

The National Civil Procedure (Code) Act, 2017

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Act Number 35 of the year 2017

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

Preamble:

Whereas, it is expedient to make the procedural law simplified and timely, by amending and consolidating the laws in force relating to the procedures on filing, proceeding, hearing and adjudication of civil cases, and other procedures related thereto, and the execution of decisions 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 Civil Procedure (Code) Act, 2017".
(2) This Code shall come into force on 17 August 2018 (first day of the month of Bhadra of the year 2075).
- 2. Definitions:** Unless the subject or the context otherwise requires, in this 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 civil cases;

- (b) "law" means a law for the time being in force;
- (c) "endorsement" means an order made and signed by the concerned officer, on the reverse side or any other part of a document or on a separate paper, specifying the ground and reason why such a document is incapable of being registered pursuant to law;
- (d) "civil case" means a case related to a legal right, obligation, status, post, family relation or property, other than a case defined by law as a criminal case, and also includes a case on any of the following matters:
 - (1) Establishment of relationship, or divorce,
 - (2) Fee, remuneration, salary, allowance or wage,
 - (3) Partition, succession, donation, gift, guardian, curator, paternal authority, adoption,
 - (4) Any right or claim under any contract, quasi-contract or unjust enrichment,
 - (5) Any right or claim relating to tort, quasi-tort or defective product,
 - (6) Servitude,
 - (7) Compensation,
 - (8) Any other matter of civil nature.

- (e) "judge" means the authority of a court to proceed, hear and adjudicate a case, and also includes an authority competent to proceed, hear and adjudicate a civil case;
- (f) "memorandum of appeal" means a petition, accompanied by his or her pleas, made by a person who is not satisfied with a decision of a lower court to a higher court for the correction of the decision;
- (g) "statement of defense" (note of defense) means a written response admitting or rebutting the claims set forth in the plaint and submitted to the court, and also includes a statement equivalent to a note of defense;
- (h) "counterclaim" means a claim made by the defendant on the claim made by the plaintiff;
- (i) "defendant" means a person who submits a note of defense, and also includes a person who makes a statement as if he or she were a defendant or a person who has been set by the court to be a defendant;
- (j) "plaint" means a complaint, law-suit, claim or petition made by a person praying for the establishment of his or her right, interest or concern, or execution of his or her claim, on any matter, and also includes a deposition equivalent to a plaint, or a counterclaim set forth in the statement of defense;
- (k) "case-file" means a file related to a case maintained in a court, recording a plaint, statement of defense, memorandum of appeal, petition, and the proof and evidence and other document related thereto;

- (l) "case" means a civil case;
 - (m) "process" means a notice or subpoena issued by a court in the name of any person in the course of proceedings of a case;
 - (n) "person" means a natural person, and this term also includes a legal person;
 - (o) "plaintiff" means a person who files a plaint;
 - (p) "Local Level" means a Rural Municipality (*Gownpalika*) or a Municipality;
 - (p) "property" means a movable or immovable property.
- 3. Matters set forth in separate law not to be affected:** (1) The provisions set forth in several procedural laws made on several matters shall govern such matters, and no provision contained in this Act shall affect such matters.
- (2) The procedural matters not contained in the law referred to in sub-section (1) shall be governed by this Act.

Chapter-2

General Principles of Civil Procedural Law

4. **Principles to be followed in civil cases:** The court shall generally follow the principles and provisions set forth in this Chapter in proceeding, hearing and adjudicating cases.
5. **Hearing to be held in open bench:** Except as otherwise provided in law or ordered by the court on a petition by a party to a case, the case shall be proceeded, heard and adjudicated in open bench.
6. **Hearing to be made by competent court:** Only the court empowered by law shall proceed, hear and adjudicate any case.
7. **Question of entitlement or disentitlement to be settled by court only:** (1) If there arises a question of entitlement or disentitlement on any matter, such a question shall be settled by the regular court only.

Explanation: For the purposes of this Act, the term "regular court" means the District Court, High Court or Supreme Court.

(2) If, in proceeding any case *sub-judice* in a court or body other than the regular court, it appears that any other matter should be proceeded, heard and adjudicated only after the settlement of the question of entitlement or disentitlement, the concerned authority shall order the parties to have such a question settled by the regular court.

8. **Dispute relating to legal status to be settled by the regular court only:** Any dispute related to the settlement of relationship, divorce or legal status of any person shall be settled by the regular court only.

9. Status of parties to be equal: (1) In proceeding, hearing and adjudicating a case, the status of parties to the case shall be equal.

(2) The court shall accord equal treatment to each party to a case.

(2) If, in the course of the proceedings of a case, the Government of Nepal or any body thereof or any legal person appears before the court as a plaintiff or defendant, except as otherwise provided for in law or ordered by the court, the Government of Nepal, such a body or a person shall not be entitled to claim any separate status, facility, privilege, immunity or exemption in the course of such proceedings.

10. One to have *locus standi* to make plaint: A person who intends to file a plaint in the court shall set down in the plaint that he or she is entitled to make any claim or has lawful interest or concern in such a claim, and show his or her *locus standi*.

11. Jurisdiction not to be in vacuum: There shall be a court or an authority with jurisdiction specified by law for the filing, proceeding, hearing and adjudicating any case.

12. Not to be allowed to avoid making decision: (1) No judge may avoid deciding a case on the ground that law is inadequate or unclear.

(2) If there exists a circumstance referred to in sub-section (1), decision shall be made based on the recognized principles of law and justice.

13. Opportunity to be given for compromise or mediation: (1) Prior to passing a judgment in any case, the court shall give an opportunity

to the parties to compromise such a case or enter into a compromise by following the procedures of mediation.

(2) If, in giving an opportunity pursuant to sub-section (1), the parties agree to enter into compromise or have recourse to the procedures of mediation, the case shall be capable of being compromised or compromised through mediation, irrespective of the level trying the case.

14. **Principle of *res judicata* to be followed:** Once a case is filed and adjudged, the court shall not hear and adjudge the case involving the same matter and the same plaintiff and defendant more than once, except for an appeal made in the case or non-execution of the deed of compromise.
15. **Right of appeal:** In a case in which any court has passed judgment or final order and made settlement upon originally proceeding and hearing it, a person who is not satisfied shall have right to make an appeal in the concerned appeal hearing court in accordance with law.

Chapter-3

Provisions Relating to Jurisdiction

- 16. Jurisdiction:** (1) In order for a court to proceed, hear and adjudicate a case, the court shall have jurisdiction to that effect pursuant to law.
- (2) Any proceeding, hearing, order or verdict made in the course of a case by a court devoid of jurisdiction shall be void.
- (3) In passing a verdict, the court shall state in the judgment under which law it has established the jurisdiction.
- 17. Jurisdiction of court:** The concerned court shall have power, as provided for in law, to originally proceed, hear and adjudicate cases, hear appeals therefrom, revise or review them.
- 18. District court to have jurisdiction:** (1) In relation to any case related to any immovable property, servitude, ditch and boundary, requiring on-site examination or inquiry by the nature of the subject-matter of the case and any case requiring the examination of any land, house or property in view of the matters set down in the plaint, the district court of the district where such land, house or property is situated shall have jurisdiction to proceed, hear and adjudicate such a case.
- (2) The district court of the district where such property is situated shall have power to proceed, hear and adjudicate the following cases, in addition to that set forth in sub-section (1):
- (a) A case involving the question of rent, crop or claimed amount or related to the ownership,

possession, use of, or entitlement or disentitlement to, a property,

- (b) A case related to freezing to or preemption, of an immovable property,
- (c) A case related to division of an immovable property,
- (d) A case related to the security, mortgage, use or enforcement of possession, of an immovable property,
- (e) A case related to any concern or interest in an immovable property,
- (f) A case related to compensation related with an immovable property.

(3) Notwithstanding anything contained in sub-section (1) or (2), the district court in which the plaint of a partition case is filed, out of the district courts of the districts where the plaintiff or the defendant is staying, shall have power to proceed, hear and adjudicate the case.

19. District court where defendant is residing or act done to have jurisdiction: (1) The district court in which the plaint is filed, out of the district court of the district where the act has been done and the district court of the district where the defendant is staying, shall have power to proceed, hear and adjudicate any case other than that set forth in Section 18.

Explanation: For the purposes of this Section, the term "district where the defendant is staying" means the district of the

defendant's residence, and also includes, in the case of a legal person, the district where the head office of such a person is situated.

(2) If the plaintiff and the defendant carry on general transaction in a district other than the district of their residence, the district court in which the plaint is filed, out of the district court of the district where such transaction was carried on and the district court of the district where the plaintiff or the defendant, as the case may be, is staying, shall have power to proceed, hear and adjudicate such case.

(3) If, in the circumstance referred to in sub-section (1), any case consists of two or more defendants, the plaint shall be filed in the district court of the district where the most of the defendants are staying.

Provided that if an equal number of defendants are staying in more than one district, the plaint may be filed in any district court of the districts where such defendants are staying.

20. Jurisdiction over cases relating to transaction carried on abroad:

(1) Notwithstanding anything contained in Sections 18 and 19, if any deed relating to a general transaction carried on or contract concluded in a foreign country provides that a case on the matter of such transaction or contract can be filed in any court of Nepal, the district court of the district where the plaintiff or the defendant is residing shall have power to proceed, hear and adjudicate such a case.

(2) Notwithstanding anything contained in sub-section (1), if any deed relating to a general transaction or contract provides that

a case on the matter of such transaction or contract can be filed in any particular district court of Nepal, that district court shall have power to proceed, hear and adjudicate such a case.

- 21. Jurisdiction over transaction done on broad Nepali aircraft or ship:** The court of Nepal shall, subject to Section 20, have jurisdiction to proceed, hear and adjudicate a case on any transaction done on board an aircraft or ship, registered in Nepal in accordance with law, while such an aircraft or ship is outside Nepal.
- 22. Higher court to have jurisdiction:** If a case is filed in both lower and higher courts on any matter falling under the jurisdiction of the lower and higher courts under law, the higher court shall have jurisdiction to proceed, hear and adjudicate the case.
- 23. Court to have jurisdiction:** If any case of the same matter is filed in both the court and other judicial body, the regular court shall have jurisdiction to proceed, hear and adjudicate such a case.
- 24. Jurisdiction over case in which public servant is a plaintiff or defendant:** (1) Notwithstanding anything contained elsewhere in this Chapter, in filing a plaint by a public servant in his or her official capacity against any one or by a person against the public servant in such capacity, such a plaint shall be filed in the district court of the district where the office in which the public servant is serving for the time being or the district where the plaintiff is staying.

(2) In filing a plaint or submitting a statement of defense in his or her personal capacity, a public servant may register it with the district court of the district where he or she is serving.

(3) If any plaint or statement of defense is registered pursuant to sub-section (2), the court shall forward such a plaint or statement of defense to the concerned district court.

(4) If any plaint or statement of defense is received pursuant to sub-section (3), the concerned district court shall proceed, hear and adjudicate the case in accordance with law.

25. Concerned district court to have jurisdiction: (1) If no court or authority is specified by law to have jurisdiction to proceed, hear and adjudicate a case, the concerned district court shall have jurisdiction to proceed, hear and adjudicate such a case.

(2) If any court, body or authority has power under law to proceed, hear and adjudicate any case but such court or body or authority is yet to be formed or specified, the concerned district court shall have power also to proceed, hear and adjudicate such a case pending the formation of such a court or body or specification of such an authority.

26. Plaintiff to be maintained in one court only: (1) If a person has filed several plaints on the same matter in several courts, the plaint shall be maintained in any one court with the consent of both parties to the case, and information thereof shall be given to the rest courts.

(2) If information is received from any court pursuant to sub-section (1) as to whether the plaint filed in such a court is to be maintained or revoked, the court in receipt of such information shall accordingly maintain or void the plaint filed in it.

- (3) If the parties fail to agree pursuant to sub-section (1), the plaint filed earlier in the court, shall be maintained, and the plaints in the other courts shall be voided.
- 27. Jurisdiction of appeal hearing court:** If a case is filed in, and proceeded, heard and adjudicated by, any court in accordance with this Chapter, the court hearing appeals from the orders or judgments passed by that court shall have jurisdiction to proceed, hear and adjudicate appeals, as provided for in law.

Chapter-4

Provisions Relating to Preparation of Deeds

28. Requirements to be fulfilled in preparing deeds: (1) A person shall so prepare a deed clearly setting out the matter on which it is to be prepared, which may be printed, typed or hand-written, that it does not contain any error and overwriting, and the executor concerned with that deed shall affix signature or thumb impression on it.

Explanation: For the purposes of this Chapter,-

- (a) The term "deed" means any of the following deeds:
 - (1) A deed of any kind of general transaction carried on household, transfer, mortgage or pledge of a property,
 - (2) A deed of adoption,
 - (3) A contract,
 - (4) A deed of authorization, power of attorney, deed of consent or other papers of similar nature,
 - (5) Any deed to be submitted to a government office or body corporate,
 - (6) Any kind of deed, including a plaint, statement of defense, memorandum of appeal, petition and application, to be submitted to the court,
 - (7) Any deed to be issued by a government office or body corporate,

- (8) Any other deed whether or not creating a legal right or obligation.
- (b) The term "executor" means a person who, by the contents of a deed, has responsibility to affix signature or thumb impression on the deed.
- (c) The term "government office" means a court, office of the Government of Nepal or Provincial Government or constitutional body, and also includes any office receiving budget or grant from, or having involvement of, the Government of Nepal or Provincial Government or Local Level office.
- (d) The term "body corporate" means a body which is fully or partly owned by the Government of Nepal or Provincial Government, a body established by law, company or trust, and also includes a university, college or school.
- (2) If any error is made or contents happen to differ for any reason, in preparing a deed referred to in sub-section (1), and the deed, therefore, requires correction, such correction shall be made by so crossing out the sentence, word, figure or letter that has to be corrected that such sentence, word, figure or letter seems to have been otherwise and writing such sentence, word, figure or letter as should have been mentioned immediately over or under the cross-out, and the concerned executor shall affix signature or thumb impression on each place where such cross-out or correction is made.

(3) Notwithstanding anything contained in sub-section (2), if any deed cannot be corrected by way of crossing out or despite that such correction can be made, the corrected content would create confusion or doubt or it is a deed required to be authenticated pursuant to law, another separate deed shall be prepared instead of such a deed.

(4) In setting down any amount in a deed referred to in sub-section (1), the amount shall be set down both in figures and words.

(5) If, in setting down any amount pursuant to sub-section (4), there is a difference between the figures and the words, the contents set down in the words shall be valid.

29. Requirements to be fulfilled in affixing signature or thumb impression: (1) In affixing or taking signature or thumb impression on a deed, a person who can write shall write his or her name and sign it, and a person who cannot write shall affix his or her thumb impressions on it.

(2) Notwithstanding anything contained in sub-section (1), in affixing signature or thumb impression on any of the following deeds, the executor shall affix the impressions of both thumbs on it, and also sign it in a manner to prove that he or she has affixed his or her signature on it, if he or she can write:

- (a) A deed related with the transfer of title to, pledge or mortgage of, a property,
- (b) Deed of consent or power of attorney to be submitted to a government body or body corporate,

- (c) A deed of exchange, deed of partition, abandonment of partition share or receipt of partition share to be executed between coparceners,
 - (d) A deed of separation or **reunification** of bread and board,
 - (e) A deed relating to adoption,
 - (f) A receipt executed separately while repaying or lending a debt, without making endorsement on the reverse side of the deed,
 - (g) A deed of loan, mortgage with possession, mortgage without possession, sub-mortgage, letter of terms of repayment, letter of guarantee, contractual bond (*Kabuliyatnama*)
 - (h) Contract of bailment,
 - (i) Unsecured bond (*Kapali*).
- (3) In affixing signature or thumb impression on a deed to be issued by a government office or a body corporate pursuant to sub-section (1), the concerned authority shall sign the deed, writing his or her name and designation, and affix the seal of office on it, and the date of its issue shall be mentioned in such a deed.
- 30. Requirements to be fulfilled in affixing signature on deeds:** (1) A person who can write shall write his or her full name, surname and address in, and sign, the deed.

(2) In affixing signature pursuant to sub-section (1), the other places may be initialed, with affixing full signature on the principal place for signature.

(3) In affixing one's signature pursuant to sub-section (1) on a deed of the same matter containing more than one page, the executor required to sign it shall so initial the top and bottom of each page that no content can be inserted to or deleted from the deed and affix his or her full signature on the principal place for signature.

31. Requirements to be fulfilled in affixing thumb impression: (1) In affixing or taking thumb impression on a deed, the person affixing such thumb impression shall affix impression of the right thumb on the deed.

(2) In affixing or taking thumb impression pursuant to sub-section (1), a person shall affix impression of the left thumb if his or her right thumb is either missing or the wheel and conch like marking of which seems unclear, and affix impression of any one right or left finger of which wheel and conch like marking seems clear, if his or her both thumbs are either missing or the wheel and conch like marking of none of seems clear, or his or her thumb impression shall be taken accordingly.

(3) In the case of a deed requiring the impressions of both thumbs, if the executor's thumb on one hand is either missing or the wheel and conch like marking of which seems unclear, he or she shall affix the thumb impression of any one of the other fingers on that hand, the wheel and conch like marking of which seems clear, and of the thumb on the other hand, the wheel and conch like

marking of which seems clear, or his or her thumb impression shall be taken accordingly.

(4) In affixing or taking thumb impression pursuant to subsection (1), an executor shall affix the thumb impression of any one of the other fingers on each hand, the wheel and conch like marking of which seems clear, if his or her both thumbs are either missing or the wheel and conch like marking of each of which seems unclear, or his or her thumb impression shall be taken accordingly.

(5) In affixing or taking thumb impression pursuant to this Section, if any executor has no figure on either hand or, though he or she has, the wheel and conch like marking of which seems unclear, he or she shall affix the thumb impression of any one or two of the fingers of the same hand, as required, the wheel and conch like marking of which seems clear, or his or her thumb impression shall be taken accordingly.

(6) In affixing or taking thumb impression pursuant to this Section, if an executor has no figure on any hand, or though he or she has, the wheel and conch like marking of each finger seems unclear, the signature and thumb impression of such an executor shall be taken pursuant to Section 33.

(7) Except for the impression of one thumb or both thumbs taken in accordance with law, in affixing or taking thumb impression pursuant to this Section, the matter that the impression of the other figure has been affixed or taken for the reason that the executor's such thumb is either missing or the wheel and conch like marking of which seems unclear shall be set down as remarks in the concerned deed, in affixing or taking the thumb impression of any other finger.

- 32. Signature to be affixed or taken:** If the executor cannot, for the reason referred to in Section 31, affix thumb impression on a deed on which thumb impression and signature have to be affixed or taken but can sign it, only signature of him or she shall be affixed or taken on it, setting out the reason to that effect.
- 33. Signature or thumb impression of guardian or curator to be taken on deed:** In the case of an executor who can, as referred to in Section 30, neither sign a deed on which the executor's signature or thumb impression has to be affixed or taken nor affix thumb impression on it in the circumstance referred to in Section 31, his or her signature or thumb impression shall be affixed or taken in presence of his or her guardian or curator, as the case may be.
- 34. Procedures for executing deed by person who is not able to affix signature or thumb impression:** In taking only signature of the executor pursuant to Section 32 or signature or thumb impression of the guardian or curator of the executor pursuant to Section 33, the concerned authority shall certify such a deed, stating the reason therefor in its upper part.
- 35. Procedures for executing deed on behalf of person in special circumstance:** (1) Notwithstanding anything contained elsewhere in this Chapter, in executing a deed on behalf of a person with sight or speech impairment, the deed shall be prepared with the contents as expressed or gestured by him or her in presence of his or her guardian or curator also, if any, and the signature or thumb impression of the guardian or curator also shall be taken on such a deed.

(2) In executing a deed on behalf of a minor or person of unsound mind, it shall be prepared in presence of his or her guardian or curator, if any, and the signature or thumb impression of him or her also shall be taken on it.

(3) Notwithstanding anything contained elsewhere in this Section, in taking the signature or thumb impression of a person who can neither write nor read, his or her signature or thumb impression shall be affixed in presence of the person chosen by him or her if he or she so wishes, and the signature or thumb impression of the person so chosen shall also be taken on the deed, also specifying the reasons in the deed that he or she has been so chosen.

36. Deeds to be valid: (1) If signature or thumb impression is affixed on a deed pursuant to this Chapter, the deed shall, subject to law, be valid for any purpose whatsoever and enforced in accordance with law.

(2) Notwithstanding anything contained in sub-section (1), in the case of any deed which involves transaction of more than fifty thousand rupees and requires affixation of signature or thumb impression pursuant to this Chapter or which involves transaction of an amount in excess of such an amount as may be so determined by the Government of Nepal, by a notification in the Nepal Gazette, that it is not less than fifty thousand rupees, and is prepared in household within Nepal, except any deed which is by law required to be authenticated or approved by any body, or recorded in, or enforced by, such a body, or is transacted through a **negotiable instrument** or any contract, agreement under a publicly notified tender, the concerned parties shall appear before the office of the Local Level or

ward committee of the Local Level and have the deed certified on top of it by such an office, and in so certifying a deed, the certifying office shall cause the executors of such a deed to affix their respective signature or thumb impressions on the deed.

Provided that the parties to a deed prepared in household, involving transaction of less than fifty thousand rupees, may, if they so wish, have even such a deed certified pursuant to this Section.

(3) If a deed is tendered for certification pursuant to sub-section (2), the office of the concerned Local Level or ward committee of the Local Level shall certify such a deed on the same day, upon maintaining the records setting out, *inter alia*, the name, surname and address of each party to the deed, the date of execution of the deed, the amount transacted or claimed amount specified in the deed.

(4) The office of the Local Level or ward committee of the Local Level may charge a fee not exceeding two hundred rupees for certification a deed pursuant to sub-section (3).

(5) The court shall not enforce a deed failing to meet the requirements referred to in this Section.

Provided that the provision of this Section shall not prejudice the recognition or enforcement of a deed prepared in accordance with the law in force for the time being prior to the commencement of this Section.

- 37. Details of identity to be set down in deed:** (1) Any deed referred to in sub-section (2) of Section 29 shall be so prepared that the identity of the main executor related to the deed is clearly set out.

(2) The identity to be set out pursuant to sub-section (1) shall contain the concerned person's three-generation description, namely, that of his or her father, mother, grand-father, grand-mother, and himself or herself, his or her wife's or husband's name, his or her citizenship number, age, the date and district of issue of his or her citizenship certificate, address of his or her permanent residence, address of his or her temporary residence, if any, and in the case of a foreign citizen, details of his or her citizenship, his or her passport number, the country and date of issue of passport, and his or her address, email address and phone number.

(3) In executing a deed in presence of a guardian or curator pursuant to this Chapter, the deed shall contain the guardian's or curator's name, surname, address, citizenship number, and in the case of a foreign citizen, his or her passport number, the country and date of issue of a passport, and his or her address, email address and phone number.

- 38. Details of body corporate to be set down:** (1) In executing, or causing to be executed, any deed on behalf of a body corporate, the deed shall contain the description clearly identifying such a body, its registration number or the place of its registered or head office, and the signature or thumb impression of the person authorized to that effect by a decision of its directors shall be affixed or taken on the deed.

(2) In affixing or taking signature or thumb impression pursuant to sub-section (1), the thumb impression of the person signing the deed on behalf of such a body shall not be required to be affixed or taken.

Provided that upon the deed being signed, the seal of such body shall be affixed thereunto.

(3) Notwithstanding anything contained in sub-section (2) of Section 37, it is not necessary to specify the description of three-generation in a deed the executor of which is a body corporate.

39. Signature to suffice: (1) Notwithstanding anything contained elsewhere in this Chapter, in signing any deed by any public office-holder in that capacity or by an office-bearer of a body corporate in that capacity, in preparing the report of any study, research, probe or inquiry, or in affixing signature or thumb impression on any deed, other than a deed requiring thumb impression pursuant to law, affixation of thumb impression on such deed shall not be required, and such a deed shall be deemed to have been duly prepared if it is duly signed by the concerned person, with his or her name and designation being mentioned, along with the date, as well.

(2) Even though a document prepared pursuant to sub-section (1) does not specify the name and designation of the concerned office-holder, the court shall impose a fine not exceeding five hundred rupees on the office-holder failing to so specify the name and designation, take such a deed in evidence as if it satisfied the requirements and proceed, hear and adjudicate the case on the basis of such a deed.

40. Signature or thumb impression to be affixed in indelible ink: (1) In affixing or taking thumb impression pursuant to this Chapter, the wheel and conch like figure of the finger shall be colored with indelible ink or otherwise and impressed on the deed.

- (2) A person who has to sign shall write his or her signature in indelible ink.
- 41. Place and date to be set down in preparing deed:** In preparing a deed referred to in sub-section (2) of Section 29, the deed shall contain its main contents, followed by the place and date of its preparation.
- 42. Deed to be witnessed:** (1) A deed required to be witnessed pursuant to law shall be prepared in witness of at least two persons who are competent to conclude a contract, and that the act, transaction referred to in the deed has been carried out in their presence shall be specified in the deed.
- (2) The signature and thumb impression of each witness referred to in sub-section (1) shall be affixed or taken on a deed pursuant to this Chapter, with the details setting out the identity and address of the witness being specified in the deed.
- (3) A deed prepared pursuant to this Chapter shall contain the matter whether it has been written by the executor himself or herself or drafted and prepared by another person, and be signed by the writer, with the description setting out his or her identify and address as well being specified in the deed.
- (4) If it is required by law to obtain any license to prepare a deed, the writer preparing the draft pursuant to sub-section (3) shall also specify the details thereof.
- 43. Deed failing to meet requirements to be invalid:** (1) A deed prepared without fulfillment of the requirements pursuant to this Chapter shall not be valid.

(2) Notwithstanding anything contained in sub-section (1), a deed may be recognized in any of the following circumstances, by imposing a fine not exceeding two hundred rupees in view of the nature of the deed.

