanding anything contained in the law in force, register the complaint in accordance with law if it is made not later than fifteen days after that day excluding the time required for journey.

**51. Decision as to jurisdiction and statute of limitation to be made:**

(1) Notwithstanding anything contained elsewhere in this Act, where the accused, in making statement in relation to any case, or the defendant, in filing a memorandum of defence, raises a question that the court lacks jurisdiction or the statute of limitation has expired, the court shall initiate other proceedings in such case only after deciding such question, and if the case does not appear to fall under its jurisdiction, the court shall order that it be presented to the proper court.

(2) A petition may be made to the appeal hearing court against the decision made pursuant to sub-section (1), not later than thirty-five days of the date of such decision.

(3) A question settled pursuant to sub-section (1) or (2) shall not be raised again in the appeal hearing court.

Provided that this provision shall not apply to an interlocutory order made in the course of proceeding of the case.

## **Chapter-5**

### **Provisions Relating to Preliminary Proceedings of Cases**

#### **52. Commencement of proceedings by the court upon filing of cases:**

(1) Except as otherwise provided in this Act, the court shall commence proceedings in a case related to any offence upon its filing in the court pursuant to this Chapter.

Provided that:

(a) On an offence of disregarding a court order or contempt of court in any other manner, the court can proceed the case even upon taking a summary statement or written explanation of the accused or upon any other petition or report,

(b) Where, in examining evidence in a case by the court, any party makes deposition alleging that any evidence is a forged or fraudulent one, the case may, on the basis of that deposition, be proceeded on the offence of fraud or forgery or on the offence of aid and abetment, making criminal conspiracy or accomplice to such offence, from the same case-file.

(2) Except in cases where the proceedings of case have commenced, pursuant to clause (b) of the proviso to sub-section (1), on the charge of committing any offence referred to in Section 81 or 82 of Chapter-3, Sections 89, 90, 91, 92, 93, 97, 98 or 100 of Chapter-4, of Part-2 of the Penal Code, or abetment of, criminal conspiracy to, or being accomplice to, any such offence, the court may, if it thinks justifiable to institute the case on the basis of a

petition, report, deposition or any separate complaint, proceed the case by executing a memorandum of order, accompanied by the reason therefor.

(3) Any case set forth in sub-section (2) shall be proceeded and adjudicated in conjunction with the case of the main offence.

(4) Notwithstanding anything contained elsewhere in this Chapter, except with the written approval of the Government of Nepal or departmental head, no case shall be instituted accusing any employee of the Government of Nepal of any offence alleged to have been committed by such employee while acting in the discharge of his or her official duty.

Provided that if any employee commits any offence by doing any act beyond his or her official duty, approval of the Government of Nepal or departmental head shall not be required to institute a case on such offence alleged to have been committed by him or her.

(5) No case may be instituted against any person on any of the offences under Schedule-1 and Schedule-2, without filing a charge sheet by the government attorney.

(6) Notwithstanding anything contained in sub-section (5), the following person may make a separate complaint for the reparation of any injury resulted from any offence:

- (a) A person who has suffered injury from the offence,
- (b) In the case of any matter requiring compliant by a public servant who is deputed elsewhere or abroad in the course of his or her employment, any of his or her immediate successors,

- (c) In relation to any act or thing required to be done or preserved by any person by virtue of any post, office or any other capacity, the person holding such post, office or capacity,
  - (d) In relation to any matter in which a person with disability, child or person over seventy-five years of age or person who is physically or mentally incompetent is entitled to make complaint, his or her successor living in the joint family and, failing such successor, any other successor or guardian,
  - (e) In relation to any offence involving any body corporate, the director, member, administrator or chief executive officer who is authorized to act as the chief of such body.
- 53. Complaint may be made:** (1) Except as otherwise provided in this Act, the following person may file a complaint in relation to any offence in the court:
- (a) A person who has suffered injury from the offence,
  - (b) In the case of any matter requiring compliant by a public servant who is deputed elsewhere or abroad in the course of his or her employment, any of his or her immediate successors,
  - (c) In relation to any act or thing required to be done or preserved by any person by virtue of any post, office or any other capacity, the person holding such post, office or capacity,

- (d) In relation to any matter in which a person with speech or visual impairment, child or person over seventy-five years of age or person who is physically or mentally incompetent is entitled to make complaint, his or her successor living in the joint family and, failing such successor, any other successor or guardian,
  - (e) In relation to any offence involving any body corporate, the director, member, administrator or chief executive officer who is authorized to act as the chief of such body.
- (2) A complaint referred to in sub-section (1) shall state the following matters and be in the form referred to in Schedule-21:
- (a) The name, surname, address (including the street), description, age, occupation or business of the accused, the name of his or her father, mother, husband or wife,
  - (b) The citizenship, passport, driving license of the accused or his or her other descriptions that could enable to find him or her easily,
  - (c) The Village Body or Municipality where the accused is residing or staying, ward number, village, street, block number, if available, and other descriptions of the accused to the extent of availability,
  - (d) If the accused is staying in a rented house, the name, surname and address of the house owner, to the extent of availability,

- (e) If the accused has no permanent abode, the name, surname and address of the owner of house where the accused is staying,
- (f) The particulars related to the offence,
- (g) Where the offender has committed more than one offence at the same time, each count of charge made against him or her, and evidence related thereto,
- (h) The relevant law to be applied, and the reason for the same,
- (i) The sentence demanded to be imposed on the accused, and the ground for the same,
- (j) The injury caused from the offence, and if compensation has to be recovered from the accused, the amount of such compensation and the ground for the same,
- (k) Other necessary matters.

(3) Any complaint referred to in sub-section (1) shall be accompanied by such number of copies of the complaint as that of the accused and one copy each of the documentary evidences intended to be produced by the complainant.

Provided that it is not required to submit copies of the complaint and documentary evidences in a case in which the Government of Nepal is plaintiff.

**54. Cases can be instituted together:** (1) A case may be instituted against the following persons upon the same charge sheet, report, complaint, plaint or memorandum of order:

(a) Persons who commit the same offence or different offences on the same occasion,

(b) Persons who commit one or more than one offence jointly or in connivance with each other,

(c) Persons who commit various offences related to each other.

(2) In the case of the persons involved in the following offence, a case may be instituted upon the same charge sheet, report, complaint, plaint or memorandum of order:

(a) Attempt, criminal conspiracy to commit, or abetment of, the offence,

(b) Accomplice to the offence,

(c) Offence of possessing, buying, selling, giving or taking any thing acquired from the offence,

(d) Offence of possessing, buying, selling, giving or taking any thing with the intention of committing the offence, or

(e) Offence of hiding any person connected with the offence or aiding such person to abscond.

**55. Separate complaint to be made in relation to each offence or accused:** Except as otherwise provided in Sections 53 and 54, a separate charge sheet, complaint or memorandum of order shall be framed or made in relation to each offence or accused.

**56. Government of Nepal to be made as plaintiff:** A case related to any of the offences under Schedule-1 and Schedule 2, other than a case instituted upon a complaint referred to in sub-section (2) of Section 52, shall be proceeded by making the Government of Nepal as the plaintiff.

## **Chapter-6**

### **Warrant for Arrest and Summons**

**57. Summons or warrant for arrest to be issued:** (1) After a complaint has been made pursuant to this Act, the court shall, subject to this Chapter, issue a summons or warrant for arrest, as required, to enforce the appearance of any accused who is not present along with the complaint in a case related to an offence set forth in Schedule-1 and Schedule- 2.

(2) The court shall, pursuant to sub-section (1), issue a warrant for arrest to enforce the appearance of the accused of the following offence:

- (a) A heinous or grave offence,
- (b) An offence of attempt to, abetment of, or criminal conspiracy to, or being accomplice to, any offence set forth in clause (a) or offence of hiding the accused of such offence or aiding such accused to abscond.

(3) The court may, as required, issue a summons to enforce the appearance of the accused of any offence other than that referred to in sub-section (2).

Provided that if the court has a reasonable reason to believe that the accused has absconded and his or her arrest is unlikely or the accused fails to appear before the court within the time limit specified in the summons, the court may issue a warrant for arrest pursuant to sub-section (2), in the case of such accused.

(4) The court may issue a warrant for arrest to arrest and produce any person who is bound to produce any document, exhibit

or evidence required to be produced before the court if there is a reasonable reason to believe that such person is likely to conceal or destruct such document, exhibit or evidence or such person fails to produce such document, exhibit or evidence before the court within the time limit specified in the summons issued pursuant to sub-section (3).

(5) With the issuance of a warrant for arrest pursuant to sub-section (4), the court may order any employee or police officer to search the place where the document, exhibit or evidence referred to in that Section is kept and produce such document, exhibit or evidence before the court.

(6) The employee or police officer referred to in sub-section (5) shall search any place in accordance with Section 18.

(7) A summons or warrant for arrest to be issued by the court under this Section to enforce the appearance of any accused shall be accompanied by a notice, in the form referred to in Schedule-22, indicating, *inter alia*, the contents of the complaint.

**58. Procedure for issuing warrant for arrest:** (1) A warrant for arrest to be issued by the court pursuant to this Chapter shall clearly state the full name and address of the person to be arrested and the reason for arrest and be in the form referred to in Schedule-23 in the case of an accused person and in the form referred to in Schedule-24 in the case of a witness and other person.

(2) A warrant for arrest issued pursuant to sub-section (1) shall be signed by the concerned authority and bear the seal of the court.

(3) While issuing a warrant for arrest pursuant to sub-section (1), the warrant for arrest shall be directed to the police office of the area where the person to be arrested is or likely to be residing or staying.

Provided that the court may, if it deems so necessary, also direct a warrant for arrest to the employee of the court.

(4) A warrant for arrest issued pursuant to this Section shall remain valid unless and until it is executed or canceled by the court.

(5) A person to whom a warrant for arrest has been issued may be arrested pursuant to such warrant, and while arresting a person in pursuance thereof, the warrant for arrest shall be shown to, and the notice sent pursuant to sub-section (7) of Section 57 shall also be delivered to, that person.

(6) A person who has been arrested under a warrant for arrest shall immediately be produced before the concerned court as soon as possible but not later than twenty-four hours, excluding the time required for journey.

(7) If the person to be arrested under a warrant for arrest is not found within seven days after the date of receipt by the police of the warrant for arrest, the concerned police office shall continue to search that person, and, subsequent thereto, proceed to his or her house and deliver the 35-day-warrant for arrest issued to him or her, in the form referred to in Schedule-25, to any of his or her family member of legal age, residing jointly with him or her, and retain a receipt thereof in the case-file.

(8) If the person referred to in sub-section (7) refuses to acknowledge such warrant or is not found, a copy of the warrant shall be affixed to his or her house in presence of a member of the concerned ward committee of the Local Level, and if such member is not available, in presence of at least two local persons, and one copy thereof shall be delivered to the court.

(9) A copy of the warrant affixed to the house where the concerned person is residing or staying pursuant to sub-section (8) shall also be delivered to the concerned ward office of the Local Level and a receipt of its acknowledgement shall be retained in the case-file.

(10) If a warrant is delivered to it pursuant to sub-section (9), the concerned ward office of the Local Level shall, upon receipt of such warrant, give information thereof to the concerned person and also affix it to its notice board.

(11) Notwithstanding anything contained elsewhere in this Section, if a person under the warrant for arrest appears himself or herself before the court prior to being arrested, he or she shall be arrested and hearing shall be held under law as to whether or not he or she has to be held in detention, and the warrant for arrest issued to him or her previously shall be voided and information thereof given to the concerned authority.

(12) If the court comes to know upon a petition by the party or through any other means that the person under the warrant for arrest is staying in any district other than his or her address, the court may also direct the warrant for arrest to the district where he or she is staying.

(13) If any accused does not appear within the time limit specified in the warrant for arrest issued pursuant to this Chapter and remains absconded or the actual address of the accused cannot be discovered or the place where the accused is staying cannot be found out, the court may publish a notice, containing the description of such accused, in any national daily newspaper and affix the notice to the notice board of the concerned court.

(14) Upon the publication of a notice pursuant to sub-section (13), the accused shall be deemed to have duly received the notice, and any police office or employee may, at any time, arrest and produce him or her.

(15) The court may, at any time after the affixation of the notice pursuant to sub-section (8), order the attachment of any property belonging to the person under the warrant for arrest.

(16) If an order for the attachment of property is made pursuant to sub-section (15), the court shall affix a notice of such attachment to its notice board and give information thereof to the concerned Land Revenue Office or other body or organization.

(17) If it receives a precept from the court for the attachment of property pursuant to such-section (16), the concerned Land Revenue Office or other body or organization shall immediately attach such property and give information thereof to the court making such attachment order.

(18) If a property attachment order is made by the court pursuant to sub-section (15), such property shall, notwithstanding

anything contained in the law in force, be deemed to have been attached with effect from the date of such order.

(19) After the person to be arrested pursuant to this Chapter appears in the court, the court shall, irrespective of the stage of the proceeding of the case, order the concerned Land Revenue Office or other body or organization to immediately release the property of such person which has been attached pursuant to this Section.

**59. Procedure for issuing summons:** (1) While issuing a summons to an accused person pursuant to this Act, the court shall issue it, specifying the date for making appearance in the court.

(2) The summons referred to in sub-section (1) shall be issued to the accused, in the form referred to in Schedule-26, at least fifteen days before the date specified for his or her appearance, if it is a case other than one under Schedule-4, and in the form referred to in Schedule-27, giving a time-limit of fifteen days if the case is related to an offence set forth in Schedule-4.

(3) Where a summons has not been served at least fifteen days in advance of the time-limit specified pursuant to sub-section (2) for making appearance but has been served prior to the time-limit specified for making appearance, and the accused is unable to appear on the date specified, the accused may make a petition to the court, accompanied by the reason for failure to so appear, within fifteen days of the service of the summons, for the specification of another time-limit for making appearance.

(4) If a petition is made pursuant to sub-section (3), the court may so specify another date for his or her appearance that such

date falls within a period not exceeding fifteen days from the date of such petition.

(5) In the case of an accused who does not appear within the time-limit specified in the summons served pursuant to this Section, the court may, if it considers necessary to have the accused arrested and produced before it, issue a warrant for arrest pursuant to the proviso to sub-section (3) of Section of 57.

Provided that if the accused makes a petition showing that he or she was not able to appear within the specified time-limit due to a force majeure event and the court holds the contents of such petition to be reasonable, the court may order the extension of the time-limit for a period not exceeding fifteen days, after the termination of the period of existence of the force majeure event, excluding the time required for journey.

**Explanation:** For the purposes of this Act, the term "period of existence of the force majeure event" means the following period:

- (a) If a person required to appear before the court had to observe obsequies or mourning on his or her own according to his or her tradition, at the demise of any one of him or her, a period of seven days, excluding the time required for journey, after the date on which a period of fifteen days of the death of such person elapsed,
- (b) If a person required to appear before the court is a woman and delivered a child, a period of sixty days

from the date of delivery, excluding the time required for journey,

- (c) If the route remained closed due to flood, landslide or snow-fall or means of public transportation did not ply due to declaration of curfew or any other reason during the time-limit specified for appearance before the court, a period of fifteen days, excluding the time required for journey, from the date of resumption of such route or means of public transportation,
- (d) If there occurred a calamity such as earthquake or volcano eruption during the time-limit specified for appearance before the court, a period of ten days, excluding the time required for journey, from the date of occurrence of such calamity,
- (e) If a person required to appear before the court was kidnapped or taken into hostage by any one, a period of fifteen days, excluding the time required for journey, from the date of being released from such kidnapping or hostage-taking,
- (f) If a person required to appear before the court, because of being unconscious or unable to make movement or seriously ill because of any accident, and thereby being unable to appear within the time-limit specified for the same, was admitted to a hospital recognized by the Government of Nepal for treatment, a period until he or she is discharged from the hospital, not exceeding fifteen days in the case of a party to a case under

Schedule-4 and not exceeding three months in the case of a party to any other case.

- (6) In the circumstances referred to in clauses (a) and (e) of sub-section (5), the concerned person shall, as far as possible, give a notice thereof to the court immediately.
- 60. Summons may be issued in the name of witness:** In issuing a summons in the name of a witness pursuant to this Act, the court shall issue the summons, stating the necessary matters, in the form referred to in Schedule-28.
- 61. Service of summons:** (1) The court shall issue a summons in triplicate, and the service of summons shall be executed by any police employee, any employee of the court or any such other government office as the court may direct.
- (2) A summons issued pursuant to this Act shall, to the extent possible, be served personally on the person summoned, by delivering it to him or her.
- (3) Where the person summoned cannot be found, or, despite being found, refuses to acknowledge the summons being served pursuant to sub-section (2), the summons may be delivered to any of his or her joint family members, who has completed at least eighteen years of age.
- (4) If the concerned person or joint family member is not found or, despite being found, such person or even such member refuses to acknowledge the summons pursuant to such-section (3), the serving employee shall affix one of the duplicates of the summons to the house or house-door of that person in the presence

of one member of the concerned ward of the Local Level and of at least two local persons, who as well as the serving employee shall affix signature or thumb impression thereon, and deliver one copy thereof to the concerned ward committee of the concerned Local Level and submit one copy of the served summons to the court.

(5) The concerned ward office of the Local Level shall affix to its notice board a notice corresponding to the summons received pursuant to sub-section (4).

(6) If at least two local persons and at least one member of the concerned ward committee of the Local Level certify that the person summoned pursuant to sub-section (5) does not reside in the place specified in the summons, the summons shall be returned to the court, indicating the address of his or her residence, if any, discovered, and indicating the matter to that effect if such address cannot be discovered.

(7) If a summons is returned pursuant to sub-section (6), the court may direct the summons to the place of his or her residence and, as required, issue another summons setting out the address, as required, in consultation also with the plaintiff.

