

## Public Security Act, 2046 (1989)

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### Amendments.

1. Public Security (First Amendment) Act, 2047 (1991) 2047-12-29  
(12 April 1991)
2. Public Security (Second Amendment) Act, 2048 (1991) 2048-7-28  
(14 Nov. 1991)
3. Some Nepal Acts Amendment Act, 2048 (1992) 2049-1-8  
(20 April 1992)
4. Republic Strengthening and Some Nepal Laws  
Amendment Act, 2066 (2010)<sup>1</sup> 2066-10-7  
(21 Jan 2010)

Act Number 5 of the Year 2046 (1989)

### **An Act made to provide for provisions to maintain public security**

**Preamble:** Whereas, it is expedient to provide for timely provisions <sup>2</sup>to hold a person under preventive detention or under an area confinement for the purpose of maintaining sovereignty, integrity or law and order situation of Nepal or for interest of general public or harmonious relations subsisting among the people of various caste, tribe or communities.

Now, therefore, be it enacted by His Majesty the king Birendra Bir Bikram Shah Dev, on advice and with consent of *Rastriya Panchayat*.

<sup>1</sup> This Act came into force on 15 *Jestha* 2065, "*Prasasti*" and the word "Kingdom" has been deleted.

<sup>2</sup> Amended by Second Amendment

1. **Short Title and Commencement:**

1.1 This Act may be called "Public Security Act, 2046 (1989)".

1.2 This Act shall come into force immediately.

2. **Definition:**

2.1 In this Act, unless the subject or context otherwise requires;

2.1.1. "An order of preventive detention" means an order issued pursuant to<sup>3</sup>Sub-section 3.1.

2.1.2 An order of area confinement means an order issued pursuant to<sup>4</sup>Sub-section 3.2....<sup>5</sup>

2.1.3 Local Authority means "Chief District Officer and this expression also include an authority who discharges the functions of chief district officer in his/her absence.

<sup>6</sup>3. **Power to issue an order:**

3.1 If there is reasonable and adequate ground to immediately prevent a person from acting in any manner prejudicial to the sovereignty, integrity or public peace and order of Nepal, the Local Authority may issue an order to keep such person under preventive detention for a specified period and at a specified place.

3.2 If there is reasonable and adequate ground to prevent a person from acting in any manner prejudicial to interest of general public or harmonious relations subsisting among various castes, tribes or communities, the Local Authority may issue any of the following orders for keeping such person under area confinement.

3.2.1 Not to reside in a specified place of Nepal.

3.2.2 Not to enter in a specified place of Nepal.

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<sup>3</sup> Amended by Second Amendment.

<sup>4</sup> Amended by Second Amendment.

<sup>5</sup> Omitted by Some Nepal Acts Amendment Act, 2048

<sup>6</sup> Amended by Second Amendment.

3.2.3 To reside only in a specified place of Nepal.

<sup>7</sup>3.3 The Ministry of Home Affairs may, in order to prevent a person from doing any act which may cause an adverse effect on security, peace and order of Nepal or on friendly relations with foreign nations or on harmonious relations subsisting among the people of various class or regions, issue an order to prevent him/her from going outside the territory of Nepal.

4. **Procedures relating to an order:**

<sup>8</sup>4.1 The Local Authority shall while issuing an order pursuant to Sub-sections 3.1 or 3.2 set out the reasons and grounds and provide the said order to the concerned person. The Local Authority shall also submit the information thereof to the Ministry of Home affairs along with a copy of the order.

4.2 If an order is issued for holding a person under preventive detention the Local Authority shall forward a notice thereof along with a copy to the District Court of the district where the said order was issued.

<sup>9</sup>4.3 If the reasons and grounds of an order issued Pursuant to Sub-sections 3.1 or 3.2 no longer exist, the Local Authority shall abrogate such an order within Twenty Four hours from the date of cause of action.

5. **Validity period of the order of preventive detention:**

5.1 Unless abrogated earlier, an order of preventive detention issued Pursuant to Section 3.1<sup>10</sup> shall be effective for a term not exceeding with Ninety days from the date of issuance.

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<sup>7</sup> Inserted by First Amendment  
<sup>8</sup> Amended by Second Amendment.  
<sup>9</sup> Inserted by Second Amendment.  
<sup>10</sup> Amended by Second Amendment.

<sup>11</sup>5.2 Notwithstanding anything contained in Sub-section 5.1, the duration of preventive detention order shall be as follows in the following circumstances,-

5.2.1 In case the Local Authority deems it necessary to extend the duration of preventive detention for more than Ninety days to hold a person under preventive detention, he/she shall forward it in writing to the Ministry of Home affairs along with the reasons and grounds thereof. If the Ministry of Home Affairs approves it, the order of preventive detention shall be remained valid for a term not exceeding with Six months from the date of issuance.

5.2.2 If it deems necessary to hold a person under preventive detention for a period longer than Six months, the Ministry of Home Affairs shall take advice with the Advisory Board constituted pursuant to Section 7. If the said Board forwards its opinion to the said Ministry stating it is reasonable to extend the duration of preventive detention, the order of preventive detention shall be extended for a period not exceeding Twelve months from the date of issuance.