- (a) If a person who can write has not affixed thumb impression but has duly affixed signature or has so affixed thumb impression as not to be clear,
- (b) If a person who can write has not affixed signature but has affixed thumb impression only,
- (c) If the deed at its end with the date of execution does not bear the signature or thumb impression of its executor,
- (d) If the deed has not been witnessed or, though witnessed, does not bear the signature of the witness,
- (e) If the name, surname, address and designation, as well, have to be set down, the deed omits any or all of the surname, address and designation.

(3) Notwithstanding anything contained elsewhere in this Chapter, if a law provides that any deed can be prepared through electronic means in accordance with law, the deed so prepared shall be deemed to be a duly prepared deed.

44. Deed executed by executor to be valid: Notwithstanding anything contained elsewhere in this Chapter, if a deed is proved to have been hand written by the executor himself or herself, such a deed shall be valid in accordance with law.

45. Deed may be registered upon making remarks: (1) If a person tenders a deed containing some erasure, addition and deletion, with

the letters being legible, for registration in a government office or a body corporate, the concerned authority shall cause the person to affix his or her signature or thumb impression at the place of such erasure, addition or deletion, and authenticate and register the deed, with remarks of such erasure, addition or deletion in such a deed.

(2) If a deed tendered by any government office or a body corporate for registration contains any erasure, addition or deletion, which is signed by the chief of such an office or a body or the person authorized by the chief, the same deed may be registered.

(3) If any deed failing to meet the requirements pursuant to sub-section (1) or (2) is tendered for registration, the competent authority of such a government office or a body shall clearly set out and specify the reason why the deed cannot be registered on the reverse side of, date and sign, the deed, and, upon getting a receipt from the person tendering it for registration, return it.

(4) Notwithstanding anything contained elsewhere in this Section, no document registered in a government office or a body corporate shall be returned to any one in exchange for another deed, and, no addition or deletion of any figure or letter to or from, or erasure or alteration in, such a deed shall be made.

- 46. Copies of deeds to be provided:** (1) If any person who has concern in a case or his or her law practitioner makes an application for a copy of a deed contained in the case-file, including the plaint, statement of defense, memorandum of appeal, petition, deed relative to the evidence produced by the plaintiff or defendant and the judgment, the court shall provide the copy of such a deed as soon as possible.

Provided that any law practitioner may obtain a copy of a judgment.

(2) Except as provided for in sub-section (1), any person concerned with any deed held in any government office or body corporate may make an application, setting out the matter why he or she is concerned with the deed, to the concerned government office or body corporate for a copy of the deed.

(3) If the content of the application made by a person for a copy of the deed pursuant to sub-section (1) or (2) appears to be reasonable, there shall be charged a fee of five rupees per page where the concerned government office, corporate body or applicant himself or herself is to copy it or get it photocopied, and a fee of ten rupees per page where the government office or body corporate itself is to make the copy and provide it.

(4) In providing a copy pursuant to sub-section (3), the matter that the copy has been provided as requested by the government office, corporate body or applicant and the copy corresponds to the original shall be authenticated, and the copy shall be provided on the same day.

(5) Notwithstanding anything contained elsewhere in this Section, no copy of a deed that has to be kept confidential or that has not to be made public pursuant to law or that has been ordered by a court not to be made public.

Chapter-5

Provisions Relating to Statute of Limitation

- 47. Plaintiff to be filed within statute of limitation:** (1) If any certain period is specified by law for filing a plaint in any court, such a period shall be deemed to be a statute of limitation.
- (2) If a statute of limitation is provided for pursuant to sub-section (1), the concerned person shall file a plaint in the court within such statute of limitation.
- (3) If any person appears in the court to file a plaint contrary to sub-section (2), his or her plaint shall not be registered, and even if such a plaint happens to have been registered for any reason, such a plaint shall be revoked.
- 48. Plaintiff may be made failing provision of statute of limitation:** If no statute of limitation is provided by law for the filing of a plaint on any matter, a plaint may be made within six months after the date of the accrual of the cause of making plaint.
- 49. Commencement of statute of limitation:** (1) A statute of limitation provided by a law for filing a plaint on any matter shall be deemed to have commenced in accordance with that law.
- (2) If there is no legal provision in relation to the commencement of a statute of limitation pursuant to sub-section (1), the statute of limitation shall be deemed to have commenced from the date of the accrual of the cause of making plaint.
- 50. Plaintiff to be made from the date of knowledge:** (1) Notwithstanding anything contained in Section 48 or 49, if the

statute of limitation of any person has been experied because of deception, forgery, fraud or conspiracy or similar other reason or not being in a position to know the matter since any act was done clandestinely, appears to file a plaint, setting out the reason, within ninety days after the date of knowledge of that matter by him or her, the court shall file such a plaint subject to this Chapter.

(2) For the purposes of sub-section (1), in the case of the Government of Nepal, Provincial Government, Local Level or any body corporate, the date on which the concerned office of such a Government or Level or such a body knew the cause of making plaint shall be deemed to be the date of knowledge.

- 51. Plaintiff may be filed after leave:** (1) If the last day of the statute of limitation falls on a public holiday and the concerned person requests for the registration of a plaint on the first day on which the court opens immediately after such a holiday, the court shall register the plaint.

(2) If a plaint is registered pursuant to sub-section (1), the plaint shall be deemed to have been filed within the statute of limitation.

Explanation: For the purposes of this Section, the term "public holiday" means a holiday, for the whole or half day, as notified by the Government of Nepal or the concerned Provincial Government, in the case of a Province, that the government offices or courts remain closed on that day.

- 52. Commencement of statute of limitation for minor or person of unsound mind:** (1) If any person who is to make a plaint is a minor, the statute of limitation shall be deemed to have been commenced in his or her case from the day on which he or she attains majority.

(2) If any person who is to make a plaint becomes of unsound mind prior to the commencement of the statute of limitation, the statue of limitation shall be deemed to have commenced in his or her case from the day on which he or she becomes of sound mind.

(3) If any person becomes of unsound mind after the commencement of the statute of limitation and he or she makes a plaint within the period of statute of limitation that remains after deduction of the period during which he or she is being of unsound mind, between the commencement and end of the statute of limitation, the plaint shall be deemed to have been made within the statute of limitation.

Provided that if the period of statute of limitation remains after the person who was of unsound mind has become of sound mind is less than fifteen days, a period of fifteen days shall be deemed to be the remaining period of the statute of limitation.

53. Commencement of statute of limitation for heir: (1) If a minor or a person of unsound mind who is to make plaint dies before the minor becomes major or the person becomes of sound mind, his or her heir may make a plaint within the statute of limitation from the date on which he or she dies.

(2) If a minor becomes major and thereafter dies, his or her heir may make a plaint within the remaining period of the statute of limitation when such a remaining period is thirty-five days or more from the date on which he or she so dies, and within thirty-five days from the date on which he or she so dies when such a remaining period is less than thirty-five days from such a date.

- (3) If a person of unsound mind becomes of sound mind and thereafter dies, his or her heir may make a plaint within the remaining period of the statute of limitation when such remaining period is thirty-five days or more from the date on which he or she so dies, and within thirty-five days from the date on which he or she so dies when such remaining period is less than thirty-five days from such a date.
- 54. Plaintiff may be made by guardian or curator:** Notwithstanding anything contained in Section 52 or 53, in the case of a minor or person of unsound mind, his or her guardian or curator, if any, under law may make a plaint within the statute of limitation specified by law, pursuant to this Chapter.
- 55. Statute of limitation not to be postponed:** No statute of limitation shall be postponed in the case of any other person except any one, out of the persons who are to make plaint jointly, who is a minor or person of unsound mind.
- Provided that such a minor or a person of unsound mind may make a separate plaint in his or her case subject to Section 53 after he or she becomes a major or a person of sound mind, as the case may be.
- 56. Statute of limitation in relation to transaction carried on abroad:** If the law or contract provides that a plaint may be made in any court of Nepal in relation to any act, action or transaction done or taken in a foreign country, such a plaint may be made subject to this Chapter as if such an act, action or transaction were done or taken within Nepal.
- 57. Statute of limitation of plaintiff made in court without jurisdiction:** If a person files a plaint in a court and it appears, for any reason, that the court has no jurisdiction to proceed, hear and settle such plaint,

the statute of limitation for making a plaint by the concerned person shall be deemed to exist for such period starting from the date on which such a court terminates the proceeding thereon as remains by excluding the period from the day of filing of such a plaint to the day of termination of such proceeding in such a court.

Provided that,

- (1) If the period of statute of limitation remains less than seven days, the statute of limitation for making a plaint shall exist until seven days.
- (2) If the court has made an endorsement at the time of filing a plaint that it has no jurisdiction, the statute of limitation for filing a plaint pursuant to this Section shall not be extended merely by the reason that proceeding has been instituted in the court without jurisdiction.
- (3) Nothing shall be deemed to bar the concerned person from filing a plaint in the competent court within the statute of limitation referred to in law merely by the reason that the court in which a plaint was filed has not settled the plaint after the court acknowledges that it has no jurisdiction to proceed, hear and settle such a plaint.
- (4) If a plaint is filed, lying as to the statute of limitation, even after the expiration of the statute of limitation in accordance with law, the jurisdiction cannot be established merely by the reason that the plaint has been registered.

58. Statute of limitation not to be expired: If a person who being unable to file a plaint within the statute of limitation as a result of the

occurrence of the following circumstance beyond control thereby statute of limitation expires, tenders a plaint for registration within the following period, setting out the matter of such expiration, the court shall, notwithstanding anything contained elsewhere in this Chapter, register such a plaint, subject to Section 59:

- (a) If a person entitled to file a plaint had to observe obsequies or mourning on his or her 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 entitled to file plaint 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 for journey 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, a period of fifteen days, excluding the time required for journey, from the date of resumption of such a route or means of public transportation,
- (d) If a person entitled to file a plaint was abducted or taken hostage by any one, a period of fifteen days, excluding the time required for journey, from the date of being released from such abduction or hostage-taking,
- (e) If there occurred a disaster such as earthquake or volcano eruption, a period of ten days, excluding the

time required for journey, from the date of occurrence of such a disaster.

- (f) If the person, because of being unconscious or unable to make movement because of any accident or being unable to make movement due to suffering from any severe disease all of a sudden, had to undergo treatment in a hospital, a period of fifteen days, excluding the time required for journey, from the date of his or her admission to the hospital.

59. Evidence of reason for expiration of statute of limitation to be submitted: (1) If any person, owing to the circumstance referred to in Section 50 or 58, fails to file a plaint within the statute of limitation, the person shall make a petition to the court, along with such evidence as may be necessary to prove that circumstance.

(2) If any person, specifying a reason for being unable to submit the evidence along with the petition pursuant to sub-section (1), requests for a period of time for the same, the court may give such period of time as it deems appropriate, not exceeding fifteen days, to the person intending to file a plaint for the submission of such evidence.

60. Statute of limitation to commence from the date of approval: If it is required by law to obtain approval of any one prior to filing a plaint against any person, body or office-bearer, the statute of limitation for filing the plaint on the matter shall be deemed to commence from the date on which the concerned person obtained the notice of such an approval.

61. Statute of limitation to commence after specification of authority: If the Government of Nepal, any other body or office-bearer is empowered by a law to specify the case trying authority, court or body, the statute of limitation for filing a plaint shall commence accordingly if such an authority, court or body is specified within the statute of limitation and, failing such specification, within thirty-five days under the relevant law from the date on which the authority, court or body was so specified.

Provided that if a case is filed in the district court pursuant to Section 25, the matter shall be governed accordingly.

62. Computation of period of statute of limitation: (1) If the period of statute of limitation is specified in terms of days, the number of days so specified shall be computed on the day counting basis.

(2) In counting days pursuant to sub-section (1), the period of statute of limitation shall be fixed by counting days from the following day of the day on which the statute of limitation has been commenced.

(3) If the period of statute of limitation is specified in terms of month, the number of months so specified shall be computed on the basis of the first day of each month irrespective of the days of any month.

(4) If the period of statute of limitation is specified in terms of year, the number of years so specified shall be computed by treating a period of twelve months as one year.

Chapter-6

Provisions Relating to Court Fees

63. Payment of court fee: (1) In filing any plaint, memorandum of appeal or counterclaim to the court, the court fee shall be charged.

(2) If a review or revision order is made on a petition for the review or revision of any case, except that referred to in sub-section (1), the court fee shall be paid.

Explanation: For the purposes of this Chapter, the term "court fee" means the fee to be charged in filing a plaint or memorandum of appeal, or petition for the review or revision of a case, and also includes the fee payable by anyone who files counterclaim.

(3) Notwithstanding anything contained in sub-section (1) or (2), no court fee shall be charged pursuant to this Chapter in respect of a case in which the Government of Nepal or Provincial Government is a plaintiff, a case within the jurisdiction of the Local Level, a case involving the use of a public or government property, or a case to be proceeded with by the body specified by the Government of Nepal, by a notification in the Nepal Gazette.

64. Case not to be proceeded with, without payment of court fee: (1) No person may make any plaint, memorandum of appeal or counterclaim or petition for the review or revision of any case without payment of the court fee chargeable pursuant to this Chapter, and no proceedings shall be taken there upon.

(2) Except as otherwise provided for in this Chapter, a plaint, memorandum of appeal or petition for the review or revision

of a case registered without payment of the court fees shall be dismissed.

65. Cases may be adjudicated without collecting court fee: (1) Notwithstanding anything contained in Section 64, the judge, in any of the following circumstances, may, by executing a memorandum (Parcha) with the reasons, make an order to proceed with a plaint, memorandum of appeal, counterclaim or petition for the review or revision of a case, subject to the collection of the whole or part of the court fee subsequently:

(a) If, upon examining a petition made by a person required to pay the court fees, specifying the reason that he or she is not able to pay the chargeable court fees fully or partly because his or her financial condition is extremely weak, there is any reasonable ground to believe that matter,

(b) If it is recommended by the concerned Local Level that a person required to pay the court fees is not able to pay the court fees because that person has no property except the property subject to the case, or if, upon examining a petition, stating the same matter, made by such a person in the court, there is any reasonable ground to believe that matter.

(2) If the judge makes an order to collect the court fees later fully or partly pursuant to sub-section (1), the concerned employee shall clearly set down how much of court fees has been collected and how much is outstanding, and attach the records thereof with the case-file.

- 66. Price or claimed amount of property to be specified:** (1) While filing a plaint one shall clearly specify the value or claimed amount of a property in terms of money which one has claimed or demanded to release from other's claim.
- (2) If, except in the case set forth in sub-section (1), a person makes a claim only that any one has not done any thing which one is bound to do or has done or is about to do any thing which one is bound not to do, the plaint shall clearly specify such a claim also.
- (3) If a plaint is filed with a claim pursuant to sub-section (2) and a decision has to be made allowing the provision of the value or claimed amount subsequently, the court shall, prior to making such a decision, cause the plaintiff to pay the court fees according to such a value or claimed amount.
- 67. Basis for fixation of value or claimed amount:** For the purposes of the payment of court fee, the value or claimed amount of an immovable property shall be fixed on the basis of the following order of priority, pursuant to Section 66:
- (a) The fee fixed by the land revenue office for the purpose of registration,
 - (b) The value, if any, fixed for the purpose of tax in accordance with the laws in force,
 - (c) Locally prevailing value.
- 68. Value or claimed amount to be taken as basis for collecting court fee:** The court shall collect the court fee on the basis of the following value or claimed amount:

- (a) In the case of a claim for establishment of title or release from claim to money, the amount of money which is the subject matter of the claim,
- (b) In the case of a claim for entitlement or claim to release from other's claim to gold, silver, jewelries or ornaments, the amount to be set by the rate fixed by the Nepal Rastra Bank, and failing such a rate, the amount to be set according to the prevailing market value thereof,
- (c) In the case of a claim for entitlement or claim to release from other's claim to any movable property other than that set forth in clause (b), the amount to be set according to the prevailing market value of such property,
- (d) In the case of a claim for entitlement or claim to release from other's claim to any securities or treasury bills, the value set by the stock market,
- (e) In the case of any movable property of which prevailing market value is not set pursuant to clause (c), the value or claimed amount specified by the plaintiff,
- (f) In the case of a claim for the yields of a land, the amount of yields of the previous year which experienced no disaster,
- (g) In the case of a claim for entitlement to, or possession in, or claim to release from other's claim to, an immovable property, land, the amount of value or

claimed amount set by the plaintiff pursuant to Section 66,

- (h) In the case of a claim for the remission of the yields of a land which experienced disaster, the amount claimed for such remission,
- (i) In the case of a claim for the remission of any thing other than the yields of a land, the amount claimed for such remission,
- (j) In the case of a claim for entitlement or to, or claim for a release from, a trust, *Mahantyayi*, priest, *Bhandare* etc., the amount of the residue to be enjoyable upon administering the functions of the trust, and in the case of any other claim, the value or claimed amount of the specified land and the amount of *Khangi* income of one year as may be enjoyed where the land is not specified,
- (k) In the case of a claim for entitlement or to release a claim to any contract amount, the contract amount of such number of years as is the subject matter of claim, and if only loss of income is claimed, the amount of the loss of income claimed,
- (l) In the case of a mortgage of immovable property, the claimed amount specified in the deed,
- (m) In the case of a claim for insolvency or date for repayment, the claimed amount indicated by the debtor,
- (n) In the case of a claim for the provision of salary, allowance or installment, the amount so claimed,

- (o) In the case of a claim for wages, remuneration, loss, damages, the amount of the value so claimed,
 - (p) In the case of a claim for a principal, profit, dividend, bonus, donation, gift, interest, house or shop rent or any property, the value of such property,
 - (q) In the case of a claim for any compensation, the amount so claimed,
 - (r) In the case of a claim for performance or recovery pursuant to a contract, the amount claimed for such performance or recovery.
- 69. Rate of court fee:** The court fee shall be charged at the following rate, according to the value or claimed amount, which is the subject matter of the claim for entitlement or claim for release from other's claim, pursuant to Section 68:
- (a) Five hundred rupees, for up to the first twenty-five thousand rupees,
 - (b) By five percent, for up to the second twenty-five thousand rupees, that does not exceed fifty thousand rupees,
 - (c) By three point five percent, for up to the third fifty thousand rupees, that does not exceed one hundred thousand rupees,
 - (d) By two percent, for up to the fourth four hundred thousand rupees, that does not exceed five hundred thousand rupees,

- (e) By one point five percent, for up to the fifth two million rupees, that does not exceed two million five hundred thousand rupees,
 - (f) By one percent, for any amount above it, not exceeding two million five hundred thousand rupees.
- 70. Court fee to be charged in lump sum:** (1) Notwithstanding anything contained in Section 69, the court fee of a lump sum of five hundred rupees shall be charged, in any of the following matters and any case related thereto:
- (a) Registration or transmission of a land or voidance of such registration or transmission,
 - (b) Claim for invoice and receipt,
 - (c) Claim for the invalidation of a deed, deed of the time bound repayment (*Bhakhatra*), letter of guarantee, bond, receipt etc.,
 - (d) Claim for the eviction of tenant from a house or land or claim against such eviction,
 - (e) Claim on obstruction with the construction of a dam, canal or ditch or denial for carrying of water through such dam, canal or ditch or on the use of water in breach of **priority order**,
 - (f) Claim for opening or closing any exit, window or door or for making, adding or closing any window, door or veranda,

- (g) Claim for the issuance of an injunction or mandatory order to refrain, or cause to be refrained, from doing any act or to cause any act to be done or for the vacation of such an order,
- (h) Determination of full competency, quasi-competency or incompetency of any person,
- (i) Divorce,
- (j) Settlement of relationship,
- (k) Claim for the judicial declaration of the death of a person or voidance of a judicial declaration or claim for amendment thereto,
- (l) Claim for commencement or non-commencement of bankrupt proceeding,
- (m) Appointment or voidance of appointment of a trustee,
- (n) Appointment or voidance of appointment of a guardian,
- (o) Appointment or voidance of appointment of a curator,
- (p) Claim for usufruct or voidance thereof,
Provided that the court fee shall be charged according to the value, if any, specified.
- (r) Claim for servitude or voidance thereof.

(2) Notwithstanding anything contained in sub-section (1), the court fee of one thousand rupees shall be charged in the following cases:

- (a) Claim for the ascertainment or provision of a partition share in the property subject to partition,
- (b) Voidance of a deed or document.

(3) The court fee of a lump sum of two thousand five hundred rupees shall be charged on a dispute filed in relation to any other contract, if, the claimed amount of which is not specified, save in sub-sections (1) and (2).

71. Special provision relating to collection of court fee: (1) Notwithstanding anything contained in Section 70, the court fee shall be charged as follows in the following cases:

- (a) If entitlement or disentitlement to any property has to be settled from the pleas of the plaintiff or appellant, according to Section 68,
- (b) If the claimed amount of a property is determined, in a partition case, on the basis of the inventory of property which is submitted with the statement of defense because it has not been submitted with the plaint or which is required by the court, according to such a claimed amount,
- (c) If a plaint is filed claiming both principal and interest, according to the amount of interest accrued up to the date of filing of the plaint,

(d) If a judgment awards the recovery of interest as well, according to the amount of interest accrued from the date of filing of the plaint to the date of the judgment.

(2) Notwithstanding anything contained in sub-section (1), if the value or claimed amount is specified in any case, the court fee shall be charged according to the value or claimed amount as referred to in the other Sections of this Chapter, and in any other case in which the value or claimed amount is not specified, the court fee of one thousand rupees shall be charged, subject to Section 70.

72. Value of previous day of the day on which case is filed to be set:

(1) In setting the value of any property for the purpose of charging the court fee pursuant to this Chapter, the value shall be set according to Section 67 if it is an immovable property, and according to the value of the property prevailing on the previous day of the day on which the case is filed if it is other property.

73. Court fee chargeable on making appeal: (1) Irrespective of the level at which an appeal is filed in a case in which the value or claimed amount is specified, an additional court fee shall be charged by fifteen percent of the court fee chargeable for filing a plaint, to the extent to which an appeal is filed upon being unsatisfied.

(2) In filing an appeal at any level in a partition case in which the claimed amount is not specified, there shall be charged the same court fee as is chargeable for filing the plaint.

(3) If an appeal is filed to the second level court against the appeal judgment made by the first level appeal hearing court, the

court fee shall be charged by additional fifteen percent of the court fee chargeable for filing the plaint, to the extent to which the appeal is filed upon being unsatisfied.

- 74. Court fee chargeable for review or revision of case:** If, upon a petition for the review or revision of any case in accordance with law, an order is made to review or revise the case, the court fee shall be charged by additional ten percent of the court fee chargeable for filing the plaint, to the extent to which the pray is made for the review or revision upon being unsatisfied.
- 75. Payment of court fee, penalty and fine payable pursuant to judgment:** (1) Any party to a case who files an appeal against the judgment of first instance or an appeal to the second level appeal hearing court against the judgment of the first level appeal hearing court shall pay the court fee as held to have been provided by him or her to the other party in pursuance of the judgment.
- (2) Any party to a case who makes petition for review, or revision of the case in accordance with law shall pay such the court fee as chargeable pursuant to the judgment.
- (3) Notwithstanding anything contained elsewhere in this Chapter, if any penalty or fine is imposed on any party to a case pursuant to a judgment, no memorandum of appeal or petition for the review or revision of a case tendered by that party shall be registered without payment of such penalty or fine or furnishing of guarantee therefor.
- 76. Court fee to be paid in cash:** (1) Except as otherwise provided for in this Chapter, the court fee shall be paid in cash.

(2) Notwithstanding anything contained in sub-section (1), if the amount of court fee exceeds one hundred thousand rupees, such a bank guarantee valid for up to one year as issued by a bank having obtained "A"-class license pursuant to the banks and financial institutions law in force may be submitted, and the renewal of such a bank guarantee shall be made each year before the expiry of its validity period until the case is adjudged.

(3) No part of or claimed or disputed property may be furnished in consideration for the bank guarantee to be submitted pursuant to sub-section (2), and the amount of court fee referred to in sub-section (1) shall be paid in cash at least one month before the expiry of the period of one year. If the court fee cannot be so paid or the amount of bank guarantee cannot be recovered by the court, such a case shall be dealt with under Section 64.

(4) If the court fee is paid to the court pursuant to this sub-section (1), the concerned employee shall record it as credit in the cash-book, duly prepare a receipt thereof in triplicate, give one copy to the payer of the court fee and retain another copy in the concerned case-file.

77. Shortfall court fee caused to be paid: (1) If it appears, in registering a plaint or memorandum of appeal, or from the contents of the plaint or memorandum of appeal, that payment of court fee less than the court fee chargeable pursuant to this Chapter is tendered, the court shall require the concerned person to pay the shortfall court fee immediately.

(2) If any person, being unable to pay the shortfall court fee immediately pursuant to sub-section (1), requests for a period of

time, the court shall give time to the concerned person to pay the shortfall court fee within the deadline for filing a plaint or memorandum of appeal if there are seven days to go for such deadline, and within seven days, if the deadline is of less than seven days.

(3) If, subsequent to the registration of a plaint or memorandum of appeal, the court comes to know, in any manner, that there has been paid or taken the court fee less than the court fee required to be collected pursuant to this Chapter or if, upon examining a complaint made by any one on this matter, the matter seems to be reasonable, the court shall appoint a date for paying the shortfall court fee within seven days if the party is on recognizance and issue a process ordering the party to pay the shortfall court fee within a period of seven days if the party is not on recognizance.

(4) If the party fails to pay the court fee within the period given pursuant to sub-section (3), the court shall not proceed, hear and settle such a case.

78. To refund excess court fee: (1) If it is found from a petition by the party or **otherwise** in the course of the proceedings of a case that excess court fee has been collected from any party, the court shall refund the excess court fee to the concerned party within three months from the date of such a petition or knowledge.

(2) If it is found in any manner after the judgment of a case that excess court fee has been collected, the concerned party may make a petition to the concerned court to have such court fee returned.

(3) If, upon examining the petition received pursuant to sub-section (2), the applicant's demand appears to be reasonable, the court shall return such court fee to the petitioner within three months from the date of such a petition.

