

Prisons Act, 2019 (1963)

<u>Date of Authentication</u>	<u>Date of Publication</u>
2019/10/22	2019/10/23
(4 February 1963)	(5 February 1963)

Amending Acts:

1. Prisons (First Amendment) Act, 2046 (1989)	2046.6.11 (27 Sep.1989)	2044.6.11 (27 Sep. 1989)
2. Some Nepal Acts Amendment Act, 2048 (1992)	2049.1.8 (20 April 1992)	2049.1.8 (20 April 1992)
3. Punishment Related Some Nepal Acts Amendment Act, 2055 (1998)		2056.1.16 (29 April 1999)
4. Prisons (Second Amendment) Act, 2064 (2007)		2064.4.32 (17 Aug. 2007)
5. Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010)		2066.10.7 (21 Jan. 2010)

Act No. 46 of 2019 (1963)

An Act Made to Provide for Prisons

Preamble: Whereas, it is expedient to amend and codify Nepal laws pertaining to prison in order to maintain law and order;

Now, therefore, be it enacted by His Majesty the King Mahendra Bir Bikram Shah Dev, in accordance with Article 93 of the Constitution of Nepal.

1. **Short Title, Extent and Commencement:** (1) This Act may be called as the "Prisons Act, 2019 (1963)".

(2) This Act shall extend throughout Nepal.

(3) This Act shall come into force on such date as the Government of Nepal may appoint, by a Notification in the Nepal Gazette.¹

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

(a) "Court" includes any commission, tribunal or office having the same power to perform judicial functions as a court has.

(b) "Prisoner" means a person detained in a Prison under sentence by a judgment of any Court.

(c) "Detainee" means a person held in the custody of a court, police or other authority for the inquiry and investigation or trial of a crime or a person detained under ²the Public Security Act, 2046 (1989).

(d) "Prison" includes a house or room or similar other place built or prescribed for the detention of Prisoners and the land appurtenant to such a house, room or place.

(e) "Prescribed" or "as prescribed" means prescribed or as prescribed by the Rules framed under this Act.

¹ A Notification was published in the Nepal Gazette on 2020/4/30 (19 August 1963) notifying the commencement of this Act on 2020/5/1 (17 August 1963).

² Amended by the Some Nepal Acts Amendment Act, 2048 (1992).

- (f) "Jailer" means any person appointed or designated to carry out the functions of Jailer pursuant to this Act.
- (g) "Prison Office" means the Office of the Jailer.
- (h) "Hospital" means any government hospital, dispensary or pharmacy (*Ausadhalaya*).
- (i)³ "Community service" means the service to be made in a school, hospital, local body, temple (*Debalaya*), elderly home, orphan as well as similar other body and social organization.
- (j)⁴ "Open prison" means any such place as specified by the Government of Nepal to hold a prisoner in such a manner that the prisoner is allowed to go outside the place where he or she is detained and do any work during the time as specified.

3. Detainee or Prisoner Slip: (1) If a person is to be held in custody for the investigation or trial of a crime, such person shall be given a detention slip (*Thunuwa Purji*) pursuant to the prevailing Nepal Law and if that person is to be detained in a Prison under the control of another authority, an information thereof shall also be given to the concerned Prison Office.

(2) If any person is to be imprisoned under the judgment of any Court, a imprisonment slip (*Kaidi Purji*) specifying, *inter alia*, the crime which that person has committed, the relevant law, the kind of punishment and its term, and the time of imprisonment as mentioned in the judgment and the imprisonment has to be given not later than three days from the date of that judgment, and a slip written in the name of the Prison Office and setting out those matters and the

³ Inserted by the Second Amendment.

⁴ Inserted by the Second Amendment

address, age, colour and identification of that person has to be sent to the Prison.

(3) If any person detained or imprisoned refuses to acknowledge the slip given pursuant to Sub-section (1) or (2), the slip has to be retained by recording that matter and by getting the slip signed by the In-charge of any one nearby office as a witness thereto.

4. **Detainee or Prisoner to be admitted:** (1) The Prison Office has to receive a person sent to be held in custody or detained in Prison after fulfilling the procedures pursuant to the prevailing Nepal Law and hold in custody or detain that person.

(2) If any person is sent to be imprisoned or detained in the Prison without fulfilling the procedures pursuant to the prevailing Nepal Law, the Prison Office has to receive and hold in custody or detain that person as per the slip, and make a request, setting out the matters in respect of which the requisite procedures have not been fulfilled, to the concerned authority to fulfill the procedures.

