

Extradition Act, 2045 (1988)

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Act No. 3 of the year 2045 (1988)

An Act made to provide for extradition of accused or offender

Preamble: Whereas, it is expedient to maintain law and order and to make legal provisions relating to the extradition of accused or offender by adopting the SAARC Regional Convention on suppression of terrorism passed by the Third Summit Conference of the South Asian countries;

Now, therefore, His Majesty Birendra Bir Bikram Shah Dev has on the advice and with the consent of the National Panchayat, made this Act, –

1. Short Title and Commencement:

1.1. This Act may be called “Extradition Act, 2045” (1988).

1.2. This Act shall come into force immediately.

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

2.1. “Court” means the court prescribed by Government of Nepal by a notification published in the Nepal Gazette.

2.2. “Offence” means the offence as stipulated in the Extradition Treaty concluded with any foreign country for extraditing the accused or offender and this word shall also include the offence as stipulated in the convention relating to the extradition of accused or offender to which Nepal is a party.

2.3. “Foreign Country” means a country which has concluded a treaty with Government of Nepal relating to the extradition of accused or offender concerning with any offence or the member country of a convention relating to such extraditions to which Nepal is a party.

2.4. “Convention” means the convention providing for the extradition of accused or offender relation to any offence to which Nepal is a party.

2.5. “Extradition Treaty” means a treaty concluded between Government of Nepal and any foreign country relating to the extradition of accused or offender relating to any offence.

3. Foreign Country May Ask for Extradition or Punishment:

3.1. While making the request for extradition of or punishment to the accused or offender who, after committing an offence, has absconded and is residing in Nepal, such foreign country may make the request in writing through its Diplomatic Mission in Kathmandu or Diplomatic Mission of Nepal which is located in the requesting foreign country. In case if it is not possible or in appropriate through diplomatic mission of the requesting country or Nepalese diplomatic Mission located in the requesting country, the foreign country has to write directly to Government of Nepal.

3.2. While making the request for extradition or punishment pursuant to Sub-section 3.1 the foreign country shall append with such request all the relevant evidence and as far as possible state the citizenship and specific features of the accused or offender and also the place where he or she is residing within Nepal.

4. Order may be Given for Enquiry: If any foreign country requests Government of Nepal to extradite or punish the accused or offender pursuant to Section 3, Government of Nepal may, if it deems necessary, give order as required to the court to enquire on such matter.

5. Issue of Warrant:

5.1. After the receipt of the order from Government of Nepal pursuant to Section 4, the court shall issue the warrant of arrest to such accused or offender mentioned in the order.

5.2. In case where the accused or offender is not apprehended after issuing the warrant pursuant to Sub-section 5.1, the court shall notify Government of Nepal accordingly within fifteen days and, if such accused or offender is apprehended after such notification the court shall notify Government of Nepal within three days of the date the accused or offender is apprehended.

6. Inquiry and Proceedings:

6.1. When the accused or the offender is apprehended and produced before the court, the court shall collect the evidence received from the foreign country making the request for extradition or punishment including those submitted by the accused or offender and inquire as to whether or not the offence committed by the accused or the offender is of extraditable nature under the extradition treaty or Convention and whether or not such offence is of political nature.

6.2. On making the inquiry pursuant to Sub-section 6.1, if the court does not find sufficient ground for extraditing or punishing the accused or offender, it may release such accused or offender.

7. Report to Be Submitted:

7.1. After completing the inquiry pursuant to Section 6, if the court finds sufficient ground for extraditing or punishing the accused or offender, it shall order that the accused or offender be put on custody, till further order from Government of Nepal been made and submit to Government of Nepal a report including all the evidence received in connection with the enquiry.

7.2. While submitting the report pursuant to Sub-section 7.1 the court shall also submit the petition, document, evidence, descriptions which the concerned accused or offender wants to submit.

8. To Extradite or Punish the Accused or Offender:

8.1. If Government of Nepal finds it reasonable to extradite any accused or

offender on the basis of the report submitted by the court pursuant to Section 7, it shall put the accused or offender in custody for extradition and issue an order specifying the place where the extradition is to take place and the name of the person who is to receive such extradited accused or offender.

Provided that, Government of Nepal shall not extradite but order the court to initiate the proceedings for punishment if such accused or offender is a Nepalese citizen .

8.2. While extraditing any accused or offender pursuant to Sub-section 8.1 the cash or the kind seized from such accused or offender shall also be handed over to the person who receives the accused or the offender if such cash or kind is not claimed by any other person.

8.3. If Government of Nepal finds it reasonable to punish than extradite any accused or offender on the basis of the report submitted by the court pursuant to Section 7, it may order the court initiate the proceedings for punishment.