- 79. Complaint may be made on court fee specified by court:** (1) A person who is not satisfied with the court fee specified by the court pursuant to this Chapter may submit a complaint to the judge of the same court within three days if the court fee has not yet been paid and prior to the judgment on the case if the court fee has already been paid.

(2) If, upon examining the complaint received pursuant to sub-section (1), it appears that excess court fee has been collected, the concerned judge shall make an order to refund the excess court fee and to take departmental action the employee who has collected the excess court fee knowingly.

Explanation: For the purposes of this sub-section, the term "knowingly" means omission to collect the court fee of the value or claimed amount, revealed from the contents of a plaint or memorandum of appeal, in accordance with this Chapter.

(3) If, upon examining the compliant pursuant to sub-section (2), its content is held to be false, the complainant shall be liable to a fine to be set by fifteen percent of such amount as claimed by which excess court fee has been specified or collected.

- 80. Fine for collection or payment of lesser court fee:** (1) The stakeholder party may, if he or she so thinks, make a complaint to the court where the case is *sub judice* that any one has decreased the

value or claimed amount with the intention of paying lesser court fee.

(2) If, upon examining a complaint received pursuant to sub-section (1), or examining the case-file by the court itself though such a complaint has not been made, it appears that the value or claimed amount has been reduced with intention of paying lesser court fee, the court shall fine such a party with fifteen percent of the decreased court fee and cause that party to pay the shortfall court fee.

(3) If, on examining a complaint made pursuant to sub-section (1), the complaint is held to be false, such a complainant shall be liable to a fine of five percent of the amount claimed by him or her to be shortfall.

(4) If it appears, from a complaint made by any one or in any other manner, that any employee of the court has knowingly collected the court fee lesser than the chargeable court fee, departmental action shall be taken against such an employee in accordance with law.

(5) If the final judgment has been passed in the case in which lesser court fee has been collected pursuant to sub-section (4) or the time-limit for filing an appeal in such a case has already expired and such court fee cannot be recovered from the concerned party, the claimed amount of such court fee shall be recovered from the employee who has so collected lesser court fee.

- 81. Forfeiture of court fee:** If the plaintiff or appellant loses the case chargeable with the court fee or if, upon proceeding with a petition

for the review or revision of a case, the previous judgment is upheld, the court fee paid by him or her shall be forfeited.

82. Proceeding to be conducted when case is compromised, dismissed or canceled: (1) In executing a deed of compromise in a case filed upon full payment of the court fee, the court shall collect twenty-five percent of the court fee if the deed is executed before the examination of evidence by the court of first instance, and half the court fee in making compromise subsequently at any stage and level, and refund the remaining court fee to the plaintiff, appellant or concerned party.

(2) In executing a deed of compromise in a case registered subject to the collection of the whole or part of the court fee subsequently, the court shall execute the deed of compromise only after collecting the court fee chargeable pursuant to sub-section (1) from the plaintiff or appellant.

(3) If a case registered upon full payment of the court fee is dismissed or canceled, the plaintiff or appellant shall not be liable to any punishment.

(4) If any case is dismissed or canceled, the court fee paid for such a case shall not be refunded.

(5) If a case registered subject to the collection of the whole or part of the court fee subsequently, the remaining court fee shall be recovered from the plaintiff or appellant.

Provided that in the case of cancellation of a case, it appears that the plaint that should not have been filed by virtue of the

contents of the plaint has been filed, the court fee collected in such a case shall be refunded.

(6) If a case compromised, dismissed or canceled in fulfillment of the requirements of law is revived for any reason on a complaint by the party and is to be proceeded again, the party on the complaint of whom the case is to be so proceeded shall again pay the court fee chargeable pursuant to this Chapter to the court seized of the case.

83. Recovery of court fee: (1) The winning party of a case charged with the court fee shall be entitled, in accordance with the judgment, recover the amount of court fee paid by him or her from the losing party.

(2) In making recovery of the court fee pursuant to sub-section (1), such recovery shall be made according to such claimed amount as held to be recoverable from each of them if there are more than one defendant or appellant, according to the extent of the right or claim that has to be disentitled from them respectively on the matter of dis-entitlement of right or claim, and on a pro rata basis from the losing defendants or respondents in the other circumstances.

(3) If a plaint has been registered without payment of part or whole of the court fee and the plaintiff or appellant wins the case, the court fee held to be chargeable shall be recovered from the other party as a penalty or fine.

(4) The plaintiff or appellant who has made a claim of more than one matter shall be entitled to recover the chargeable court fee

from the other party according to **only** the extent of the claim of that matter as held to be sustained.

(5) If a case has been filed without payment of part or whole of the court fee and the plaintiff or appellant loses the case, the chargeable court fee shall be recovered from them.

(6) If a judgment is made entitling the plaintiff or appellant to recover the court fee pursuant to this Section and the defendant or respondent dies prior to the recovery, the plaintiff or appellant shall be entitled to recover such court fee from the successor to such a defendant or respondent.

(7) If, in passing a judgment on an appeal or case for review or revision, the appellant or petitioner wins the case wholly or partly, the appellant or petitioner shall be entitled to recover from the respondent such amount of court fee as held to be chargeable on the extent to which he or she has so won.

- 84. Recovery of court fee to be made with priority:** In making recovery of, or collecting, any claimed amount, fine, court fee and other fee or charge, as well, in pursuance of a judgment, the court shall first recover or collect the court fee.

Chapter-7

Provisions Relating to Complaints and Presentation of Claims

- 85. Claims to be made:** (1) If a person intends to have a matter of claim enforced under law, such a person shall make such a claim before the court.
- (2) In making a claim pursuant to sub-section (1), the person shall make a plaint to the court, by fulfilling the procedures and terms referred to in this Chapter.
- 86. Plaintiff to be made on matter in which one has right:** (1) Except as otherwise provided for in the Chapter, a person shall make a plaint claiming for only the matter in which he or she has right.
- (2) If any person prays for the registration of a plaint in a manner contrary to sub-section (1), the plaint shall not be capable of being registered, and even if such a plaint has been registered for any reason, the plaint shall be voided, except in the case where a plaint has been made pursuant to Section 91.
- 87. One plaint may be made:** (1) A person may file one plaint against another person on such matter irrespective of the number of subjects or related matters of any claim of civil nature.
- (2) If, instead of making a plaint in a matter in relation to which the same plaint can be made at the same time, a person tenders another plaint subsequently only after considering the results of the case filed earlier, such a plaint shall not be entertained.
- 88. Number of plaintiff or defendant not to affect:** In making a plaint in relation to any one subject matter of a claim, one and the same plaint may be made by any one person against irrespective number of

persons or by irrespective number of persons against one person or by irrespective number of persons against irrespective number of persons.

- 89. Plaintiff to be made only once:** (1) After a person has filed a plaint against another person on a matter in a court pursuant to Section 87, that person may not make another plaint against that another person on the same matter in the same court or in any other court.

(2) If, on the same matter, one party files a plaint in a court and the other party files a plaint in another court or both parties make separate plaints in the same court, the case shall be proceed with according to the plaint registered earlier, and the other plaints shall be voided.

Provided that if plaints may be or ought to be made by both parties in accordance with law, nothing shall prevent from proceeding with both plaints.

- 90. Plaintiff to be filed within statute of limitation:** (1) A person shall files a plaint, along with his or her claim, in a court within the statute of limitation specified by law.

(2) In filing a plaint pursuant to sub-section (1), the plaintiff shall state the law specifying the statute of limitation within which the plaint has been made.

(3) Any plaint tendered for registration contrary to sub-section (1) or (2) shall be endorsed and returned.

- 91. Plaintiff may be made by any one in the case of a dispute involving public interest or concern:** (1) Notwithstanding anything contained elsewhere in this Act, any person may, with the leave of the court,

file a plaint on a dispute involving the right, interest or concern of the Government of Nepal, Provincial Government or Local Level or public interest or concern.

(2) In order to obtain a leave pursuant to sub-section (1), a separate petition shall be filed along with the plaint.

(3) If a petition is made for the leave pursuant to sub-section (2), the court shall decide such a matter on the same day on which such a petition is made.

92. Plaintiff may be made for establishment of right: If the right of a third party is also affected as a result of the judgment passed on a case in the form of dismissal, cancellation or otherwise or of the execution of a deed of compromise in accordance with law, such a person may file a plaint within thirty-five days from the date of his or her knowledge praying that such a judgment or deed of compromise be voided and his or her right be established.

93. Plaintiff may be filed on behalf of body corporate: (1) In filing a plaint or statement of defense on behalf of a body corporate, a natural person authorized by a decision of such a director, board of directors or management committee or committee with such status as may be empowered by the concerned law, statute or articles of such a body for the purpose of filing plaint or statement of defense may make the plaint or statement of defense, which shall state such matter.

(2) In filing a plaint or statement of defense pursuant to sub-section (1), the plaint or statement of defense shall be accompanied also by a copy of the decision made by such a director, board of

directors, management committee or committee with such status in relation to filing of plaint or statement of defense.

(3) In filing a plaint or statement of defense on behalf of any office of the Government of Nepal or Provincial Government or Local Level, constitutional body or court, the office-bearer who acts as the administrative chief of such an office, body or court may file the plaint or statement of defense.

94. Plaintiff not to be made on matter adjudged: (1) Once a judgment is made on any matter, the same party may not file a plaint again against the same person on the same matter, instead of making appeal against such a judgment in accordance with law.

(2) A plaint registered contrary to sub-section (1) shall be canceled.

(3) A judgment passed on the basis of a plaint filed contrary to sub-section (1) shall be void.

95. Form of plaint: A plaint shall be prepared and filed in the format referred to in Schedule-1.

96. Claim of plaint ought to be clear: (1) In filing a plaint, the plaintiff shall precisely specify, in the plaint, his or her claim, the subject matter of the claim, and the ground and evidence on the basis of which such a claim is filed.

(2) A plaint of which claim is not clear pursuant to sub-section (1) and which does not clearly specify the act or action to be done by the court shall not be deemed to be a duly made plaint, and such a plaint shall not be registered.

- 97. Plaintiff fee:** In filing a plaint, the plaintiff fee of two hundred rupees shall be charged.
- 98. Registration of plaint:** (1) If any one tenders a plaint for registration, the concerned employee shall, upon examining whether the plaint meets the requirements pursuant to this Chapter and the proof and evidence specified therein are attached or not, register the plaint in the register referred to in Schedule-2 if the plaint meets the requirements, and issues the concerned party a receipt of the registration of the plaint in the format referred to in Schedule-3.

(2) In tendering a plaint for registration pursuant to sub-section (1), there shall be produced two copies of the plaint and evidence if there is only one defendant, and one copy thereof for each of the two or more defendants.

Provided that despite the number of defendants living in a joint family, only one copy may be produced for such defendants.

(3) In producing more than one copy of the plaint or evidence, the plaintiff shall set down that the copy truly corresponds to the original and affix his or her signature or thumb impression thereon, and the court shall verify the copy with the original.

(4) If, in making examination pursuant to sub-section (1), the plaint is not found duly prepared and to meet the requirements, the reason for its failure to meet the requirements shall be specified in, and an endorsement made on, the plaint.

Chapter-8

Provisions Relating to Process and Service of Process

99. Plaintiff may be delivered by plaintiff himself or herself: (1) If the plaintiff, desires to deliver the process to the defendant on his or her own or through his or her law practitioner, and states that matter in the plaint, the plaintiff shall deliver the process to the defendant on his or her own or through the law practitioner within three days, excluding the time required for journey, from the date of registration of the plaint.

(2) The plaintiff or his or her legal practitioner shall, in delivering the process to the defendant pursuant to sub-section (1), deliver a copy each of the plaint, and the evidence, document, if any, attached to the plaint.

(3) The plaintiff or his or her law practitioner shall receive two copies of the process to be served and certified copies of the plaint and evidence from the court for the purpose of delivering the copies of the process, plaint and evidence to the defendant pursuant to sub-section (1) or (2), and give a receipt thereof in the format referred to in Schedule-4.

(4) When the plaintiff or his or her law practitioner tenders the process for delivery to the defendant pursuant to sub-section (1), the defendant shall receive such process, and if it is so received, the process shall be deemed to be duly delivered.

Provided that if the process is so tendered for delivery to a body corporate, such a body shall receive it.

(5) If, in the case of a body corporate, the process is delivered to its head office, the process shall be deemed to be duly delivered to the concerned body pursuant to sub-section (4).

Explanation: For the purposes of this Section, the term "head office" means the registered office, if any, of a body corporate, and failing such an office, the main office of transaction of such a body.

(6) The defendant shall, in receipt of the process pursuant to sub-section (4), give a receipt thereof in the format referred to in Schedule-5.

(7) If the plaintiff or his or her law practitioner delivers the process to the defendant pursuant to sub-section (3), such a plaintiff or law practitioner shall submit a receipt of the process given by the defendant to the court within seven days after such delivery of the process.

(8) The time limit for submitting a statement of defense shall be set from the date of receipt of the process given by the defendant pursuant to sub-section (6).

(9) If the defendant refuses to receive the process when tendered by the plaintiff or his or her law practitioner for its delivery pursuant to this Section, such a plaintiff or a law practitioner shall submit a report to that effect to the court within two days after the expiry of the time limit referred to in sub-section (1).

(10) If a report is received from the plaintiff or his or her law practitioner pursuant to sub-section (9) that the process could not be served, the process shall be served on the defendant in accordance with this Chapter.

100. To issue process to defendant: (1) Except where the plaintiff himself or herself or his or her law practitioner delivers the process to the defendant pursuant to Section 99, the court shall, within three days from the date of registration of the plaint, issue a process to the defendant to submit a statement of defense.

(2) In issuing the process pursuant to sub-section (1), one copy of the plaint filed by the plaintiff in the court and the evidence attached therewith shall also be delivered.

(3) If, after the issuance of the process by the court but before the submission of the statement of defense, the defendant files a petition for a copy of the plaint or document attached with the case-file, the court shall certify and provide the copy of such documents.

101. Time-limit to be given: (1) In issuing a process in the name of a defendant pursuant to this Chapter, the court shall give a time-limit of twenty-one days, excluding the time required for journey, to the defendant to appear before the court for counterclaim or defense in relation to such a plaint.

(2) Notwithstanding anything contained in sub-section (1), the court shall, in giving a time-limit to a person who is maintained as a defendant by it pursuant to Section 123, give a time-limit of seven days, excluding the time required for journey.

102. Process to be served: (1) In issuing the process by the court pursuant to Section 101, the concerned officer shall prepare the process notice in triplicate, sign them, affix the seal of court thereunto and cause the same to be served.

(2) Notwithstanding anything contained in sub-section (1), the process notice shall be prepared in duplicate if it is served through the plaintiff or his or her law practitioner.

(3) In issuing the process pursuant to this Chapter, provision shall be made so that the process is served, or caused to be served, accompanied by one copy of the plaint, on the persons made defendants who live in a joint family, and accompanied by one copy of the plaint for each defendant other than such persons.

103. Format of process: (1) In issuing a process in the name of a defendant in accordance with this Chapter, it shall be issued in the format referred to in Schedule-6.

(2) In issuing a process in the name of a person other than a defendant, it shall be issued in the format referred to in Schedule-7.

104. Process server to serve process: (1) The process server shall serve the process received from the court normally within seven days, except the time required for journey.

Explanation: For the purposes of this Chapter, the term "process server" means an employee who is responsible or deputed for serving the process issued by the court on the concerned person.

(2) If the process cannot be served within the period referred to in sub-section (1), the process server shall make a report, along with the reason therefor, to the concerned court, and if such report is found to be false, he or she may be liable to departmental action.

105. Procedures relating to service of process: (1) The court shall prepare a process to be served in triplicate and deliver them to the process server for serving them.

(2) In receipt of the process pursuant to sub-section (1), the process server may, if he or she personally knows the concerned person, deliver the process to the concerned person wherever he or she finds him or her, recording the matter to that effect.

(3) If the concerned person is not found pursuant to sub-section (2), the process server shall go to the address of his or her residence, find out his or her house or rented house, identify the concerned person and deliver the process to that person, in presence of the concerned ward chairperson, ward member, secretary or any government employee of the Local Level and at least two local persons, and obtain a receipt thereof, recording the date of service of the process.

(4) If the person under process cannot be found, the court shall deliver it to any other person of the age of majority, living in his or her joint family, in pursuance of the procedures referred to in sub-section (3).

(5) If the concerned person or any person of the age of majority living in his or her joint family is not found or, though found, refuses to receive the process, the process server shall serve the process by affixing it on the house, doorstep of that person, in a manner conspicuous to all, in presence of the persons referred to in sub-section (3), and recording that matter in the process.

(6) In serving the process in pursuance of the procedures referred to in sub-sections (2), (3), (4) and (5), the process server shall specify on the reverse side of the process the manner of its service, whether by delivering or affixing it, the date and time thereof, and cause the persons referred to in sub-section (3) to affix their respective signature or thumb impression clearly at the time of its delivery or affixation.

(7) The process server shall sign the copy of the process served pursuant to sub-section (6) and submit it, accompanied by the report thereof, to the court.

(8) If a process is served by affixing it on the house or doorstep pursuant to sub-section (5), the process server shall specify the date and time of service thereof on the third copy of such process notice, deliver it to the concerned Local Level and take a separate receipt thereof or take signature of the concerned ward chairperson, member, secretary or any government employee of the Local Level on the reverse side of the served copy, specifying the matter to that effect.

(9) If the process server delivers a process pursuant to sub-section (8), the concerned Local Level shall immediately affix such a process on its notice board.

(10) Even though a copy of the process affixed on the house or doorstep pursuant to this Section has not been delivered to the concerned Local Level or the Local Level has not affixed the process received by it on its notice-board, the process shall be deemed to have been served in accordance with law if it has been duly affixed

on the house or doorstep of the concerned person pursuant to sub-section (5).

(11) In serving a process on any body corporate in relation to any case, the process shall be served on the person acting as the principal person then in the registered office, head office, or main office of transaction of such a body.

Provided that if such person is not available, the process may be served by delivering it to any office-bearer or employee serving in such an office of such a body.

Explanation: For the purposes of this Section, the term "person acting as the principal person" means the chief executive officer of a body corporate, and also includes the chairperson, vice-chairperson, secretary, managing director, executive director, general manager of such a body or the company secretary in the case of a company.

(12) Notwithstanding anything contained in sub-section (11), in serving a process in the name of a government office, constitutional body or court, the process shall be served by delivering it to the chief, administrative chief of such an office or any office-bearer entrusted with such responsibility or office-bearer acting for him or her, and to such an office, body or court, setting out that matter, if any such office-bearer is not available.

(13) In serving a process in the name of any government office, constitutional body, court, body corporate or office-bearer or employee thereof in that capacity, the process shall be served by

delivering it to such an office, a body, court or its office-bearer or an employee.

(14) If a process cannot be served pursuant to sub-sections (11), (12) and (13), the concerned process server shall submit a report, along with the reason therefor, to the concerned court within three days.

(15) If a report is submitted pursuant to sub-section (14), the concerned court shall make an order to serve the process by post on such an office, a body, court or body corporate or its office-bearer or an employee in that capacity.

(16) If an order is made pursuant to sub-section (15), the concerned court may serve the process by sending a registered letter, containing the matter to that effect, to such an office, a body, court or body corporate or its office-bearer or an employee in that capacity.

(17) After the return-receipt of the process sent by post pursuant to sub-section (16) is submitted to the court, the process shall, except as otherwise proved, be deemed to have been duly served.

(18) If the record specifying, in a sequential order, the house or bloc number of any person residing within the territory of any Local Level has been maintained or such a person has consented to the service a process by the court by post in relation to his or her transaction, business or any matter, the court may, subject to that provision, serve the process, notwithstanding anything contained elsewhere in this Section.

(19) If a report stating that the process issued in the name of any person who is an office-bearer or employee of any government office, constitutional body, court or body corporate cannot be served pursuant to sub-sections (2), (3), (4) and (5) is received from the concerned process server, the concerned court may make an order to serve the process on such a person pursuant to sub-section (13) or (15).

(20) If an order is made pursuant to sub-section (19), the court shall serve the process notice in the name of the concerned person in pursuance of such an order.

(21) Notwithstanding anything contained elsewhere in this Section, if the party and opponent party of a case have provided for their respective address for exchanging electronic notice such as email or fax to give a notice to each other in the matter of any document, concerned matter or transaction or sending a process in relation to a dispute, the court may serve the process through an electronic notice to such an address.

(22) If a report is received from the process server that the process could not be served on the concerned person in spite of the pursuance of the procedures set forth in various sub-sections of this Section and the contents of the report deem reasonable, the court may make an order to serve the process in the name of such a person by publishing it in a national daily newspaper.

(23) If an order is made pursuant to sub-section (22), the process shall be served in pursuance of the order.

(24) The concerned party shall bear the expenses incurred in the service of the process by publishing it in a national daily newspaper pursuant to sub-section (22).

106. Process may be served at court: (1) Notwithstanding anything contained in Section 105 or 107, the process server may serve a process issued in the name of the following person by delivering it to such a 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 on recognizance in another case in the concerned court, at the time when the party appears in the court,
- (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 in the court in the course of 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 court in the course of such practice,
- (e) In the case of a person who appears as a witness, when he or she appears in the court in that capacity.

(2) If the process server tenders a process for delivery to any person referred to in sub-section (1) when the person appears in the concerned court, the person shall receive it.

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

(4) If the content of a report given pursuant to sub-section (3) deems reasonable, the court shall make an order to prevent that person from making representation, receiving the appointed date for appearance in the capacity of attorney, doing law practice or making deposition in the capacity of witness in that court until the person receives the process issued by the court in his or her name.

107. Process deemed to be served: (1) If a process issued by the court is delivered to the concerned person at any place or his or her address pursuant to this Chapter or made known to him or her by any other identifiable means pursuant to this Act, the process shall be deemed to have been served.

(2) Notwithstanding anything contained in sub-section (1), if the person to receive the process appears in the court and apply for receiving it personally, the process shall be delivered to him or her at the court, and if the process is so delivered, it shall be deemed to have been duly delivered.

108. To assist the process server: (1) The concerned ward chairperson, member, secretary or any government employee of the Local Level and the local person shall render all such assistance to the process server as required in the serve of the process pursuant to this Chapter, including by searching, showing and identifying the house of the concerned person, and witness and sign the service of such a process.

(2) Notwithstanding anything contained in sub-section (1), a process duly served in fulfillment of the other procedures shall not be invalid merely by the reason that the concerned ward chairperson, member, secretary or any government employee of the Local Level and other local person has not witnessed and assisted in the service of the process or has refused to assist in such a service.

- 109. Person who does not assist being liable to sentence:** If a report of the process server is received that any person bound to assist pursuant to Section 108 has not rendered any assistance in the service of the process and the content of such report appears to be reasonable, the concerned court may sentence the person who does not so assist to a fine not exceeding five thousand rupees.
- 110. Examination of process served:** Immediately when a report on the service of a process is submitted by the concerned process server after serving it pursuant to this Chapter, the concerned officer employee of the court shall examine whether such a process has been duly served or not and certify and record it in the case-file if it appears to have been duly served.
- 111. Requirement to make re-service:** (1) If, upon examination pursuant to Section 110, it does not appear that the process has been served in fulfillment of the requirements of law or if, in examining it upon a complaint made by any person in relation to the service of such a process, it appears that the process has been served unduly or has not been served at all, the court shall order the concerned process server or another process server to serve it again in fulfillment of the requirements.

(2) If an order is made pursuant to sub-section (1), such a process server shall serve the process again pursuant to this Chapter.

112. Process server liable to fine: If any process server fails to deliver the third copy of the process affixed on the house or doorstep of the concerned person when that person is not found to the concerned Local Level, such a process server shall be liable to a fine not exceeding one thousand rupees for each instance, and the concerned court may order also to take departmental action against such a process server.

113. Process may be served on attorney or law practitioner: (1) Notwithstanding anything contained elsewhere in this Chapter, if a person has lawfully appointed an attorney or law practitioner for receiving a process to be served on that person, such a process may be served on that attorney or law practitioner.

(2) In serving a process on an attorney or law practitioner pursuant to clause (c) or (d) of sub-section (1) of Section 106 and this Section, a receipt shall be taken in the format referred to in Schedule-8.

(3) A process which is delivered to or served on the attorney or law practitioner of a party or the concerned authorized attorney in a case in which an authorized attorney is appointed, pursuant to sub-section (1), shall be deemed to have been duly delivered or served pursuant to this Chapter.

114. Service of process in the name of person whose house, address is not identified: (1) Notwithstanding anything contained in Section 105, in serving a process in the name of a person whose house,

address is not identified, the process may be served by posting it at the address of the village, city and street of such a person, if any, set down and on the notice-board of the court, setting out the matter if even such a village, city and street be not identified and publishing it in a national daily newspaper.

(2) If a process is served through a newspaper pursuant to sub-section (1), such a process shall be deemed to have been duly served.

115. Service of process on person outside territorial jurisdiction: (1) In serving a process in the name of a person who is living or residing outside the territorial jurisdiction of the court where a suit has been instituted, a required number of copies of the notice with process, accompanied by the order of such a court, shall be sent to the court having territorial jurisdiction over the area where that person is living or residing, and electronic means may also be used for so sending the process.

(2) If the notice with process is received from another court pursuant to sub-section (1), such a court shall cause the process to be served in fulfillment of the requirements referred to in this Chapter.

(3) Such a court shall, after serving the process pursuant to sub-section (2), send such a process to the concerned court.

116. One who serves, or causes to be served, process unduly or causes obstruction being liable to sentence: Based on a report of the concerned process server or a complaint by a person, the court may institute action against any person who does any of the following acts and impose on such a person a sentence of a fine not exceeding

ten thousand rupees or imprisonment for a term not exceeding one month or both:

- (a) Failing to cause the service of a process issued by the court without a reasonable ground,
- (b) Serving, or causing to be served, a process upon setting down false matters or making false contents,
- (c) Making objection or obstruction to the service of a process notice,
- (d) Tearing out or peeling off the affixed process.

117. Process unduly served to be void: (1) A party of a case may, at any time prior to the adjudication of the case, make a petition to the court claiming that the process has not been served in fulfillment of the procedures referred to in this Chapter or has not been served at all.