(8) While serving a summons on any office-bearer or employee of the Government of Nepal or any body corporate, the summons may be served at the office where such office-bearer or employee is serving.

(9) Where a summons is received for service pursuant to sub-section (8), the chief of such office or body available for the time being shall serve the summons by delivering one copy of the

summons to the concerned office-bearer or employee, and, as far as practicable, cause the other copy to be signed by the concerned office-bearer or employee, stating the manner and date of its service, and return that copy to the court.

(10) If a summons cannot be served pursuant to sub-section (9), such summons shall be affixed to the notice board of the concerned office or body. A report on such affixation to the notice board shall be given to the concerned court.

(11) If, in serving a summons pursuant to sub-section (8), such officer-bearer or employee is on leave, the concerned office or body shall promptly give a notice of such service of summons to such employee.

(12) If a summons is to be served on any body corporate, a copy of the summons shall be delivered to the central or local office of such body, and the receipt thereof shall be submitted to the court.

(13) If a summons is served at the local office pursuant to sub-section (12), the summons shall be deemed to have been served at the headquarters of such body.

(14) In serving a summons pursuant to this Section, the serving employee shall submit to the court a report containing the date and details of the service.

(15) If any court is required to serve a summons on a person who is residing in any area outside its jurisdiction, the court shall send the summons to the court of that area and cause it to be served through that court, and that court shall cause the summons to be

served in accordance with this Chapter and return a copy thereof to the court issuing the summons.

(16) In serving a summons pursuant to this Section, the notice sent to the accused person pursuant to sub-section (7) of Section 57 shall also be delivered or, depending on the situation, affixed to the house-door, together with the summons.

**62. Summons may be served through print or electronic communication media:** (1) If any summons cannot be served pursuant to Section 61, the court may serve the summons by publishing the contents of such summons in such national daily newspaper or broadcasting through electronic communication media as owned by the Government of Nepal.

(2) If a summons is published or broadcast pursuant to sub-section (1), the summons shall be deemed to have been duly served.

**63. Service of arrest for warrant:** (1) The court shall issue a warrant for arrest in triplicate, and the warrant for arrest shall, if practicable, be served personally on the person warranted.

(2) The person warranted shall acknowledge the warrant for arrest issued pursuant to sub-section (1)

(3) If the person warranted cannot be found to serve the warrant for warrant being served pursuant to sub-section (1), the warrant may be delivered to any of his or her joint family members who has completed at least eighteen years of age.

(4) If the concerned person or any joint family member is not found pursuant to sub-section (3) or, despite being found, such person or family member refuses to acknowledge the warrant, the

serving employee shall affix one of the duplicates of the warrant to the house-door of that person in the presence of a member of the concerned ward of the Local Level and of at least two local persons, who as well as the serving employee shall affix signature or thumb impression thereon, and deliver one copy thereof to the concerned ward office of the Local Level and submit one copy of the served warrant for arrest to the court.

(5) The concerned ward committee of the Local Level shall affix to its notice board a notice corresponding to the warrant for arrest received pursuant to sub-section (4).

(6) If at least two local persons and at least one member of the concerned ward committee of the Local Level certify that the person to be arrested pursuant to the warrant for arrest issued under sub-section (5) does not reside in the place specified in the warrant, the warrant for arrest shall be returned to the court, indicating the address of his or her residence, if any, discovered, and indicating the matter to that effect if such address cannot be discovered.

(7) If a warrant for arrest is returned pursuant to sub-section (6), the court may direct the warrant for arrest to the place of his or her residence and, as required, issue another warrant for arrest setting out the address, as required, in consultation also with the plaintiff.

(8) In serving a warrant for arrest pursuant to this Section, the serving employee shall submit to the court a report containing the date and details of the service.

(9) If any court is required to serve a warrant for arrest on a person who is residing in any area outside its jurisdiction, the court

shall send the warrant for arrest to the court of that area and cause it to be served through that court, and that court shall cause the warrant for arrest to be served in accordance with this Chapter and return a copy thereof to the court issuing it.

(10) If an employee making a report referred to in sub-section (8) makes a report setting out the reason for not being able to effect the service of a warrant for arrest in pursuance of the procedures set forth in this Section, the warrant for arrest issued to the concerned person may, notwithstanding anything contained elsewhere in this Section, be served by publishing the warrant in a national daily newspaper owned by the Government of Nepal, and the warrant for arrest so served shall be deemed to have been duly served.

(11) In serving a warrant for arrest, the notice sent to the accused person pursuant to sub-section (7) of Section 57 shall also be delivered or, depending on the situation, affixed to the house-door of him or her, together with the warrant for arrest.

- 64. Warrant for arrest or summons may be issued to or served on accused residing in foreign country:** (1) Notwithstanding anything contained elsewhere in this Chapter, if a warrant for arrest is to be issued to or a summons is to be served on a person who is accused of an offence sub judice in any court and staying or residing in a foreign country, the warrant for arrest or summons may be issued to or served on such person in accordance with the law in force on mutual legal assistance.

(2) If the Government of Nepal receives information as to the service of a warrant for arrest or summons issued pursuant to sub-section (1), it shall give such information to the concerned court.

(3) If a warrant for arrest or summons issued pursuant to sub-section (1) cannot be served, such warrant or summons may be served by publishing it in such national daily newspaper as owned by the Government of Nepal or broadcasting it through electronic communication media.

(4) If a warrant for arrest is issued or summons served pursuant to sub-section (1), such warrant or summons shall be deemed to have been duly issued or served in accordance with this Act.

(5) If a warrant for arrest is issued pursuant to sub-section (1) and the police of the concerned country arrests and hands over the accused to any police office, the accused shall be produced before the concerned court as soon as possible but not later than twenty-four hours, excluding the time required for journey.

(6) Notwithstanding anything contained elsewhere in this Section, nothing shall prevent the institution of proceeding and adjudication of a case by the reason only that the warrant for arrest or summons could not be issued to or served on any person staying or residing in a foreign country, in accordance with this Section.

- 65. Special provisions relating to absconding persons:** (1) In the case of a person against whom a warrant for arrest has been issued pursuant to this Chapter but who is not arrested because of not being found or in the case of a person who is absconding and failing to

appear before the court, the following matters shall be dealt with as follows, with effect from the following day of the expiry of thirty days after the date of issuance of such warrant to the day on which he or she appears before the court:

- (a) If such person is an incumbent office-bearer or employee of the Government of Nepal, State Government, Local Level, constitutional body or any government office, a body corporate, educational or academic institution under full or partial ownership or control of the Government of Nepal, State Government, Local Level, or any other public body, he or she shall be deemed to have *ipso facto* been suspended from his or her office,
- (b) If an attachment to the property belonging to such person has not been effected pursuant to sub-section (15) of Section 58, the attachment of the immovable property belonging to him or her shall be effected pursuant to that sub-section,
- (c) If it is required to renew any industry, trade or business or income tax registration firm, license, industry etc. held in the name of, or under sole ownership of, such person, the act of renewal shall automatically be withheld,
- (d) Transaction on securities held in the name of such person shall *ipso facto* be withheld,

- (e) Facilities such as salary, allowance, gratuity and pension receivable by such person in accordance with law shall be deemed to have *ipso facto* been withheld,
- (f) Any interest, royalty or facility to be acquired by such person from any intellectual property right such as a patent, design, trademark and copyright shall be considered to have *ipso facto* been withheld,
- (g) If any bank account held in the name of such person is known, and a request is made to withhold the transaction of such account, such bank account shall be considered to have *ipso facto* been withheld,
- (h) If it is so requested not to provide a citizenship certificate, passport or land ownership registration certificate to such person in accordance with law, the concerned body shall not provide the citizenship certificate, passport or land ownership certificate to him or her,
- (i) If it is known that such person is staying or residing outside Nepal, the extradition proceeding may be initiated if such person can be extradited under a treaty to which the Government of Nepal is a party or under the law in force, and failing such circumstance, in view of the gravity of the offence, a request may be made through the diplomatic channel to the concerned country or relevant international organization to arrest such person.

- (2) The court shall give a notice thereof to the concerned authority or body in order to make effective the provisions referred to in sub-section (1).
- 66. Process may be served at court:** (1) Notwithstanding anything contained elsewhere in this Chapter, any process or notice issued by any court to the following person may, in the following circumstance, be served by delivering it to such person at the court itself:
- (a) In the case of an employee or office-bearer of the concerned court, at the time when he or she makes attendance in the court,
  - (b) In the case of a party who is remanded on recognizance in another case in the concerned court, at the time when the party appears on the appointed date for appearance,
  - (c) In the case of an attorney who represents any party in any case in the concerned court, at the time when the attorney appears for such representation,
  - (d) In the case of a law practitioner who appears in the concerned court in the course of law practice, at the time when he or she appears in the course of such practice, or
  - (e) In the case of a person who appears as a witness, at the time when he or she appears in that capacity.

(2) If a process or notice issued by the court in the name of any person referred to in sub-section (1) is tendered for delivery when the person appears in the concerned court, the person shall receive it.

(3) If any person refuses to acknowledge such process or notice tendered for delivery pursuant to sub-section (2), the process server shall give a report thereof to the concerned court immediately.

(4) If the content of the report made pursuant to sub-section (3) seems to be reasonable, the court shall make an order to prevent such person from representing a party, receiving the appointed date for appearance in capacity of an attorney, doing law practice or making deposition in the capacity of witness in the court until he or she acknowledges such process or notice.

## Chapter-7

### **Provisions Relating to Detention, Bail and Guarantee**

- 67. To hold the accused in detention:** (1) If, based on the evidence available for the time being, any person accused of the following offence appears to be guilty of the offence or there is any reasonable ground, based on such evidence, to believe that such person is guilty of the offence, the court may remand such person in detention for trial, recording the reason for such detention:
- (a) Any offence punishable by the sentence of imprisonment for life,
  - (b) Any offence under Schedule-1 or Schedule-2 which is punishable by a sentence of imprisonment for a term exceeding three years, or
  - (c) An offence of attempt to, abetment of, or criminal conspiracy to, or being accomplice to, the offence set forth in clause (a) or (b).
- (2) Notwithstanding anything contained in sub-section (1), the court may, in any of the following circumstances, remand such accused in detention for trial as may be punishable by a sentence of imprisonment in accordance with law:
- (a) If the accused pleads guilt of the charge made against him or her before the court,
  - (b) If the accused charged with an offence punishable by a sentence of imprisonment for a term of one year or more has no permanent abode in Nepal and there is a possibility that the accused might

abscond and might not be apprehended subsequently if he or she is not remanded in detention,

- (c) If the accused, being default in making appearance within the time-limit in pursuance of the warrant for arrest issued pursuant to sub-section (1) of Section 58, has been arrested and produced accordingly, and fails to show any satisfactory reason for being unable to appear in the court,
- (d) If the accused was convicted of an offence and sentenced to imprisonment within the period of three years immediately before this instant charge against him or her.

(3) Notwithstanding anything contained in sub-section (1) or (2), the court may, in relation to an offence other than that punishable by a sentence of imprisonment for a term exceeding ten years, remand on bail/bond or guarantee any accused who is a child or infirm due to physical or mental disease or woman with pregnancy of more than seven months or the aged above seventy-five years of age.

**68. Bail /bond, guarantee or bank guarantee to be taken from the accused:** (1) Except in the case referred to in Section 67, the court may ask for a bail/bond, guarantee or bank guarantee from the accused if there exists a reasonable ground for proving the charge against the accused.

Provided that the bank guarantee shall be unconditional and renewable at such times as may be specified by the court.

(2) The court shall remand in detention any accused who fails to furnish bail/bond, guarantee or bank guarantee pursuant to sub-section (1).

- 69. To remand on recognizance:** The case shall be tried by remanding the accused on recognizance to appear on appointed days when the accused appears in the court, in any case other than that referred to in Sections 67 and 68.
- 70. Additional bail/bond, guarantee or bank guarantee may be demanded:** (1) If it appears subsequently that the bail/bond, guarantee or bank guarantee taken from any accused is insufficient, the court may demand additional bail/bond, guarantee or bank guarantee from the accused.
- (2) If the accused fails to furnish such additional bail/bond, guarantee or bank guarantee referred to in sub-section (1), the court may remand such accused in detention.
- 71. Power to remand in detention or on guarantee at any stage of proceedings:** (1) In the course of examining evidence, the court may, irrespective of the stage of the proceedings of a case, and in the light of the circumstances of the case, remand the accused in detention pursuant to Section 67 or demand a bail/bond, guarantee or bank guarantee from the accused pursuant to Section 68; and nothing shall be deemed to prevent the court from remanding the accused in detention or demanding a bail/bond, guarantee or bank guarantee from the accused subsequently by the reason only that the accused

was not remanded in detention or that a bail/bond, guarantee or bank guarantee was not taken from him or her earlier.

(2) If the court has any reasonable ground to prove that the accused remanded in detention pursuant to Section 67 or 68 is not guilty of the offence, the court may, irrespective of the stage of proceedings of the case, hear such matter and order the release of such accused from detention.

**72. Grounds for fixation of amount of bail/bond, guarantee or bank guarantee:** (1) The amount of a bail/bond, guarantee or bank guarantee to be taken pursuant to this Chapter shall be fixed reasonably, having regard to the following matters:

- (a) Nature and gravity of the offence,
- (b) Financial status and family condition of the accused or the offender,
- (c) Age and physical condition of the accused or the offender,
- (d) Whether he or she was previously convicted of any offence and sentenced for the same or not,
- (e) Whether he or she has committed several offences on the same occasion or not,
- (f) Sentence imposed or imposable on him or her, and compensation to be borne by him or her,
- (g) Consequences resulted from the offence,
- (h) Whether he or she has pleaded guilty of the offence or not,

(i) Where the accused is a helpless or infirm person or pregnant woman or woman accompanying a baby whom she breast feeds.

(2) If any party to a case makes a petition to the appeal hearing court showing the reason that the amount of a bail/bond, guarantee or bank guarantee demanded from any person under this Act is lesser or excessive and is not thus reasonable, such court may hear the matter and order the alteration or modification in the amount of such bail/bond, guarantee or bank guarantee.

**73. Petition may be made to appeal hearing court:** A person who is not satisfied with the order of detention, bail/bond, guarantee or bank guarantee made pursuant to this Chapter may make a petition to the court hearing appeal up to one level.

Provided that in relation to a question as to the illegality of the order of detention made in a case involving an offence punishable by a sentence of imprisonment for life or imprisonment for a term of five years or more, a petition may also be made to the court hearing appeal more than one level.

**74. Deed to be executed while taking bail/bond, guarantee or bank guarantee:** (1) While taking a bail/bond from any person under this Chapter, the court shall cause a deed to be executed by such person in the form referred to in Schedule-29, containing the condition that the amount of bail/bond shall be forfeited if such person fails to appear at the time and place specified by the court.

(2) While taking a guarantee or bank guarantee pursuant to this Act, the court shall fix the amount of guarantee and take security of property equal to such amount.

(3) If a person required to furnish a guarantee furnishes the security of his or her property, the court shall cause a deed to be executed by such person in the form referred to in Schedule-30 containing the condition that the amount of guarantee shall be recovered from the property so furnished as security or from any other property belonging to him or her if he or she fails to appear at such time and place as specified by the court.

**Explanation:** For the purposes of this Chapter, the term "guarantee" also includes a bank guarantee.

(4) If any other person furnishes his or her property as a guarantee for the person who is required to furnish guarantee pursuant to this Chapter, the court shall cause a separate deed to be executed by that person in the form referred to in Schedule-31 containing the condition that if that person fails to make the accused appear at such place and time as specified by the court, the amount of that guarantee shall be recovered from the property so furnished as guarantee or from any other property belonging to that person.

(5) If the value of the property furnished as guarantee pursuant to this Section decreases subsequently for any reason, the person who has furnished such guarantee shall submit a property equal to the decreased value to the court.

**75. Forfeiture of bail/bond:** (1) If a person who has furnished a bail/bond pursuant to this Chapter fails to appear in the court, the bail/bond furnished by him or her shall be forfeited.

(2) If any immovable property has been furnished as a bail/bond pursuant to sub-section (1), the property equal to the

amount to be paid by such person shall be sold or recovered and the rest property shall be returned to him or her.

**76. Amount of bail/bond may be returned and guarantee released:**

(1) If the court remands the accused in detention pursuant to this Chapter in a case filed in the court, the bail/bond or guarantee furnished by him or her before detention shall be released.

(2) Except as otherwise provided in this Act, the bail/bond or guarantee taken by the court from any accused in the course of the proceedings of the case shall be immediately returned or released to the accused if the accused is ultimately adjudged to be acquitted of the offence.

**77. To release from detention where case not adjudged within specified period:** (1) If the case cannot be adjudicated within one year from the first date fixed for the examination of evidence in relation to any accused remanded in detention for trial pursuant to this Chapter and if such accused is still held in detention, the case may be proceeded and adjudicated by remanding such accused on bail/bond or guarantee.

Provided that:

(a) This Section shall not apply to any person who is accused of an offence punishable by a sentence of imprisonment for life or imprisonment for a term of ten years or more if such person is held in detention pursuant to Section 67.

(b) The court may, if it thinks reasonable, proceed the case by remanding a recidivist in detention.

- (2) If any court issues order to release any accused pursuant to sub-section (1), it shall give information thereof to the appeal hearing court not later than three days after the issue of such release order.
- 78. Maximum allowable period of detention:** Notwithstanding anything contained elsewhere in this Chapter, no accused shall be held in detention for a period exceeding the maximum term of the sentence of imprisonment than can be imposed on him or her if the charge made against him or her is proved.
- 79. Memorandum of order to be executed:** While remanding any accused in detention, releasing any accused held in detention or taking a bail/bond or guarantee from any accused or modifying or altering such bail/bond or guarantee pursuant to this Chapter or releasing from detention pursuant to Section 77, the court shall execute a memorandum of order to that effect, accompanied by the reason for the same.
- 80. Warrant for detention to be given:** While holding any person in detention for any reason whatsoever pursuant to this Act, the competent authority shall hold such person in detention by giving a warrant for detention in the form referred to in Schedule-32, accompanied by the reason therefor and legal ground of such detention, to that person pursuant to an order for detention made pursuant to this Chapter.

