

Nepal: Extradition Act, 2045

Extradition Act, 2045 (1988)

Date of Royal Seal and Publication

2045-5-15
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Act No. 3 of the year 2045 (1988) **An Act made to provide for extradition of an accused or offender**

Preamble: Whereas, it is expedient to maintain law and order and to make legal provisions relating to the extradition of accused of offender by adopting the SAARC Regional Convention of 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:

Unless the subject or the context otherwise requires, in this Act:

- 2.1. “Court” means the court prescribed by His Majesty’s Government by the 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 His Majesty’s Government relating to the extradition of accused or offender concerning with any offence or the member country of a convention relating to such extraditions 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 His Majesty’s Government and any foreign country relating to the extradition of accused or offender relating to any offence.

3. Foreign County 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 within the Kingdom of Nepal, such

foreign country may make the request in writing through its Diplomatic Mission in Kathmandu or the 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 evidences 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 the Kingdom of Nepal.

4. Order may be Given for Enquiry:

If any foreign country requests His Majesty's Government to extradite or punish the accused or offender pursuant to Section 3, His Majesty's Government 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 His Majesty's Government 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 His Majesty's Government accordingly within fifteen days and, if such accused or offender is apprehended after such notification the court shall notify His Majesty's Government 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 evidences 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 His Majesty's Government been made and submit to His Majesty's Government a report including all the evidences 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 His Majesty's Government 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.
- 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 cash or kind is not claimed by any other person.

- 8.3. If His Majesty's Government 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 the Kingdom of Nepal.
- 9.2. An appeal under the prevailing law may be lie against the decision made by the court pursuant to Sub-section 9.1.

10. Release from 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 on the Kingdom 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 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, His Majesty's Government 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:

His Majesty's Government 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 is seemed to be of political offence on the basis of the evidences received from the country making the request for extradition or on the basis of the evidences 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 n 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 of offender in pursuance of the prevailing Nepal law for the offence committed within the Kingdom of 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, f it deems necessary to arrest him or her on such basis, may issue warrant to arrest such accused of 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 His Majesty's Government.

- 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 His Majesty's Government 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 His Majesty's Government 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 His Majesty's Government:

Notwithstanding anything written elsewhere in this Act, His Majesty's Government may, at any time, annual all acts, proceedings, warrant or order against any accused or offender and issue an order of release of such accused of offender in case he or she is in custody. If it deems that the accused of 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 any reason which His Majesty's Government deems proper.

16. Special Provision:

Notwithstanding anything written in the prevailing Nepal Law the evidences, proofs and documents received from the foreign country in connection with the case whose proceeding have been initiated under this Act may e 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 the Kingdom of Nepal, has absconded and is residing at any place within the jurisdiction of any foreign country. His Majesty's Government shall request the government of such foreign country of extradite or punish such accused or offender.
- 17.2. While making request pursuant to sub section 17.1 His Majesty's Government shall append with such request all the relevant evidence and as far as possible state the citizenship and specific features or 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:

His Majesty's Government may frame Rules, as required, for fulfilling the objectives of this Act.

20. Repeal:

The Extradition Act, 2020 has been repealed.