(2) If the court holds the content of the petition referred to in sub-section (1) to be reasonable, the court may void the process served unduly and make an order to serve the process again or order the concerned party to receive the process.

(3) Notwithstanding anything contained in sub-section (1) or (2), if, in examining a process served pursuant to this Chapter, it appears that the process has been served without fulfilling the requirements, the court shall void such process and cause the process to be served again in fulfillment of the requirements.

118. Appeal equivalent to statement of defense may be made: (1) The concerned defendant may make an appeal equivalent to the statement of defense to the concerned appeal hearing court, within thirty-five days from the date of knowledge but not later than six months of the

date of ex parte judgment by the lower court, setting out the matter that such a judgment has been made against him or her for the reason that he or she was not able to make defense or submit a statement of defense in the case as a result of the service of the process unduly, without fulfilling the procedures referred to in this Chapter.

(2) If an appeal equivalent to the statement of defense is received pursuant to sub-section (1), the appeal hearing court shall, prior to hearing the memorandum of appeal, decide whether or not the process was served duly on the person named as the defendant in the plaint or on the person maintained as defendant by the court pursuant to Section 123.

(3) If, on conducting hearing pursuant to sub-section (2), the appeal hearing court holds that the process was not served duly on the defendant of the case or the person maintained as the defendant by the court pursuant to Section 123, the appeal hearing court shall void the ex parte judgment made by the lower court in such a case, order the lower court to proceed again, hear and adjudicate the case in accordance with law by maintaining the memorandum of appeal as the statement of defense, and remand the case file to that court.

(4) If the case-file, accompanied by its order, is received from the appeal hearing court pursuant to sub-section (3), the concerned court shall, within three days of the receipt of such a case file, issue to and serve on the plaintiff a process of seven days, excluding the time required for journey.

(5) If a process has been served pursuant to sub-section (4), the court shall proceed, hear and adjudicate the case in accordance with law when the plaintiff appears within the time-limit or the time-limit expires.

Chapter-9

Provisions Relating to Statement of Defense and Counterclaim

119. Statement of defense to be submitted: (1) A defendant shall submit a statement of defense to the concerned court within twenty-one days after the date of service of the process on him or her in accordance with Chapter-8.

(2) Except as otherwise provided for elsewhere in this Act, a statement of defense tendered for submission after the period referred to in sub-section (1) shall not be registered, and the court shall not recognize such a statement of defense despite the fact that it has been registered.

120. Form of statement of defense: In submitting a statement of defense, it shall be submitted in the format as referred to in Schedule-9.

121. Counterclaim may be submitted: (1) If, in submitting the statement of defense, a defendant wishes to make any claim against the plaintiff, the defendant may make such a claim; and if the defendant makes such a claim, he or she shall be deemed to have made a counterclaim.

(2) The counterclaim referred to in sub-section (1) shall be set down in the statement of defense itself and be limited to the matters of claim by the plaintiff.

(3) If a counterclaim is made pursuant to sub-section (1), the defendant shall submit two copies of the statement of defense if the plaintiff is only one and one copy thereof for each other plaintiff if more than one plaintiff.

Provided that only one copy of the statement of defense may be submitted for the plaintiffs living in a joint family despite the irrespective number of such plaintiffs.

(4) Out of the two copies of the statement of defense received pursuant to sub-section (3), the court shall deliver one copy to the plaintiff or his or her attorney appearing on the date appointed by the court immediately after the submission of the statement of defense.

(5) Within fifteen days of the delivery of the statement of defense pursuant to sub-section (4), the plaintiff shall submit to the concerned court a defense in writing stating whether he or she admits or rebuts the counterclaim.

(6) Notwithstanding anything contained elsewhere in this Section, where the defendant makes a deposition equivalent to the statement of defense in writing before the court and makes a counterclaim as well, the court shall provide a copy of the record of such deposition to the plaintiff pursuant to sub-section (4).

(7) If the defendant makes a counterclaim pursuant to this Section, the court shall order such a party to pay the court fee referred to in Chapter-6 within seven days, and his or her counterclaim shall be entertained only if the defendant pays the court fee in pursuance of such an order.

122. Statement of defense to be registered: (1) If the defendant tenders a statement of defense for registration, the court shall examine whether it has been filed with the time-limit and meets the requirements or not, and register the statement of defense if it is

found to be within the time-limit and meets the requirements, and give the concerned party a receipt thereof in the form referred to in Schedule-3.

(2) If, in examining the statement of defense pursuant to sub-section (1), it appears that it has been tendered after the expiration of the time-limit or it does not meet the requirements, the court shall make an endorsement on the statement of defense, recording the reasons therefor.

123. To maintain defendant by the court: (1) If, even though a plaint against any person has not been filed in the court, it appears that the right, interest, claim or concern of any person is affected by proceeding, hearing or adjudicating any case or it appears from the plaint made by the plaintiff or contents of the statement of defense submitted by the defendant that another person is also involved in the matter of claim by the plaint or it is necessary to enquire any person into any matter for any other reasonable ground, the court may, for the reasons to be recorded, order to examine such a person.

(2) In examining any person pursuant to sub-section (1), a time-limit of seven days shall be given to that person, and if that person appears in the court within the time-limit so given, the court shall take his or her deposition.

(3) If a person examined pursuant to sub-section (3) wishes to make a deposition setting out evidence, his or her deposition shall be recorded and if that person requests for the submission of written response, an order shall be made to submit the written response within a reasonable time not exceeding seven days.

(4) If it appears, from the deposition or written response referred to in sub-section (3), that such a person has also a concern or involvement in the matter of claim by the plaintiff or that judgment by the court will also affect his or her right, interest, claim or concern, the court shall hold such a person on recognizance as if he or she were a defendant.

(5) If it appears, from the written response or deposition submitted or made pursuant to sub-section (3), that such a person is merely like an evidence, the court may not hold him or her on recognizance.

124. Petition may be made for standing as defendant: (1) If any person other than a person named as a defendant in the plaint so wishes, such a person may, after the submission of the statement of defense but prior to judgment, make a petition to the court that he or she also be maintained as defendant in such a case, specifying his or her right, interest, claim or concern being involved in any case sub-judice in the court and on what grounds and for what reasons judgment in such a case will also affect his or her right, interest, claim or concern.

(2) If the contents of the petition received pursuant to sub-section (1) appears to be reasonable, the court shall maintain that person also as a defendant and give information thereof to the plaintiff and other defendant of that case.

Provided that the defendant so maintained shall not be entitled to make a counterclaim against the plaintiff.

125. Fee for statement of defense: In submitting a statement of defense, a fee of two hundred rupees shall be charged.

Chapter-10

Provisions Relating to Endorsement

- 126. Documents to be examined:** The concerned officer shall, immediately on receipt of a plaint, statement of defense or memorandum of appeal tendered for registration in the court or a petition to be filed in the course of proceedings of a case tendered for filing, study such document and examine whether it is in the format set forth in law, is within the statute of limitation or time-limit, falls under the jurisdiction of the court, sets out such matters as required to be set out, it contains any error, incompleteness in writing, presentation or mentioning or any difference between letters and figures and whether it does not meet the requirements for any reason.
- 127. To give opportunity to correct documents failing to meet requirements:** (1) If, in making examination pursuant to Section 126, such a document seems to consist of errors such as failing to be in the format set forth in law, failing to set out the matters required to be set out or containing any error, incompleteness in writing, presentation or mentioning or any difference between letters and figures and such document can be registered if such errors are corrected and then the document tendered for filing, the concerned officer of the court shall make endorsement on the document setting out the matters to be corrected or made in conformity with the requirements, date the endorsement, affix the seal of court thereunto and return it to the concerned person, by taking a receipt thereof.
- (2) If an endorsement is made on a document pursuant to sub-section (1), the concerned officer shall order the registration of such a document if it is tendered for registration upon making it meet

the requirements within the remaining statute of limitation or time-limit, if the statute of limitation or time-limit is remaining for more than three days, or within seven days after the date of endorsement, if such a limitation or time-limit is remaining for less than three days.

(3) If an order is made pursuant to sub-section (2), the court shall register such document.

- 128. Document to be endorsed:** If, in making examination pursuant to Section 126, it seems that such a document cannot be registered because of reasons such as being not within the statute of limitation or time-limit, not falling within the jurisdiction of the concerned court, not being required or allowed to be dealt with by the court or being contrary to law, the concerned officer shall endorse, date it, affix the seal of court thereunto and return it to the concerned person, by taking a receipt thereof.
- 129. Records to be maintained in court:** One copy of the document returned pursuant to Section 127 or endorsed pursuant to Section 128 shall be recorded in the court.
- 130. Petition may be made against order of endorsement:** (1) A party who is not satisfied with the matter of endorsement made by the concerned officer pursuant to Section 128 may make a petition to the judge of such a court and to the appeal hearing court, if such an endorsement has been made by the judge himself or herself, praying for an order to register the document submitted by that party.

(2) The judge of the concerned court or the appeal hearing court shall make an order as to whether the matter of endorsement is

in conformity with law or not within fifteen days from the date on which the petition was made pursuant to sub-section (1).

(3) Prior to making an order pursuant to sub-section (2), the appeal hearing court may, whether making examination or not, conduct hearing on the matter of whether such an endorsement is in conformity with law or not, and if, upon conducting hearing, the endorsement does not appear to be in conformity with law, the court shall make an order to register the document prayed for registration upon endorsement.

(4) If an order is made pursuant to sub-section (3), the endorsement making office-bearer shall, upon receipt of such an order, register such a document on the same day.

(5) If, upon conducting hearing pursuant to sub-section (3), such an endorsement appears to be in conformity with law, the appeal hearing court may, for reasons to be recorded, order the termination of proceedings on such a petition.

Chapter-11

Provisions Relating to Preliminary Hearings

- 131. Pleas as to absence of locus standi, statute of limitation or jurisdiction may be made:** If the defendant, in submitting the statement of defense, wishes to make pleas on all or any of the following matters, he or she shall specify such matters in the statement of defense:
- (a) The plaintiff has no locus standi to file the case,
 - (b) The plaintiff has not been filed within the statute of limitation,
 - (c) The court in which the plaintiff has been registered has no jurisdiction to proceed, hear and adjudicate the claims of the plaintiff.
- 132. Preliminary hearing to be conducted:** (1) If the defendant makes pleas of all or any of the matters referred to in Section 131 in submitting the statement of defense, the court shall conduct preliminary hearing on such matters before proceeding to examine evidence in, hear or adjudicate, the case.
- (2) In conducting preliminary hearing pursuant to subsection (1), the court shall conduct preliminary hearing, being limited to the pleas taken by the defendant, on the next appointed date for appearance following the synchronization of the appointed dates taken by the plaintiff and the defendant.
- (3) In conducting preliminary hearing pursuant to subsection (2), the court shall settle the matters of whether the plaintiff has locus standi to file the case, the plaintiff has been filed within the

statute of limitation or the court has jurisdiction to proceed, hear and adjudicate such a case or not and make an order or decision thereon.

(4) If, in conducting preliminary hearing pursuant to sub-section (3), the pleas taken by the defendant that the plaintiff has no locus standi to file the case, the plaintiff has not been filed within the statute of limitation or the court has no jurisdiction does not appear to be reasonable, the court shall proceed, hear and adjudicate such a case in accordance with law.

133. Termination of proceeding upon dismissal of case: (1) If, in conducting preliminary hearing pursuant to sub-section (3), it appears that the plaintiff has no locus standi to file such a case or the case has not been filed within the statute of limitation or the court in which the plaintiff has been filed has no jurisdiction to proceed, hear and adjudicate such a case, the court shall make judgment to dismiss such a case.

(2) If judgment is made to dismiss the case pursuant to sub-section (1), the proceeding of such a case shall be terminated.

134. Plea of any settled matter may not be made: (1) If, in making an order pursuant to Section 132, the court makes an order to the effect that the plaintiff has locus standi to file the plaintiff, the plaintiff has been filed within the statute of limitation or such a court has jurisdiction to proceed, hear and adjudicate such a case, the defendant may not make the plea again on the same matter in making an appeal in, or a petition of the review or revision of, such a case.

(2) Even though any one makes a plea contrary to sub-section (1), such a plea shall not be heard.

(3) Notwithstanding anything contained elsewhere in this Section, a petition or appeal may be made to the concerned appeal hearing court under Section 157 against such an order or under Section 205 against such a decision as made by the court pursuant to sub-section (3) of Section 132.

Chapter-12

Provisions Relating to Appointed Date for Appearance

- 135. Required to appear on due date:** (1) Except where appearance on the appointed date for appearance is not required under law or court order, the court shall proceed, hear and adjudicate a case, by causing each party of the case to appear on the appointed date for appearance.
- (2) After the examination by the court of evidence of both the plaintiff and the defendant, any party may, if he or she so wishes, discontinue appearance on such appointed date with the leave of the court.
- 136. Appointment of the same date for appearance:** (1) The court shall appoint the same date for appearance for both the plaintiff and the defendant if they are on recognizance.
- (2) The court shall so appoint the date for appearance of the plaintiff after the filing of the plaint by deducting the period in which a statement of defense is submitted or likely to be submitted, by estimating the time-limit for the submission of the statement of defense.
- (3) If the date appointed pursuant to sub-section (1) does not correspond to the date of submission of the statement of defense by the defendant, the appointed date for appearance subsequent to the submission of the statement of defense shall be so appointed that such a date is the same for both the plaintiff and the defendant.
- 137. Appointment of date for appearance by assigning purpose:** (1) The court shall appoint the date for appearance by mentioning, in the

book and sheet of appointed date for appearance, the reason and purpose for which such a date has been appointed and the proceeding to be carried out on the date so appointed.

(2) The count shall conduct the proceedings specified for that purpose on the date for appearance appointed pursuant to sub-section (1).

(3) Notwithstanding anything contained in sub-section (2), if the specified proceeding cannot be conducted for any reasonable grounds on the appointed date for appearance or the time does not allow to complete the proceeding on such a date, the court shall specify the same matter in the receipt of appointed date for appearance, and appoint another date for appearance.

(4) The book and sheet of appointed date for appearance shall be maintained in the format referred to in Schedule-10 and Schedule-11, respectively.

138. Not to overlap appointed dates for appearance: (1) If a case has been instituted by a party of a case, other than a case in which an attorney has been appointed in accordance with law, in another court which is fifteen kilometers (around four *Kosh*) far from the court in which the case was filed and the party gives information thereof to the court in which the case was filed by a petition thereto, such a court shall, while appointing the date for appearance of the party, so appoint such a date as not to overlap with the date for appearance appointed by that other court in the case being tried by it.

(2) If a person who is on recognizance in more than one case in which the same party is plaintiff or defendant in the same

court makes a petition, setting out the matter, to the court for the appointment of the same date for appearance, the court shall, as far as possible, appoint the same date for appearance for all the cases.

(3) If the date for appearance is appointed pursuant to sub-section (2) and the party of the case appears before any one section on the appointed date, the party shall be deemed to have been appeared on the date appointed for the other cases in the same section.

(4) If any party of the case appears on the appointed date for appearance, the court shall take his or her signature or thumb impression on the receipt of appointed date for appearance referred to in Schedule-12 and enter his or her appearance.

(5) If any party does not appear in the court pursuant to sub-section (4), he or she shall be deemed to have expired the appointed date for appearance, and the concerned authority shall certify and record the matter.

139. Date for appearance deemed to have been appointed on the following day: If the court remains closed owing to a public holiday falling on the date appointed by the court, the date for appearance shall be deemed to have been appointed on the following day of the end of the public holiday.

140. Information to be given in event of person required to appear on appointed date for appearance being held in detention: (1) If a person required to appear in the court on the appointed date for appearance is held in detention for any reason and, therefore, cannot appear, the person himself or herself or a member of his or her joint

family, his or her law practitioner or attorney shall give information of that matter indicating in which case he or she is being held in detention to such a court.

(2) If information of the detention of any person is received pursuant to sub-section (1), the court shall seek from the concerned body information as to why he or she has been held in detention and how long he or she has to be held in detention.

(3) If information is sought pursuant to sub-section (2), the concerned body shall give the court in which a case has been filed information about the reason for detaining the person and possible days for which he or she has to be detained, and information to that effect, if circumstance is such that he or she cannot be released from detention immediately.

(4) If information is received pursuant to sub-section (3) that the detainee will be released within one month and he or she appears in the court within seven days from the date of his or her release, excluding the time required for journey, the case shall be proceeded with by appointing the date for appearance in accordance with law, as if that day of his or her appearance were the appointed date for appearance.

(5) If information is received pursuant to sub-section (3) that the detainee will remain in detention for a period exceeding one month or the day of his or her release from detention is not certain or circumstance is such that he or she cannot be released from detention immediately, the court need not wait him or her for the proceeding, hearing and adjudication of such a case.

(6) If a person held in detention appoints and sends an attorney to perform the act to be performed by him or her during such a period, the attorney so appointed may perform such act on his or her behalf.

(7) Notwithstanding anything contained in sub-section (5), if a case cannot be adjudicated without subpoenaing or examining any party of the case, the court shall proceed, hear and adjudicate the case upon subpoenaing and examining that party in accordance with law.

(8) Notwithstanding anything contained elsewhere in this Section, if a person held in detention in the course of the proceeding of the case is released from detention and appears in the court within seven days, excluding the time required for journey, the court shall proceed, hear and adjudicate the case, by holding him or her on recognizance.

141. Not to stay proceeding despite expiration of appointed date for appearance: (1) If any party to a case expires the appointed date for appearance by failing to appear on the date for appearance appointed by the court, the following provisions shall govern the following matters, after the expiration of such a period of appointed date for appearance as may be extended pursuant to Chapter-21:

- (a) If the plaintiff expires the appointed date for appearance prior to the submission of the statement of defense, the plaintiff's claim shall be dismissed,
- (b) If the plaintiff expires the appointed date for appearance after the submission of the statement of

defense and it appears or is held that the defendant has admitted the plaintiff claim in whole or in part, the court shall dismiss the remaining claim, subject to passing a judgment accordingly to the extent of such admission,

- (c) If the defendant does not submit the statement of defense or expires the appointed date for appearance after the submission of the statement of defense, the court shall examine the plaintiff and evidence submitted by the plaintiff and the evidence of the defendant and adjudge the case accordingly,
- (d) If, subsequent to the filing of the plaintiff or submission of the statement of defense, both the plaintiff and the defendant expire the appointed date for appearance, such a case shall be dismissed.

(3) If a case is dismissed pursuant to clause (a), (b) or (d) of sub-section (1), no other plaintiff claim by the same plaintiff against the same defendant on the same matter shall lie.

- 142. Not required to remain on recognizance:** (1) Notwithstanding anything contained elsewhere in this Chapter, the Government of Nepal, Provincial Government or Local Level or such a body, constitutional body or court shall not be required to remain on recognizance in a case in which the Government of Nepal, Provincial Government, Local Level, such a body or court is plaintiff or defendant in accordance with law.

Provided that the government attorney shall appear on the day of examination of evidence, hearing of the case or on the day ordered by the court for the attorney to make appearance.

- 143. Proceeding may be conducted without holding parties on recognizance in any case at appellate level:** Except as otherwise ordered by the court, any case at the appellate level may be proceeded, heard and adjudicated without holding its parties on recognizance.

Chapter-13

Provisions Relating to Attorney

144. Attorney may be appointed: (1) Any party to a case may appoint a representative to perform any act related to the case in the court or for any specific act referred to in this Chapter, on his or her behalf.

(2) If a representative is appointed pursuant to sub-section (1), an attorney shall be deemed to have been appointed.

(3) In appointing an attorney pursuant to sub-section (2), a deed shall be executed to that effect.

145. Qualification of person to be appointed as attorney: A person who possesses the following qualification may become an attorney:

- (a) One who is competent to conclude a contract in accordance with law,
- (b) One who is not a defaulter of payment of a claimed government amount according to a judgment, any such fee, court fee as required to be paid to the court for the execution of judgment or any fine or penalty imposed by the court,
- (c) One who is not convicted for forgery, fraud, corruption or offence involving moral turpitude.

Provided that nothing contained in this clause shall prevent any person from appointing any one of his or her joint family as his or her attorney.

146. Form of power of attorney: (1) A deed referred to in sub-section (3) of Section 144 shall be prepared in the format referred to in Schedule-13.

(2) The executor shall affix his or her signature or thumb impression on the power of attorney referred to in sub-section (1), which shall be witnessed by at least two witnesses, and contain identification of such witnesses and its writer and also bear their signature or thumb impression.

- 147. One person may become attorney in case or of person more than one:** A person may become an attorney in more than one case at the same time or be appointed by more than one person as an attorney in the same case.

Provided that a person shall not be eligible of being appointed as attorney of both party and opponent party in any case at the same time.

- 148. Party may become attorney:** If the same party of a case involves two persons or more as the plaintiff or defendant, any one of them may be appointed as an attorney in the same case.
- 149. Attorney may be appointed in more than one court:** A person who has been appointed as an attorney in a case *sub judice* in one court may be appointed as an attorney in another case *sub judice* in another court.
- 150. Powers of attorney:** The powers of an attorney shall be as set forth in the power of attorney executed at the time of his or her appointment by the party to a case.
- 151. Power of attorney to meet requirements:** (1) Prior to registering a power of attorney, the court shall examine whether such a power of attorney meets the requirements in accordance with this Chapter and register it if it appears to meet such requirements.

(2) If, in making examination pursuant to sub-section (1), it appears that the power of attorney does not meet the requirements, endorsement shall be made, setting out the reason for its failure to meet the requirements, giving a time-limit of three days to prepare it, meet the requirements and tendering it.

(3) If the power of attorney endorsed pursuant to sub-section (2) is executed in meeting of the requirements and tendered within the time-limit, the court shall register such a power of attorney.

152. Power to change attorney or deal with case in person: (1) A party to a case may, if he or she so wishes, at any time revoke the power of attorney executed by him or her and appoint another attorney, or deal with the case in person by making a petition to that effect.

(2) If another attorney is appointed or the party himself or herself deals with the case pursuant to sub-section (1), the court shall attach with the case-file the power of attorney appointing the attorney or petition made for dealing with the case in person and also maintain record thereof.

153. Provisions relating to authorized attorney: (1) Notwithstanding anything contained elsewhere in this Chapter, a person may appoint any person as an authorized attorney by executing a power of attorney to file a plaint, submit a statement of defense, withdraw the plaint claim or enter into compromise or carry out other legal action on his or her behalf, with or without specifying any case.

(2) In appointing an authorized attorney by executing a general power of attorney without specifying any case pursuant to this sub-section (1), the person appointing the attorney shall affix

signature and thumb impression on the power of attorney in presence of, and have it authenticated by, a judge of any District Court if the power of attorney is executed within Nepal, and any Nepali ambassador or consul general if it is executed in a foreign country.

(3) A person who wishes to have a power of attorney authenticated pursuant to sub-section (2), the person shall affix a photograph of him or her and of the attorney to be appointed unto the power of attorney, and submit copies of the citizenship certificates or passports of both of them to the district judge or Nepali embassy or consulate general.

(4) A fee of five hundred rupees shall be charged for the authentication of a power of attorney pursuant to sub-section (3).

(5) A person appointed as an authorized attorney pursuant to this Section may appear in the court when the case is proceeded, heard and adjudicated or appoint another person as an attorney for that purpose.

- 154. Right in immovable property may be transferred through authorized attorney:** (1) A person who is not able to appear in the concerned office in order to sell or dispose of, or exchange or execute a deed of gift with immediate effect or otherwise transfer any immovable property in which he or she has right and ownership or to execute any deed required to be registered pursuant to law may sell, dispose of, exchange or execute a deed of gift with immediate effect or otherwise transfer such property or execute such deed by appointing an authorized attorney by executing the power of attorney setting out the reasonable ground for his or his inability to appear in person.

(2) In appointing an authorized attorney pursuant to sub-section (1), the procedures referred to in sub-sections (2) and (3) of Section 153 shall be fulfilled.

(3) A person appointed as an authorized attorney pursuant to sub-section (1) shall perform necessary acts on behalf of the person appointing him or her as attorney, subject to the terms and conditions of the power of attorney executed and delivered to him or her.

(4) Notwithstanding anything contained elsewhere in this Section, a deed of gift with testamentary effect may not be executed by appointing an authorized attorney.

155. Termination of status of authorized attorney: (1) The status of an authorized attorney referred to in this Chapter shall, *ipso facto*, be terminated in any of the following circumstances:

- (a) If the power of authorized attorney specifies any certain act, purpose and period and such act, purpose or period gets completed or expired,
- (b) If the power of authorized attorney is so executed that it will cease to exist after the completion or termination of any specific event or circumstance and such an event or circumstance gets completed or does not exist,
- (c) If the person appointing attorney voids the power of attorney by publishing a notice in any two national daily newspapers,

- (d) If the person appointing attorney or the attorney dies prior to the completion of the act referred to in the power of attorney,
- (e) If the concerned person appears in person and transfers or exchanges the right in the property intended to be transferred or exchanged through attorney,
- (f) If a case is filed in a court between the person appointing attorney and the attorney or a person of his or her joint family in relation to the property referred to in the power of attorney,
- (g) If any case is filed in a court between the person appointing authorized attorney and the attorney,
- (h) If the authorized attorney gives the person appointing him or her information in writing expressing his or her unwillingness to act in such a capacity, accompanied by the original copy of the power of authorized attorney.

(2) Notwithstanding anything contained elsewhere in this Chapter, nothing contained in this Chapter shall be deemed to affect any power of authorized attorney already authenticated in fulfillment of the requirements of law for the time being in force, prior to the commencement of this Act.

Chapter-14

Provisions Relating to Interlocutory or Interim Orders

156. Petition may be made for issuance of interlocutory order: (1)

Where the claim of a plaint or memorandum of appeal will be meaningless if any act or action is not prevented immediately or if any act is not done immediately in the course of proceeding of any case or if the status quo of any matter is not maintained, the plaintiff or appellant may make a petition, setting out that matter, to the concerned court, praying for the issuance of an interlocutory order on such a matter.