## **Chapter-8**

### **Provisions Relating to Appointed Date**

**81. Appointment of date for appearance by assigning reason:** (1) A court shall, in so doing, appoint the date for appearance upon specifying each proceeding required to be conducted in the presence of parties to a case and the proceeding to be carried out on each appointed date for appearance.

(2) The proceeding specified pursuant to sub-section (1) shall be carried out on the appointed date.

Provided that if the specified proceeding cannot be conducted for any reason on the appointed date for appearance, the court may execute a memorandum of order, assigning the reason therefor, and appoint another date for appearance.

(3) In a case to which the Government of Nepal is plaintiff or defendant, the court shall give the concerned government attorney office a notice of such date for hearing or proceeding of the case as appointed pursuant to sub-section (1).

**82. Book of, and receipt of acknowledgment of, appointed date for appearance:** (1) The court shall maintain one book of appointed date for appearance or a separate book for each case division, as required, in the form referred to in Schedule-33.

(2) The concerned employee shall mention in the book of appointed date for appearance maintained pursuant to sub-section (1) the date appointed for appearance and the purpose for which that date is so appointed and signed it, cause the parties to the case who are present to affix signature or thumb impression on it, and maintain

a receipt of acknowledgement of the date for appearance in the form referred to in Schedule-34, to be recorded in the case-file.

(3) If any party does not appear in the court on the date appointed for appearance pursuant to sub-section (2), the concerned employee shall record that matter in the book of appointed date for appearance, and sign it.

(4) Notwithstanding anything contained elsewhere in this Section, the Government of Nepal shall not be required to be on recognizance in a case in which the Government of Nepal is plaintiff.

**83. Sheet of appointed date for appearance:** (1) The court shall give a sheet of appointed date for appearance to the parties to each case in the form referred to in Schedule-35.

(2) The concerned employee shall state the date appointed for appearance and the purpose for which that date is so appointed in the sheet referred to in sub-section (1), and sign it.

**84. Appointment of date for appearance to be made in a manner to be convenient to parties:** (1) While appointing a date for appearance for any purpose in a case, the court shall appoint such date, as far as practicable, taking into consideration of whether it would be convenient to the parties to the case and the specified purpose could be accomplished or not.

(2) While appointing a date for appearance pursuant to sub-section (1), it shall be appointed in accordance with the schedule of business specified in relation to the proceedings of the case.

**85. To appear on appointed date for appearance:** (1) Where a date is appointed by the court for appearance for any proceeding, the accused or defendant shall appear in the court on that appointed date for appearance.

Provided that if any party to a case makes a petition showing the reason for being unable to appear in the court on the appointed date for appearance, and the court holds such reason to be reasonable, the court may order the extension of the expired appointed date for appearance for a maximum period of fifteen days, at one time or several times not exceeding two times, excluding the time required for journey.

(2) Where a person required to appear in the court on the appointed date for appearance pursuant to sub-section (1) has been held in detention or imprisoned in any manner whatsoever, the person shall send information of that matter to the concerned court through the prison in which he or she is so held in detention or imprisoned.

(3) If information is given pursuant to sub-section (2), such person shall not be deemed to have expired the appointed date for appearance during the period of such detention or imprisonment.

(4) If any person who is held in detention or imprisoned gives information thereof to the court pursuant to sub-section (2), the court may order the concerned prison to produce that person at the time of trial.

**86. Consequences of absence of parties on appointed date for appearance:** (1) If the plaintiff does not appear on the date

appointed for trial and proceeding in any case related to an offence under Schedule-4, the court shall appoint another date for appearance in estimation of the time-limit that can be extended by him or her pursuant to the proviso to sub-section (1) of Section 85.

(2) If the party to a case appears on or before the other date as appointed for appearance pursuant to sub-section (1) and makes a petition subject to the proviso to sub-section (5) of Section 59, showing a reasonable reason for being unable to appear on the previous appointed date owing to a force majeure event, the court shall extend the appointed date for appearance of him or her and adjudicate the case in accordance with law.

(3) If the party to a case does not appear in the court on the other date appointed for appearance pursuant to sub-section (1) and it appears or is held from the evidence contained in the case-file that the defendant has admitted the plaintiff's claims in whole or in part, the court shall adjudicate the case by making judgment to such extent, and dismissing it to the extent that the claims which do not appear or are not held to be admitted by the defendant.

Provided that where the plaintiff is in attendance but the defendant is absent, the court shall adjudge the case accordingly, by examining all proofs and evidence adduced by the plaintiff and the defendant.

(4) Even though the accused or defendant does not appear in the court subsequent to a deposition or statement of defense made in the court pursuant to this Act, the court may proceed and adjudicate the case in accordance with law.

**87. Power to issue warrant for arrest and attach property:** (1) Notwithstanding anything contained in Section 86, if any accused has failed to appear on the previous appointed date for appearance, the court may, if it is of the opinion that the accused should be arrested and produced before it, issue a warrant for his or her arrest pursuant to Section 58 and order the arrest of, and attachment of the property of, such accused.

(2) If an order is made pursuant to sub-section (1), the concerned police employee shall arrest the accused, and the concerned Land Revenue Office or other body or organization shall attach the property of the accused, in pursuance of such order.

**88. Remaining on recognizance after examination of evidence not necessary:** (1) Notwithstanding anything contained elsewhere in this Section, if any party does not wish to remain on recognizance after the examination of evidence, the party may make a petition to the court for a leave to that effect.

(2) If a petition is made pursuant to sub-section (1) and the court does not consider necessary to keep him or her on recognizance, it may discontinue his or her recognizance.

## **Chapter-9**

### **Provisions Relating to Attorney**

**89. Attorney may be appointed:** (1) If any party to a case is unable to appear in person to file a complaint, memorandum of appeal or statement of defense, submit evidence, recover the claimed amount, compensation or any other thing in pursuance of judgment or do any other necessary act pertaining to the case, that party may appoint an attorney on his or her behalf, setting out the reason for the same.

(2) Notwithstanding anything contained in sub-section (1), no attorney may be appointed in the following circumstance:

- (a) If the case relates to any offence under Schedule-1 or Schedule-2,
- (b) If the accused who is required to make deposition pursuant to this Act has to appear personally in the court to make such deposition,
- (c) If the accused is required to be on remand pursuant to this Act or is a person who is remanded in detention as a consequence of his or her failure to furnish such bail/bond or guarantee as demanded to be furnished by him or her,
- (d) If the court so thinks necessary on any reasonable ground and orders the party to a case to appear personally in the court despite the circumstance that an attorney is already or may be appointed,
- (e) Except where a person who is a foreign national or whose nationality is not known is in detention

or has already furnished a bail/bond or guarantee, if such person fails to furnish a bail/bond or guarantee of an amount equivalent to the sentence which can be imposed on him or her upon judgment in the case in accordance with law,

- (f) If there is any penalty, fine, ten percent fee, five percent fee imposed pursuant to a court order is due and payable, upon the party being default in payment of the same,
- (g) If the court, showing any reasonable reason to do so, has passed an order disallowing the party to appoint an attorney.

(3) If any person appoints an attorney in contravention of sub-section (2), the court shall void such attorney.

(4) Any person having the following qualification may be appointed as an attorney:

- (a) Being competent to make contract under the law in force,
- (b) Not having been sentenced for forgery, fraud, corruption or any other criminal offence involving moral turpitude,

Provided that nothing contained in this clause shall prevent any party to a case from appointing any of his or her joint family relatives as his or her attorney.

(c) No government claimed amount pursuant to any decision or fee, court fee, penalty or fine payable to the court in the execution of judgment being due and payable.

(5) In appointing an attorney pursuant to sub-section (1), a power of attorney shall be executed in the form referred to in Schedule-36, stating the following matters:

(a) Subject matter of the case,

(b) Full name, surname, address including street, and age of the person to be appointed as attorney, his or her citizenship number and district of issue of citizenship certificate,

(c) Matter that the person to be appointed as attorney does not suffer any disqualification referred to in sub-section (4),

(d) Matter that any penalty, fine, ten percent fee and five percent fee imposed pursuant to a court order is not due and payable,

(e) The act authorized to be done by the attorney.

(6) A power of attorney shall be witnessed by at least two persons.

(7) A power of attorney shall bear signature or thumb impression of the party appointing the attorney and the witnesses.

- 90. Person may become attorney of more than one person simultaneously:** A person may become an attorney of more than one person simultaneously.

Provided that a person who is an attorney of a party to a case shall not also become an attorney of the opposite party to the same case or a case related to that case.

- 91. Party may be attorney:** In any case involving more than one plaintiff or defendant, any one of them may be appointed as an attorney.

Provided that an attorney of one party to a case shall not also become attorney of the opposite party to the same case.

- 92. Powers and duties of attorney:** (1) An attorney may carry out any acts set forth in the power of attorney on behalf of the party appointing him or her.

(2) If the court makes order to cause the appearance of the person appointing attorney in person, the attorney shall cause such person to make appearance in the court.

(3) If the concerned person fails to appear pursuant to subsection (2), the court may void the attorney of such person.

- 93. Revocation of attorney:** (1) If a party who has appointed an attorney wishes to revoke the power of attorney executed by him or her, the party may, at any time, revoke the power of attorney and carry out acts pertaining to the case in person or appoint another person as his or her attorney.

(2) In the event of the revocation of the power of attorney and carrying out of acts pertaining to the case by a party in person,

the concerned party shall give information thereof through petition to the court.

94. **Not to arrest attorney:** No attorney shall be arrested for any sentence imposed on, or liability to be borne by, the party upon passing judgment in the case.
95. **Special provision relating to permission to appoint attorney:** (1) Notwithstanding anything contained in clause (a) of sub-section (2) of Section 89, a person in the following circumstance may make a petition, setting out the matter, to the court for permission to appoint an attorney:
  - (a) If a person accused of an offence punishable by a sentence of imprisonment for a term of three years or less is not held in detention and there arises a circumstance where he or she cannot appear on the appointed date for appearance because of a force majeure event,
  - (b) If a woman accused of an offence punishable by a sentence of imprisonment for a term not exceeding five years cannot appear in the court on the appointed date for appearance because of her delivery or any other reason.

(2) If, upon a petition made pursuant to sub-section (1), the court considers its contents to be reasonable, it may, assigning the reasons to be recorded, grant permission to him or her to appoint an attorney, with or without specifying the period, subject to the other provisions contained in this Chapter.

## **Chapter-10**

### **Provisions Relating to Transfer and Adjournment of Cases**

**96. Power to transfer cases:** (1) The Supreme Court may, if there exists a circumstance referred to in clause (1) of Article 134 of the Constitution of Nepal, procure a case sub-judice in any High Court from such Court, and proceed, hear and adjudicate it.

(2) The Supreme Court may, if there exists a circumstance referred to in clause (2) of Article 134 of the Constitution of Nepal, make an order that a case sub-judice in one High Court be transferred to, and heard and adjudicated by, another High Court.

(3) The High Court may, if there exists a circumstance referred to in clause (2) of Article 145 of the Constitution of Nepal, make an order that a case sub-judice in one District Court under its jurisdiction be transferred to, and heard and adjudicated by, another District Court under its jurisdiction.

(4) Decision as to whether the circumstance requiring the transfer of the case referred to in sub-section (2) or (3) exists or not shall be made on the basis of a petition by the concerned party to a case or information from the inspection or report of the court.

(5) If there is some reason that any case filed in any court cannot be heard by the judge of that court pursuant to this Act, the concerned court shall submit a report, setting out such matter, to the appeal hearing court, and upon receipt of such report, the appeal hearing court may, also considering the convenience of the parties, transfer such case to another court of equal jurisdiction that is subordinate to its territorial jurisdiction.

(6) If an order is made pursuant to sub-section (2), such court shall, in accordance with the order of the Supreme Court, proceed, hear and adjudicate the case.

(7) Even if any case is adjudicated by another court pursuant to sub-section (2), (3) or (5), appeal from the judgment made by such court shall lie in the court hearing appeal from the court where the plaint has been registered originally.

**97. Power to adjourn cases:** (1) If any party to a case, out of the several cases filed in the several courts, makes a petition to the concerned court, showing a reasonable reason that the adjudication of one case cannot be, or ought not to be, made until any other case is adjudicated, or that judgment of one case will have substantial effect on the judgment of any other case or if it realizes that matter, on its own initiative, in the course of proceedings, the court may, for the reasons to be recorded, order that such case be adjourned.

(2) If any court passes an order to adjourn any case filed in it pursuant to sub-section (1), the court shall adjourn all the proceedings of the case, by giving written information thereof to the parties to the case, and also give information thereof to the concerned court in which another case is filed.

(3) Upon receipt of the information referred to in sub-section (2), the concerned court shall, upon adjudicating the related case filed in it, give information thereof, accompanied by a copy of the judgment, to the court adjourning the case within thirty days after the date of judgment, and upon receipt of such information, the court adjourning the case shall resume the proceedings of the case by

giving a written notice thereof to the parties to the case and appointing the date for appearance, and hear and adjudicate the case.

(4) Notwithstanding anything contained in sub-section (3), if such parties are also parties to the case referred to in sub-section (3), the court adjudging the case shall order them to appear in the court adjourning the case not later than fifteen days.

(5) If two courts hold divergent views on which of the cases filed in such courts should be adjourned, the courts shall send their respective report to the appeal hearing court.

(6) In the circumstance referred to in sub-section (5), even a party to the case may make petition to the concerned appeal hearing court.

(7) If a report has been sent pursuant to sub-section (5) or a petition is made by the party pursuant to sub-section (6), the court shall act in accordance with the order of the appeal hearing court, in relation to such case.

(8) If the court hearing appeal from the two courts holding divergent views referred to in sub-section (5) is not the same, such matter shall be submitted to the Supreme Court, and it shall be done as per the order of the Supreme Court.

(9) If the court so deems necessary, it may give notice to and hear the concerned parties before adjourning the case or passing an order for adjournment pursuant to this Section.

**98. To adjourn case in the event of failure of accused to appear:** (1) If an accused against whom a warrant for arrest has been issued pursuant to Section 57 does not appear or cannot be caused to appear

before the court even within thirty-five days after the date of the issuance of the warrant for arrest to the accused, the court shall adjourn the case in the case of that accused and hear and adjudicate the case, upon taking and examining evidence, in the case of the other accused involved in that case.

Provided that:

(a) In the case of an accused who does not appear subsequent to a deposition made in or statement of defense submitted to the court, the case shall not be liable to adjournment, and the court shall adjudicate the case upon taking and examining the proof and evidence adduced by the plaintiff and the defendant and such other evidence as the court thinks reasonable,

(b) In relation to a case of offence punishable by a sentence of imprisonment for a term of three years or less, judgment shall be made in that case based on the appreciation of evidence, also in the case of the accused or defendants failing to appear in the court.

(2) If any case is to be adjourned pursuant to sub-section (1), the court shall postpone all the proceedings of the case.

(3) If a case is adjourned pursuant to sub-section (1) and the accused appears or is caused to appear in the court prior to the adjudication of the case, the court shall revive the proceeding, give

information thereof to the complainant and proceed and adjudicate the case.

(4) If an accused does not appear or is not caused to appear in the court within a period of three years after the date of adjournment of the case pursuant to sub-section (1), the court shall revive the case so adjourned and proceed and adjudicate it in the case of such accused.

(5) If an accused does not appear or is not caused to appear in the court even until the period during which the case can be subject to adjournment pursuant to sub-section (1), the proceeds acquired from the auction sale, under the law in force, of the property attached pursuant to sub-section (15) of Section 58 shall, upon the judgment in that case convicting the accused, be credited to the consolidated fund of the Government of Nepal.

(6) Where an accused appears or is caused to appear in the court prior to the adjudication of the case and the accused produces any evidence to the satisfaction of the court that the accused could not appear by the reason that he or she was ignorant of the case instituted against him or her, the court shall order that the property attached be returned to him or her by deducting or realizing the following expenses:

- (a) The expenses incurred in attaching the property where it has not yet been sold,
- (b) The expenses incurred in publishing a public notice for his or her appearance in the court or in

the case of him or her in any matter related to the proceedings of the case.

(7) Notwithstanding anything contained elsewhere in this Section, if a case filed in a court is adjourned and a report or information is received that the accused has appeared as a plaintiff or defendant in any other case filed in the same court or in any other court, such case shall not be deemed to be adjourned, and the court may order such accused to appear in the court to proceed such case.

(8) Such case may be revived, proceeded and adjudicated, in spite of the failure of the accused to appear in pursuance of the order referred to in sub-section (7).

## **Chapter-11**

### **Provisions Relating to Examination of Evidence**

**99. Evidence to be produced:** (1) All of his or her witnesses, documents, exhibits and evidences shall be specified in the complaint by the plaintiff, in the deposition by the accused, and in the statement of defense by the defendant.

(2) Such documents, exhibits and evidences specified pursuant to sub-section (1) as, by the nature of such documents, exhibits or evidences, should be in his or her possession or obtainable by him or her shall be produced by the plaintiff with the complaint, by the defendant with the statement of defense and by the accused while making deposition.