6. **Duration of an order of area confinement order:**

6.1 Unless abrogated earlier, an order of area confinement shall remain valid for a period not exceeding Thirty days from the date of issuance.

<sup>12</sup>6.2 Notwithstanding anything contained in Sub-section 6.1, if it is necessary to extend the duration of an order of area confinement issued pursuant to this Act for more than Thirty days, the Local Authority shall forward it in writing to the Ministry of Home Affairs

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<sup>11</sup> Amended by First Amendment.

<sup>12</sup> Amended by First Amendment.

along with reasons and grounds thereof. If the Ministry of Home Affairs deems it reasonable and approves it the said order shall be extended for a period not exceeding Ninety days from the date of issuance.

6A. <sup>13</sup> .....

7. **Constitution of an Advisory Board:** For the purpose of this Act, Government of Nepal may, on consultation with the Chief-Justice, constitute an Advisory Board under the chairpersonship of a sitting judge of the Supreme Court and two other members shall be from sitting or retired judges of the Supreme Court.

8. **Procedures of the Advisory Board:**

8.1. If the Ministry of Home Affairs deems necessary to hold a person under preventive detention for more than Six months<sup>14</sup> it shall submit a report to the Advisory Board along with reasons and grounds thereof, an advice given by Local Authority in this regard, if any, and the complaint lodged on behalf of detainee, if any, with Government of Nepal.

8.2 The Advisory Board shall, upon considering the report as well as other document received pursuant to Sub-section 8.1 and statement or clarification submitted by detainee pursuant to Sub-section 8.3 if any, forwards its opinion as to whether it is necessary to extend the duration of preventive detention or not.

8.3 The Advisory Board, if it deems necessary, may make an inquiry with the person held under preventive detention, or seek his/her clarification in this regard.

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<sup>13</sup> Omitted by Some Nepal Acts Amendment Act, 2048.

<sup>14</sup> Amended by First Amendment.

9. **Power to abrogate order:**

- 9.1 The Local Authority may abrogate any order issued by him/her at any time before the termination of the duration of an order.
- 9.2 The Government of Nepal may abrogate any order of preventive detention <sup>15</sup>and any order of area confinement.

10. **Penalty:**

- 10.1 The Local Authority....<sup>16</sup> may impose an imprisonment for a term not exceeding Six months or impose a fine up to One Thousand Rupees on a person who violates an order issued pursuant <sup>17</sup>to Sub-section 3.2.
- 10.2 An appeal may be filed in <sup>18</sup>Court of Appeal against an order of punishment made pursuant to Sub-section 10.1.
- 10.3 If an appeal is filed pursuant to Sub-section 10.2 <sup>19</sup>the Court of Appeal shall dispose the appeal upon confining only in the matter as to whether the said order is contravened or not.

11. **No question may be raised in any court:** No question may be raised in any court against an order issued <sup>20</sup>under this Act.

12. **Procedures to be followed in the course of release:** In the course of releasing a person held under preventive detention, such person shall be released in front of concerned district court judge or the Registrar (*Shrestedar*) of the said court in the absence of a judge.

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<sup>15</sup> Amended by Some Nepal Acts Amendment Act, 2048.

<sup>16</sup> Omitted by Some Nepal Acts Amendment Act, 2048

<sup>17</sup> Amended by Second Amendment.

<sup>18</sup> Amended by Administration of Justice Act, 2048

<sup>19</sup> Amended by Administration of Justice Act, 2048

<sup>20</sup> Amended by First Amendment.

<sup>21</sup>12A. **Entitlement to get compensation for *mala fide* preventive detention:**

12A.1 Notwithstanding anything contained in Section 11, if a person held under preventive detention deems that he/she was kept under preventive detention in contravention of this Act or in *bad faith*, may file a case before District Court during a term of detention or within a period of Thirty Five days from his/her release upon claiming for a compensation from the Local Authority who issued such order.

12A.2 If the claim mentioned in complaint lodged pursuant to Sub-section 12A.1, is proved, the district court may pass a judgment for providing a reasonable compensation to the complainant from the Government of Nepal upon considering the factors such as the duration of preventive detention, the age and social prestige of detainee and economic loss faced by him/her due to preventive detention.

12A.3 The Local Authority may request the office of government attorney to defend him/her in relation to the complaint lodged pursuant to Sub-section 12A.1 and government attorney shall defend him/her in court of law.

13. **Departmental action:** If it is proved that an order issued by Local Authority under this Act was issued in *bad faith*, such authority shall be subjected to departmental action and be punished.

14. **Power to frame Rules:** The Government of Nepal may frame necessary Rules to carry out the objectives of this Act.

15. **Repeal and saving:**

15.1 Public Security Act, 2018 (1961), is, hereby, repealed.

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<sup>21</sup> Inserted by Second Amendment.

- 15.2 The provisions of this Act shall be applied with respect to the order issued under Public Security Act, 2018 (1961).

NEPAL LAW COMMISSION