Explanation: For the purposes of this Chapter, the term "interlocutory order" means any order other than a decision or judgment made in a case.

(2) If, upon hearing the petition received pursuant to sub-section (1), it appears appropriate to issue such an order, the court may, for the reasons to be specified, issue an interlocutory order on such a matter.

(3) If an order is made pursuant to sub-section (2) on the basis of hearing of a petition by any one party, the other party may make a petition to the same court for the voidance of such an order.

(4) If a petition is made pursuant to sub-section (3), the concerned court shall hear both parties and make a decision to or not to issue an order voiding such an order, and the party who is not satisfied with that decision may make a petition to the court hearing appeals from such a court.

157. Petition may be made against interlocutory order: (1) A person who is not satisfied with any of the following orders issued by a lower court in the course of proceeding of a case may make a petition to the court hearing appeals from such a court to void or vacate such an order within fifteen days after the date of such an order:

- (a) Order to hold the party on recognizance or take guarantee or court fee from the party,
- (b) Order to cancel a complaint made to the judge against the order of endorsement made that the case cannot be registered pursuant to Chapter-10,
- (c) Order issued upon determining the matter relating to *locus standi*, statute of limitation or jurisdiction in the course of holding preliminary hearing pursuant to Chapter-11,
- (c) Any other order made in the course of proceeding of the case.

(2) Notwithstanding anything contained in sub-section (1), any party to a case may make to the court hearing appeals from the court a petition alleging that the time-limit has been expired of any action taken by the court or irregularity has been made by not doing the act required to be done in accordance with law within the specified period, and praying for the voidance of such an action.

(3) If any petition is made pursuant to sub-section (1) or (2), the appeal hearing court shall, as required, obtain the report or case-file from the concerned court and hear the petition.

(4) If, in conducting hearing pursuant to sub-section (3), the order made or action taken by the lower court appears to be unduly or made or taken upon expiration of the time-limit, the appeal hearing court may, for reasons to be specified, void or annul such an order or order the lower court to do such other act as deemed appropriate under law.

158. Provisions relating to the issuance of interim order: (1) If the concerned petitioner considers that the petition claim would be meaningless if the status quo of any subject matter of any claim is not maintained pending the final settlement of the petition, such a petitioner may, setting out that matter, pray for the issuance of an interim order.

(2) If an interim order is prayed for pursuant to sub-section (1), the court may, if it deems appropriate and necessary, issue any of the following orders for a period until the petition is finally settled:

- (a) To issue an interim order, specifying a certain period,
- (b) To order to summon the presence of the other party for discussions on whether the interim order issued pursuant to clause (a) should be continued or not,
- (c) To issue a conditional interim order if a party, in holding discussion in relation to the interim order, makes commitment in writing that the party will bear compensation under the law in force for the damage, if any, caused to the other party as a result

of the issuance of the interim order in his or her favor, after the final decision of the petition,

(d) To maintain the *status quo* of the subject matter of the petition claim where the petition claim appears to be meaningless if the *status quo* of such subject matter is not maintained.

(3) Notwithstanding anything contained in sub-section (2), nothing shall preclude the court from making a final decision on the subject matter of a petition submitted for an interim order if the court considers that it is appropriate to make a decision on such a matter.

(4) An interim order issued pursuant to sub-section (2) shall be deemed to have, *ipso facto*, been invalid upon the final settlement of the petition.

(5) Notwithstanding anything contained elsewhere in this Section, where the court has once refused to issue an interim order, the concerned party may subsequently make a petition again for such an order on the same matter, specifying the grounds and reasons for a fundamental change in the circumstances.

(6) If a petition referred to in sub-section (5) is made, the court may, upon hearing both parties, issue an interim or other appropriate order in respect of the interim order.

(7) If an order is made to summon the presence of the other party to hold a discussion on whether the interim order issued pursuant to sub-section (2) should be continued or not and a discussion cannot be held on that day because of the petitioner, the interim order shall thereafter be inoperative.

(8) The court shall specify the reasons for issuing, or refusing to issue, an interim order pursuant to this Section.

(9) If an order is issued pursuant to sub-section (2) or (6), nothing contained in this Section shall preclude the court from proceeding with the case without affecting such an order.

159. Vacation of interim order: (1) Any party may make a petition to the same court for the vacation of an interim order issued by the court on the ground that the interim order was issued upon *ex parte* hearing or that an opportunity was not given to that party to present his or her matters.

(2) If a petition is made pursuant to sub-section (1), the court may order the presence of the other party and conduct hearing on that matter.

(3) If, in conducting hearing pursuant to sub-section (2), the court considers it appropriate to vacate the interim order issued earlier on that matter, the court shall, for the reasons to be specified, vacate such an order.

(4) Notwithstanding anything contained in sub-section (3), if it appears appropriate to amend or alter the terms of an interim order instead of vacating it, the court may, for the reasons to be specified, amend or alter such terms of the interim order.

160. Compensation to be paid: (1) If the interim order issued pursuant to this Chapter is vacated or its terms altered or amended and any party has suffered any loss or damage because of being unable to do any act or take any action as a result of the interim order prior to such vacation, amendment or alteration, that party may make a

petition to the concerned court against the party praying for the interim order for compensation, setting out the amount of such suffered loss or damage.

(2) If a petition is made pursuant to sub-section (1), the court may order the presence of the concerned parties and conduct hearings on the matter.

(3) If, upon conducting hearings pursuant to sub-section (2), it appears that the petitioner has actually suffered loss or damage as a result of the issuance of the interim order, the court may order the payment of compensation in consideration for such loss or damage.

Provided that no order may be made for the payment of compensation in consideration for any remote or indirect loss or damage.

(4) If an order is made pursuant to sub-section (3), the party praying for the interim order shall pay the compensation referred to in that order.

Chapter-15

Provisions Relating to Examination of Documentary Evidence

161. Documentary evidence to be submitted: (1) The plaintiff and the defendant shall submit the originals and copies of such documentary evidence related with the claims as set down by the plaintiff in the plaint and with the pleas as set down by the defendant in the statement of defense, along with the plaint or the statement of defense.

(2) Notwithstanding anything contained in sub-section (1), if the documentary evidence cannot be submitted immediately, along with the plaint or statement of defense, in a case of which the Government of Nepal is plaintiff or defendant, the plaint or statement of defense may state the reason therefor, and describe in which office such an evidence is or likely to be held.

(3) If description as to the evidence is made in the plaint or statement of defense pursuant to sub-section (1), the court may, as required, itself procure such an evidence from the concerned office and examine it.

(4) Notwithstanding anything contained elsewhere in this Section, if it is not possible to submit the original of any documentary evidence to the court immediately, a duplicate copy thereof may be duly submitted along with the plaint or statement of defense, accompanied by the reason therefor.

162. Evidence to be specified: (1) Notwithstanding anything contained in Section 161, if the original or copy of any documentary evidence is not available for the time being because the original of such evidence

is in the custody of any person or organization, the plaintiff or defendant shall specify that matter in the plaint or statement of defense.

(2) If it is necessary to examine the evidence specified pursuant to sub-section (1), the court may order such a person or an organization to submit the original or copy of such an evidence within the period specified by it.

(3) If an order is made pursuant to sub-section (2), such person or an organization shall submit such an evidence to the court within the period specified by the court.

(4) If any person or organization does not submit such an evidence within the period referred to in sub-section (3), the court may sentence such a person or the chief of such an organization to a fine not exceeding one thousand rupees.

163. Request for time: (1) If the plaintiff or defendant requests for a time, setting out the reason why it is not possible to submit any documentary evidence at the time of registering the plaint or statement of defense, and the court may, if it finds the reason to be reasonable, give the time not exceeding fifteen days for that purpose.

(2) The plaintiff or defendant shall submit such evidence to the court within the time given pursuant to sub-section (1).

(3) Any evidence that is not submitted within the time referred to in sub-section (2) may not be examined as evidence.

164. Leave may be granted to submit evidence: (1) If any new and important documentary evidence of which the plaintiff or defendant was unaware at the time of registration of the plaint or statement of

defense comes to the knowledge of or is discovered by the plaintiff or defendant subsequently, the plaintiff or defendant may request for a leave to submit such an evidence, and the court may, if it deems the matter reasonable, grant a leave to the plaintiff or defendant to submit such an evidence.

(2) If the plaintiff or defendant makes a petition to the court, stating that it is not possible for him or her to submit the evidence referred to in sub-section (1) on his or her own because such an evidence is in the custody of another person, organization or body, the court may make an order pursuant to sub-section (2) of Section 162 to produce such an evidence.

165. Original documents to be returned: (1) Upon receipt of the original and a duplicate copy of any documentary evidence pursuant to this Chapter, the concerned officer shall verify the duplicate copy of such documentary evidence with its original, authenticate the duplicate copy, take the signature or thumb impression of the person submitting it on the duplicate copy and attach it with the case-file.

(2) After attaching the authenticated duplicate copy with the case-file pursuant to sub-section (1), the court shall return the original of such an evidence to the concerned person.

(3) If the original copy returned pursuant to sub-section (2) is required, the court may demand it from the concerned person at any time. If such a person does not submit the original of documentary evidence so demanded, such an evidence may not be taken in evidence in such a case.

- 166. Evidence cannot be examined prior to submission of statement of defense:** Except as otherwise provided for in law, no proceeding to examine evidence may, generally, be conducted prior to the submission, or expiration of the period for the submission, of the statement of defense.
- 167. Evidence to be examined:** If it appears necessary to examine any such a document in evidence as maintained with a government office specified in the plaint or statement of defense, an order shall be made to examine such an evidence generally within seven days after the date of submission of the statement of defense or after the date of expiration of the period for submission of the statement of defense where it has not been submitted.
- 168. Evidence to be examined on the issue to be decided:** (1) On the date appointed for appearance of the parties to a case, the court shall ascertain upon what issues the parties are at variance, by examining the plaint, statement of defense and all the submitted documentary evidences, in presence of the plaintiff and defendant, and also inquiring them into necessary matters.
- (2) If, in making ascertainment pursuant to sub-section (1), it appears that both parties agree on the claims by the plaintiff, the court shall make a decision on the same day.
- (3) If, in making ascertainment pursuant to sub-section (1), it appears that both parties disagree on the matters partly or fully, the court shall frame the issues that are denied and to be decided and clearly set out other additional evidence required to be examined in that connection and order the production of, and appoint the date for the examination of, evidence and proof.

(4) Notwithstanding anything contained elsewhere in this Section, no evidence may be examined on any matter other than these related to the issues to be decided.

169. Power of court to order submission of document: (1) If the court is of opinion that any such evidence which is necessary to decide the issues to be decided as the party to a case is not able to or could not submit is in the custody of any person, it may, at any time in the course of proceeding of the case, order such a person to submit such evidence within such period as specified by the court.

(2) If an order to submit evidence is made pursuant to sub-section (1), the concerned person shall submit such a document in person or through any other person to the court within the period specified in the order.

(3) The court may sentence the person who does not either produce the document pursuant to sub-section (2) nor specify also a reasonable ground for the failure to submit it to a fine not exceeding ten thousand rupees.

170. Order of examination of evidence: (1) Except as otherwise ordered by the court, in examining evidence on the date appointed for appearance for the examination of evidence, the court shall, generally, examine the evidence submitted by the defendant after the examination of the evidence submitted by the plaintiff.

(2) If, in examining evidence pursuant to sub-section (1), any party to a case immediately raises an objection that any documentary evidence is inadmissible in evidence or is irrelevant,

the court shall examine such a matter and order immediately as to whether such an objection is reasonable or not.

(3) If, in making an order pursuant to sub-section (2), any documentary evidence submitted by any party is held to be inadmissible in evidence or irrelevant, such a matter shall be recorded and attached with the case-file.

171. Power to cause document to be executed: (1) If it is necessary to inquire any party into any matter of the case, the court may at any time inquire that party and cause him or her to execute a paper, in presence of the other party.

(2) Except on such matters as required to be proceeded, heard and adjudicated upon a plaint in accordance with law, the court shall proceed, hear and adjudicate any case to be proceeded, heard and adjudicated upon any other complaint by setting out the evidence of each matter required to be set out by the plaintiff or defendant, getting him or her to make deposition and recording the same.

172. Deposition to be made whether a document is genuine or forged:
(1) On the date appointed for appearance for the examination of evidence, the original of documentary evidence submitted by the plaintiff shall be shown, and its contents read out, to the defendant and *vice versa*, and if any party names such a document as a genuine, forged or fraudulent one, deposition to that effect shall be taken and recorded.

(2) If, in showing or reading out a document pursuant to sub-section (1), a party is not able to immediately determine whether

the document is genuine, forged or fraudulent and requests for a time-limit, the court shall give a time-limit not exceeding three days.

(3) If a document bearing the signature or thumb impression of any person other than a party to the case has been submitted and a party to the case for a time-limit in view of being unable to immediately name whether the document is genuine, forged or fraudulent, a time-limit not exceeding fifteen days may be given to make deposition, accompanied by evidence, whether it is genuine, forged or fraudulent.

(4) The court shall take deposition of the person who is to make deposition within the time-limit given pursuant to sub-section (3) and accordingly record it, by which he or she names the document whether genuine, forged or fraudulent.

(5) If, in taking deposition pursuant to sub-section (4), any party states that such a document is forged or fraudulent, the court shall take depositions of all parties to the case on the same day, if present on that day, and take deposition of the party, if any, absent on that day, on next day on which he or she appears.

(6) If it appears necessary to order the appearance of the concerned party in person in a case in which his or her attorney or legal practitioner is on recognizance, the court shall order the appearance of, and take deposition of, such party.

(7) If, in showing or reading out any documentary evidence pursuant to this Section, the concerned party is not able to ascertain whether it is genuine, forged or fraudulent, the court may refer such a documentary evidence to the concerned expert for its examination.

173. Document need not be read out for genuineness, forgery or fraudulence: (1) Any document that cannot be taken in evidence in accordance with law need not be read out or shown for the purpose of genuineness, forgery or fraudulence.

(2) If any document submitted by a defendant as evidence affects any other defendant, the court shall show and read out the document to such an affected defendant and take his or her deposition, in accordance with the procedures of Section 172.

174. Examination of evidence by appeal hearing court: If it is necessary to adjudge a case of which the judgment examining court is seized by way of appeal or otherwise by ascertaining whether any document submitted for evidence in that case is a genuine, forged or fraudulent one and the lower court has adjudged the case without completing such procedures, the appeal hearing court shall procure the original of that document and take deposition of the party.

175. To proceed, hear and adjudicate case by taking deposition: A case capable of being determined as a criminal case in accordance with law, arising from the statement of defense or deposition by the defendant in any civil case shall be proceeded, heard and adjudicated from the same case-file, by taking deposition of the party.

Provided that the court empowered to try only specific type of cases under a law shall proceed, hear and adjudicate only such cases in accordance with that law.

176. Affected parties to be heard: If the study of the documents attached with the case-file reveals that the right of a third person other than the parties to the case will be affected from the adjudging of any

issue of a case or such a person is also related to the case, the court shall examine also such a person, provide him or her with a reasonable time and opportunity to be heard and proceed, hear and adjudicate the case by holding him or her on recognizance based on the evidence submitted by him or her, as if he or she were the principal person.

177. Power to carry out mapping, survey or measurement: (1) If it appears that a case should not be adjudicated without carrying out the mapping, survey or measurement of the immovable property in dispute, the court shall order to carry out the mapping, survey or measurement of such property.

(2) If it is to carry out the mapping, survey or measurement of such property pursuant to the order made under sub-section (1), the court shall appoint a date for both parties to appear at the place where such mapping, survey or measurement has to be carried out or give a notice of such appointed date to them.

(3) One employee of at least non-gazette second class serving in the court and a surveyor (Amin) shall visit to the place where the immovable property has to be mapped, surveyed and measured on the date appointed for appearance pursuant to sub-section (2), carry out the mapping, measurement and survey of that immovable property and prepare a memorandum thereof, in presence of both parties to the case, at least one representative of the Local Level as far as available and at least two local persons, as well.

(4) Upon carrying out the mapping, survey or measurement pursuant to sub-section (3), the employee deputed by the court shall take signature or thumb impression of the concerned party, local

person and Local Level representative on the memorandum of mapping, survey or measurement, specify his or her name and signature on it, prepare three copies of such mapping, survey or measurement, which is also to be signed by the mapping, surveying and measuring employee, with his or her name, surname and designation, give a copy to each party to the case, take a receipt thereof, surrender the remaining one copy, receipt and memorandum to the court and attach them to the case-file.

(5) If the parties fail to appear when the mapping, survey or measurement has to be carried out pursuant to sub-section (3) or refuse to affix signature or thumb impression on the memorandum of mapping despite appearance or if it is a case in which the parties remain absent on the appointed date for appearance, the deputed employee shall carry out mapping, survey or measurement in presence of the other persons referred to in sub-section (4), enter in the memorandum of mapping a remark that the party has not appeared or has refused to affix signature or thumb impression despite appearance, affix his or her signature or thumb impression on, and take signature or thumb impression of at least one representative of the Local Level, submit the memorandum to the court and attach it with the case-file.

(6) If a representative of the Local Level who is required to appear pursuant to this Section remains absent despite a notice was given to him or her, the mapping, survey or measurement carried out in fulfillment of the other procedures shall not be deemed to be unduly merely by the reason that he or she has remained absent.

(7) A mapping, survey or measurement that fails to meet the requirements pursuant to this Section shall be inadmissible in evidence.

(8) If, in carrying out the mapping, survey or measurement of any immovable property pursuant to this Section, the employee deputed by the court for that purpose is found to have dishonestly carried out such mapping, survey or measurement in a manner to make it different than the reality or actuality of such immovable property, such an employee shall be liable to a fine not exceeding ten thousand rupees, and to a departmental action as well.

178. Power to inspect site: (1) If it appears that it is not possible to submit the actual subject-matter of a case to the court due to the complexity of such a subject-matter or it is necessary to make direct observation or inspection of the site where the thing specified as evidence, matter or immovable property in dispute is situated, the court shall make an order, setting out the reason for the same.

(2) If an order is made to make observation or inspection pursuant to sub-section (1), the court shall appoint the day in advance for that purpose, and the judge himself or herself or the technician or other employee designated pursuant to the order of court shall make such an observation or inspection of the site.

(3) If any technician or other person makes observation or inspection of such a thing, matter or site pursuant to sub-section (2), such a technician or person shall prepare a report on the matters relevant to the subject-matter of the case and submit it to the court.

Chapter-16

Provisions Relating to Examination of Witness

179. Parties to cause appearance of witness: (1) The party to a case himself or herself shall cause the appearance of any witness mentioned as evidence on the date appointed by the court for appearance for the examination of witness.

(2) The evidence of a witness who fails to make appearance on the date appointed pursuant to sub-section (1) shall not be examined.

(3) Notwithstanding anything contained in sub-section (1) or (2), if the witness fails to make appearance on the date appointed for causing the presence of witness due to a circumstance referred to in clause (c) or (e) of Section 225 and, within seven days, excluding the time required for journey, from the date on which the route was opened, the party makes a petition, accompanied also by a recommendation by the concerned Local Level or any government office certifying the occurrence of such a circumstance, praying that another date for appearance be appointed, the court shall so appoint another date for appearance that the examination of witness is made within seven days of the date of such an application.

180. Power of court to subpoena and examine witness: (1) Notwithstanding anything contained in Section 179, the court shall issue a process to any witness who must be examined in a case involving the right, interest or concern of the Government of Nepal or public right, interest or concern, thereby ordering such a witness to appear in the court within fifteen days.

(2) If a process is issued pursuant to sub-section (1), such a witness shall appear within the period as specified by the court.

(3) A process to be issued in the name of a witness pursuant to this Section shall be in the format as referred to in Schedule-14.

181. Employee may be deputed to examine witness: (1) If any party to a case makes a petition to the court praying that the place where a witness who is unable to appear before the court due to physical illness is residing or staying be visited and such a witness examined there, and the petition seems to be reasonable, the court may order for the examination of such a witness as prayed by the petitioner.

(2) If an order is made pursuant to sub-section (1), the judge of the court shall visit the place where the witness is residing or staying and examine the witness on his or her own or depute an employee to so inquire the witness.

(3) The petitioner shall bear the expenses incurred in the visit of the judge or employee of the court for examining the witness pursuant to sub-section (2).

182. Witness may be examined through video-conference: (1) Notwithstanding anything contained elsewhere in this Chapter, if it is not possible to produce before the court a witness required to be examined pursuant to this Chapter because of condition of the witness being older aged, physically infirm, illness or being outside Nepal, and any party of the case makes a petition, showing that reason, to the court for the examination of such a witness through the video-conference, the court may, if it deems such a matter

reasonable, make an order for the examination of such a witness through the video-conference.

(2) If an order is made pursuant to sub-section (1), the concerned party shall produce such a witness on such a place and on such a day as appointed by the court for the examination of the witness through the video-conference.

(3) The court shall examine, or cause to be examined, the witness present at the video-conference as if he or she were a witness present before the court.

(4) In making examination of the witness pursuant to sub-section (3), the court shall set down and record the deposition of the witness on video-conference and the matters of the video conference.

(5) The record of examination of a witness through the video conference shall be maintained in the format referred to in Schedule-15.

(6) The expenses incurred in the examination of a witness pursuant to this Section shall be borne by the party petitioning for the examination of the witness through the video-conference.

183. Day for examination of witness to be appointed on appointed date for appearance of parties: (1) Except in the case referred to in Section 181 or 182, the court shall so appoint the day for the examination of a witness that such an examination is made on the appointed date for appearance of the parties.

(2) In examining a witness, a deposition containing the matters expressed by the witness shall be prepared, the witness shall

be caused to affix his or her signature or thumb impression on the deposition, to be recorded then.

184. Oath to be taken: A witness who appears in the court and makes a deposition shall take an oath before the judge that he or she will state nothing but the truth, in the format referred to in Schedule-16.

185. Witness to be examined by judge: (1) The judge in whose bench the examination of a witness is referred to shall examine the witness.

(2) In making the examination of a witness pursuant to subsection (1), the judge may seek the assistance of such an employee as may be required to make such an examination.

186. Witness to be examined on appointed date for appearance: (1) Except in the case referred to in Section 181 or 182, the court shall examine all witnesses in appearance at the court on the date appointed for the examination of witness.

(2) If, because of lack of the time, it is not possible to complete the examination of all witnesses on the same day, the date for appearance shall, for the reason to be recorded, be so appointed for the witnesses and parties that the witness examination will be made on the following day.

Explanation: For the purposes of this Section, the term "the following day" means the first day on which the court remains open, immediately after the day of the examination of witness.

187. Deposition to be authenticated: (1) The judge shall, in examining a witness in the court, put questions to the witness on the matters as required to be set out by the witness in the case and record in the deposition such questions and the replies thereto by the witness and

the details of cross examination, if any, made in accordance with law.

(2) After recording the details referred to in sub-section (1), the judge shall ask the witness whether he or she has any thing else to state on any matter and cause him or her to state such a matter, if any, set down in the prepared deposition that the examination of witness has been made in presence of him or her and attending parties to the case or attorneys, and take signature or thumb impression of the witness and of each of such other persons on such deposition and authenticate it.

(3) If any or all of the witnesses and parties of the case or attorneys refuses to affix their respective signature or thumb impression on the deposition prepared pursuant to sub-section (2), the witness examining judge shall set down and authenticate that matter and record it in the case-file of the concerned case.

(4) The deposition of a witness shall be taken in the format referred to in Schedule-17.

188. Remarks to be made and authenticated: If, in making witness examination, the concerned witness does not answer or refuses to answer the questions asked by the judge or gives answer to any unrelated matter, in stead of answering the question asked, the judge shall make remarks thereof and authenticate it pursuant to Section 187.

189. Commission may be issued: (1) Notwithstanding anything contained elsewhere in this Chapter, if the concerned party makes a petition to the court for issuing a commission for the examination on

interrogatories of a witness to be examined, who being a resident of another district and because of his or her physical condition cannot be produced and examined in the court seized of the case, the court may, if it deems the matter reasonable, order to issue a commission for the examination on interrogatories of such a witness.

(2) If the examination of a witness on commission is to be made pursuant to sub-section (1), the interrogatories to be asked to such a witness shall be framed in the format referred to in Schedule-18, authenticated by the court and sent with the commission to the district court of the district where the witness is staying or residing, and such interrogatories may also be sent through electronic means.

(3) If the court orders to issue a commission pursuant to sub-section (2), the court shall appoint the date for the parties to the case to appear in the court examining the witness on commission and give information thereof to such a court.

(4) If a commission accompanied by the interrogatories is received pursuant to sub-section (2), such a court shall prepare a deposition of the witness produced pursuant to sub-section (1) of Section 179, containing the answer to each interrogatory of the commission upon fulfilling the procedures referred to in this Chapter as if the case were filed in that court, cause such a person to affix his or her signature and thumb impression on such deposition in fulfillment of the procedures referred to in Section 187 or 188, and send the deposition to the concerned district court within three days.

(5) If the person to be examined on commission pursuant to sub-section (4) does not appear, such a court shall send the

commission, along with a statement of that matter, to the court issuing the commission.

(6) In sending a commission to the concerned court pursuant to sub-section (4), the court shall give information thereof to the parties or attorneys of such a case, appoint the date for them to appear and send them back to the court seized of the case.

Chapter-17

Provisions Relating to Hearing of Cases and Judgments

190. Power to make judgment on matter as agreed: (1) The court shall study the plaint, statement of defense and all documents produced in presence of both parties on the date appointed for appearance of the plaintiff and defendant, after the submission of the statement of defense, and inquire the plaintiff and defendant into the unclear matter, if any.

(2) In making study or inquiry pursuant to sub-section (1), the court shall ascertain the matter on which both parties are not at issue or on which they are at issue.

(3) If, in ascertaining the matter pursuant to sub-section (1), it appears that the defendant has admitted the claim of the plaintiff, the court may adjudge such case at that time.