(3) Notwithstanding anything contained in sub-section (1) or (2), the following provisions shall apply to the following matters:

(a) If the accused, in making deposition, or the defendant, in submitting the statement of defense, makes a request that another date for appearance be appointed for producing any document, exhibit or evidence that cannot be produced immediately, the court may appoint another date for appearance up to a period of one month,

(b) In the case of taking and examining evidence related to the offence of forgery or fraud pursuant to sub-section (3) of the Section 104, the provisions of that Section shall apply,

(c) If, during the trial of the case, there arises a circumstance requiring the production of any additional evidence in support or rebuttal of any new fact, the concerned party may produce such additional evidence with the permission of the court.

(4) Any party to the case shall, in producing any documentary evidence pursuant to sub-section (2), submit such number of copies of the document as is more by one copy than the number of opponents.

Provided that it shall not be required to submit copies of such document in any case under Schedule-1 or Schedule-2.

**Explanation:** For the purposes of this Section, the term “copy” means a photocopy or any other copy of a document.

**100. Originals to be returned:** (1) If any document is produced before the court pursuant to sub-section (2) of Section 99, the court shall cause its employee to verify whether the copy, submitted pursuant to sub-section (4) of the said Section, corresponds to the original or not.

(2) The employee making verification pursuant to sub-section (1) shall, upon verification, sign each page of the document setting down therein that the copy is true according to the original, get the party submitting the document to sign the same and authenticate it with the seal of the court.

(3) After the authentication made pursuant to sub-section (2), such employee shall affix the seal of the court on, sign and date,

the reverse side of the original, and thereupon return it to the party submitting it.

(4) If the court so wishes, it may, as required, order the concerned party to re-submit the original of a document returned pursuant to sub-section (3).

**101. Party to cause attendance of witness:** (1) The concerned party shall cause the attendance of any witness of each case filed in the court on the day appointed by the court.

(2) Notwithstanding anything contained in sub-section (1), if, in any specific case in which the defendants are in attendance at the time when the case is filed, the plaintiff or the defendant or both may produce their respective evidence of witness before the court at the time of filing of the case.

(3) In producing a witness pursuant to sub-section (1) or (2), the concerned investigating authority or his or her office shall produce the witness of prosecution in any case under Schedule-1 or Schedule-2, through the government attorney office.

(4) The evidence of a witness who fails to appear on the date appointed for appearance for the examination of witness pursuant to sub-section (1) shall not be **taken into the case**.

Provided that if the witness fails to appear owing to a force majeure event and the party makes a petition setting out the matter, the court may appoint another date for appearance for the examination of such witness.

(5) If the process of examination of witness has not begun by the reason that all defendants to any case set forth in Schedule-1

or Schedule-2 of this Act are not present, any party may, showing that the production of witnesses cannot be enforced subsequently if they are not produced immediately, request that such witnesses be produced immediately and their depositions recorded.

(6) If a request is made pursuant to sub-section (5) and such reason is reasonable, the court may, assigning the reasons for the same, take deposition of such witness immediately.

(7) The party and opposite party to a case in attendance shall be allowed to make cross-examination of the deposition made by the witness pursuant to sub-section (6), and if there does not exist such situation, the party in attendance subsequently may make rebuttal subsequently only to the extent of the contents of the deposition.

102. **Examination of expert witness:** If an expert who expresses an expert opinion in any case related to a heinous or grievous offence in which the Government of Nepal is plaintiff dies or has resided abroad for a long time and is not able to return to Nepal or it is not possible to examine him or her for any other reason, expert opinion may be obtained from another expert in the same field who is equal to or superior to such expert witness.
103. **Cross examination of the co-accused:** If, in examining evidence pursuant to this Chapter, any co-accused makes accusation against another co-accused, such co-accused may make cross-examination to the extent of such accusation.
104. **Provisions relating to documentary evidence:** (1) The court shall cause the parties to a case to produce the originals of documentary

evidence on the date appointed for appearance for examining evidence and show the document produced by one party to the other.

(2) If the other party makes a plea that the document shown pursuant to sub-section (1) was made by means of forgery or fraud, the court shall set down such plea and record the deposition of such party.

(3) Notwithstanding anything contained in sub-section (2), if, in the process of showing any documentary evidence produced by one party to the other party, the other party, mentioning that he or she is not able to confirm immediately whether such document is genuine, forged or fraud, makes request for time for that purpose, the court may, as required, appoint a date for not more than seven days, and shall give information thereof to the other party, and record the deposition of that party on that appointed date and also examine the evidence produced by that party in that connection if that party states that the document is forged or fraud.

Provided that in the case of a party who is absent or not represented on the date appointed for appearance for the examination of evidence, it shall not be necessary to show the document to, or record the deposition of, that party pursuant to this Section.

(4) Notwithstanding anything contained in sub-section (3), if any party, due to a force majeure event, remains absent on the date appointed for appearance for confirming whether a document is genuine or forged, and if the party or his or her representative appears within fifteen days of the appointment of such date and wishes to express any matter about that document, such party or

representative shall be given an opportunity to make expression accordingly.

**105. Document named as forged or fraud to be kept in the case-file:**

In the process of showing the original of a document produced by one party to the other party pursuant to sub-section (1) of Section 104, if the other party names it as a forged or fraudulent document, the reverse side of such original shall be signed by both the parties, by the concerned employee and bear the seal of the court and thereupon be sealed and recorded in the case-file safely and if there is no space to affix signature or thumb impression, separate paper shall be added to the deed with signature or thumb impression at the joints.

**106. Witness to be examined on fixed day:** (1) The deposition of all witnesses in attendance on the date appointed for appearance for the examination of witness shall be taken; and only where it is not possible because of the time factor to complete the taking of the deposition of all witnesses in attendance on that day, the deposition of such witnesses shall be taken on the next day on which the court remains open.

(2) Prior to making a deposition by a witness who appears to make such deposition pursuant to sub-section (1), the witness shall take an oath that he or she will state noting but the truth, in the form referred to in Schedule-37 in a manner to be heard by others, and such oath shall be recorded in the concerned case-file.

(3) The deposition of a witness taken down shall be recorded in the form referred to in Schedule-38.

**107. Power to examine witness on commission:** (1) Notwithstanding anything contained elsewhere in this Chapter, if a witness is in a place outside the jurisdiction of the court in which the case is filed or the attendance of such witness cannot be procured for any reason and, in view of the gravity of the case, it so appears necessary to examine such witness on commission, the court shall give information thereof to the parties to the case.

(2) If any party to the case so desires, the party may make a petition, accompanied by the reasons, to the court that any interrogatories which the party wishes to be asked to the witness be included in the commission referred to in sub-section (1).

(3) If any petition is made pursuant to sub-section (2) and the court deems reasonable to have such interrogatories included in a commission, it may order that such interrogatories be also included in the commission; and the interrogatories of the commission shall be framed accordingly.

(4) The form of a commission shall be as set forth in Schedule-39.

(5) If, in examining a witness on commission pursuant to sub-section (1), any party to the case so desires, the party may appear in the court to which the commission is directed and examine, cross-examine or re-examine the said witness in accordance with the prevailing law on evidence.

**108. Deposition to be taken before bench:** (1) The deposition of a witness to be taken pursuant to this Act shall be taken before the bench of the judge.

Provided that while taking the deposition of a witness who is unable to appear before the court due to physical infirmity, the judge himself or herself may proceed to or send an officer employee subordinate to him or her to the place where such witness is residing or staying, and the evidence of such witness shall be taken by the judge or by such employee in the form of deposition.

(2) While so taking the deposition of a witness pursuant to sub-section (1), the concerned parties to the case shall be given information thereof and also provided with an opportunity to make examination pursuant to sub-section (5) of Section 107.

**109. Witness may be examined through video conference:** (1) If it is not possible to produce before the court a witness required to be examined pursuant to this Chapter because of the witness being physically infirm or a child or for security reason, the concerned party may, setting out that matter, make a petition to the court for the examination of such witness through video conference.

(2) If the court makes an order for the examination of any specific witness through video conference, the witness shall be examined accordingly.

(3) If a petition referred to in sub-section (1) is made and the reason set forth therein seems to be reasonable or the court makes an order pursuant to sub-section (2), the court may, notwithstanding anything contained elsewhere in this Act, examine such witness through video conference.

(4) In making video conference pursuant to sub-section (3), the concerned party to the case may, with the permission of the

court, appear before such conference room and examine, cross-examine or re-examine the witness.

(5) In examining a witness pursuant to sub-section (3), arrangement shall be made to record the matters expressed by such witness, and the court shall maintain records of the video conference.

(6) The record of examination of a witness through video conference shall be maintained in the form referred to in Schedule-40.

**110. Demeanor, appearance etc. of witness may be recorded:** (1) The judge may record such remarks as he or she perceives material respecting the demeanor of a witness whilst under examination, and such remarks may include how was the behavior and appearance of the witness, whether the witness was excited or disappointed while answering the questions put to him or her and what the reflection was as to the truth or untruth of the replies made by him or her from his or her facial expression.

(2) The note made pursuant to sub-section (1) shall be signed by the judge and kept in the case-file.

(3) The judge may take into consideration of the note referred to in sub-section (1) while making appraisal of the deposition of the witness as evidence.

**111. Witness once examined not to be re-examined:** A witness who has once been examined shall not be examined again.

Provided that if any matter that is essential to be inquired into with such witness has been omitted and the judge, assigning the

reasons thereof, make an order to that effect, such witness may be summoned and examined again.

**112. Summons or warrant for arrest may be issued to witness ought to be examined:** (1) A party to the case may make a petition, accompanied by the reasons for the same, that a summons be issued to enforce the attendance of any witness who is related with criminal case in which the Government of Nepal is plaintiff but who does not appear on the day appointed by the court for appearance for the examination of evidence and the examination of such witness is expedient in view of the gravity of the offence or the production of any document or exhibit by such witness.

(2) If a petition referred to in sub-section (1) is made and the court considers such petition to be reasonable and perceives that the examination of such evidence is necessary, the court may summon such witness to appear before the court within a maximum period of fifteen days and examine him or her.

(3) If a summons is issued pursuant to sub-section (2), such witness shall appear within the specified time-limit, except for a reasonable reason.

(4) If a witness fails to appear within the time-limit specified pursuant to sub-section (3), the court may impose a fine not exceeding two thousand rupees on such witness, issue a warrant for arrest and take deposition of such witness when he or she is so arrested and brought before it.

(5) If any witness is not found or cannot be arrested even upon the issuance of a warrant for arrest pursuant to sub-section (4),

the court shall pass judgment in the case, awarding a sentence of imprisonment for a term not exceeding forty-five days, based on the evidence examined, subject to the enforcement of the sentence as and when such witness is arrested or found.

(6) A summons or warrant for arrest issued pursuant to this Section shall be served pursuant to Chapter-6.

**113. Daily and travel allowance and security to be provided to witness:** (1) The concerned police office shall provide witnesses, who appear before the court, on behalf of the Government of Nepal, in any case related to any offence under Schedule-1 or Schedule-2, with such daily and travel allowance as is receivable by the non-gazetted first class government employee, and expert witnesses with such daily and travel allowance as is receivable by the gazetted third class government employee under the law in force.

(2) If any government employee appears before the court as a witness or expert, the office where the employee is serving shall provide him or her with the daily and travel allowance receivable by such employee under the law in force.

(3) The Government of Nepal shall make necessary arrangement for the security of a witness referred to in sub-section (1).

**114. To protect witness or victim:** (1) If any person who is a witness in any case related to any offence under Schedule-1 or Schedule-2 thinks that there is a threat to his or her security while appearing before the court or after making deposition in the court, he or she

may make a petition, setting out the reason for the same, to the court for making security arrangement.

(2) If a request referred to in sub-section (1) is made, the court may order the concerned body to make arrangement for the security of such witness.

(3) If an order is made by the court pursuant to sub-section (2), it shall be the duty of such body to make arrangement for such security.

(4) No question shall be raised in any court about any measure followed pursuant to the order made by the court for the protection of witness pursuant to this Section.

(5) The police shall provide security to the victim of any particular offence or witness of any case if information is obtained that such person is under undue coercion, threat or having adverse impact on the security of his or her body from the opponent as being the witness thereof.

**115. Witness or evidence may be examined even outside the State of Nepal:** (1) If any court needs to examine any witness or evidence that is outside the State of Nepal or issue a commission to that effect in relation to any case pending before it, the examination of such witness or evidence or the issuance of such commission may be effected in accordance with the law in force on mutual legal assistance.

(2) The form of commission to be used pursuant to sub-section (1) shall be as set forth in Schedule-41.

(3) The witness or evidence examined pursuant to sub-section (1) shall be deemed to have been examined in accordance with this Act.

Provided that details of the witness or evidence so examined shall be certified in accordance with the law of the concerned country.

(4) If the examination of a witness or evidence required to be examined or has been examined pursuant to this Section in a language other than the Nepali language, an authentic translation of the record of such examination or evidence into the Nepali language shall be submitted to the court.

(5) If it is necessary to examine any witness from outside the State of Nepal or make his or her deposition in the course of investigation or trial of any case, such deposition may be conducted by means of video conference or other similar technology as prescribed for that purpose.

(6) Arrangement shall be made for keeping records of the deposition made by the witness in the course of witness testimony or deposition conducted in accordance with sub-section (5).

(7) Notwithstanding anything contained elsewhere in this Chapter, nothing shall be deemed to prevent the trying and settling of a case by the reason only that evidence cannot be examined pursuant to this Section.

## **Chapter-12**

### **Provisions Relating to Withdrawal, Compromise and Mediation of Cases**

**116. Not to withdraw cases:** (1) No case once filed in the court on any offence under Schedule-1 or Schedule- 2 shall be capable of being withdrawn.

(2) Notwithstanding anything contained in sub-section (1), any case other than any of the following cases may be withdrawn:

- (a) A case relating to the offence of forged passport or citizenship, immigration, corruption, human trafficking and transportation, smuggling and transaction of narcotic drugs, poaching of, and illicit trade in, wildlife, adulteration of goods of public consumption with poison, murder by administrating poison, in a cruel or inhumane way or by taking control, money laundering, or ancient monuments protection,
- (b) A case related to the offence under Section 56 of Chapter-2, Section 129, 130, 131 or 134 of Chapter-6, Section 138, 139 or 141 of Chapter-7, Chapter-8, Section 167 of Chapter-10, Section 206 of Chapter-16, Chapter-17, sub-section (1), (2) or (3) of Section 219 of Chapter-18, Section 230 or 231 of Chapter-19, or Section 256 of Chapter-22 of Part-2 of the Penal Code,

(c) If the withdrawal of a case is prejudicial to the property right of any person, the case in which consent of such person is not available to that extent.

(3) The Government of Nepal shall make directives with necessary standards on the cases to be withdrawn pursuant to sub-section (2).

(4) If a case to be withdrawn pursuant to sub-section (2), the Government of Nepal may, in consultation with the Attorney General, make decision to its withdrawal, in accordance with the directives made pursuant to sub-section (3).

(5) If the Government of Nepal decides to withdraw a case pursuant to sub-section (4), the Government of Nepal shall, through the Attorney General or such government attorney as authorized by him or her, make a petition, accompanied by the reasons for such withdrawal, to the concerned court.

(6) If a petition is made pursuant to sub-section (5), the court shall conduct hearing before granting permission for the withdrawal of the case.

(7) If, upon conducting hearing pursuant to sub-section (6), the court deems it reasonable to make order allowing the withdrawal of the case, the court may make such order allowing such withdrawal, assigning the reasons for the same.

(8) Notwithstanding anything contained elsewhere in this Section, no case which is under consideration at the stage of appeal, reference, review or revision shall be subject to withdrawal.

**117. Compromise may be made:** Any case related to any of the offences under Schedule-3 and Schedule-4 may be compromised at any stage whatsoever with the consent of the parties to the case.

Provided that if, in a case related to cheating or loss of or damage to any property of the public or foreign employment, both the defendant and the victim make a petition to the Government of Nepal for the execution of compromise, the Government of Nepal may, if it deems it reasonable, make an order to have such compromise executed through the government attorney in respect of such case.

**118. Procedures for making compromise:** (1) The parties shall, if they desire to compromise a case pursuant to Section 117, submit to the court a joint petition, bearing signature or thumb impression of both the parties, setting out the terms of compromise intended to be made within the limits of the plaintiff's claim.

(2) If a petition containing the terms of compromise is submitted to the court pursuant to sub-section (1), the court shall read out the petition to the parties and ask the parties making such petition whether they intend to enter into compromise with free will and consent or not.

(3) If, in response to a question asked pursuant to sub-section (2), the parties reply that they are willing to compromise with free will and consent, the judge trying the case shall prepare a deed of compromise subject to the terms contained in the joint petition, and take signature or thumb impression of the parties and affix his or her signature on the deed.

(4) Except in cases where any one has been authorized by a power of attorney to enter into compromise pursuant to this Chapter, while entering into compromise through an attorney, a separate deed of consent executed by the party to that effect shall be submitted.

**119. Consequences of withdrawal or compromise of cases:** (1) If the Government of Nepal withdraws any case pursuant to Section 116, no case shall be instituted again against the accused of that case in respect of the same offence.

(2) If the compromise of a case is made pursuant to Section 117, no action or case shall be capable of being instituted subsequently between the same parties in respect of the same matter.

Provided that nothing contained in this sub-section shall bar the making of a petition claiming that any party has not complied with the terms contained in the deed of compromise.

**120. Mediation may be made:** (1) If the parties to any case related with any offence under Schedule-4 so agree or the court considers appropriate to refer such case for mediation, the court may order to refer such case for mediation at any time and stage, getting the parties to choose the mediator and specifying the mediator if the parties fail to do so.

(2) If an order is made pursuant to sub-section (1), the parties to the case shall appear before such mediator.

(3) After the parties appear pursuant to sub-section (2), the mediator shall conduct mediation proceedings, and prepare a deed of compromise and submit it to the court if the parties consent to enter into compromise.

(4) Upon receipt of a deed of compromise referred to in sub-section (3), the court shall authenticate such deed.