5. **Detainee or Prisoner to be Searched:** (1) When any Detainee or Prisoner is entered into a Prison, that Detainee or Prisoner has to be searched and any weapon or prohibited article, if found, has to be seized.

(2) The Jailer shall so take the custody of such goods which a Detainee or Prisoner may bring into the Prison and as may be sent into the Prison for his/her daily use pursuant to the prevailing Nepal Law and as are in excess of that required for his/her daily use that such goods shall be provided to the Detainee or Prisoner in the event of necessity.

6. Arrangements for keeping Detainees or Prisoners: (1) While detaining or imprisoning the Detainees or Prisoners, they shall be detained or imprisoned as follows:

- (a) The males and females shall be separated and kept in separate houses to the extent available and where they are to be kept in one house since a separate house is not available, they shall be kept in different parts of the house in such a manner as to prevent their meeting or conversing.
- (b) Where there is an arrangement to keep the Detainees and the Prisoners in one Prison, the Detainees and the Prisoners shall be separated and kept in separate parts as far as possible, subject to Clause (a).
- (c) The Prisoners or the Detainees under Twenty One years and those above Twenty One years shall be separated and kept in different parts as far as possible, subject to Clauses (a) and (b).
- (d) The civil case and criminal case Prisoners shall be separated and kept in different parts as far as possible, subject to Clauses (a) and (c).
- (e) Sick Detainees or Prisoners shall be separated and kept in different parts as far as possible.

(f)⁵ Insane and half-minded Detainees or Prisoners shall be separated and kept in different parts as far as possible.

(2) The convicted Prisoner may be kept alone in a separate room as per necessity.

7.⁶ **Fetter and Handcuffs Not To Be Used:** No Detainee or Prisoner, other than the Prisoner who has absconded from the Prison and been arrested or who attempts to abscond the Prison or who commits any activities as referred to in Sub-section (2) of Section 22, shall be fettered or handcuffed in the Prison.

8. **Child's Care in Prison:** (1) If any detained or imprisoned woman gives birth to a child in Prison or has a minor child under Two years of age and wishes to bring up the child by keeping the child with her, she may keep the child in the Prison even though there is any person outside to look after the child. After the child completes the age of Two years, the custody of the child has to be handed over to that person except in the event of necessity.

(2)⁷ If any Detainee or Prisoner has a child to be maintained by him/her and there is no one, other than him/her, to maintain and subsist that child, all the care, education, maintenance and subsistence of such a child shall be carried out at the expense of The Government of Nepal as prescribed until that Detainee or Prisoner remains detained or imprisoned.

⁵ Inserted by the Some Nepal Acts Amendment Act, 2048 (1992).

⁶ Amended by the First Amendment

⁷ Amended by the First Amendment.

(3) If any child below Twelve years of age is detained or imprisoned, his/her parents or other relative shall not be allowed to stay in Prison to look after him/her even if they so wish.

9. **Provision relating to food and clothes of Detainees and Prisoners:** The Detainees or Prisoners detained or imprisoned in Prison and the minor children of such Detainees and Prisoners as referred to in Sub-sections (1) and (2) of Section 8 shall be provided with such food and clothes as prescribed.

Provided, however, that-

- (a) A Detainee detained in custody for a period of One year or less without specification of imprisonment shall be provided with clothes.
- (b)⁸ If any Detainee or Prisoner wishes to make arrangement for his/her food and clothes at his/her own cost, he/she shall be allowed to make such arrangement, as prescribed.

10. **Employment of Detainee or Prisoner:** Unless the prevailing Nepal Law otherwise requires, no Detainee or Prisoner shall be engaged in any work against his/her will.

Provided that, if the Government of Nepal considers it necessary for the health, economic progress or improvement of the Detainees and Prisoners, arrangement may be made to engage any Detainee or Prisoner in a work.

⁸ Amended by the First Amendment.

10A.⁹ Power to send for community service: (1) Notwithstanding anything contained in this Act or the prevailing Nepal Law, the case Adjudicating Authority may send an offender sentenced to imprisonment for a term not exceeding Three years in any case for community service.

Provided that, any authority other than a court established or formed in accordance with the prevailing Nepal Law shall obtain the permission of the concerned District Court for sending the offender for community service pursuant to Sub-section (1).