191. Pre-hearing discussions between plaintiff and defendant may be made: (1) If the court deems it reasonable to hold pre-hearing discussions between the plaintiff and the defendant in order to ascertain the matter to be adjudged in any case pursuant to this Chapter, the court may, for the reasons to be recorded, order to hold such discussions.

(2) If an order is made pursuant to sub-section (1), the court shall appoint the date for appearance of the parties for that purpose and hold such discussions.

(3) The plaintiff, defendant and their legal practitioners may attend the discussions referred to in sub-section (2).

(4) On the discussions referred to in sub-section (3), the plaintiff and defendant may submit evidence in support or rebuttal of their respective claim or defense and present their respective claim or plea in order to ascertain the matter to be adjudged by the court.

(5) If, after ascertaining the matter to be adjudged from the discussions referred to in sub-section (2), it is necessary to examine further evidence in such a matter, in addition to the evidence examined pursuant to Chapter-15, the court shall order to examine such an evidence.

(6) If discussions are held between the plaintiff and defendant pursuant to this Section, the court shall prepare records thereof and attach the same with the case-file.

(7) The concerned office shall, if so requested pursuant to sub-section (6), execute it within three days.

192. To hold hearings upon completion of examination of evidence:

(1) The court shall, upon the completion of examination of evidence, hear and decide the case generally within one month.

(2) In holding hearings pursuant to sub-section (1), the parties of the case may present their respective claims or defense and pleadings on their own or through their respective law practitioners or attorneys appointed by them.

(3) If, in holding hearings pursuant to sub-section (1), the court makes an order to present pleading notes in order to clarify the additional matters in the case, the parties of the case shall present pleading notes in writing on their own or through their respective law

practitioners or attorneys appointed by them, within the period specified by the court.

193. To provide opportunity to enter into compromise: (1) If the parties of a case *sub judice* in the court wish to enter into a compromise at any stage, they may make a joint petition, setting out that matter, to the court.

(2) If a petition is made pursuant to sub-section (1), the court shall read out the contents of the petition and its meanings and consequences to the concerned parties.

(3) If, even upon reading out pursuant to sub-section (2), the parties to the case agree to enter into a compromise, the court shall draw up a deed of compromise in triplicate.

(4) If, in reading out the contents of the deed of compromise drawn up pursuant to sub-section (2) to them, the parties agree to enter into a compromise, the judge shall cause both parties to affix their respective signature and thumb impression on such a deed of compromise, and authenticate that the deed of the compromise has been executed in his or her presence, attach once copy with the concerned case-file and give one copy each to the plaintiff and the defendant.

(5) If a deed of compromise is executed pursuant to sub-section (4), no complaint may be made that any party is not satisfied with the deed of compromise, except that the other party has not complied with the deed of compromise.

(6) If a deed of compromise is executed pursuant to sub-section (4) and transmission, registration or plotting of any

immovable property has to be made as a result of such a deed, the court executing the deed of compromise shall, within three days, direct the concerned office to do the act referred to in such deed.

(7) The concerned office shall, if so directed pursuant to sub-section (6), execute it within three days.

194. Disputes may be settled through mediation: (1) If the parties to a case *sub judice* in the court of any level so wish, they may make a joint petition to the court for the settlement of the dispute of the case through mediation.

(2) If a petition is made pursuant to sub-section (1), the judge trying the case shall, if it deems appropriate to settle the dispute through mediation, make an order to settle the dispute of the case through mediation.

(3) Notwithstanding anything contained in pursuant to sub-section (1) or (2), if the court considers that it is appropriate to settle any case *sub judice* in the court through mediation and the parties agree to have recourse to the mediation process, the court may order for the settlement of such a case through mediation.

(4) If an order is made pursuant to sub-section (2) or (3), a process shall be initiated for the settlement of the case through mediation in accordance with law.

(5) If the case is settled in pursuance of the process referred to in sub-section (4), the parties shall make a petition, stating that matter, to the court.

(6) If a petition is received pursuant to sub-section (5), the court shall execute the deed of compromise between the parties.

(7) The provisions relating to compromise set forth in subsections (3), (4), (5) and (6) of Section 193 shall also apply *mutatis mutandis* to the settlement of case through mediation pursuant to this Section.

(8) If an order is made for the settlement of a case through mediation pursuant to this Section but the case cannot be settled through mediation, the court shall appoint the date for the parties to appear, and proceed, hear and adjudicate such a case in accordance with law.

195. Incapability of being compromised or mediated: Notwithstanding anything contained in Section 193 or 194, a case instituted where the Government of Nepal is a plaintiff and a case relating to a public, government or community property shall not be settled by a compromise or mediation.

Provided that nothing shall bar from entering into a compromise in such a manner as to maintain the public, government or community property.

196. Claim may be withdrawn: (1) The party to any case other than a case in which the Government of Nepal is plaintiff may make a petition to the court at any time before the judgment on the case in order to abandon and withdraw the claim made by him or her in the plaint, memorandum of appeal or petition or to withdraw the plaint, memorandum of appeal or petition showing the reason why he or she is not able to prove his or her claim or why the purpose of the claim has ended.

(2) If a petition is received pursuant to sub-section (1), the court shall order to grant a leave to withdraw the plaint, memorandum of appeal or petition as requested by the petitioner.

(3) If an order is made for the withdrawal of a plaint, memorandum of appeal or petition pursuant to sub-section (2), the court shall cross off the record of that case.

(4) If a person withdraws a plaint, memorandum of appeal or petition pursuant to this section, the same person may not make a complaint on the same matter against the person made as the opposite party in such plaint, memorandum or petition.

197. Judgment to be made: (1) After the completion of hearing of the case pursuant to this Chapter, the court shall make verdict on the issue to be decided generally on the same day of the completion of hearing and record the same in the verdict book.

Explanation: For the purposes of this Section, the term "verdict book" means a book maintained in the court for the judge to record briefly the matters decided in a case and the grounds for the same.

(2) Notwithstanding anything contained in sub-section (1), if an order is made to submit a note of pleadings pursuant to sub-section (3) of Section 192, the court shall make a verdict within seven days of the receipt of the note of pleadings.

(3) If a verdict cannot be made on any matter to be decided in a case pursuant to sub-section (1) on the same day by the reason that such a matter involves a complicated question of law or fact, and the court makes an order specifying the reason why such a matter

involves such complicated question of fact or law, the date for appearance shall be appointed so that decision is pronounced within a maximum period of fifteen days.

(4) If the date for appearance is appointed pursuant to sub-section (3), the court shall make a verdict in the case, record it in the verdict book and read out the same to the parties on that day.

(5) If a court makes an ex-parte judgment, the court shall, within thirty days from the date of authentication of such a judgment, publish a notice as to such an ex-parte judgment in a national daily newspaper for the information of the absent party, and the concerned party of the case in attendance shall bear the costs incurred in the publication of such a notice.

(6) If the date for hearing is appointed by the court for the judgment, the court shall record all the facts of the case and evidence examined, ascertain the matters to be adjudged in the case and attach, or cause to be attached, the same with the case-file pursuant to Section 191, prior to the date so appointed.

(7) If any concerned party or his or her law practitioner intends to obtain the contents of the court's decision set down in the verdict book upon the adjudication of the case, the court shall authenticate such contents and provide the same to the party.

198. Form of judgment: (1) The court shall, on the basis of the decision made pursuant to Section 192, prepare the judgment in the format referred to in Schedule-19 within twenty-one working days.

(2) The judge shall authenticate the judgment prepared pursuant to sub-section (1) by signing and dating it.

(3) The court shall, each week, post and display on its notice-board and web-site the details of judgments authenticated pursuant to sub-section (2) within that week.

- 199. Judgment not to be amended:** After the authentication of a judgment by the judge pursuant to Section 198, no amendment shall be made to it, except correction of minor errors in such a manner as not to alter the verdict.

Explanation: For the purposes of this Section, the term "minor errors" means such difference between the figure and the words contained in the judgment, error on the mentioning of any one of the name, surname and address of the plaintiff, defendant or witness and minor type, typing or printing error as not to vary the matter adjudged and the verdict.

- 200. Deed to be executed on hearing of judgment:** (1) The court shall, upon the judgment of a case, pronounce the judgment to the parties of the case, if they are present, and cause a deed to be executed by them to the effect that they have heard the judgment and attached it with the case-file.

(2) If a party is absent but his or her attorney is present, such a deed shall be caused to be executed by the attorney.

(3) If any party is not present at the time of pronouncement of the judgment pursuant to sub-section (1), the judgment making court shall proceed to serve on such a party, on its own or through the lower court, a notice of judgment accompanied by the time-limit for appeal, if the judgment is appealable, and a notice of judgment, if not appealable, in the format referred to in Schedule-20, in

fulfillment of the procedures referred to in Chapter-8, within three days of the preparation of the judgment.

(4) If a party to the case himself or herself or his or her attorney is present or his or her law practitioner has appeared and made pleadings at the time of making judgment, the party to the case shall be deemed to be present for the purpose of sub-section (3).

Chapter-18

Provisions Relating to Adjournment and Transfer of Cases

201. Power to adjourn cases: (1) If any party to a case, out of the several cases filed in several courts, makes a petition to a court, showing a reason that the adjudication of one case cannot be, or ought not to be, made until any other case is adjudicated, or that adjudication of one case will have substantial effect on the verdict of any other case or if, in the course of proceeding or hearing of any case, it appears necessary to adjourn the case, the court may order, for the reasons to be recorded, that such a case be adjourned.

(2) If an order is made to adjourn any case pursuant to sub-section (1), the court shall give information thereof to the parties to the case and to the court in which another case is *sub judice*.

(3) Upon receipt of the information referred to in sub-section (2), the court seized of such a case shall, upon adjudication of the case, give information thereof, accompanied by a copy of the judgment, to the case adjourning court pursuant to sub-section (2) within thirty days after the date of judgment.

(4) If, upon the adjudication of the case pursuant to sub-section (3), the parties to the case are on recognizance and it is necessary to appoint a date for the parties to appear in the case adjourning court, the court shall appoint the date for the parties to appear in, and send them to, the case adjourning court.

(5) Notwithstanding anything contained elsewhere in this Section, if the several courts hold a divergent opinion on which of

the cases *sub judice* in such courts should be adjourned, a report shall be made immediately to the court hearing appeals from the concerned court on that matter.

(6) If a report is made pursuant to sub-section (5), the appeal hearing court shall make an appropriate order on that matter within one month, and the concerned court shall proceed the case in accordance with that order.

(7) If the courts hearing appeals from the courts holding divergent opinions on the adjournment of case pursuant to sub-section (5) are different, a report on that matter shall be made immediately to the Supreme Court.

(8) If a report is made pursuant to sub-section (7), the Supreme Court shall make an appropriate order on that matter within three months, and the concerned court shall proceed the case in accordance with that order.

202. Revival of adjourned case: (1) If it is required to revive and proceed a case adjourned pursuant to Section 201, any party to the case may make a petition, accompanied by the reason and ground for the revival, to the court.

(2) If a petition made pursuant to sub-section (1) appears to be reasonable, the court shall revive and hear the adjourned case as per the petition.

(3) Notwithstanding anything contained elsewhere in this Section, if information is received that the case *sub judice* in another court has been adjudged or if there is no reason for continuing the

adjournment of a case, the court shall immediately revive and proceed the adjourned case.

(4) In adjourning the case, the parties on recognizance shall be dispensed with the requirement to appear on the appointed date.

(5) In reviving the adjourned case, the court shall serve a process on the parties on recognizance at the time of adjournment of the case, thereby ordering them to appear within seven days and proceed the case.

203. 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 a 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 proceeded, 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 by, another District Court under its jurisdiction.

(4) Decision as to whether the circumstance requiring the transfer of a 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 the case or information received from any other source.

(5) If an order is made pursuant to sub-section (2) or (3), such a court shall, in pursuance of the order of the Supreme Court or High Court, proceed, hear and adjudicate such a case.

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

204. Power of Supreme Court to try and settle case: (1) Notwithstanding anything contained elsewhere in this Act, if, on a petition of any party to a case or a report of the concerned court seized of the case, the Supreme Court is of the opinion that, in view of the fact that the case involves interpretation of any complicated constitutional or legal question or a legal question of public importance or concern, it will be appropriate to have the case tried and settled only after the settlement of such a question involved in the case decided by the Supreme Court, then the Supreme Court shall, for the reasons to be recorded, make an order to call for such a case and try and settle it by itself.

(2) If an order is made by the Supreme Court pursuant to sub-section (1), the concerned court shall send the case-file of such case to the Supreme Court, give information thereof to the parties to the case and appoint the date for them to appear in the Supreme Court.

(3) If an order is made pursuant to sub-section (1), the Supreme Court may hear and adjudicate such a case or settle any complicated constitutional or legal question of public concern

involved in that case, and remand the case-file to the concerned court for the adjudication of the rest matters.

(4) In remanding the case-file to the concerned court for proceeding on the rest matters pursuant to sub-section (3), the Supreme Court shall give information thereof to the parties and appoint the date for them to appear in such a court.

Chapter-19

Provisions Relating to Appeals

205. Appeal may be made within specified period: (1) Except as otherwise provided for in this Act, a party who is not satisfied with a judgment made by the court of first instance may make an appeal to the concerned appeal hearing court within thirty days from the date of knowledge of the judgment.

(2) If a party to an appealable case or his or her attorney is present in the court and hears the judgment, the time-limit of thirty days for appeal shall begin from the date on which a deed is executed by him or her to the effect that he or she so hears the judgment, and if a notice of judgment made in the absence of the party is issued, such time-limit shall begin from the date on which such a notice is served.

(3) If a party to a case appears in person or through his or her attorney on the date appointed for appearance for hearing and the judgment in the case is made on that day so appointed, the party to the case shall, for the purposes of sub-section (1), be deemed to know the judgment.

Explanation: For the purposes of this Section, in computing the day of knowledge shall be reckoned from the day of authentication of the judgment by the judge pursuant to Section 198.

(4) Notwithstanding anything contained in sub-section (2), even though the deed of hearing judgment is not executed or the notice of judgment made is not served, the party to the case may make an appeal within thirty days from the date of receipt of a copy

of the judgment not later than six months of the authentication of the judgment in the case.

206. Circumstances where appeal cannot lie: Notwithstanding anything contained in Section 205, no appeal shall lie in any of the following circumstances:

- (a) If the time-limit is expired without submitting the statements of defense or making defense after the receipt of the process or the service of the process,
- (b) If the case is compromised or mediated,
- (c) If the claim is withdrawn,
- (d) If the plaintiff is dismissed.

Provided that an appeal may be made if the plaintiff is dismissed unduly.

207. Court fee to be paid in making appeal: An evidence of the payment of the court fee chargeable in making an appeal pursuant to law shall be submitted along with the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), if the court grants a leave for payment of the court fee at the time of judgment in the case, the appeal shall be registered in spite of the absence of the evidence of payment of the court fee.

208. Format of memorandum of appeal: (1) A person who intends to make an appeal shall prepare a memorandum of appeal in the format referred to in Schedule-21.

(2) In making an appeal, the memorandum of appeal shall be written in decent language, and be accompanied by necessary documents proving the pleas of appeal.

(3) The appeal fee of three hundred rupees shall be charged for making an appeal.

209. Appeal to be registered in appeal hearing court: (1) In making an appeal, the memorandum of appeal shall be registered in the court hearing appeals from the court of which judgment is to be appealed.

(2) If any person tenders a memorandum of appeal for registration pursuant to sub-section (1), the court shall examine whether it is made within the time-limit referred to in Section 205, whether the fee chargeable for registering appeal is paid and whether the appeal meets the requirements pursuant to this Chapter or not, and register it if it appears to meet such requirements, and give a receipt in the form referred to in Schedule-3 to the concerned party.

(3) If, in examining a memorandum of appeal pursuant to sub-section (2), it does not appear to meet the requirements, the court shall, for the reasons to be recorded, not register the memorandum of appeal, and make endorsement on it.

210. Appeal may be registered in case adjudging court: (1) Notwithstanding anything contained in Section 209, a memorandum of appeal may also be registered through the court adjudging a case.

(2) If a memorandum of appeal is tendered for registration pursuant to sub-section (1), such a court shall register the memorandum of appeal in fulfillment of the procedures referred to in Section 209.

(3) The memorandum of appeal registered pursuant to sub-section (2), accompanied by the concerned case-file, shall be sent to the appeal hearing court within three days.

(4) If the appellant who registers a memorandum of appeal pursuant to this Section wishes to be on recognizance, a date shall be appointed for him or her to appear in the concerned appeal hearing court.

211. Appeal may be registered by government employee in court of area of his or her service: (1) If any government employee is to make an appeal in a case involving his or her right, interest and concern and is not able to appear in person in the appeal hearing court because of a government business, he or she may register the appeal, setting out the reason therefor, through such type of appeal hearing court, if any, available in the territory where he or she is in service or in absence of a such court, through the District Court in the territory where he or she is in service.

(2) If an appeal is tendered for registration pursuant to sub-section (1), such a court shall register the appeal in fulfillment of the procedures referred to in Section 209.

(3) If an appeal is registered pursuant to sub-section (2), the court registering the memorandum of appeal shall send such a memorandum of appeal, along with verification that the memorandum of appeal has been registered and the concerned employee making appeal is in service in that area, to the concerned appeal hearing court within three days.

(4) If a government employee who makes an appeal pursuant to this Section wishes to remain on recognizance, the memorandum of appeal registering court shall hold him or her on recognizance and send information thereof to the concerned appeal hearing court.

212. To procure case-file: (1) The appeal hearing court shall, within three days of the registration of a memorandum of appeal, ask the concerned court to send the case-file of the concerned case.

(2) If the case-file is asked pursuant to sub-section (1), the concerned court shall send the case-file to the appeal hearing court within three days of receipt of the letter.

213. To order respondent to appear: (1) The appeal hearing court shall, within fifteen days after the receipt of the case-file from the lower court pursuant to Section 212, conduct hearings as to whether it is necessary to order the appearance of the respondent and hear the case, as prayed by the appellant.

(2) If, upon holding hearings pursuant to sub-section (1), it does not seem that the verdict made by the lower court will be reversed, the appeal hearing court shall adjudge it as so held.

(3) If, upon conducting hearings pursuant to sub-section (1), it seems that the verdict made by the lower court may be reversed, the appeal hearing court shall, for the reasons to be recorded, order the appearance of the respondent for hearings.

214. Service of process on respondent: (1) If an order to summon the appearance of the respondent is made pursuant to sub-section (3) of Section 213, the appeal hearing court shall serve the process, in the

format referred to in Schedule-22, on the respondent, thereby ordering him or her to appear within fifteen days, except the time required for journey.

(2) Notwithstanding anything contained in sub-section (1), the appeal hearing court may itself serve the process referred to in sub-section (1) if it so wishes or cause it to be served through the court adjudging the case originally, in fulfillment of the requirements referred to in Chapter-8.

(3) After the process is served pursuant to sub-section (2), the respondent may, if he or she so wishes, submit defenses in writing to the appeal hearing court.

(4) If the respondent so wishes, the court shall proceed, hear and adjudicate the case, by holding him or her on recognizance.

215. Appeal to be heard: (1) After the service of the process pursuant to Section 214, the appeal hearing court shall appoint the date for appearance for the hearing if the respondent is present and both the appellant and respondent are on recognizance and hear the appeal on that day, and even though either or both of the parties are not on recognizance, it shall appoint the date for appearance for hearing the appeal and hear it on that date.

(2) After the service of the process pursuant to Section 214, the appeal hearing court shall hear the appeal in spite of the absence of the respondent.

(3) Upon hearing the appeal pursuant to sub-section (1) or (2), the appeal hearing court shall make verdict as so held.

(4) The appeal hearing court shall make appellate judgment in the format referred to in Schedule-23.

216. Powers of appeal hearing court: (1) In hearing an appeal pursuant to Section 215, the appeal hearing court shall have the following powers:

- (a) To uphold or withhold the judgment of the lower court,
- (b) To reverse, in whole or in part, the judgment of the lower court,
- (c) Where the judgment has been made without examining such evidence as required to have been examined, to make such an examination by itself or to order the lower court to make such an examination,
- (d) If any particular issue required to have been adjudged in the case has not been adjudged, to adjudge the issue itself or order the lower court to adjudge it,
- (e) To make any consequential or incidental change in the judgment of the lower court.

217. To exercise powers of the court of first instance: In proceeding, hearing or adjudging a case in appeal pursuant to this Chapter, the appeal hearing court may exercise such powers as may be exercised by the court of first instance.

218. Verdict to be made by making simultaneous hearings: (1) Even if various parties to a case make separate appeals against the verdict made by the lower court in the same case, all appeals shall be heard simultaneously and verdict made as so held.

(2) Even though, in making a verdict pursuant to subsection (1), any appeal is already decided for any reason, verdict shall be as so held in the remaining appeals as if such an appeal were not adjudged previously.

Ministry of Law, Justice and Parliamentary Affairs

Chapter-20

Revision and Review of Cases

219. Revision of cases: (1) The Supreme Court may, in the following circumstance, revise a judgment or final order made by a High Court in a case not appealable to the Supreme Court pursuant to law:

- (a) If the judgment or final order of the High Court involves a serious error in the interpretation of the Constitution or law,
 - (b) If any legal principle or precedent established by the Supreme Court has not been complied with or has been applied with wrong interpretation,
 - (c) If any government or public property is misappropriated or any damage is caused to such property or ownership or possession of a person is established in an unauthorized manner over such property due to the lack of proper and correct evaluation of the evidence contained in the case-file of a case involving a dispute relating to such government or public property, or
 - (d) If the verdict is materially affected due to the lack of proper representation of a child, woman, person with disability, person suffering from mental disease or person above seventy-five years of age.
- (2) A petition may be made to the Supreme Court or through the High Court making such a verdict for the revision of the case within forty-five days from the date of knowledge of the judgment in the case made by the High Court.

(3) The petition to be made pursuant to sub-section (2) shall be accompanied by such details and documents as prescribed.

(4) If a petition is received for the revision of a case pursuant to sub-section (2), the Supreme Court shall conduct hearing as to whether the circumstance referred to in sub-section (1) exists in the judgment or final order of the High Court or not.

(5) If, in conducting hearing pursuant to sub-section (4), it appears that the judgment or final order of the High Court contains any circumstance referred to in sub-section (1), the Supreme Court shall order for the appearance of the other parties to such a case in order to revise the case.

(6) If the other party to the case appears pursuant to sub-section (2), the Supreme Court shall hear and adjudge the case, in presence of that party as well.

Provided that nothing shall bar from adjudging the case by the reason that the other party to the case remains absent.

220. Provision relating to review: (1) No case in which judgment or final order is made by a court may be reviewed by the same court.

(2) Notwithstanding anything contained in sub-section (1), the Supreme Court may, subject to the laws in force, review its judgment or final order in following circumstance:

(a) If the concerned party comes to know or otherwise discovers any evidence or fact likely to materially affect the verdict or final order made in the case only after the adjudication of the case, or

(b) If it appears that the judgment or final order is contrary to the precedent or legal principle established by the Supreme Court.

(3) If any circumstance referred to in sub-section (1) exists in a judgment or final order made by the Supreme Court, a petition, setting out the reasons therefor, may be made to the Supreme Court within sixty days from the date on which the Judge of the Supreme Court authenticated the judgment or final order by signing it, and if a petition is made in the circumstance referred to in clause (b), a copy of such a precedent or principle shall also be attached.

(4) If, in examining the petition received pursuant to sub-section (2), its contents seem to be reasonable, the Supreme Court shall make an order to review such a case.

(5) The Supreme Court shall not review its judgment or final order in the following circumstance:

- (a) If such a judgment or final order was once reviewed,
- (b) If the judgment or final order was made by the **Grand Full Bench**,
- (c) If the verdict was made by the Constitutional Bench,
- (d) If the case was already adjudged by way of revision pursuant to the laws in force prior to the commencement of this Act, or
- (d) If the verdict of the High Court was upheld in the case reviewed pursuant to Section 219, or a decree to revise it was not granted.

221. Case to be adjudicated being confined to relevant matters: In revising a case pursuant to Section 219 or reviewing a case pursuant to Section 220, the case shall be adjudicated, being confined only to such grounds and relevant matters as on which the Supreme Court has made an order to revise or review the case.

Chapter-21

Provisions Relating to Extension of Time-limit and Date for Appearance

- 222. Not to expire time-limit or date for appearance:** No person shall expire the time-limit or date for appearance specified by the court in relation to any case.
- 223. Expired time-limit or date for appearance may be extended:** Notwithstanding anything contained in this Section 222, a party who expires the time-limit or date for appearance appointed in a case upon being unable to appear in the court on or before the appointed time-limit or date for appearance owing to a circumstance beyond his or her control may extend the time-limit for up to fifteen days for one time and the date for appearance for up to twenty-one days for a maximum of two times.
- 224. Fixation of instance:** (1) In fixing the instance where a party to the case expires the date for appearance, the instance shall be fixed by reckoning only the expired date for appearance without reckoning the extended time-limit.
- (2) In reckoning the days for the extension of the time-limit or date for appearance expired by a party to the case, there shall be reckoned the days up to the day allowed to be extended with effect from the following day of the day of expiration of the time-limit or date for appearance.
- (3) Notwithstanding anything contained elsewhere in this Section, the instance of the time-limit or date for appearance extended previously shall not be computed where the case is

remanded by a court to a lower court to re-adjudge it or the adjourned case is revived and proceeded.