(5) If compromise is executed pursuant to sub-section (4), the court may, in pursuance of the deed of compromise executed by the parties, exempt the penalty, fine or fee imposed by the lower court in relation to such case.

## **Chapter-13**

### **Provisions Relating to Proceedings, Hearing of, and Judgments in, Cases**

- 121. Charge to be read out to the accused:** (1) When the accused appears before the court, the particulars of the offence of which he or she is accused, all facts related with such offence, the evidence produced by the complainant in support of the charge and punishment imposable on him or her if such charge is proved shall be clearly stated to him or her, and the claim made in the charge sheet shall be read out by the court to him or her.
- (2) While stating and reminding the charge and punishment imposable on such charge pursuant to sub-section (1), the court shall also state which charge is based on which proof, evidence or document, and provide him or her with opportunity to see each proof, evidence or document, or to obtain a copy thereof if he or she so wishes.
- 122. Deposition of the accused to be made:** (1) After reading out the charge and punishment imposable on such charge to the accused pursuant to Section 121, the court shall ask him or her whether he or she has any statement to make on that charge and record his or her deposition.
- (2) If any accused who has already appeared in the court wishes to consult a law practitioner prior to taking of his or her deposition, he or she shall be provided with an opportunity to make such consultation.

(3) Before recording the deposition pursuant to sub-section (1), the court shall inform the accused that he or she shall not be compelled to testify against himself or herself and reminded of the matter that such testimony if made by him or her may be admissible in evidence against him or her.

(4) In the process of reminding the accused of the matters pursuant to sub-section (3), the demand, if any, made by the government attorney offering a reduction in sentence against him or her and the relevant provision of the law in force shall also be stated to him or her.

(5) In recording the deposition of the accused pursuant to this Section, each question and answer to such question shall both be recorded, and where deposition has been taken through video conference, such deposition shall also be recorded.

(6) After recording the deposition referred to in sub-section (5), signature or thumb impressions of the accused shall be taken on such record and the judge also shall sign it.

Provided that where deposition has been made through video conference, the judge shall authenticate such matter.

(7) If, in taking deposition of the accused pursuant to this Section, any matter is omitted to be inquired with him or her, the court may summon the appearance of such accused and take re-deposition of the omitted matter from him or her.

(8) Notwithstanding anything contained elsewhere in this Section, in relation to a case related to any offence under Schedule-4, a statement of defense shall be submitted in the form referred to in

Schedule-42, within the time-limit set forth in the process issued by the court.

**123. Judgment to be made immediately if the accused pleads guilty of offence:** (1) If any accused, pleading guilty of the offence which he or she is charged with, makes a statement of confession before the court, the court may, also having regard to the truth and reliability of such statement, make judgment immediately.

Provided that:

(a) In spite of such statement of confession by the accused, if the court, in view of the evidence contained in the case-file, circumstances under which the offence was committed or any other matter, has any reason to believe that his or her confession is not true, the court shall not make judgment in the case pursuant to this Section but shall order the examination of further evidence in the case, by executing a memorandum of order, accompanied by the reasons therefor,

(b) If the accused who has confessed the offence which he or she is charged with makes a plea for a reduction in the sentence, the court shall, stating all matters pertaining thereto, take his or her deposition and examine evidence thereon.

(2) If, in depositing before the court, any accused makes a plea that is different from the plea he or she has made before the investigating authority and the plaintiff makes submission for

permission to re-conduct investigation into the evidence or plea produced or made by him or her and submit further proof or evidence to the court, the court may give permission to produce such additional proof or evidence.

(3) If an order is made pursuant to sub-section (2), the court shall not adjudge the case until such additional proof or evidence is produced.

Provided that such additional proof or evidence shall be produced prior to the order for taking and trying of evidence.

(4) If any accused does not confess fully the offence which he or she is charged with but confesses it partially, the court shall order the examination of further evidence to the extent only of the matter which he or she has not confessed.

**124. Discussion may be held between plaintiff and defendant:** (1) If the accused has not pleaded guilty of the offence pursuant to Section 123, the court may order to hold discussion between the plaintiff and the defendant in order to ascertain the matter to be adjudged in the case.

(2) If an order is made to hold discussion pursuant to sub-section (1), the plaintiff, defendant and the accused, in respect of a case in which the Government of Nepal is plaintiff, shall also appear in the court, and if such accused so wishes, his or her law practitioner may also appear.

(3) In the discussion referred to in sub-section (1), the plaintiff and the defendant may present claim and defense and evidence relevant thereto, respectively.

(4) The court may ascertain the matter to be adjudged in the case from the claim, defense and evidence submitted by the plaintiff and the defendant pursuant to sub-section (3).

**125. Appointment of date for appearance for examination of evidence:** (1) The court shall, in any of the following circumstances, execute a memorandum of order, setting out, inter alia, the matters to be adjudged as ascertained pursuant to Section 124, and appoint the date for appearance for the examination of evidence:

- (a) If the accused refuses to make deposition pursuant to Section 122,
- (b) If the defendant does not submit a statement of defense,
- (c) If the accused makes deposition or statement of defense, denying wholly or partly the charge made against him or her,
- (d) If the court executes a memorandum of order for the examination of evidence pursuant to clause (a) or (b) of the proviso to sub-section (1) of Section 123,
- (e) Such other circumstance as may be held appropriate by the court.

(2) While appointing the date for appearance for the examination of evidence pursuant to sub-section (1), the court shall estimate the time required for the witnesses to appear and the documentary evidence and thing to be produced, and so appoint such date that evidence is collected as soon as possible.

(3) If the plaintiff of a case makes a request for time for the submission of further evidence or proof pursuant to sub-section (2) of Section 123, the court shall, in appointing the date for appearance pursuant to sub-section (1), generally appoint the date for appearance for the examination of evidence so that evidence is examined not later than two months after the filing of case.

(4) In making order for appointing the date for appearance for the examination of evidence pursuant to sub-section (2) or (3), such order shall be so issued that the examination of all evidences required to be examined in the case is made at the same time as far as possible.

(5) Subsequent to the order appointing the date for appearance pursuant to sub-section (1) or (2), the concerned party to the case shall submit or produce such evidence or witness before the court on the appointed date for appearance as required to be submitted or produced by that party.

**126. Party or witness held in detention or imprisonment to be produced:** (1) If any party or witness of a case, who is held in detention or imprisonment, is required to be produced to make his or her statement or deposition or in relation to another case relevant to him or her, the court shall, setting out the reason, order the concerned office to produce such party or witness before the court on the date appointed for appearance for that purpose.

(2) Upon receipt of an order pursuant to sub-section (1), the concerned office shall produce before the court such party or witness accompanied by the security personnel.

(3) Notwithstanding anything contained in sub-section (2), if there is a reasonable reason for not being able to produce such party or witness before the court because of security or physical disability, such office may, with the consent of the court, arrange for the examination of him or her through video conference.

(4) If any party or witness of a case is examined through video conference pursuant to sub-section (3), the matters stated by him or her shall be recorded.

**127. Order of examining evidence:** (1) Except as otherwise ordered by the court, the evidence of the plaintiff shall first be examined and then the evidence of the defendant shall be examined on the date appointed for appearance for the examination of evidence, subject to the law of evidence.

(2) If one party makes any objection immediately that any evidence produced by the other party or matter deposed by any witness is not admissible in evidence or should not be taken as evidence or is irrelevant to the case, the judge shall immediately decide whether the objection is reasonable or not.

(3) The court shall not allow any party to produce any evidence which is irrelevant to the case.

**128. Provisions relating to trial of person of unsound mind:** (1) If there is any reasonable reason to believe that any accused person, being of unsound mind, is incapable of making his or her defense, the court may also order causing such person to be examined and treated by a licensed doctor.

(2) If, upon the examination made pursuant to sub-section (1), it appears that the accused is incapable of making his or her defense because of unsound mind, the court shall adjourn the case in the case of such person, by executing a memorandum of order to that effect.

(3) Notwithstanding anything contained elsewhere in this Act, if such accused is held in detention and the court so considers reasonable, it may, at the time when proceeding is conducted pursuant to sub-section (1) or subsequent to the execution of the memorandum of order pursuant to sub-section (2), release such accused from detention.

(4) In releasing the accused pursuant to sub-section (3), the court shall cause his or her guardian to make a bond that he or she shall take care of the accused in a manner to prevent the accused from doing any kind of injury or harm to any other person and produce the accused before the court when so ordered by the court.

(5) In releasing the accused pursuant to sub-section (4), the court may take bail/bond or guarantee from the guardian in accordance with Chapter-7.

(6) Except where the accused, who is held in detention and is of unsound mind, is released from detention pursuant to sub-section (3), the court shall order the concerned prison to take special care of such accused placed in detention for trial.

(7) If the case of the accused of unsound mind is adjourned pursuant to sub-section (2), the court shall, whenever the accused becomes of sound mind, revive the adjournment, cause the

appearance of the accused before the court and proceed with the trial of the case.

Provided that prior to so reviving the adjournment, the court shall cause the accused to be examined again by a licensed medical doctor, and that he or she has become of sound mind shall be certified by such doctor.

(8) The court may, if it so wishes, order the medical doctor who has made certification of soundness pursuant to sub-section (1) or (7) to appear before the court as a witness.

(9) Notwithstanding anything contained elsewhere in this Section, if there are other defendants also, along with the person of unsound mind, nothing shall be deemed to bar the hearing of the case in the case of such other defendants.

**129. Trial of cases to be conducted in open bench:** The court shall conduct the trial of cases in open bench.

Provided that the trial of a case related to the offence of espionage, human trafficking and transportation, sexual offence, a case involving a child as the accused or victim, violence against women, rape, incest or a case running between husband and wife or any other case that the court has, considering it reasonable to do so, ordered for trial in camera, may be conducted in camera, and the court may prohibit the access to such bench of any person, other than the concerned parties to that case, concerned law practitioners, employees of the court and such other persons as the court considers necessary.

**130. Law practitioner may be appointed by the accused for his or her defense:** (1) Any person accused of any offence may appoint a law practitioner of his or her choice for his or her defense, rebutting the charge made against him or her, and pleading the case.

(2) If an accused who is charged with the offence punishable by a sentence of imprisonment for life or for a term of ten years or more fails to appoint his or her law practitioner, the court may, in the case of such accused, order that the law practitioner appointed by the court defend him or her.

(3) Notwithstanding anything contained elsewhere in this Section, even if any accused does not intend to appoint a law practitioner pursuant to sub-section (1) or refuses to have defended by the law practitioner appointed by the court pursuant to sub-section (2), nothing shall be deemed to prevent proceeding the case.

**131. Judgment to be made:** (1) The judge shall make judgment in a case generally within one month after the termination of examination of evidence in the case.

(2) If it is not possible to make judgment within the period referred to in sub-section (1), information thereof, accompanied by the reason for the same, shall be given to the appeal hearing court.

(3) Judgment to be made pursuant to this Section shall be in the form referred to in Schedule-43 and state, *inter alia*, the following matters:

(a) Short description of the case and other necessary matters relevant thereto,

- (b) Main points of pleading, if any, made by the law practitioner in the case,
- (c) Evidence produced by the parties to the case, credibility or refutability of such evidence, the basis thereof, sufficiency or insufficiency of such evidence,
- (d) Matters relating to the legal question, if any, raised by any party to the case,
- (e) Grounds for the conviction or acquittal of offence and the reasons for the same,
- (f) Whether the judgment is appealable or not, and the court in which appeal shall lie,
- (g) Other necessary matters.

(4) In making judgment pursuant to this Section, the judge may read out the full text of the judgment, if prepared, and the decision only if the full text is not so prepared.

(5) If only the decision is read out pursuant to sub-section (4), the judge shall cause it to be taken down in short hand in the decision book, sign it and take signature or thumb impression of the parties to the case who are in attendance on it.

Provided that it shall not be necessary to cause it to be signed by the government attorney in a state case in which the Government of Nepal is plaintiff.

(6) If a decision is read out pursuant to sub-section (5), the judge shall write down the judgment and keep it in the case-file within one month.

**Explanation:** For the purposes of this sub-section, the term "decision read out" means the decision read out upon sentencing.

(7) If the judgment is not set down within the time-limit referred to in sub-section (6), the concerned party may make a complaint to the Chief Judge of the concerned High Court, in the case of a judgment of that High Court or a court subordinate to it, and to the Chief Justice in the case of a judgment of the Supreme Court, not later than three days after the expiration of such time-limit.

(8) If a complaint is made pursuant to sub-section (7), the concerned Chief Judge or the Chief Justice shall give direction to the concerned judge to prepare the judgment within a week.

(9) The court shall, as far as possible, also put the decision referred to in sub-section (5) on its website immediately.

(10) The court shall affix the decisions prepared and authenticated in each week on its notice board and also put them on the website.

**132. Notice and copy of judgment to be given:** (1) The court shall give a notice of judgment in the form referred to in Schedule-44 to the accused or defendant who has not been involved in the proceedings of the case from the beginning, the accused held in detention or imprisonment or the accused of a case heard ex parte.

(2) The notice referred to in sub-section (1) shall be served as if it were a summons, and if such notice cannot be served, it shall be published in any national daily newspaper owned by the Government of Nepal.

(3) The concerned party shall bear the expenses to be incurred in the publication of a notice referred to in sub-section (2) in relation to any case under Schedule-4.

(4) The information of judgment of any of the cases under Schedule-1, Schedule-2 and Schedule-3 shall also be given to the concerned government attorney office.

**133. Dismissal of cases on death:** (1) Notwithstanding anything contained elsewhere in this Act, if the accused or defendant of any case dies, the court shall dismiss such case.

Provided that if there are more than one accused or defendant, the case shall not be dismissed even on the death of any one accused.

(2) Notwithstanding anything contained in sub-section (1), despite the death of the accused or defendant in a case involving the claimed amount, the court may decide to set the claimed amount upon examining the evidence included in the case-file and such other evidence as the court finds necessary to examine.

(3) If, despite the death of any complainant in any case referred to in sub-section (2), the successor to such complainant appears to accept and continue the case within thirty days of his or her death, the court may decide as to whether or not compensation should be awarded by examining the evidence contained in the case-file and any other evidence required to be examined.

(4) In the event of the death of a party making appeal, or petition for review or revision or of a person who was originally convicted of the offence in such case, the case subject to such appeal, review or revision petition shall abate.

Provided that:

- (a) In the event of the death of any one of the same party, the case shall not abate without trying the case in respect of the other persons,
- (b) In respect of a case involving any claimed amount, the successor may, if he or she so wishes, take over the case within thirty-five days from the date of receipt of information.

## **Chapter-14**

### **Provisions Relating to Appeal and Reference for Sanction**

- 134. Appeal to lie:** (1) A party who is not satisfied with a judgment or final order made by a court may make an appeal within thirty days from the date of knowledge of the judgment.

Provided that if an appealing party makes a petition showing the cause of being unable to make appeal within that time-limit and the appeal hearing court considers the petition to be reasonable, it may order the extension of the time-limit for a maximum of thirty days.

(2) A person wishing to make an appeal pursuant to subsection (1) shall file it with the court which hears appeals from the court making judgment.

(3) Notwithstanding anything contained elsewhere in this Act, if any party to a case or his or her attorney is present, or his or her law practitioner has made pleadings, before the court at the time of hearing and judgment is made on the same day, the party to the case shall be deemed to have known that such judgment has been made.

(4) Notwithstanding anything contained elsewhere in this Section, the party shall be deemed to have *ipso facto* known the judgment after the expiry of a period of one year from the date of judgment.

- 135. Filing of appeal through judgment making court or prison where one is imprisoned:** (1) Notwithstanding anything contained in subsection (2) of Section 134, any person wishing to make appeal

pursuant to sub-section (1) of that Section may make appeal through the judgment making court or also through the prison where the person convicted of the offence pursuant to such judgment is imprisoned.

(2) If an appeal is filed pursuant to sub-section (1), such court or prison shall, as soon as possible, forward the appeal to the appeal hearing court, setting out the details of the service or payment, if any, by the appellant of the sentence imposed on him or her or the bail/bond or guarantee, if any, furnished by him or her in consideration for such sentence, and give information thereof to the appellant.

(3) The judgment making court shall forward the case-file along with the appeal pursuant to sub-section (2).

**136. Procedures to be fulfilled in making appeal:** (1) A memorandum of appeal shall be made in the form referred to in Schedule-45.

(2) Every memorandum of appeal to be made pursuant to sub-section (1) shall clearly state, *inter alia*, the full name and address of the appellant and that of the respondent, short description of the case, the matters contained in the decision of the lower court with which the appellant is dissatisfied and grounds for such dissatisfaction, the matters to be decided by the appeal hearing court and the relevant laws, and shall bear signature or thumb impression of the appellant.

(3) Every memorandum of appeal to be made pursuant to sub-section (1) shall be accompanied by the following documents:

- (a) A copy of the judgment intended to be appealed against,
- (b) If any sentence is imposed on the appellant by the judgment, evidence showing that he or she has served or paid such sentence or has been imprisoned or furnished a bail/bond or guarantee for the same.

**137. To remain in imprisonment while making appeal:** (1) Any of the following persons shall remain in imprisonment while making appeal:

- (a) A person who is sentenced to imprisonment for life,
- (b) A person who is sentenced to imprisonment for a term exceeding ten years,
- (c) A person who, upon being convicted of any offence under Schedule-1 or Schedule-2, is sentenced to imprisonment for a term exceeding three years,
- (d) A person who, having been remanded in detention for trial, is convicted of the offence and sentenced to imprisonment,
- (e) A person who is sentenced to imprisonment and has not permanent residence in Nepal.