9. Proceedings under the Prevailing Nepal Law to be Followed:

9.1. While initiating proceedings for punishment by not extraditing the accused or offender pursuant to Section 8, such proceedings shall be initiated under the prevailing Nepal law deeming as if the accused or offender has committed the offence within Nepal.

9.2. An appeal under the prevailing law may lie against the decision made by the court pursuant to Sub-section 9.1.

10. Release from the Custody: If any accused or offender put on custody under Sub-section 8.1 for extraditing to any foreign country pursuant to this Act is not being taken out of Nepal within sixty days of being put on custody, the Supreme court may, on the basis of the petition submitted by such accused or offender or submitted on his/her behalf, if finds it reasonable, release such accused or offender from custody.

11. In Case Request for Extradition is Made from More than One Country:

In case request for extradition is made from more than one country in regard to the same accused or offender, Government of Nepal may, on considering the nature of the offence, extradite such accused or offender to the foreign country as it deems proper.

12. Restriction on Extradition: Government of Nepal shall not extradite the requisitioned accused or offender on the following conditions:-

12.1. In case such accused or offender is a political offender or if the offence committed by him/her is seemed to be of political offence on the basis of the evidence received from the country making the request for extradition or on the basis of the evidence produced by the accused or offender in connection with the enquiry made by the court or if it is found that the accused or offender is being demanded for punishment on political offence.

12.2. If it is found that the request for extradition has been made after the expiry of the period of limitation for initiating proceedings against the accused or offender in pursuance of the law of such country.

12.3. In case the accused or offender is undergoing a punishment or a proceeding is going on against such accused or offender in pursuance of the prevailing Nepal law for the offence committed within Nepal, till the punishment or the proceeding is completed.

13. Power to Issue Warrant for Arrest under Certain Conditions:

13.1. On receiving information or evidence of the fact that any fugitive accused or offender of any foreign country who is liable to be extradited or punished under this Act has come or been residing to any area under its jurisdiction, the concerned District Court, if it deems necessary to arrest him or her on such basis, may issue warrant to arrest such accused or offender.

13.2. The concerned District Court shall have to submit within three days, the

report on the warrant issued pursuant to Sub-section 13.1 for arresting any accused or offender and the copy of the concerned information and evidence to Government of Nepal.

13.3. A person arrested and put on custody pursuant to the warrant issued under Sub-section 13.1 shall not be kept on custody for more than three months unless any order is received from Government of Nepal in relation to such person.

13.4. In case where the District Court has submitted a report pursuant to Sub-section 13.2 in regard to any accused or offender and if the District Court has been ordered by Government of Nepal to initiate proceedings against such accused or offender for extradition or punishment, the concerned District Court shall follow the proceedings as laid down in this Act.

- 14. Political Offence Is Not to Be Considered an Offence:** Notwithstanding anything written elsewhere in this Act the offenses enumerated in the SAARC Regional Convention on Suppression of Terrorism shall not be considered as political offence or an offence motivated with the political objectives for the purpose of extradition.
- 15. Special Authority of Government of Nepal :** Notwithstanding anything written elsewhere in this Act, Government of Nepal may, at any time, annul all acts, proceedings, warrant or order against any accused or offender and issue an order of release of such accused or offender in case he or she is in custody. if it deems that the accused or offender whose extradition is requested is not proper to be extradited or proceeding initiated against him or her due to the trivial nature of the offence or the reason submitted by the accused or offender for non extradition or for reasons of justice or political ground any reason which Government of Nepal deems proper.
- 16. Special Provision:** Notwithstanding anything written in the prevailing Nepal Law the evidence, proofs and documents received from the foreign country in

connection with the case whose proceeding have been initiated under this Act may be admitted as evidence by the court.

17. Request to Be Made to the Foreign Country for Extradition of Punishment:

17.1. If any person, having committed an offence within Nepal, has absconded and is residing at any place within the jurisdiction of any foreign country, Government of Nepal shall request the government of such foreign country to extradite or punish such accused or offender.

17.2. While making request pursuant to Sub-section 17.1, Government of Nepal shall append with such request all the relevant evidence and as far as possible state the citizenship and specific features of the accused or offender and also the place where he or she is residing in such foreign country.

18. The Provisions of This Act Not to Be Applicable: Notwithstanding anything written elsewhere in this Act, If any country has not made legal provision for fulfilling the requirement of the treaty concluded with Nepal or convention to which Nepal is a party, the provisions of this Act shall not be applicable in regard to such country.

19. Power to Frame Rules: Government of Nepal may frame Rules, as required, for fulfilling the objectives of this Act.

20. Repeal: The Extradition Act, 2020 has been repealed.

Note : The words changed by The Act Amending Some Nepal laws, 2063 :-

"Government of Nepal" Instead of "His majesty's Government"