225. Extension of expired time-limit or date for appearance: (1) Notwithstanding anything contained elsewhere in this Act, if any party to a case makes a petition, stating that the time-limit or date for appearance has been expired owing to the occurrence of any of the following circumstances beyond control, to the concerned court within the following period, for the extension of such time-limit or date for appearance, and the court shall order the extension of such expired time-limit or date for appearance:

- (a) In the case of expiration of the time-limit or date for appearance because of that the person required to appear within the time-limit or at the date for appearance had to observe obsequies or mourning on his or her own according to the rituals and custom of his or her community, at the demise of any one of him or her, twenty-one days, excluding the time required for journey, after the date of such a death,
- (b) In the case of expiration of the time-limit or date for appearance because of that the woman required to appear within the time-limit or at the date for appearance delivered a child, forty-five days, excluding the time required for journey, after the date of her delivery,
- (c) In the case of expiration of the time-limit or date for appearance because of that 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, seven days, excluding the time required for journey, after the date of resumption of such route or means of public transportation,

- (d) In the case of expiration of the time-limit or date for appearance because of that the person required to appear within the time-limit or at the date for appearance was abducted or taken hostage by any one, ten days, excluding the time required for journey, after the date of being released from abduction or hostage-taking,
 - (e) In the case of expiration of the time-limit or date for appearance because of the occurrence of a disaster such as earthquake and volcano eruption, ten days, excluding the time required for journey, after the date of occurrence of such calamity.
 - (f) If the person, because of being unconscious or unable to make movement because of any accident or being unable to make movement due to suffering from any severe disease all of a sudden, had to undergo treatment in a hospital, fifteen days, excluding the time required for journey, after the date of such cause.
- (2) A petition to be made for the extension of the expired time-limit or date for appearance pursuant to sub-section (1) shall be accompanied by such evidence as may be necessary to prove the occurrence of the circumstance referred to in that sub-section.

226. To take over case: If, during the pendency of proceeding of a case in a court, prior to judgment in the case, the time-limit or date for appearance appointed by the court expires because of the death of any party to the case or being unsound mind even until the period referred to in clause (f) of sub-section (1) of Section 225 or his or her disappearance, his or her guardian or nearest successor, in absence of the guardian, may make a petition to the court for the extension of the time-limit or date for appearance and taking over the case, within twenty-one days, excluding the time required for journey, after the date of his or her death, unsoundness or disappearance.

(2) If, in examining the petition made pursuant to sub-section (1), its contents appear to be reasonable, the court may allow such a case to be continued and extend the expired time-limit or date for appearance.

227. Computation of time required for journey: (1) The court shall, in computing the time required for journey compute the time required for journey according to the actual days required to make journey by bus or rail in the case of a place where regular transport service is available and at the rate of one day for every fifteen kilometers in the case of a place where such bus or rail service is not available.

(2) In computing the time required for journey pursuant to sub-section (1), the time-limit of one day shall be set for a distance of less than fifteen kilometers.

Provided that no time required for journey shall be given for a distance of less than fifteen kilometers.

228. Not to adjudicate until the extendable period: Even though a party to the case fails to appear within the time-limit or on the date for appearance appointed by the court and expires such time-limit or date, the court shall not hear and adjudicate the case pending the termination of the period allowed to be extended pursuant to Section 223 or 225.

Chapter-22

Provisions Relating to Execution of Judgments

229. Records to be prepared: (1) If the court makes a judgment ordering the enforcement, registration and de-registration of the matter, transmission, pre-emption, partition, realization of claimed amount, recovery of fine or realization of court fee, the concerned employee shall, as soon as possible, prepare a record thereof and send it to the bailiff section (*Tahasil Sakha*) within three days of the preparation of the judgment.

Explanation: For the purposes of this Chapter, the term "claimed amount" means any amount whatsoever including compensation awarded by a judgment.

(2) Upon receipt of the record pursuant to sub-section (1), the concerned employee shall create a separate case-file, attaching therewith a copy of the judgment, for the execution of the judgment.

(3) If the record referred to in sub-section (2) has been prepared by the appeal hearing court, the concerned employee shall forward such a case-file, accompanied by the record, to the concerned district court within three days of the preparation of the judgment.

230. Execution of judgment or order by concerned district court: (1) The district court where the plaint or complaint was filed shall execute the judgment made in such a case irrespective of the level of the court making judgment in the case.

(2) The concerned district court shall execute the judgment in a case originally proceeded and adjudicated by the appeal hearing court.

(3) Notwithstanding anything contained elsewhere in this Section, if the district court to execute the judgment or order cannot be ascertained because of the subject matter of the case, the district court designated by the appeal hearing court shall execute the judgment or order in that case.

(4) Notwithstanding anything contained elsewhere in this Section, the concerned body shall execute any judgment or order made by any body other than the regular court.

(5) Notwithstanding anything contained in sub-section (4), the court shall execute a judgment in accordance with this Act except as otherwise provided by law for the execution of judgment or order.

(6) If the court makes a judgment or order for reinstating or removing any one in or from any office, the court shall, except as otherwise provided in this Act or the laws in force, send a precept to the concerned body or office for the execution of such a judgment or order within three days of the making of such a judgment or order.

(7) Upon receipt of a precept pursuant to sub-section (6), the concerned body or office shall execute it accordingly and give information thereof to the concerned court. If such information is not given, the court may order also to take departmental action against the person who acts as the chief of the concerned body or office.

231. Stay of execution of judgment: Notwithstanding anything contained in Section 230, the court shall stay the execution of a judgment in the following circumstance:

- (a) If the judgment is appealable, until the expiration of the time-limit for making appeal,
- (b) If an appeal is made in a case which is appealable under law, until the final adjudication of the case at the appellate level,
- (c) If an order is made to review a case pursuant to Section 219, until the adjudication thereof,
- (d) If an order is made to revise a case pursuant to Section 220, until the final adjudication thereof.

232. Not to bar execution of judgment or deed of compromise: Notwithstanding anything contained elsewhere in this Chapter, nothing shall bar the execution of a judgment or deed of compromise in the following circumstance:

- (a) If a petition made by a party for the review or revision of a judgment made in any case is *sub judice* in a court, to execute the judgment made in such a case, except as otherwise ordered by the court, merely by the reason that such a petition has been made,
- (b) Even though a case for the withhold of a judgment or deed of compromise is filed by any one, to execute the judgment or deed of compromise made in that case, except as otherwise ordered by the court,

- (c) If appears that the property which is the subject matter of a case will get disordered if the judgment in the case is not executed immediately or if the winning party of a case involving payment of compensation makes a written commitment to bear compensation for any loss caused to the other party if the winning party subsequently loses the case at the appellate level, to execute such a judgment by the court prior to the expiration of the time-limit for making appeal or prior to making of appellate judgment in such a case,
 - (d) If the parties to a case *sub judice* in the court agree on any matter of the case and the matter so agreed can be separated and executed accordingly, and the court makes an order to that effect.
- 233. Attorney may be appointed:** If any party to the case is not able to appear in person in the course of the execution of judgment, the party may appoint and assign an attorney for that purpose.
- 234. Opportunity to be given for compromise or mediation:** (1) Notwithstanding anything contained elsewhere in this Chapter, if the parties wish to execute the judgment by way of compromise or mediation, they may make a joint petition, setting out that matter, to the court.

Provided that no petition may be made for compromise or mediation in the matter of recovery of a government claimed amount.

(2) If a petition is received from the parties for compromise or mediation pursuant to sub-section (1), the court shall provide the parties with opportunity to execute the judgment by way of compromise or mediation within such reasonable period as specified by it.

(3) If the parties agree to execute the judgment by way of compromise or mediation within the period specified pursuant to sub-section (2), the concerned court or the officer assuming the responsibility of the court's bailiff shall execute a deed of compromise between the parties in accordance with law.

(4) If the parties do not agree to execute the judgment by way of compromise or mediation within the period specified pursuant to sub-section (2), the court shall execute the judgment in pursuance of the procedures referred to in this Chapter.

235. Parties to remain on recognizance: (1) If the court of first instance delivering a judgment in a case makes it ordering the enforcement, registration or de-registration of the matter, transmission, preemption, partition, and realization of claimed amount, among others, and the parties to the case are present in the court, the court shall so appoint the date for the parties to appear for the purpose of executing the judgment that the date for appearance falls after the period of expiration of the time-limit for making an appeal in such a case.

(2) If an appeal is made in such a case within the date appointed pursuant to sub-section (1), the court shall so discontinue the recognizance of the parties and abate the case-file of such a case as the matter will be dealt with in accordance with judgment by the High Court.

(3) If the parties to the case are present in the court as set forth in sub-section (1) after the final judgment made also by the appeal hearing court, the court shall appoint the date for the parties to appear for the purpose of executing the judgment and send the parties to appear in, and forward the case file to, the concerned court of first instance, and send it to such a court, stating the matter, if the parties are not present.

(4) If the parties to the case appear in the court of first instance pursuant to sub-section (3), the court shall hold the parties who are present on recognizance for the purpose of executing the judgment.

(5) If an intimation is received from the appeal hearing court that the parties are not on recognizance pursuant to sub-section (3), parties do not appear on the appointed date for appearance or the case becomes final upon the judgment of the court of first instance not being appealed and the parties to any case do not appear in the court, the court of first instance shall issue a process of fifteen days in the format referred to in Schedule-24, ordering the parties to appear in the court for the purpose of executing the judgment.

Provided that if any or both of the parties to the case be not on recognizance, such a process shall be sent to the party who is not on recognizance within three days of the receipt of the case-file.

(6) Notwithstanding anything contained elsewhere in this Section, if it is not necessary to hold any party on recognizance in the course of execution of judgment, the court shall not hold such a party on recognizance.

236. Power to execute judgment upon collecting additional fee: (1) If a party to a case appears for the execution of the judgment after the expiration of the time-limit specified in the process, if any, issued pursuant to this Act and after the expiration of the time-limit by which the case can be taken over or the expired date for appearance can be extended if such time-limit or date has been expired, the court shall execute the judgment by collecting an additional fee of ten percent of the fee chargeable for the execution of judgment if it is within six months of the expiration of the time-limit and of twenty-five percent thereof if it is within one year of such expiration.

(2) If the party does not appear for the execution of a judgment even within the period referred to in sub-section (1), the court shall abate the proceeding on the execution of such judgment, except as otherwise provided in this Chapter.

237. Case may be taken over or expired date for appearance may be extended: (1) If any party to the case dies in the course of execution of the judgment, his or her successor may take over such a case pursuant to this Act.

(2) If any party to the case expires the date for appearance in the course of execution of the judgment, he or she may extend the expired date for appearance pursuant to this Act.

238. Procedures for enforcement: (1) The judgment holder shall, prior to issuing a commission, pay to the court a sum to be set by three percent of the claimed amount of the property to be enforced, if such amount is specified, and a sum of one thousand rupees, if the claimed amount is not specified for the enforcement of the judgment by the court.

(2) If the judgment holder pays the amount to the court pursuant to in sub-section (1), the court shall, on the same day of payment of the amount, appoint the day on which a commission to make enforcement is to be dispatched and give a notice thereof to the parties and appoint the date for them to appear at the place where the enforcement is to be made, and if the judgment debtor is not on recognizance, the court shall also give a notice of that matter to such party.

(3) In appointing the date for appearance or giving a notice pursuant to sub-section (2), if the matter to be enforced consists of a house or land, a notice shall also be given to vacate such a house or land within seven days.

(4) If the property to be enforced is in possession or custody of a person other than a party to the case, the court shall give a notice also to such a person to appear at the place where the commission is dispatched to.

(5) The court shall dispatch a commission on the day appointed pursuant to sub-section (2) and enforce the delivery of possession of such property in pursuance of the judgment.

(6) If the direction or side of any house or land to be enforced in pursuance of the judgment is not set out, the court shall enforce the delivery of possession of such a house or land by lot upon making proportionate division in presence of the parties.

(7) In effecting the enforcement pursuant to this Section, the court shall effect it in presence of the judgment holder and the

judgment debtor or their representatives and in presence of a representative of the Local Level and at least two witnesses.

(8) If the judgment debtor or any other person causes obstruction or hindrance to the enforcement, the court shall effect the enforcement by using force as required.

(9) Notwithstanding anything contained elsewhere in this Section, if the house or shop to be enforced contains any property locked up by any one and the person in possession or custody of the house or shop to be foreclosed is present, the enforcement shall be effected by causing the person to open the house or shop, and if such a person is not present, a notice in the format referred to in schedule-25 shall be affixed on the door of the house or shop subject to enforcement, thereby requiring that person to open the lock of such a house or shop within seven days.

(10) If the concerned person does not open the lock of the house or shop within the time-limit referred to in sub-section (9), the court shall, after the expiration of such time-limit, enforce the delivery of possession of the house or shop by breaking such a lock as soon as possible.

(11) If any property is found within the house or shop in the course of effecting enforcement pursuant to this Section, the court may, at the same time, prepare an inventory of such property and take such property in its control.

(12) A seven-day notice shall be affixed at the place where such house or shop is situated, thereby informing the concerned person to get back the property taken in control pursuant to sub-

section (11) within thirty-five days, and if such a person does not appear to get back such property even within the time-limit so given, the court shall auction such property and immediately hand over the proceeds of auction to the concerned person.

(13) If the concerned person refuses to receive immediately the proceeds of auction made pursuant to sub-section (12), the court shall credit such proceeds into the deposit account.

(14) If the concerned person appears to receive the amount within one year after the crediting of the amount into the deposit account pursuant to sub-section (13), the court shall refund the amount remaining after deduction of ten percent therefrom to such a person.

(15) If the concerned person does not appear to receive such an amount within the period referred to in sub-section (14), the court shall credit such an amount into the government fund.

(16) If any person does not abandon possession of a property once enforced by the court and causes obstruction thereto, the court shall sentence such a person to a fine not exceeding twenty-five thousand rupees or imprisonment for a term not exceeding three months for each instance, and again enforce the delivery of possession of the property previously enforced in accordance with the judgment, and a separate plaint need not be made for that purpose. No additional fee shall be payable for effecting such an enforcement.

(17) If the property subject to enforcement is situated in another territory, the court shall appoint the date for the concerned

parties for effecting enforcement and forward the case-file and parties to the district court of such territory.

(18) If a precept is received to effect the enforcement pursuant to sub-section (17), the concerned court shall effect the enforcement pursuant to law and give information thereof to such a court.

(19) After effecting the enforcement by the court pursuant to this Section, the court shall give a proof thereof to the judgment holder.

(20) The court shall complete the effecting of enforcement within six months after the appearance of the parties in the court.

(21) The concerned party shall bear the actual costs incurred in course of the enforcement.

(22) If the judgment holder demands for enforcement in accordance with the judgment, enforcement shall be effected accordingly.

Provided that if the matter to be enforced consists of a land or physical structure with such area as is not allowed by law for plotting out for partition or enforcement, the court shall enforce the delivery of possession of the land or structure on the basis of the agreed price if both party so agree and the local market price (*Panchakirti* price) or price of auction sale if they do not so agree. If, in effecting such an enforcement, any party wishes to pay it in cash, that party may do so.

(23) If any person is held to have built or made a physical structure by encroaching of other's land and enforcement is to be effected in relation thereto, such a structure shall be demolished, and

the person who has built or made the structure by making such encroachment shall bear the costs incurred therein.

(24) The judgment holder shall be awarded with the amount of compensation if the parties agree thereto without demolishing the structure referred to in sub-section (23), and with an amount consisting of the local market *Panchakirti* price and additional sum of twenty-five percent of such price if the parties do not agree on the amount of compensation in spite of their agreement not to demolish it.

239. Procedures for effecting registration and de-registration of matter and transmission: (1) If, in the course of making registration and de-registration of the matter and transmission, in pursuance of a judgment, the judgment holder is on recognizance pursuant to Section 235, the court shall, for the purpose of executing the judgment, send a precept, accompanied with its statement, to the office making registration and de-registration of the matter and transmission, and also ask the party to appear in that office within twenty-one days.

(2) If a percept is received from the court pursuant to sub-section (1) and the concerned party appears in it, the office shall effect the registration and de-registration of the matter and transmission in pursuance of the judgment within three days.

(3) If any party appears in the concerned office for registration and de-registration of the matter and transmission after the expiration of the time-limit referred to in sub-section (1), the office shall effect the registration and de-registration of the matter and transmission in pursuance of the judgment, by collecting a fee of five hundred rupees for each year.

240. Procedures relating to preemption: (1) If, in the course of executing preemption in pursuance of a judgment, any party is on recognizance pursuant to Section 235, the court shall appoint the date for such a party to appear to obtain preemption of the property subject to preemption or receive the deposited amount and send the party to the office holding the deposited amount.

(2) If both parties to effect preemption appear in the office pursuant to sub-section (1), the office shall hand over the deposited amount to the preemptee within seven days and deliver up the document of such property and receipt thereof to the preemptor.

(3) If only the preemptee appears in the office pursuant to sub-section (1), the office shall hand over the amount to him or her pursuant to sub-section (2) and deliver up the documents including the receipt of payment of the amount to the preemptor as and when he or she appears.

(4) If only the preemptor appears in the office pursuant to sub-section (1), the office shall effect preemption in pursuance of the judgment and deliver up the documents including the receipt of payment of amount to him or her.

(5) If preemption is effected by the office pursuant to this Section, the preemptee shall receive the deposited amount within thirty-five days of the date of preemption.

(6) If the preemptee appears to receive the deposited amount after the expiration of the time-limit referred to in sub-section (5), the office shall return to such a person the deposited amount remaining after deduction of additional three percent of the

deposited amount if it is within one year and addition five percent thereof if it is within three years.

(7) If the preemptee does not appear to receive the deposited amount even within the time-limit referred to in sub-section (6), the office shall credit such deposited amount into the government fund.

241. Procedures for effecting partition: (1) If, in the course of effecting partition in pursuance of a judgment, the parties are on recognizance pursuant to Section 235, the court shall effect partition by setting aside partition shares within six months.

(2) If a judgment is made to set aside partition shares for more than one coparceners if and, any coparcener is absent, the court shall serve a fifteen-day process in the form referred to in Schedule-26 on the coparcener who is absent.

(3) If the concerned coparcener appears within the time-limit referred to in sub-section (2), the court shall set aside partition shares in presence of all coparceners.

(4) If all coparceners entitled to partition do not appear within the time-limit referred to in sub-section (2), the court shall set aside partition shares of the coparceners who are absent and effect partition shares of the coparceners who are present.

(5) If partition is effected pursuant to sub-section (4), the person failing to appear within the time-limit shall not be entitled to make a suit on the matter of effecting partition or of higher or lower grade or value of the partition.

(6) If it is necessary to send a commission to effect partition, the court shall send the commission to an employee to effect partition.

(7) In the course of setting aside partition shares pursuant to this Section, the coparceners bound to give partition in pursuance of the judgment or the coparceners who take custody of the property set forth in the inventory, their representatives or other major persons living in the joint family shall show such property set forth in the inventory as to be partitioned.

(8) If the person giving partition or taking custody of the property is not found or any major person living in the joint family cannot show all properties as set forth in the inventory, the court shall serve a process in the format referred to in Schedule-27 on the person giving, and taking custody of, the partition share, thereby ordering them to appear in the court within fifteen days, excluding the time required for journey.

(9) If the person giving partition or taking custody of the property fails to appear within the time-limit referred to in sub-section (8) or does not show the property subject to partition despite making appearance, the court shall effect partition according to the inventory by opening the closed property, if any, in presence of a member or representative of the Local Level and at least two persons as witness.

(10) If the parties fail to appear within the time-limit referred to in sub-section (2) or (8), the court shall commence proceeding to effect partition by setting aside partition shares in pursuance of the judgment within three days after the expiration of such time-limit.

(11) If any party appear in the court after the time-limit given pursuant to sub-section (8) and if, the execution of partition is not completed by that time, the court shall effect partition in pursuance of the judgment in presence of him or her also.

(12) If, in the course of making partition, all properties set forth in the inventory are not in order, the claimed amount of the shortfall property shall be ascertained, and reimbursed from the partition share of the partition giver or the person taking custody of the property. If the partition share is not recovered even from such reimbursement, recovery shall be made from any other property owned and possessed by such a person to the person receiving partition, in consideration for such shortfall portion.

(13) If, in the course of effecting partition, the person receiving partition or a major person living in the joint family refuses to receive his or her partition share and any perishable property is subject to partition, the court shall auction such property. If the concerned person does not appear to receive the proceeds of such auction subsequently, the court shall return the amount remaining after deducting ten percent thereof to him or her.

(14) If, in effecting partition, the property subject to partition cannot be so partitioned as to be enjoyable by all coparceners equally or the form of such property consisted of any house, land or in-kind property is changed upon partition and becomes unusable, partition shall be so effected that any coparcener may take such property at the price, if any, set by agreement of all coparceners, and at the local market (*Panchakirti*) price, if there is no such an agreement.

(15) If more than one coparceners wish to take the property at the price set pursuant to sub-section (14), partition shall be effected so that the coparcener set by lot may take it.

(16) If partition cannot be effected pursuant to sub-section (14) or (15), the property shall be auctioned in participation of the parties to the case and other persons as well, and the proceeds of auction shall be partitioned among the coparceners in pursuance of the judgment.

(17) If the coparceners do not agree as to the property subject to partition, the court shall divide such property on proportionate of higher or lower value or grade and effect partition by lot.

(18) If any person does not show or produce the property in his or her custody as set forth in the inventory, the court shall sentence such a person to a fine of five percent of the claimed amount of the property that was not so shown or produced.

(19) If in a case in which final judgment is made holding the plaintiff to be entitled to partition, the other defendant coparceners also make a petition for setting aside and receiving their respective partition shares, the court shall set aside such partition shares from the property as held by judgment and cause the same to be provided to them, by collecting the court fee chargeable by law.

(20) If the property subject to partition is situated also in another district, the court shall also send a precept to the concerned court to effect partition of such property.

(21) If a precept is received pursuant to sub-section (20), the concerned court shall effect partition pursuant to this Section and give information thereof to such a court.

(22) If any one transfers a property subject to partition or a new coparcener is added or the number of coparceners decreases during the pendency of the case in the court or prior to the execution of the judgment made in such a case, a plaint need not be made again for that purpose, and in such a circumstance, partition shall be effected upon examining the truth of the petition, if any, made to the court.

(23) In effecting partition pursuant to this Section, a fee shall be charged by two point five percent of the property so partitioned.

242. Procedures for recovering claimed amount: (1) If, in the course of recovering the claimed amount in pursuance of a judgment, the judgment holder is on recognizance pursuant to Section 235, the court shall cause a document to be executed by such a party as to whether he or she wishes to recover the claimed amount.

(2) If, in executing a document pursuant to sub-section (1), the judgment holder does not wish to recover the claimed amount, the court shall remind him or her of the consequence that may arise from such failure to recover the claimed amount, terminate the judgment execution proceeding and cross off the records of the claimed amount, on the same day.

(3) If, in executing a deed pursuant to sub-section (1), the judgment holder wishes to recover the claimed amount and the judgment debtor is on recognizance, the court shall give a time of a

maximum of thirty-five days to the judgment debtor to pay the claimed amount ought to be paid in pursuance of the judgment.

(4) The judgment debtor shall pay an amount equal to the claimed amount to the court in cash or by a good for payment cheque or any other instrument within the time given pursuant to sub-section (3).

(5) Notwithstanding anything contained in sub-section (4), the judgment debtor may make a request to the court to recover the claimed amount from any property of him or her.

(6) If the judgment debtor is not present in the court, or despite being present, does not pay the amount in consideration of the claimed amount or fails to show a property pursuant to sub-section (5) or the judgment holder does not agree because it is not possible to recover the claimed amount from the property so shown, the judgment holder may, showing the property of the judgment debtor, make a petition to the court for the recovery of the claimed amount from such property.

(7) If, in recovering the claimed amount pursuant to this Section, any property has to be freezed, the court shall freeze such property as required and effect the recovery of the claimed amount by auctioning such property also as required.

(8) If the proceeds of auction of the property made pursuant to sub-section (7) exceed the claimed amount, the court shall immediately return such excess amount to the judgment debtor if he or she is present.

(9) If the concerned party refuses to receive the amount pursuant to sub-section (8), the court shall credit that amount into the deposit account.

(10) If the concerned person does not appear to receive the amount within one year after the date on which such amount was credited into the deposit account, such an amount shall be paid to the government fund.

(11) If a property from which the claimed amount is to be recovered is situated in another district, the court shall send a precept to the concerned court to recovery the claimed amount.

(12) If a precept is received pursuant to sub-section (11), the concerned court shall effect recovery of the claimed amount pursuant to this Section and give information thereof to such a court.

(13) Notwithstanding anything contained elsewhere in this Section, if the judgment holder discovers the concealment or hiding of any property by the judgment debtor and makes a petition showing the same while the judgment debtor is alive, the court shall auction the property and effect the recovery to the extent of the claimed amount to which he or she is entitled.

(14) The court shall, in consideration for effecting the recovery of the claimed amount pursuant to this Section, collect a fee of three percent of such a claimed amount from the judgment holder.

(15) If the judgment debtor, in the matter of the recovery of the claimed amount of any person pursuant to this Section, makes a petition, accompanied by a bank guarantee issued by any commercial bank, to the court for a facility of payment of the whole or shortfall

of the claimed amount in installments and if the judgment holder so agrees, the court may cause such claimed amount to be paid over in installments.

243. Property subject to attachment: (1) In making attachment of property in consideration for the claimed amount pursuant to Section 242, the partition shares of those, above twelve years of age, who have not separated bread and board and are living together and enjoying or using such property or of those who, despite having obtained their respective partition share or separated bread and board, live together while enjoying or using that property shall also be subject to attachment.

(2) In making attachment pursuant to sub-section (1), the property that remains upon setting aside the following property shall be attached:

- (a) If any property subject to attachment is a personal property of a person other than the attachment, such property,
- (b) Up to three pairs of clothes and up to three pairs of shoes being or to be put on by the person whose property is being attached and his or her joint family,
- (c) Such bare cooking and dining utensils, pots and bare quilt and mattress and a reasonable number of furniture as required for the person whose property is being attached and his or her joint family,
- (d) Such books as required for the joint family of the person whose property is being attached to impart education,

- (e) Medicines and medical equipment already purchased for the person whose property is being attached and his or her joint family prior to the commencement of the attachment proceeding,
- (f) Such food as required for the person whose property is being attached and his or her joint family to maintain livelihood for a maximum of three months,
- (g) Bare inputs or tools related with the occupation or employment of the person whose property is being attached and his or her joint family.

(3) Notwithstanding anything contained in sub-section (2), in setting aside property pursuant to clauses (b), (c), (d), (e), (f) and (g) of that sub-section, no property valued at more than one hundred thousand rupees shall be so set aside.