(2) Notwithstanding anything contained in sub-section (1), if a person who is above seventy-five years of age or a person who is recommended by the medical board formed by the Government of

Nepal that he or she, owing to suffering from an incurable or highly severe disease, cannot stay in detention or an offender who has not been held in detention by an order of the court that he or she is not required to be remanded in detention but is sentenced to imprisonment for a term not exceeding ten years makes a petition, setting out the reason, for a leave of appeal without being held in detention, and if such reason appears to be reasonable, the appeal hearing court may, upon taking a bail/bond or guarantee from him or her, grant the leave of appeal.

(3) If a leave of appeal is granted pursuant to sub-section (2), such court shall execute a memorandum of order recording the reasons for such leave to make appeal without being held in detention and the memorandum of order shall be included in the case-file.

(4) Any person other than that mentioned in sub-sections (1) and (2) may make appeal by furnishing with the court passing judgment or the appeal hearing court a bail/bond or guarantee for the sentence imposed on the person by that judgment.

(5) If a person who does not furnish a bail/bond or guarantee pursuant to sub-section (4) is sentenced to imprisonment, that person may appeal only being held in imprisonment for such sentence.

(6) If decision cannot be made on the appeal made by a person who is imprisoned for being unable to furnish a bail/bond or guarantee pursuant to sub-section (2) or (4) within six months from the date of filing of such appeal, the concerned appeal hearing court

shall try the case by releasing that person from imprisonment after the said period and holding him or her on recognizance.

(7) In the event of failure to make judgment within the period referred to in sub-section (6), such court shall give information thereof, accompanied by the reason therefor, to the court hearing appeal.

(8) Notwithstanding anything contained elsewhere in this Section:

- (a) In the case of a person who having been held in detention or imprisonment in the course of proceedings of the case has already served the sentence as commuted by the judgment, such person shall not be required to remain in prison or furnish a bail/bond or guarantee to make appeal,
- (b) No person shall be imprisoned for a period in excess of the sentence imposed by the judgment only by the reason that appeal has been made.

(9) In the case of a person furnishing a bail/bond or guarantee pursuant to Chapter-7, such bail/bond or guarantee may, to the extent of the sufficiency of such bail/bond or guarantee, be maintained as a bail/bond or guarantee, for the purposes of this Section.

(10) In taking a bail/bond or guarantee pursuant to this Section, the court may, having regard to the need and propriety, require and take the bail/bond or guarantee also for such claimed amount of a governmental or public body as is held recoverable by the judgment.

(11) If the bail/bond or guarantee of any property belonging to any person other than the appellant has been furnished, such property shall not be maintained as a bail/bond or guarantee for the purposes of this Section without the consent of that person.

**138. Calling for case file:** (1) Except in cases where the case-file is received pursuant to sub-section (3) of Section 135, the appeal hearing court shall, upon the filing of an appeal, and as soon as possible, order the concerned court to send the case-file of such case.

(2) The concerned court shall send the case-file to the appeal hearing court within three days from the date of receipt of the order pursuant to sub-section (1).

**139. Appointment of date for appearance for hearing appeal:** Upon receipt of the case-file pursuant to sub-section (3) of Section 135 or Section 138, the appeal hearing court shall appoint the date for appearance for the hearing of the appeal.

**140. Hearing of appeal:** (1) The appeal hearing court shall complete the hearing of appeal within six months after the date of receipt of the case-file from the lower court.

(2) If, while hearing the appeal pursuant to sub-section (1), the appeal hearing court considers that the decision made by the lower court is reasonable and does not suffer any substantial difference, it may dismiss the appeal, by recording its reasons for doing so.

(3) If, except for the dismissal of the appeal plea pursuant to sub-section (2), it appears that the pleas of the appeal should be heard, the appeal hearing court shall, setting out the reasons for the

same, appoint the date for appearance for the hearing of the appeal and give a notice to the respondent to rebut the pleas of appeal.

(4) In giving a notice referred to in sub-section (3), a notice of fifteen days shall be given, also accompanied by a copy of the memorandum of appeal.

(5) A person who has obtained a notice pursuant to sub-section (3) may submit defense in writing to defend himself or herself and rebut the pleas of appeal, within the period specified by the court.

(6) The defense in writing to be submitted to the court pursuant to sub-section (5) shall be in the form set forth in Schedule-46.

(7) Upon hearing the appeal pursuant to sub-section (3), the court shall decide the appeal.

**141. Appeal liable to be heard ex parte in absence of respondent:** (1) If the respondent does not appear within the time-limit of the notice given pursuant to sub-section (3) of Section 140, the appeal hearing court may appoint such another date for appearance for deciding the appeal as falling after at least fifteen days, and hear the appeal ex parte on such date and decide it.

(2) Notwithstanding anything contained in sub-section (1), if the respondent makes a petition, prior to the date appointed for appearance pursuant to sub-section (1), showing a reasonable reason for being unable to appear within the time-limit of the notice given pursuant to sub-section (3) of Section 140, and such reason seems to be reasonable, the court shall order the extension of the time-limit, showing such reason, and also order the respondent to appear on the

date appointed pursuant to sub-section (1), and hear and decide the appeal.

**142. Not required to be on recognizance:** (1) If an appellant or respondent does not wish to remain on recognizance in the course of the appeal proceedings, he or she may make a petition to that effect to the court.

(2) If a petition is made pursuant to sub-section (1), the court may discontinue his or her appearance on the appointed dates, by getting a deed to be executed by the appellant or respondent to the effect that he or she will appear as and when the court so requires.

Provided that the appellant or respondent who is not on recognizance may, if he or she so wishes, appear on the date appointed for appearance for the hearing of the appeal.

(3) Notwithstanding anything contained elsewhere in this Section, if, during the hearing of appeal, the court is of the opinion that the appellant should be inquired into any matter or required to produce any evidence in relation to the appeal, the court may order the appellant to keep on appearing on the appointed dates for appearance.

**143. Service of notice or order on appellant or respondent as if it were a summons:** The notice or order to be issued by the court to the appellant or respondent pursuant to Section 140, 141 or 142 shall be served in accordance with Chapter-6 as if it were a summons.

**144. Powers of appeal hearing court:** (1) In hearing the appeal pursuant to this Chapter, the appeal hearing court shall have the following powers:

- (a) To approve, void or reverse or partially reverse the judgment of the lower court,
  - (b) To reduce or enhance the extent of the sentence commuted by the lower court to the offender, or to alter the sentence,
  - (c) Where the judgment has been made without examining such evidence as required to have been examined, to make such examination by itself or to order the lower court to make such examination,
  - (d) If any particular matter required to have been adjudged in the case has not been adjudged, to adjudge itself or order the lower court to adjudge such matter.
- (2) If an appeal from the judgment passed by the lower court is made by any particular offender or complainant only, and the decision on the appeal will render the judgment of the lower court to be affected in the case of the offender or defendant not making appeal, the appeal hearing court, in exercise of the powers set forth in sub-section (1), may, setting out and recording the reasons therefor, pass judgment in accordance with law also in the case of such accused.
- (3) Notwithstanding anything contained elsewhere in this Section, the appeal hearing court may, as required, exercise such powers as may be exercised by the lower court.
- 145. Reference for sanction:** (1) If any court passes judgment commuting a sentence of imprisonment for a term of twenty years or

more or imprisonment for life to any person, it shall refer such judgment for sanction, accompanied by the case-file, to the appeal hearing court within thirty-five days from the date of passage of such judgment.

(2) If a reference for sanction is made pursuant to sub-section (1) and even the appeal hearing court passes judgment confirming the sentence of imprisonment for a term of twenty years or more or imprisonment for life to the accused, such judgment shall then be referred to the Supreme Court for sanction.

**146. Appeal against reference judgment:** A party, who is dissatisfied with the judgment so passed by the court as to be referred to for sanction pursuant to Section 145, may appeal against it.

**147. Not to pass reference judgment until expiration of time-limit for appeal:** (1) In any case submitted for reference pursuant to Section 145, no reference judgment shall be made until the time-limit allowed for preferring an appeal expires.

(2) If an appeal is made within the time-limit referred to in sub-section (1), the records of reference judgment shall be crossed off and the case shall be heard on appeal.

Provided that if an appeal is made by any person only, out of the persons subjected to sentence, decision shall be made by virtue of the same appeal also in cases of those who have not made appeal.

**148. Procedures for making reference for sanction:** (1) In referring a judgment for sanction in any case pursuant to Section 145, the court shall forward the case-file of that case along with the reference.

(2) If the accused is held in detention in the case in which reference judgment is made pursuant to sub-section (1), reference shall also specify the date on which the accused was held in detention and the name of the prison where he or she is being kept, and details of the accused if he or she has absconded or escaped from the detention.

(3) The other procedures on the hearing of reference for sanction shall be the same as applicable to the hearing of appeal.

**149. Powers of court in dealing with reference for sanction:** (1) Any court dealing with reference may exercise such powers as may be exercised by the appeal hearing court.

(2) If, in examining a reference for sanction, it appears that the verdict of the judgment of the lower court is not in order and any alteration can be made therein, the concerned parties shall be summoned to appear, by giving the time-limit of fifteen days.

**150. Appeal and reference judgment:** The appeal judgment shall be made in the form referred to in Schedule-47, and the reference judgment in the form referred to in Schedule-48.

Provided that where a single judgment has to be made on appeal and on reference for sanction, such judgment shall be made in the form referred to in Schedule-47.

## **Chapter-15**

### **Provisions Relating to Execution of Judgments**

**151. To establish record of sentence:** (1) If the court passes any judgment in any case, the concerned court shall establish a record of the sentence, fine or the established claimed amount or compensation pursuant to such judgment.

(2) If the appeal hearing court passes judgment convicting any person of any offence or any person is convicted of any offence being judgment of the lower court reversed or voided, it shall establish a record thereof and send a copy of the judgment to the concerned District Court for its execution.

(3) After establishing a record pursuant to sub-section (1) or (2), the concerned court shall execute the judgment, and if any body has to do any act for the execution of judgment, it shall order the body to do such act.

(4) While making an order pursuant to sub-section (3), if the person sentenced to imprisonment is present in the court, the court shall also forward him or her to the prison; and if such person is neither present in the court nor held in detention or prison, the court shall send an order, in the form referred to in Schedule-49, to the concerned police office to arrest and hand over him or her to the prison.

(5) If the same offender is liable to more than one sentence and there is a doubt as to which sentence is the higher, the prison office shall write to the concerned district court and do as sanctioned by the district court.

**152. Bodies for judgment execution:** (1) The District Court where the charge sheet or plaint has been filed shall execute the judgment on a case irrespective of the tier of court making such judgment.

(2) The concerned District Court shall also execute a judgment on a case proceeded and adjudicated originally by the appeal hearing court.

(3) Notwithstanding anything contained elsewhere in this Section, if the District Court responsible for the execution of a judgment cannot be identified because of the number of defendants, location of their residence or property, the District Court designated by the appeal hearing court shall execute the judgment of such case.

(4) The concerned bodies shall execute judgments made by the judicial bodies other than the regular courts.

(5) Notwithstanding anything contained in sub-section (4), the concerned District Court shall execute the judgment pursuant to this Act, unless otherwise provided by law in respect of judgment execution.

**153. Postponement of execution of judgments:** (1) The court shall postpone the execution of a judgment in the following circumstance:

(a) If an appeal is made in a case which is appealable pursuant to law, until the case is finally adjudicated on appeal, or if no such appeal is made, until the time-limit allowed for preferring appeal is expired,

(b) If the case is one requiring reference for sanction pursuant to law, until the reference made for sanction is decided.

(2) When an appeal is made pursuant to clause (a) of sub-section (1), the appellant shall submit a petition stating that matter to the concerned court.

(3) Notwithstanding anything contained in sub-section (1), if a judgment is made holding any offender liable to a sentence of imprisonment, such offender shall be immediately sent to imprisonment, except as otherwise provided in this Act.

**154. Confinement in prison:** (1) Upon receipt of an order referred to in Section 151 or upon the person held to be offender being arrested by the police office, the concerned prison office shall confine the offender in prison in accordance with law.

Provided that if a child below eighteen years of age is convicted of an offence, the child shall be held in a separate children reform home or similar other home as provided by the Government of Nepal.

(2) While confining an offender in prison pursuant to sub-section (1), the prison office shall prepare and update the record containing information, *inter alia*, of when the offender has been confined in prison or arrested and when the service of the sentence of imprisonment will complete.

**155. Payment of money in lieu of imprisonment:** (1) If, in view of the age of the offender who is convicted, at the first instance, of any offence punishable by a sentence of imprisonment for a term of one year or less, gravity of the offence, manner of commission of the offence and his or her conduct, as well, the court does not consider it appropriate to confine the offender in prison and is of the view that

there will be no threat to the public peace, law and order if he or she is released, and the court, for the reasons to be recorded, considers it appropriate to dispense with the requirement of undergoing imprisonment upon payment of a fine in lieu of imprisonment, the court may order that the offender be not liable to undergo imprisonment if he or she makes payment of money in lieu of imprisonment.

(2) Prior to issuing an order pursuant to sub-section (1), the court shall cause a deed to be executed by the offender that he or she will not commit any kind of offence henceforth and will comply with good conduct.

(3) In making payment of money by an offender who is dispensed with the requirement of undergoing imprisonment upon payment of money in lieu of imprisonment pursuant to sub-section (1), the offender shall pay money by three hundred rupees a day of imprisonment.

(4) If any offender who is dispensed with the requirement of undergoing imprisonment pursuant to sub-section (1) commits any offense punishable by a sentence of imprisonment within three years after the date of such release, the sentence also including that of imprisonment imposed on him or her by the previous judgment shall be executed.

(5) Notwithstanding anything contained elsewhere in this Section, if any foreign national who has been convicted of any offence punishable by a sentence of imprisonment for a term of one year or less and is in detention or imprisonment makes a petition for dispensing with the requirement of undergoing imprisonment upon

payment of a fine in lieu of the imprisonment, and if the offence is not any offence set forth in sub-section (4) of Section 159, and the court considers appropriate to release that offender from imprisonment upon payment of a fine in lieu of the imprisonment, the court may order that the offender will not be liable to undergo imprisonment if he or she makes payment in lump sum of the amount to be set by five hundred rupees a day.

(6) In making an order pursuant to sub-section (5), the court shall order that such person be sent out of Nepal within seven days and the immigration office shall send such person out of Nepal pursuant to the court order.

(7) Fifty percent of the amount received pursuant to sub-sections (3) and (5) shall be deposited into the victim relief fund established in accordance with law.

(8) If payment of money is made pursuant to this Section, the offender shall be deemed to have served the sentence of imprisonment.

(9) Notwithstanding anything contained elsewhere in this Section, the record of imprisonment of the person who is dispensed with the requirement of undergoing imprisonment pursuant to this Section shall remain valid until the period of completion of the service of the sentence of imprisonment, and the court may, at any time, revoke the order under this Section if he or she upholds conduct or commits offence, contrary to sub-sections (2) and (4).

(10) If an order is revoked pursuant to sub-section (9), such offender shall serve the whole sentence commuted to him or her, by undergoing imprisonment.

**156. Property to be attached:** (1) If the property belonging to a person against whom a warrant for arrest has been issued pursuant to sub-section (4) of Section 151 has not been attached earlier or if such person cannot be arrested, the concerned police office may make a report, also indicating the description of his or her property, to the court for making attachment to the property to which such person has partition entitlement.

(2) If a report is made pursuant to sub-section (1), the concerned court shall issue an order to the concerned land revenue office or other body or institution to attach the property to which such person has entitlement.

(3) If, in attaching the property pursuant to sub-section (2), property more than that required to be attached has been attached, such person may make a petition to the concerned court to release such excess property attached.

(4) If a petition is made pursuant to sub-section (3) and, upon examination of such petition, it appears that excess property has been so attached, the court may make an order to the concerned land revenue office or body or institution to release the attachment of such excess property, and if such order is made, such office or body shall release such property.

(5) If an offender is liable to pay the claimed amount, compensation or other amount pursuant to a judgment of the court,

such amount shall, in accordance with this Chapter, be recovered from the property attached pursuant to sub-section (1), and only the remaining property shall be attached.

**157. Property may be auctioned:** (1) If any offender cannot be arrested even until six months from the date of issue of warrant for arresting that offender pursuant to sub-section (4) of Section 151, the amount of fine or compensation payable as per the judgment shall be recovered by receiving cash from the concerned body or institution if the property attached pursuant to Section 156 is cash and by auctioning the property so attached if it is other movable or immovable property and paying the amount in consideration for a fine or government claimed amount to the consolidated fund, and the amount remaining upon payment of compensation, if any, shall be returned to his or her successor.

(2) If the offender is arrested before terminating the record of sentence pursuant to this Act and intends to pay in cash the fine, claimed amount or compensation to which he or she is liable, the sentence of imprisonment shall be executed by returning to him or her the property attached pursuant to Section 156, upon recovering the expenses incurred in the execution of such attachment if such property has not yet been auctioned, and the proceeds of the auction sale of the property upon recovering the expenses incurred in the execution of such attachment and auction, if such property has been auctioned.

**158. Remission of sentence in the event of death of the person sentenced:** (1) In the event of the death of a person who is convicted by the court of an offence and sentenced therefor, the whole sentence

of imprisonment or fine remaining to be executed until the time of his or her death shall *ipso facto* be remitted.

(2) Notwithstanding anything contained in sub-section (1), if a person liable to pay any governmental or personal claimed amount, compensation or other amount dies before making such payment, such amount or compensation shall, in accordance with this Act, be recovered from the property belonging to that person only to the extent of the amount recoverable from such property.

(3) In making recovery of any claimed amount, compensation or amount pursuant to sub-section (2), the governmental claimed amount, compensation and personal compensation and claimed amount shall be recovered in respective order of priority from the property to the extent of recoverability from the property of such person.

**159. Pardon many be made:** (1) A person who is sentenced by a court judgment to punishment for an offence may make a petition to the President, through the Ministry of Home Affairs, for the pardon, suspension, alteration or reduction of that sentence.

(2) In making a petition pursuant to sub-section (1), the petitioner shall attach a copy of the judgment of the court by which he or she was sentenced.

(3) If a petition made pursuant to sub-section (1) is forwarded by the President to the Ministry of Home Affairs for necessary action, the Ministry shall, having regard to the following matters, make a submission to the Government of Nepal to decide

whether or not to pardon, suspend, alter or reduce the sentence imposed on the petitioner:

- (a) Nature of the offence, and the circumstances under which the offence was committed,
- (b) Age and physical condition of the offender,
- (c) **Limit**/ceiling of the sentence imposed on the offender,
- (d) Whether or not the offender was sentenced to imprisonment for committing any offence prior to that punishment sentenced to him or her, and if he or she was so sentenced, the nature of such offence and the sentence served by him or her,
- (e) Whether or not the offender is held in detention.

(4) Notwithstanding anything contained elsewhere in subsection (3), no action may be taken to pardon, suspend, alter or reduce the sentence imposed on the offender of any of the following offences:

- (a) Corruption,
- (b) Torture,
- (c) Rape,
- (d) Murder in a cruel and inhumane way or by taking control,
- (e) Genocide,
- (f) Explosives,

- (g) Kidnapping, hostage-taking or enforced disappearance,
- (h) Human trafficking and transportation,
- (i) Money laundering, and
- (j) Narcotic drugs trafficking or transaction punishable by a sentence of imprisonment for a term exceeding three years.

(5) Notwithstanding anything contained elsewhere in this Section, if the case is under consideration of any court by way of appeal, reference for sanction, review or revision or if the sentence imposed by the judgment of a court has not become final, the Ministry of Home Affairs may not take action referred to in sub-section (3).

(6) Prior to making a decision pursuant to sub-section (3), the Government of Nepal may consult the parole and probation board established by law.

(7) If, while making decision pursuant to sub-section (3), the Government of Nepal has any reasonable reason for pardoning the whole or any part of, suspending, altering or reducing, the sentence imposed on the petitioner, it shall make a recommendation, accompanied by its opinion along with the grounds therefor, to the President.

(8) If the sentence imposed on any offender is pardoned, suspended, altered or reduced by the President pursuant to the recommendation made by the Government of Nepal under sub-section (7), the Government of Nepal shall give a notice thereof to the concerned court.

(9) After receiving the notice referred to in sub-section (8), the concerned court shall accordingly void or update the records thereof.

(10) The judgment of the concerned court shall not be voided by the reason of pardon, alteration or reduction of the sentence imposed on any person granted by the President pursuant to this Section, and it shall not affect in any manner the sentence already served or fine or claimed amount already paid by such person.

(11) The Government of Nepal may make necessary standards for the purpose of making proposal or recommendation pursuant to sub-sections (3) and (7).

**160. Records to be voided:** (1) The court shall, in the following circumstance, void the records of sentence established pursuant to sub-section (1) or (2) of Section 151, by setting out the reasons therefor:

- (a) If the sentence of imprisonment has been served by the offender pursuant to this Chapter,
- (b) If the sentence of imprisonment has been served by the offender by labor pursuant to the law in force,
- (c) If the sentence of imprisonment or punishment is remitted due to the death of the offender as mentioned in Section 158,
- (d) If the sentence of imprisonment has been served by the offender in a reform home or community center or by doing community service in accordance with the law in force,

- (e) If the sentence imposed on the offender is pardoned in whole pursuant to Section 159,
- (f) If the offender pays the full amount for the fine or claimed amount or compensation pursuant to this Chapter, or
- (g) If amount in lieu of imprisonment or sentence or claimed amount or compensation imposed on the offender is recovered pursuant to this Chapter.

(2) Notwithstanding anything contained in sub-section (1), if any person, who is sentenced to imprisonment or required to undergo imprisonment for a fine or government claimed amount or any other amount in accordance with the law in force, fails to appear in the court or to undergo imprisonment in the prison or cannot be arrested until the following period, the court shall void the records of sentence established in the case of such person:

- (a) Fifty years in the case of the sentence of imprisonment for life,
- (b) Forty years in the case of the sentence of imprisonment for a term exceeding ten years,
- (c) Thirty years in the case of the sentence of imprisonment for a term of five to ten years,
- (d) Twenty years in the case of the sentence of imprisonment for a term of one to five years,
- (e) Twelve years in the case of the sentence of imprisonment for a term not exceeding one year.

(3) If a person whose record is voided pursuant to sub-section (2) is found after the expiry of the said period, the court shall execute the judgment in accordance with this Chapter as if the record were not voided in the case of him or her.

(4) In voiding the record pursuant to sub-section (2), the property belonging to that person, if any, attached pursuant to this Act, shall be forfeited and auctioned, and the proceeds of sale by auction shall be credited to the consolidated fund.

(5) No person whose record has been voided by the reason of the non-completion of the service of sentence pursuant to this Section shall, notwithstanding anything contained in the law in force, be eligible to be appointed, nominated, designated or elected to any public office until such person serves such sentence pursuant to the judgment awarding the sentence.

**161. Period of detention undergone to be set off against sentence of imprisonment:** (1) If a person who, on conviction, is sentenced to imprisonment by a court judgment, has remained in detention or custody in the course of investigation, the period of such detention or custody shall be set off against the term of imprisonment imposed on him or her by the judgment, and such offender shall be imprisoned only for the remaining term of imprisonment.

(2) If any offender who is not sentenced to imprisonment but to a fine only has remained in detention or custody in the course of investigation, the total amount to be set by three hundred rupees a day of the period of his or her detention or custody shall be set off against the amount of fine payable by him or her.

**162. Execution of sentence of fine:** (1) Every person who is required to pay a fine in accordance with the records established pursuant to Section 151 shall pay the fine immediately.

(2) Notwithstanding anything contained in sub-section (1), if such person is not able to immediately pay the amount of fine but furnishes a property as the guarantee for the payment of such amount, the court may order that the amount of fine be paid up within one year in a maximum of three installments.

(3) Notwithstanding anything contained in sub-section (2), if the person so sentenced to fine has furnished any bail/bond or guarantee pursuant to Chapter 7 or Section 137, the court shall order that the amount of fine be recovered from such bail/bond or guarantee and only the remaining amount be paid in installments.

(4) Except in cases where the provision of payment of the amount of fine in installments is made pursuant to sub-section (2) or the service of sentence has already been made by remaining in detention or custody in the course of the proceedings of the case or the amount of fine is recoverable from the bail/bond or guarantee furnished pursuant to Chapter 7 or Section 137, the court shall order the concerned prison to imprison the offender in lieu of the fine if he or she fails to pay the amount of fine immediately.

(5) If an order is made pursuant to sub-section (4) and the offender who fails to pay the amount of fine pays some amount of fine or if the offender has remained in custody or detention in the course of the proceedings of the case and there is a situation that the period of such custody or detention undergone by him or her is to be set off against the period of imprisonment, the period of

imprisonment in the default of payment of the amount of fine shall be set by setting off the said period of imprisonment undergone, and the offender shall be imprisoned only for the remaining period in proportion to the period so set and the total amount of the fine.

**163. Provisions relating to government claimed amount or other amount:** (1) If a judgment decrees that the claimed amount be recovered, the recovery of a government claimed amount shall have priority over the recovery of a personal claimed amount.

Provided that if any judgment has been made to recover a personal claimed amount before making the judgment to the effect that a governmental claimed amount be recovered, no priority shall be given to the government claimed amount.

(2) If the government claimed amount or other amount has not been recovered pursuant to the judgment or there is a situation that such amount cannot be recovered, except where the property belonging to the offender liable to pay such claimed amount or other amount has already been attached previously, such property shall be attached as soon as possible after the passage of the judgment.

(3) If the offender fails to pay the claimed amount or other amount referred to in sub-section (1) within thirty days from the date on which the judgment becomes final, such amount shall be recovered, in the case of a movable property attached pursuant to sub-section (2), by receiving such movable property from the body holding it, and in the case of an immovable property so attached, by auctioning such immovable property.

(4) Such person shall be imprisoned for the government claimed amount that has not been recovered even from the proceeds of the auction of the property pursuant to sub-section (3).

**164. Imprisonment for government claimed amount:** (1) The concerned person shall pay any government claimed amount or any other amount held by a court judgment to be recoverable.

(2) If such person fails to pay the government claimed amount or other amount referred to in sub-section (1), such amount shall be recovered by forfeiting his or her property.

(3) If any government claimed amount or other amount could not be recovered even by making forfeiture referred to in sub-section (2), the sentence of imprisonment for a term not exceeding the following term for the following claimed amount or such amount shall be set for such person:

- (a) One month for the claimed amount of five thousand to ten thousand rupees,
- (b) Three months for the claimed amount of ten thousand to twenty-five thousand rupees,
- (c) Six months for the claimed amount of twenty-five thousand to fifty thousand rupees,
- (d) One year for the claimed amount of fifty thousand to one hundred thousand rupees,
- (e) Six months for every fifty thousand rupees over one hundred thousand rupees.

(4) One shall be sentenced to imprisonment for an amount less than that set forth in clause (a) of sub-section (3) in a manner to set off three hundred rupees for each day.

(5) Notwithstanding anything contained elsewhere in this Section, in sentencing to imprisonment for a government claimed amount, such sentence of imprisonment shall not be set to exceed seven years.

**165. Procedures for recovering personal claimed amount or compensation:** (1) A person shall pay such personal claimed amount held to be payable by him or her, compensation or other amount to which the victim or his or her successor is entitled under the judgment of a court to the person who is entitled to get such payment within six months from the date of judgment.

(2) If such person fails to pay such claimed amount, compensation or amount within the period referred to in sub-section (1), he or she shall be liable to a fine not exceeding ten thousand rupees.

(3) If the person required to pay such claimed amount, compensation or other amount within the period referred to in sub-section (1), the person who is entitled to the recovery of such claimed amount, compensation or other amount may make a petition within three years from the date of final judgment, showing the property owned by the person liable to pay such claimed amount, compensation or other amount.

(4) If a petition is made pursuant to sub-section (3), the court shall cause such claimed amount, compensation or other

amount to be recovered respectively by attaching and auctioning the said property.

(5) If the person liable to pay a claimed amount, compensation or other amount pursuant to sub-section (1) pays the same to the court or if the claimed amount, compensation or other amount is recovered from the bail/bond or guarantee if any, furnished pursuant to sub-section (1) of Section 68, recovery shall be made accordingly.

(6) If the person entitled to the recovery of a claimed amount, compensation or other amount is not able to find the property within the period referred to in sub-section (3), the court shall abate the petition, subject to the execution of recovery if he or she gives intimation as and when such property is found.

(7) If the claimed amount, compensation or other amount could not be recovered pursuant to sub-section (4), the person entitled to recover the remaining claimed amount, compensation or other amount which could not be so recovered may make a petition for imprisoning the offender, within thirty days from the date of auction sale of the property of the offender or the date of abatement of the petition pursuant to sub-section (6).

(8) If a petition is made pursuant to sub-section (7), the court shall convert the remaining claimed amount or other amount into the term of imprisonment at the rate of three hundred rupees a day, and the person liable to pay such claimed amount or other amount shall be imprisoned accordingly.

(9) While imprisoning any person pursuant to sub-section (8), such person shall not be imprisoned for more than two years in the case of a claimed amount of a particular person and for more than four years in the case of a claimed amount of a public body under full or majority ownership or control of the Government of Nepal, State Government or Local Level.

Provided that while imprisoning any person for the non-recovery of compensation, such person may be imprisoned for up to four years.

(10) While imprisoning any person for a personal claimed amount, compensation or other amount pursuant to sub-section (8), if the claimed amount remains or is less than three hundred rupees, such person shall be imprisoned for one day for the same.

(11) While imprisoning any person pursuant to sub-section (8), the Government of Nepal shall bear such ration expenses as should be provided under law.

(12) Notwithstanding anything contained elsewhere in this Section, if the person required to pay a claimed amount, compensation or other amount is held to have concealed or converted in any manner his or her property within the period set forth in sub-section (1) or (3), twenty-five percent of such property shall devolve on one who discovers it, the remaining shall be used to pay the claimed amount, compensation or other amount and further remaining shall be deposited in the consolidated fund, notwithstanding anything contained in the law in force.

**166. Recovery of amount under judgment from bail/bond:** (1)

Notwithstanding anything contained elsewhere in this Chapter, if any offender has furnished any amount as a bail/bond pursuant to this Act, the fine, claimed amount, compensation or other amount payable by him or her by virtue of the judgment shall be recovered or caused to be recovered from that amount of bail/bond to the extent it is covered by such amount of bail/bond.

(2) In making recovery pursuant to sub-section (1), it shall be made in order of the following priority:

- (a) Fine,
- (b) Claimed amount,
- (c) Compensation,
- (d) Any other amount, if any.

(3) If the full recovery of the claimed amount, compensation or other amount cannot be made, or caused to be made, from the amount referred to in sub-section (1), only the remainder of the recoverable amount shall be recovered, or caused to be recovered, upon taking action pursuant to this Chapter.

(4) Notwithstanding anything contained elsewhere in this Chapter, except where any offender pays immediately the fine, claimed amount, compensation or other amount required to be paid by him or her pursuant to the judgment or its recovery can be made pursuant to sub-section (1), the fine, compensation or other amount shall be recovered by auctioning the property, if any, furnished as security/guarantee by him or her or by any other person on his or her behalf in accordance with this Act.

(5) Notwithstanding anything contained elsewhere in this Section, if any other person has provided his or her property as a bail/bond or guarantee in favour of any offender, before auctioning the property of such other person, the court shall give a notice to him or her to pay the fine, claimed amount, compensation or other amount payable pursuant to the judgment within forty-five days, and if such person pays such amount within the said time, the property up to the limit of his or her bail/bond or guarantee shall be released.

(6) In the case of the remainder of the amount which cannot be recovered from the property referred to in sub-section (3), it shall be recovered by auctioning the offender's other property; and while so making recovery, recovery shall be made in priority referred to in sub-section (2).

(7) If the offender's partition share has not been set aside for the purpose of making auction pursuant to sub-section (6), auction shall be made by setting aside his or her partition share in accordance with law.

**167. Procedures for attachment, forfeiture or control of property:**

(1) While attaching, forfeiting or taking control of the property of any offender pursuant to this Act, the concerned court shall follow the following procedures:

(a) If the property is being registered or licensed separately, to give a notice of attachment to the office responsible for registering, transmitting, issuing or renewing the license,

- (b) If the property is cash, to give a notice of attachment to the body holding such cash,
- (c) If the property is that crops or rent can be harvested in or collected from it, the court shall order the concerned Local Level to collect such corps or rent and pay the amount into the deposit account,
- (d) If it is the property subject to speedy decay or spoil or livestock, the court shall cause such property to be auctioned and the proceeds of such auction to be paid into the deposit account.

(2) While attaching the property of any person pursuant to this Act, if that person has lent a loan to anyone else or invested it, the court shall issue an order to the borrower restraining him or her from realizing the principal amount, interest or any other return of the said loan or investment.

(3) The court shall require the borrower to pay to it the principal amount, interest, return or similar other amount of the loan or investment referred to in sub-section (2).

(4) If any other person has right in the property attached pursuant to this Section, such person may make a complaint to the court making attachment within thirty-five days from the date of knowledge of such attachment, by showing his or her right in that property.

(5) If a complaint is made pursuant to sub-section (4), the court shall decide as to the right in the property if it is empowered by

law to make such decision and shall forward the complaint to the proper court, if it has no such power.

(6) If the court makes any decision pursuant to sub-section (5), a person who is not satisfied with such decision may make an appeal in accordance with law.

**168. To appoint date for appearance for recovery of claimed amount, compensation or other amount:** (1) While appointing a date for appearance for causing the recovery of the claimed amount, compensation or other amount pursuant to the judgment, the date for appearance shall be appointed, by indicating the purpose for which the date is so appointed.

Provided that the government party shall not be required to be on recognizance for a government claimed amount or compensation.

(2) If the person entitled to have recovery does not appear on the date for appearance appointed pursuant to sub-section (1), the recovery proceedings shall be postponed on that day.

(3) If the person entitled to have recovery of the claimed amount, compensation or other amount makes a petition, showing a reasonable reason for his or her absence on the date appointed for appearance pursuant to sub-section (1), to the court within fifteen days, such claimed amount, compensation or other amount as is recoverable to such person under the judgment shall be recovered to him or her.

(4) If the person who is entitled to have recovery of the claimed amount, compensation or other amount and does not appear on the date appointed pursuant to sub-section (1) fails to make a

petition within the period referred to in sub-section (2), the recovery of such claimed amount, compensation or other amount shall be abated for one year.

(5) If the concerned person makes appearance within the period referred to in sub-section (4), the recovery of the claimed amount, compensation or other amount recoverable under the judgment shall be made.

(6) If the concerned person fails to appear within the period referred to in sub-section (4), no action shall thereafter be taken in relation to the recovery of such claimed amount, compensation or other amount.

## **Chapter-16**

### **Miscellaneous**

- 169. Cases to be tried by District Court:** The case trying authority, if any, designated by the Government of Nepal, by a notification in the Nepal Gazette, shall try any of such cases set forth in the Penal Code, and the District Court shall try the other cases.
- 170. Priority order for trying cases:** (1) The court shall proceed, hear and adjudicate cases as per the following order of priority:

- (a) A case to which a person held in detention in the course of investigation is a party,
  - (b) A case to which a person remanded in custody for trial is a party,
  - (c) A case to which a person held in imprisonment is a party,
  - (d) A case to which a person with disability or a child is a party,
  - (e) A case to which a person with physical disability or a person of over seventy-five years of age is a party,
  - (e) A case relating to violence against woman,
  - (f) A case which is accorded priority in proceeding or hearing pursuant to law,
  - (g) A case registered earlier according to the order of registration of cases.
- (2) While proceeding and adjudicating any case involving any other persons, in addition to those mentioned in clauses (a), (b)

or (c) of sub-section (1), as parties, proceeding, hearing and adjudication shall be made also in the case of such persons.