(4) If the claimed amount cannot be recovered in full even upon making attachment pursuant to sub-section (2), no other family members shall be attached.

244. Imprisonment for claimed amount or fine: (1) If the claimed amount is not recoverable in full even from the auction sale made pursuant to sub-section (7) of Section 242, a property is not shown or the property cannot be auctioned, and the judgment holder, wishing to subject the judgment debtor to imprisonment, makes a petition for the same within fifteen days on which the property was auctioned or the circumstance referred to in this sub-section occurred, the court shall execute a memorandum thereof and imprison the judgment debtor in accordance with law.

(2) In imprisoning the judgment debtor pursuant to sub-section (1), the court shall convert the remaining claimed amount into imprisonment at the rate of four hundred rupees a day, and imprison him or her equal thereto.

(3) In subjecting to imprisonment pursuant to sub-section (1), the term of such imprisonment may not exceed four years in the case of a claimed amount of the Government of Nepal or a public body under full or majority ownership or control of the Government of Nepal and two years in the case of a claimed amount of an individual or other body.

(4) If, in subjecting to imprisonment pursuant to sub-section (1), the claimed amount is or remains less than four hundred rupees, the concerned person shall be imprisoned for one day for such amount.

(5) In subjecting to imprisonment pursuant to sub-section (1), the person wishing to effect such imprisonment shall bear such ration expenses as chargeable under law.

(6) In subjecting to imprisonment in lieu of a fine, one shall be so imprisoned at the rate of two hundred rupees a day as not to exceed four years.

(7) Prior to subjecting to imprisonment pursuant to this Section, the concerned person shall be given a reasonable time to present his or her statements.

(8) Notwithstanding anything contained elsewhere in this Chapter, if the judgment debtor in default of payment of the remaining claimed amount is imprisoned by order of the court at the

party's request for the unrecovered remaining claimed amount, no claim may be made again in relation to that claimed amount.

245. Matter to be done when the judgment debtor dies: (1) If the judgment debtor dies prior to the recovery of such claimed amount, the claimed amount shall be recovered from the property in which he or she has right.

(2) If the claimed amount cannot be recovered from the property in which he or she has right, the shortfall claimed amount shall be recovered from the person who succeeds to his or her property.

(3) Notwithstanding anything contained in sub-section (2), in recovering the claimed amount from the successor, no amount in excess of that succeeded to by him or her shall be recovered.

246. Concession in fine: If a person sentenced to a fine pursuant to a judgment pays the fine immediately or within sixty days of the date of the judgment, the person shall enjoy twenty percent concession in the fine imposed on him or her.

247. Execution of deed of compromise: (1) If any deed of compromise is so executed that any act has to be done, or caused to be done, by any government body, the court shall send a precept to the concerned office to do the act referred to in the deed of compromise, within three days of the execution of such a deed.

(2) Even though, in a case involving more than one plaintiff or defendant, all parties are not present for the execution of the deed of compromise, the deed of compromise shall be executed after the expiration of the time-limit referred to in sub-section (1). In so

executing the deed of compromise, the court shall also protect the interest of the person who does not appear for such execution.

248. Period for refund of court fee, deposit and cost: (1) Except as otherwise provided for in this Act, in order to get refund of such amount of court fee and deposit as held to be refunded pursuant to a judgment, the concerned person shall make a petition praying demand for such refund, along with evidence, to the court within one year after the date of knowledge of the final judgment.

(2) If the amount demanded pursuant to sub-section (1) is refundable, the amount of court fee shall be returned within three months and deposit, within seven days of the date of receipt of the petition.

(3) Except as otherwise provided for in this Act, the person entitled to receive or refund of the proceeds of auction shall receive such amount within six months after the date of auction.

(4) If the concerned person fails to receive the court fee, deposit or amount within the time-limit referred to in sub-section (1) or (3), such fee, deposit or amount shall then become non-refundable, and be credited to the government account.

249. Fee chargeable for the execution of judgment: (1) Except as otherwise provided for in this Chapter, the court shall collect the fee at the rate of five percent from the recipient of any amount the payment of which has been effected by the court pursuant to a judgment.

(2) Notwithstanding anything contained in sub-section (1), no fee shall be charged for such specification of repayment date,

delivery of any document or division of borrowers between creditors as effected by the court.

250. Complaint may be made: (1) A concerned person who is not satisfied with any act done or action taken by the concerned employee in the course of execution of a judgment may make a complaint to the judge of the same court within fifteen days.

(2) A person who is not satisfied with a decision taken on the complaint made pursuant to sub-section (1) may make a petition to the appeal hearing court.

(3) A complaint made pursuant to sub-section (1) and petition made pursuant to sub-section (2) shall be disposed of within one month and two months, respectively.

(4) A party who remains absent on the date for appearance despite receiving the notice for appearance for the execution of judgment shall not make a complaint or petition referred to in this Section.

251. Proceeding not to be void merely by the reason of absence of representative: (1) If any proceeding has to be conducted in presence of, or bear signature and thumb impression of, a member or representative of the Local Level pursuant to this Chapter, such proceeding may be conducted, or caused to be conducted, even though such a member or representative does not appear despite giving a written notice for the presence of such a member or representative.

(2) Any proceeding otherwise duly conducted shall not be invalid merely by the reason that a member or representative of the

Local Level did not appear or refused to affix his or her signature and thumb impression pursuant to sub-section (1).

252. Power to institute action or impose punishment on contempt: (1) It shall be the duty of the parties to a case to assist in the execution of judgment pursuant to this Chapter.

(2) The court may, in accordance with law, institute action on contempt against, or impose a sentence of a fine not exceeding one thousand rupees or imprisonment for a term not exceeding three months or both on, a person who hinders the execution of judgment.

253. Employee entitled to incentive: (1) If a government employee who is deputed for the recovery of the imposed fine, penalty or claimed government amount in pursuance of a judgment does not wish to receive the amount for daily and travel allowance, the employee shall be entitled to the incentive allowance of twenty-five percent of the amount recovered.

(2) The bailiff (*Tahashildar*) shall be entitled to an incentive of five percent of the amount recovered pursuant to sub-section (1).

(3) The allowance or amount referred to in sub-sections (1) and (2) shall be chargeable on the amount of fine or government claimed amount recovered.

(4) If any person, other than a government employee, has recovered the government claimed amount or fine pursuant to this Section, an amount equal to the amount referred to in sub-section (2) may be provided to that person as if he or she were a government employee.

Chapter-23

Provisions Relating to Civil Cases Involving Government as Plaintiff or Party

254. Inquiry into and filing of civil case in which Government is plaintiff: (1) A person who intends to institute a case referred to in Schedule-28 and a case which is so specified by the law in force as a case to which the Government of Nepal, Provincial Government or Local Level is a plaintiff shall make a written report or verbal notice, setting out the evidence on the matter of such a case whatever he or she has or knows to the best of his or her knowledge and information, to such an authority as specified by the Government of Nepal by a notification in the Nepal Gazette or to the land revenue officer of the concerned district failing such specification.

(2) If a verbal notice is made pursuant to sub-section (1), the concerned authority shall write down the matter of such a person in the format of a report and take his or her signature and thumb impression thereon.

(3) If a report is received pursuant to sub-section (1), the concerned authority shall, as required, make survey and measurement of the house or land related to the case or inquire into other necessary matter, and send the original case-file and a copy thereof, along with the evidence collected and his or her opinion, as well, to the government attorney of the concerned district at least fifteen days in advance of the expiry of the statute of limitation under the relevant law, having regard to the time required for making

decision of whether or not to institute the case and the time required for preparing a plaint and filing it if decision is made to institute the case.

(4) Even though any report is not made by any one pursuant to sub-section (1), the concerned authority shall, on his or her own motion, collect necessary evidence, complete the procedures referred to in sub-section (3) and send the documents, along with the case-file, to the government attorney of the concerned district if he or she has a reason to institute the case referred to in sub-section (1).

(5) If a case-file is received pursuant to sub-section (3) or (4), the government attorney shall, upon studying the case-file, decide whether or not to institute the case on that matter.

(6) If decision is made to institute the case pursuant to sub-section (5), the government attorney shall prepare a plaint and file the case, along with the evidence, in the concerned court.

(7) If decision is made not to institute the case pursuant to sub-section (5), the government attorney shall return the case-file so received and evidence to the concerned authority.

255. Case to be instituted with Government being plaintiff: A case filed pursuant to Section 254 shall be instituted as one in which the Government is plaintiff.

Provided that Section 91 shall govern the matter in which a plaint has to be made.

256. To give notice if case appears to be instituted by person: (1) If, in studying the case-file pursuant to sub-section (5) of Section 254, it

appears that such a case should not be instituted upon the Government being plaintiff but should be instituted by the aggrieved person in accordance with law, the government attorney shall make decision accordingly and notify the case-file sending authority to give a notice thereof to the concerned person.

(2) The statute of limitation specified by law shall be computed from the date of receipt of the notice referred to in sub-section (1), in the case of the concerned person.

257. To maintain concerned person as party: (1) If, in the course of proceeding, any case filed with the Government of Nepal, Provincial Government or Local Level being a plaintiff pursuant to Section 254 does not appear to be a case in which the Government of Nepal, Provincial Government or Local Level is a plaintiff, the court shall make order accordingly and summon the appearance of the concerned person. If the concerned person appears in pursuance of the court order and takes over the case, he or she shall be maintained as the plaintiff party and the case shall be proceeded, heard and adjudicated from the case-file of that case.

258. Provisions relating to institution of other civil cases: (1) The authority specified by the concerned law for the purpose of instituting civil cases other than those filed pursuant to Section 254 or collecting evidence or the chief of the concerned office if such an authority is not specified shall collect evidence and send the case-file, along with evidence and his or her opinion, to the concerned government attorney for a decision to or not to institute the case in such a manner as not to expire the statute of limitation.

(2) If the case-file is received pursuant to sub-section (1), the government attorney shall study the case-file and decide to or not to institute the case, and return the received case-file to the concerned authority in such a manner as not to expire the statute of limitation for filing the case, along with a description of the matter on which and the person against whom the case should be instituted, if decision to institute the case is made.

(3) If a decision to institute the case is made by the government attorney pursuant to sub-section (2), the concerned authority shall prepare, affix his or her signature and thumb impression on, a plaint and file the case in the concerned court within the statute of limitation.

(4) After a case is filed pursuant to sub-section (3), the concerned authority shall provide a copy of the case-file related to such a case to the government attorney.

259. Provision relating to statute of limitation: (1) If a suit is to be made on a civil matter in the name of any person by the Government of Nepal, Provincial Government or Local Level, such a suit shall be made within the statute of limitation, if any, specified by this Act and other law for that purpose, and if such statute of limitation is not specified, within two years after the date on which the Government of Nepal, Provincial Government or Local Level knew the accrual of the cause of action.

Provided that if this Act and other law provide for non-applicability of a statute of limitation to a suit or there is no any

statute of limitation or provides that suit can be made any time, a suit may be made any time.

(2) For the purposes of sub-section (1), if the concerned authority of the Government of Nepal, Provincial Government or Local Level office knows the accrual of the cause of action, the Government of Nepal, Provincial Government or Local Level shall be deemed to know it.

260. Provision relating to deposition of witness or submission of evidence: (1) If a case is filed pursuant to Section 254, the person who submits a information report or notice on that matter shall be deemed to be a witness of the plaintiff party.

(2) The concerned authority shall be responsible for producing or providing, through the government attorney, the witness or evidence of a case filed pursuant to Section 254 and other civil case with the Government of Nepal or Provincial Government being defendant on the day appointed by the court to that end.

(3) The government attorney shall make deposition of a witness or submit evidence in a case filed pursuant to Section 254 and any other civil case in which Government of Nepal or Provincial Government is a plaintiff.

(4) If it is essential to examine any witness in a case filed pursuant to Section 254, the witness may be summoned and examined as if he or she were a witness to be essentially examined in a criminal case.

261. Government attorney to make pleading and defense: (1) The government attorney shall plead and defend a case filed pursuant to Section 254.

(2) Except as provided for in sub-section (1), the government attorney may, if so requested by the concerned body, plead and defend a civil case instituted by the Government of Nepal as plaintiff or against the Government of Nepal, Provincial Government or Local Level, as the opponent party.

262. To give time-limit: (1) The court shall give a time-limit of seventy days to tender an appeal in a case filed pursuant to Section 254.

(2) If the time-limit given pursuant to sub-section (1) expires and the concerned party makes a petition, showing a reasonable ground, to the court, the court may extend the time-limit of up to thirty days, in addition to the time-limit extendable under Chapter-8.

263. Authority responsible for making appeal, petition for review or revision of case: (1) The concerned government attorney shall be responsible for tendering an appeal in, or petition for the review or revision of, a civil case filed pursuant to Section 254.

(2) Except as provided for in sub-section (1), the concerned authority or chief of office himself or herself may tender an appeal in, or petition for the review or revision of, a civil case instituted by or against the Government of Nepal, Provincial Government or Local Level.

Provided that the government attorney may, if so requested by the concerned authority or chief of office, tender an appeal in, or petition for the review or revision of, such a case.

264. Procedure for making suit against Government of Nepal: (1) If it is necessary to make a law-suit in a civil case against the Government of Nepal, Provincial Government or Local Level, the concerned person shall give a notice thereof to the office against which the law-suit has to be made or the chief of such an office.

(2) If a notice is received pursuant to sub-section (1), the concerned office or chief of that office shall consult with, or obtain a sanction from, any other office or body if such consultation or sanction is necessary.

(3) If, upon necessary inquiry into the matter of the notice received pursuant to sub-section (1), there is any reason for not filing a law-suit, the concerned office or chief of that office shall give information thereof, along with the clear reason therefor, to the concerned person within thirty days of the date of receipt of such a notice.

(4) If the concerned office or chief of that office does not give any information about that matter within the period referred to in sub-section (3) or even though information has been so given as not to file a suit, the reason therefor does not appear reasonable, the concerned person may file a law-suit within thirty-five days of the date of expiration of the period or receipt of such information.

265. Other matters to be governed by Act and law: The matters contained herein as to the civil cases with the Government of Nepal, Provincial Government or Local Level being a plaintiff or party shall be governed by this Chapter and other matters not set forth in this Chapter shall be governed by the other Chapters of this Act and law.

Chapter-24

Miscellaneous

- 266. Compensation to be determined:** (1) If the concerned person claims for compensation in a case in which compensation may be awarded by law, the court shall, in deciding the case, determine compensation.
- (2) Except as otherwise provided for in law, in determining compensation pursuant to sub-section (1) the following matters shall be considered :
- (a) Actual loss caused from the damage,
 - (b) Loss in income caused by the reason of damage,
 - (c) Additional loss suffered by the reason of damage.
- (3) In determining compensation pursuant to sub-section (1), the actual loss by the reason of the violation of right or interest of any one or actual loss resulted or likely to be resulted from such violation shall be ascertained and compensation shall be determined merely on the basis thereof; and compensation cannot be determined on a remote matter.
- 267. Case may be filed on behalf of minor, infirm and disappeared person:** (1) Minor who has not attained the age of majority under the law or in spite of attaining the legal age of majority, a person who is infirm due to old age, with visual or speech impairment, of unsound mind or is disappeared person, on his or her own, or where he or she is not able to do so on his or her own, his or her guardian or curator

may, on his or her behalf, make or submit a plaint, statement of defense, memorandum of appeal or petition.

Explanation: For the purposes of this Section, the term "disappeared person" means a person who has left the house without notice for three consecutive years or who has gone abroad but it is uncertain whether he or she will return.

(2) A guardian or curator shall make a separate petition to the court for a leave for making or submitting a plaint, statement of defense, memorandum of appeal or petition on behalf of such persons pursuant to sub-section (1).

(3) If a petition is received pursuant to sub-section (2), the court shall first examine evidence as to whether or not the person referred to in the petition is a minor or in spite of attaining the legal age of majority, is infirm due to old age, with visual or speech impairment, of unsound mind or disappeared person, and if the petitioner's statement appears reasonable upon making such an examination, it may grant a leave for making or submitting a plaint, statement of defense, memorandum of appeal or petition on behalf of that person in spite of a power of attorney or authorization.

(4) The court shall decide a petition for a leave pursuant to sub-section (3) within seven days of the making of such petition.

(5) Notwithstanding anything contained in sub-section (4), the court shall decide a petition for a leave for making or submitting a plaint, statement of defense, memorandum of appeal or petition on

behalf of a disappeared person within fifteen days of the making of such petition for the leave.

268. Cases to be heard in open bench: (1) The court shall hear cases in open bench.

(2) Notwithstanding anything contained in sub-section (1), if any party to the case makes a petition, setting out the reason for conducting in camera the hearing of a case related to family relation, establishment of relation, marriage or divorce, and the statement of petition appears reasonable or if the court, on its own motion, deems it reasonable to conduct the hearing of a case in camera, the court shall order such a case to be heard in camera.

(3) If an order is made to conduct hearing in camera pursuant to sub-section (2), the access of any person other than the parties to that case or their attorneys, law practitioners appointed by the parties and such other persons or employees as ordered by the judge shall be prohibited.

(4) Notwithstanding anything contained elsewhere in this Section, if the court considers it reasonable to prevent any person from entering into the bench for reason of public security, the court may prohibit the entry of such a person into the bench.

269. Proceeding to be made in presence of parties: In conducting the hearing of a case or deciding the issue to be adjudged, such proceeding shall be conducted in presence of the parties.

Provided that even if any party is not present on the date appointed for the hearing of a case, nothing shall be deemed to bar from deciding and adjudging the case.

270. Priority order for trying cases: (1) The court shall proceed, hear and adjudicate cases in the following order of priority:

- (a) A case in which a person with disability or minor is a party,
 - (b) A case in which a person with physical disability or over seventy-five years of age is a party,
 - (c) A case relating to the matter of name-giving or settlement of relationship,
 - (d) A case relating to alimony,
 - (e) A case relating to divorce,
 - (f) A case registered earlier according to the order of registration of cases.
- (2) Notwithstanding anything contained in sub-section (1), if there are cases of more than one nature in the same order, the case registered earlier shall be proceeded, heard and adjudicated.
- (3) Notwithstanding anything contained in sub-sections (1) and (2), the court may, in view of the gravity and propriety of any case, proceed, hear and adjudicate such a case by according priority to it.

271. 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 of his or her close relative,

Explanation: For the purposes of this Section, the term “close relative” means a person who is in the order of priority to succeed to his or her property in accordance with law when succession is open, maternal uncle, maternal aunt, mother's elder sister, mother's younger sister, father's elder brother, father's younger brother, mother-in-law, father-in-law on the side of husband or wife, father's sister, father's sister's husband, elder brother-in-law, younger brother-in-law, sister-in-law, elder sister, younger sister, elder sister's husband, sister's husband, son-in-law, nephew, niece, niece's husband, niece's daughter-in-law 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, 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 reason, a substantial conflict of interest of him or her or a family

member jointly living with him or her or of any person referred to in clause (a).

(2) If there appears any circumstance referred to in sub-section (1), the case trying judge shall make an order to that effect, setting out the reason to refrain from trying it.

(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 proceeding, hearing or adjudicating the case.

(4) If a petition referred to in sub-section (3) is received, the case trying judge shall, before proceeding, hearing or adjudicating the case, ascertain whether the request or claim of such a petition is reasonable or not, and make an order to that effect if the judge should not try the case.

(5) If an order is made pursuant to sub-section (2) or (4), another judge in the same court shall proceed, hear and adjudicate the case, and failing such a judge, the case-file, specifying by the reason therefor, shall be sent to the nearest court of the same level to proceed, hear and adjudicate the case, and the date shall also be appointed for the parties to appear in that court.

(6) If a case-file is received pursuant to sub-section (5), such a court shall proceed, hear and adjudicate such a case despite that it is not within its jurisdiction.

272. Acts to be performed by judge himself or herself: (1) The judge himself or herself shall perform the following acts, out of the acts to be performed by the court pursuant to this Act:

- (a) Taking statement of a party,
- (b) Taking an oath of a witness,
- (c) Taking deposition of a witness,
- (d) Making an interim or interlocutory order,
- (e) Executing an order sheet of matters to be decided in a case,
- (f) Issuing order for the examination of evidence,
- (g) Conducting preliminary hearing and pre-trial discussion of a case,
- (h) Conducting hearing,
- (i) Effecting a deed of compromise,
- (j) Passing a judgment or issuing any kind of final order.

(2) Notwithstanding anything contained in sub-section (1), the judge may, for the purpose of taking or recording a statement or deposition, take assistance of an employee whose rank is at least non-gazette first class in the court, if available, and of an employee whose rank is at least non-gazette second class, failing such a first class employee.

273. 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, and it appears necessary to translate such a document in the Nepali language, the court may order the party who has submitted such a document to submit a translation of the document in the Nepali language.

(2) If an order is made pursuant to sub-section (1), the concerned party shall get the document translated in the Nepali language and submit a certified copy thereof to the court.

274. Assistance of interpreter may be taken: (1) The court may take assistance of an interpreter of the concerned language for taking statement or deposition of any party or witness who is unable to understand the Nepali language, or for any other purpose.

(2) The concerned party shall bear the expenses incurred in taking assistance of the interpreter for taking statement or deposition pursuant to sub-section (1).

275. Power to ask parties to case at any time: (1) The judge may, prior to passing judgment in a case, order and ask any matter to its parties at any time.

(2) The responses given by the concerned party to the case pursuant to sub-section (1) shall be recorded and enclosed in the case-file.

276. Identity of party or witness may be kept secret: (1) Notwithstanding anything contained elsewhere in this Act, if it appears that the disclosure of the identity of any party or witness

may be prejudicial to the social prestige or honor of such a party or a witness or may result in undue fear, terror or fright by any party or be prejudicial to the security of his or her body or life, the concerned party may request the court that the name, surname, address of such party or a 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 make order that the name, surname and address of such a party or witness and his or her father's, mother'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, mother's name or his or her identity kept secret pursuant to sub-section (1) at the time of hearing of the concerned case or publishing the details pertaining thereto, such disclosure shall be made under nick name, surname, address or description in pursuance of the order of the court.

277. Duty to assist in witnessing and affixing signature and thumb impression: (1) Any person bound to witness an act or action or affix his or her signature or thumb impression on a document prepared by the court in the course of any proceeding pursuant to this Act shall assist the court by so witnessing the act or action or affixing signature or thumb impression on the document.

(2) If any person refuses to witness or affix signature or thumb impression on a document pursuant to sub-section (1) and continues to refuse to so witness or affix signature or thumb

impression on such a document in spite of making him or her understand the consequence thereof, the employee executing that act or document shall execute such a document which shall be signed by any other two persons present and by himself or herself, setting out that matter and remarks, along with the reason for the failure of such a person to witness or affix signature or thumb impression on the concerned document.

(3) Any document executed pursuant to sub-section (2) shall be deemed to have been executed in fulfillment of the legal requirements.

(4) The court may sentence a person who makes obstruction to or does not render assistance in the action of the court pursuant to this Section to a fine not exceeding five thousand rupees.

278. Saving of act done in good faith: No judge or other employee may be subject to any action in relation to any act done or action taken in good faith in accordance with this Act or the rules framed under this Act.

279. Not to be invalid by reason of printing or mathematical error:

(1) If there is any minor error or omission in respect of the procedures referred to in this Act while proceeding, hearing and adjudicating a case, or mathematical or any other minor error or omission in writing or printing while preparing any document, all acts and proceedings relating thereto shall not be deemed to be invalid merely by that reason.

(2) If there is any mathematical or other minor error or omission in writing or printing while proceeding, hearing and adjudicating a case or while preparing any document pursuant to sub-section (1), the judge may, by executing a separate memorandum, so correct such error or omission as not to affect the decree.

280. Receipt to be taken or given: (1) In returning any original document submitted in the court to any person or handing over any original document by the court to any person, a receipt or proof to the effect that such a 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.

281. Petition fee: Except as otherwise provided for in this Act, any petition to be submitted to the court shall be charged with a fee of ten rupees.

282. Publication of process or notice: In publishing any process or notice by the court in a national daily newspaper pursuant to this Act, it shall be published in a national daily newspaper to be published by a body owned by the Government of Nepal on the day fixed by the Supreme Court.

283. To order for departmental action: (1) Except as otherwise provided for in this Act, if any employee bound to discharge any act referred to in this Act does not discharge such an act within the period specified by this Act, the aggrieved party may make a

complaint to the judge of the concerned court against such an employee.

(2) If a complaint referred to in sub-section (1) is made and examination of such employee shows that he or she has not discharged the act in time for no reasonable reason, the judge may order to take departmental action against him or her.

284. Index of documents: There shall be maintained an index of documents in each case in the format referred to in Schedule-29, and such an index shall record the serial number and details of the documents, in order of the date of registration.

285. Disposal of documents: (1) After five years of the final decision of a case, the court shall dispose the documents, except the following documents enclosed in the case-file of the said case:

- (a) Plaintiff,
- (b) Statement,
- (c) Statement of defense or counterclaim,
- (d) Process issued in the name of a party,
- (e) Map or design related with the case,
- (f) Originals of documentary evidence,
- (g) Deed of compromise,
- (h) Memorandum of appeal,
- (i) Petition made for review or revision of the case,
- (j) Judgment, decision, final order made by the court,

- (k) Such other document as considered necessary to be preserved in accordance with law.
- (2) The *Shrestedar* (registrar of the court) shall, prior to the disposal of documents pursuant to sub-section (1), prepare an inventory of the documents to be disposed, and affix his or her signature or thumb impression on the inventory.
- 286. Power to alter in Schedule:** The Government of Nepal may, by a notification in the Nepal Gazette, make necessary alteration, or change in the Schedules.
- 287. Power to remove difficulty:** If there arises any difficulty in relation to the court procedures in the course of implementation of this Act, the Full Court of the Supreme Court may make necessary provision in order to remove such difficulty.
- 288. Power to frame rules:** The Supreme Court may frame necessary rules on matters of court procedures, for the implementation of this Act.
- 289. Power to frame guidelines:** The Supreme Court may, subject to this Act and the rules framed hereunder, frame necessary guidelines for the implementation of this Act.