(3) Out of the cases in which more than one person who are remanded in detention or custody are parties, the case of the person who has been held in detention or custody earlier shall be proceeded, heard and adjudicated first.

(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the court may, in view of the gravity and propriety of any case, proceed, hear and adjudicated such case by according priority to it.

- 171. Index of documents:** There shall be maintained an index of documents in each case in the form referred to in Schedule-50, and such index shall record the serial number and description of the documents, according to the order of the date of registration.
- 172. Disposal of documents:** After the completion of five years of the final decision of a case, the court shall dispose the documents other than the following documents enclosed in the case-file of the said case:

- (a) Complaint, charge sheet or plaint,
- (b) Statement of the accused or the note of defense,
- (c) Statement equivalent to the note of defense,
- (d) Originals of evidence,
- (e) Memorandum of appeal, if any,
- (f) Petition for review or revision of the case, if any,
- (g) Judgment or final decision made by the court,

- (h) Map, inventory form, statements of property,
- (i) Such other documents as considered necessary to be preserved in accordance with law.

**Explanation:** For the purposes of this Section, the term "final decision" means the decision made by the appeal hearing court in relation to a judgment appealed for, and the decision made by the court competent to make sanction in relation to a reference judgment.

**173. Document to be translated:** (1) If any document written in any language other than the Nepali language is submitted to the court in the form of evidence, the court may, as required, order the party who has submitted such document to submit an authentic translation of the document in the Nepali language.

(2) The concerned party as ordered by the court pursuant to sub-section (1) shall make translation of such document in the Nepali language and submit its certified copy to the court.

(3) If there arises any dispute as to the translation referred to in sub-section (2), the court may summon the presence of and examine any expert in such matter.

**174. Assistance of interpreter may be taken:** (1) If it is required to take statement or deposition of any accused or witness who is unable to understand or speak the Nepali language or for any other purpose, the investigating authority, prosecutor or the court may take assistance of an interpreter of the concerned language or the sign language.

(2) The Government of Nepal shall bear the expenses incurred in taking assistance of the interpreter pursuant to sub-section (1).

**175. Copies to be provided:** (1) The concerned party to a case or his or her law practitioner may obtain a copy of any document contained in the case-file of any case, by paying such fees as provided by law.

Provided that any law practitioner may obtain the copy of a judgment.

(2) Notwithstanding anything contained in sub-section (1), no copy of a document that has to be kept confidential pursuant to law shall be provided.

**176. Not to try case involving conflict of interest:** (1) No judge shall proceed, hear and adjudicate any of the following cases:

(a) A case involving right, interest or concern of him or her or his or her close relative,

**Explanation:** For the purposes of this Section, the term “close relative” means a person who is, by relation, entitled to succeed to his or her property upon his or her death or maternal uncle, maternal aunt, mother's elder sister, mother's younger sister, mother's elder sister's husband, mother's younger sister's husband, mother-in-law, father-in-law, father's sister, father's sister's husband, elder brother-in-law, younger brother-in-law, elder sister-in-law, younger sister-in-law, elder sister, younger sister, elder sister's husband, younger sister's

husband, daughter-in-law, nephew, niece, niece's husband, niece's daughter-in-law, maternal grandfather, maternal grand-mother or any person having such relation in the family.

- (b) A case in which he or she has become an attorney, law practitioner or witness on any occasion,
- (c) A case which he or she, in capacity of the judge, has decided or made a final order therein in any court,
- (d) A case in which he or she has given opinion as to whether or not to institute it on any occasion,
- (e) A case involving, for any other reason, a substantial interest of him or her or any of his or her joint family members.

(2) If there appears any circumstance referred to in sub-section (1), the judge shall make order, setting out the reason therefor, to the effect that he or she cannot try the case.

(3) If any judge proceeds to try, hear or adjudicate any case in a manner contrary to sub-section (1), any party may make a petition, accompanied by necessary evidence, for not so trying, hearing or adjudicating the case.

(4) If a petition is made pursuant to sub-section (3), the judge shall, before proceeding, hearing or adjudicating the case, make decision as to whether the claim of such petition is reasonable or not.

(5) If, while making decision pursuant to sub-section (4), the claim of petition appears reasonable or the judge himself or

herself has made order pursuant to sub-section (2) that he or she should not proceed, hear or settle the case, such case shall be referred to another judge, if any, in the same court and in absence of such judge, submission shall be made to the appeal hearing court for the transfer of the case in accordance with sub-section (3) of Section 96.

**177. Acts to be done by judge himself or herself:** (1) The judge himself or herself shall do the following acts, out of the acts to be done by the court pursuant to this Act:

- (a) Taking and recording a statement or deposition of the accused or of a witness,
- (b) Taking an oath of a witness,
- (c) Issuing order for remanding in custody or on bail/bond or guarantee,
- (d) Executing a memorandum of orders on matters to be decided in the case,
- (e) Issuing an order for the examination of evidence,
- (f) Issuing an interim or interlocutory order,
- (g) Hearing of the case,
- (h) Holding preliminary and pre-trial discussion in the case,
- (i) Issuing any other kind of order as required,
- (j) Passing a judgment or final order.

(2) Notwithstanding anything contained in sub-section (1),

the following matters may be carried out as follows:

- (a) An employee in the court whose rank is at least non-gazette first class may record the evidence or deposition of a witness, at the direction of the judge.
- (b) In the absence of the judge, the senior-most employee out of the employees present in the court may make an order pursuant to Chapter 6 in respect of taking depositions of the accused or remanding him or her in custody or taking a bail/bond or guarantee from him or her.

Provided that the order made pursuant to this clause shall be submitted to the judge immediately when the judge attends the court, and the judge may, upon examining it, uphold, void or amend that order.

- (3) The acts other than those contained in sub-section (1) or (2) may be done by any employee subordinate to the judge, at the direction or on the order of the latter.

**178. Procedure to be followed for releasing detainee or prisoner:** (1) If any detainee or prisoner has to be released pursuant to the judgment or order of the court, the court shall send such order stating the reasons for release, full name and address of the detainee or prisoner and detail of the case to the concerned prison.

(2) Upon receipt of the order referred to in sub-section (1), the concerned prison shall immediately release the detainee or prisoner in pursuance of such order.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if any detainee or prisoner to be released pursuant to the

judgment or order is present in the court, he or she shall, upon judgment, be released immediately and a notice thereof shall be given to the concerned prison.

**179. To give notice on release of property subject to attachment:** In releasing any property attached in accordance with this Act pursuant to the court judgment or order, the court shall give a notice thereof to the concerned office and the person responsible for such attachment.

**180. Pleading and appeal to be made by government attorney:** (1) The government attorney shall, on behalf of the Government of Nepal, plead and defend the cases related to the offences under Schedule-1 and Schedule-2.

(2) The concerned authority shall file and appeal cases related to the offences under Schedule-3, and the concerned government attorney shall, if so requested, defend such cases.

(3) The government attorney shall, while pleading cases, plead them as per the prevailing norms on professional conduct.

(4) Except as otherwise provided in the law in force, the government attorney shall have power to make appeal against or file a petition for the review or revision of, any judgment or order passed or made by the court in any case referred to in sub-section (1) in the event of not being satisfied with such judgment or order.

(5) Notwithstanding anything contained elsewhere in this Section, if it is necessary that any particular case, in which the Government of Nepal is plaintiff, be pleaded by any other law practitioner in addition to the government attorney, the concerned body shall, assigning the reason therefor, obtain consent of the

Attorney General or the government attorney authorized by him or her for the same.

(6) Upon receiving the consent pursuant to sub-section (5), such body may appoint another law practitioner.

(7) The law practitioner appointed pursuant to sub-section (6) shall plead the case, subject to the general direction by the Attorney General or the government attorney authorized by him or her.

**181. Power of government attorney to make complaint:** If any decision or order made by any judicial or quasi-judicial body has an effect in the title, interest or concern of the Government of Nepal and there is no authority specified by law to file the case, make appeal or review petition or make a complaint or petition in any other manner against such order or decision, the Attorney General or the government attorney designated by him or her may, subject to law, make a complaint, appeal or review or other petition to the concerned authority against such decision or order on that matter.

**182. To register document tendered for registration in court:** (1) The court shall immediately register a document tendered for registration in it and give a receipt thereof if the document is found to meet the requirements of the law.

(2) If a document tendered for registration pursuant to sub-section (1) is not found to meet the requirements of the law, the court shall return the document, by making endorsement setting out its failure to meet the requirements.

(3) If, in relation to the matters of a document returned upon making endorsement pursuant to sub-section (2), the document is made to meet the requirements as set out by endorsement and is tendered for registration within the statute of limitation or time-limit or within seven days after the date of endorsement if that date is the deadline for the registration of such document, it shall be registered and proceeded with in accordance with law.

**183. Identity of victim or witness may be kept secret:** (1) Notwithstanding anything contained elsewhere in this Act, if the investigation authority thinks that the disclosure of the identity of a person who is a victim or witness of any particular offence may be prejudicial to the social prestige or honor of such person or witness or may result in undue fear, terror or fright by the accused or other party or be prejudicial to his or her body or life, the authority may make a request to the court, through the government attorney, that the name, surname, address of such person or witness or the name of his or her father or any other description which may disclose his or her identity be kept secret.

(2) If a request is made pursuant to sub-section (1), the court may order that the name, surname and address of such victim or witness and his or her father's name or his or her identity be kept secret.

(3) In disclosing the name, surname, address of the person or his or her father's name having been kept secret pursuant to sub-section (1) at the time of hearing of the concerned case or publishing details pertaining thereto, such disclosure shall be made under fake

name, surname, address or father's name, pursuant to the order of the court.

**184. Deposition, document or deed made or executed before investigating authority may be recorded in audio-visual means:**

(1) Notwithstanding anything contained elsewhere in this Act, the investigating authority may, in the following circumstance, record, or cause to be recorded, the deposition, document or deed of a victim of an offence, informant or witness through any audio-visual means, in the presence of the government attorney:

- (a) If the investigating authority has a reasonable reason to believe that the accused may, by way of putting undue influence on, or showing fear, terror, intimidation or threat to the victim of an offence, the informant or any witness, prevent such victim, informant or witness from appearing before the court or compel him or her to make statement or deposition contrary to the statement or document which he or she has made or executed before the investigating authority, in spite of his or her appearance in the court,
- (b) If such person, informant or witness is, owing to physical infirmity or being a child, not able to appear before the police office or government attorney office,
- (c) If any thing to be submitted to the court as evidence cannot be taken to the court from the place where that thing is situated.

(2) The court may admit in evidence the audio-video means recorded pursuant to sub-section (1).

**185. Performance of activities by higher level employee:** (1) Any function or duty that is required to be or may be performed by any government attorney, police officer or any other officer pursuant to this Act may also be performed by such government attorney of higher level or of the same level as designated by the Attorney General or by such police employee of higher level or of the same level as designated by the Inspector General of Police or by any other officer of higher level or of the same level in the concerned office.

(2) Any function or duty performed pursuant to sub-section (1) shall be deemed to have been performed by the competent authority.

**186. Receipt to be taken or given:** (1) While returning any document registered in the court to any person or handing over any document by the court to any person, a receipt or proof to the effect that such document has been so returned or handed over shall be executed or taken and enclosed in the case-file.

(2) The court shall, while receiving any document submitted by any person to it, give a receipt thereof to that person.

**187. To make assistance in witnessing and giving signature or thumb impression:** (1) If any person is bound to witness any act in the course of proceedings or affixing signature or thumb impression on a document prepared by the court pursuant to this Act, such person

shall assist the court by so being witness or affixing signature or thumb impression on such document.

(2) If any person bound to witness any act or affix signature or thumb impression on any document pursuant to sub-section (1) refuses to do so, the employee executing that act or document may sign and execute such document, by taking signature or thumb impression of any other two persons present, setting out that matter and remarks, along with the reason for the failure of such person to witness or sign the document.

(3) Any document executed pursuant to sub-section (2) shall be deemed to have been executed in fulfillment of the requirements specified by law.

(4) If any person bound to affix his or her signature or thumb impression on any document executed before the court refuses to do so, the judge shall set out the matter, mention remarks in the document and sign it.

(5) If any person does not assist the court by omitting to witness any act or to affix signature or thumb impression on any document under this Section, the court may fine such person with a maximum of five thousand rupees.

(6) If any person, when affixing his or her signature or thumb impression on a document pursuant to this Act, expresses his or her disagreement over any matter contained in the document, he or she may affix his or her signature or thumb impression on it, separately stating his or her remarks.

**188. Action not to be instituted:** (1) No question shall be raised nor any case instituted in any court in respect of any decision, prosecution, pleading and defense made by the government attorney in relation to any case pursuant to this Act.

(2) No action may be taken in respect of any act done or action taken in good faith by the investigating authority in relation to the investigation of any of the offences under Schedule-1 and Schedule-2.

**189. Provision of investigating committee:** (1) Notwithstanding anything contained elsewhere in this Act, the following committee shall investigate into a complaint filed in relation to the offence investigated or prosecuted dishonestly as referred to in Section 99 of the Penal Code:

(a)	Joint Attorney General of at least gazetted first class designated by the Attorney General	-Chairperson
(b)	At least gazetted first class officer of the Government of Nepal, as designated by the Government of Nepal	-Member
(c)	At least gazetted first class officer of the Nepal Police, as designated by the Government of Nepal	-Member

(2) If, in conducting investigation, the committee referred to in sub-section (1) finds that such investigation or prosecution has been conducted or made dishonestly, it shall write to the concerned government attorney office to institute the case in relation thereto.

- 190. Power to grant permission to take over case:** If, in any case of the offence under Schedule-4 involving the recovery of any kind of movable or immovable property, other than a case involving the recovery of a claimed amount or sentence of imprisonment or fine, the complainant dies or becomes of unsound mind or goes away and the time-limit and the date appointed for appearance by the court get expired, and his or her successor makes a petition for the extension of the time-limit and appointed date for appearance, within thirty-five days from the date of his or her death, being of unsound mind or going away, excluding the time required for journey, the court may issue an order extending the expired time-limit and appointed date for appearance.
- 191. Mutual legal assistance may be effected:** If a summons or warrant for arrest has to be issued to, or any evidence to be taken from, any offender of a case related to any offence to be proceeded, heard and adjudicated pursuant to this Act who is in a foreign country or it is necessary to assist in the service of a summons or warrant for arrest on, or take any evidence from, any accused of a case *sub judice* in a foreign court, who is in Nepal, the matter shall be dealt with in accordance with the mutual legal assistance law.
- 192. Documents may be exchanged through electronic means:** The documents referred to in this Act may be exchanged through electronic means in accordance with the law in force related to electronic transactions.
- 193. Not to be affected by printing or mathematical error:** If there is any mathematical or other minor error or omission in writing or printing in respect of the procedures under this Act, while conducting

investigation, prosecution and other proceeding of a case under this Act, all acts and proceedings related thereto shall not be deemed illegal by that reason alone.

- 194. Coordination committee:** (1) There shall be a coordination committee as follows, in order to bring effectiveness in the investigation and prosecution of cases of offences under Schedule-1 or Schedule-2, by making coordination, as required, between the bodies involved in such investigation and prosecution:

(a)	Attorney General	-Chairperson
(b)	Secretary, Ministry of Law, Justice and Parliamentary Affairs	-Member
(c)	Secretary, Ministry of Home Affairs	-Member
(d)	Inspector General of Police, Nepal Police	-Member
(e)	Such government attorney of gazetted first class level or above in the Office of Attorney General as designated by the Attorney General	-Member secretary

- (2) The rules of procedures of the coordination committee shall be as determined by itself.

- 195. Departmental action to be taken:** A public servant who fails to do act or take any action required to be done or taken pursuant to this Act within the period, if any, specified by this Act shall be liable to departmental action in accordance with law.

**196. Power to frame rules:** (1) The Government of Nepal may, in consultation with the Attorney General, frame rules on matters of investigation, and the Supreme Court may frame rules on matters of court proceedings, for the implementation of this Act.

(2) While framing rules pursuant to sub-section (1), the Judicial Council shall be consulted on the matters pertaining to the administration of justice.

**197. Power to frame directives:** (1) In order to make acts to be carried out under this Act simple, clear and well managed, the following authority may, as required, make and enforce directives on the following matters:

- (a) The Government of Nepal, on the advice of the Attorney General, in respect of the investigation and prosecution of cases of offences under Schedule-1 or Schedule-2,
- (b) The Attorney General in respect of the pleading, defense or legal opinion in relation to the cases related to offences under Schedule-1 or Schedule-2,
- (c) The Supreme Court in respect of the service of summons under Chapter 6,
- (d) The Supreme Court in respect of the management of court or bench;
- (e) The Supreme Court in respect of the execution of judgments under Chapter 15,

- (f) The Government of Nepal, in consultation with the Attorney General, in respect of the withdrawal of cases pursuant to Section 116,
  - (g) The Government of Nepal, in consultation with the Attorney General, in respect of pardon pursuant to Section 159,
  - (h) The Supreme Court in respect of the other court proceedings.
- (2) The directives referred to in sub-section (1) shall be deemed to have been issued under this Act.

**198. Power to make alteration in Schedules:** The Government of Nepal may, as required, make any alteration in or addition to or deletion from the offences set forth in Schedule-1 or Schedule-2, by a notification in the Nepal Gazette.