(2) An offender sent for community service shall not be entitled to a remuneration and facility for rendering such a service.

(3) If an offender engaged in community service does not perform the work entrusted to him or her, such an offender may, within the approval of the concerned District Court, to the Prison to serve the remaining imprisonment.

10B.¹⁰ Power to hold in open Prison: (1) Notwithstanding anything contained in this Act or the prevailing Nepal Law, the prescribed authority may permit a prisoner who has been sentenced to imprisonment for a term of more than Three years and already served at least one-thirds thereof to remain in open Prison.

(2) The period of stay in open Prison pursuant to Sub-section (1) shall be deemed as the service of imprisonment.

(3) A prisoner who stays in open Prison pursuant to Sub-section (1) shall not be entitled to such ration, clothing and medical treatment expenses as to be obtained pursuant to this Act.

⁹ Inserted by the Second Amendment.

¹⁰ Inserted by the Second Amendment.

(4) The other provisions relating to Open Prison shall be as prescribed.

10C.¹¹ Not to send for community service or open Prison:

Notwithstanding anything contained in Sections 10A. and 10B., no person held to be offender of the following case shall be sent for community service or open Prison:

- (a) Human trafficking and transportation (control),
- (b) Rape,
- (c) Absconding Fleeing from Prison,
- (d) Smuggling of imports and exports of goods,
- (e) Transaction of narcotic drugs,
- (f) Corruption,
- (g) Case related to espionage,
- (h) Case relating to protected wildlife,
- (i) Relating to archaeological goods.

11. Health and Treatment: (1) Treatment of the physically or mentally sick Detainees or Prisoners shall be done by the government doctor.

Provided that, if any Detainee or Prisoner wishes to have his/her treatment done by any other doctor at his/her own cost, permission shall be granted to have such treatment as prescribed.

(2) If any Detainee or Prisoner becomes extremely sick and the government doctor makes his/her reasoned opinion in writing determining that it is necessary to keep the said Detainee or Prisoner in a hospital for better treatment, the handcuff and fetter, if put on the

¹¹ Inserted by the Second Amendment.

said Detainee or Prisoner, shall be taken off, and his/her treatment shall be done by keeping him/her in a hospital as prescribed.

¹²(3) If the government doctor makes his/her reasoned opinion indicating that any Detainee or Prisoner who has seriously fallen sick is at the critical stage of death and the heir to that Detainee or Prisoner wishes to take him/her to the nearby burial site, the heir shall be permitted to take that Detainee or Prisoner to the nearby burial site from the Prison where he/she is detained in, after having the heir execute a deed of guarantee (*Hajir Jamani*) covenanting that he/she shall bring that Detainee or Prisoner back to the Prison if he/she is recovered from the disease. The heir who assumes the custody of the Detainee or Prisoner and takes him/her to the burial site shall provide the concerned Prison with a report on the health of the concerned Detainee or Prisoner each week.

(4) The Detainee or Prisoner taken to the hospital or the burial site under Sub-section (2) or (3) shall be considered to have remained in the Prison and the said period shall be deducted from the term of imprisonment which he/she is to serve.

(5) If the Detainee or Prisoner as referred to in Sub-section (2) or (3) is recovered, he/she shall be held in Prison again except in cases where he/she is not required to be detained or the term of his/her imprisonment has expired¹³

- 12. Provision on Pregnant Woman Detainee or Prisoner:** (1) If any woman Detainee or Prisoner is pregnant, the woman, other than the woman Detainee or Prisoner detained or imprisoned in a case

¹² Amended by the First Amendment.

¹³ Repealed by the First Amendment.

relating to¹⁴state affairs or sentenced to life imprisonment or branding or the murderer woman, shall be released on bail after she has become Six months pregnant, and such a woman who has been so released on bail shall be held in Prison again after Two months of her delivery except in cases where she is not required to be detained or the term of her imprisonment has expired

(2) If any pregnant woman stays outside the Prison pursuant to Sub-section (1), she shall be treated as if she were in the Prison and the period during which she has remained outside the Prison shall be deducted from the term of imprisonment which she is to serve.

13. Action to be done in the event of death of Detainee or

Prisoner: (1) If any Detainee or Prisoner dies and the government doctor certifies his/her death after examination, the Jailer shall execute a deed to that effect, as well as a deed on inventory of his/her entire property, witnessed by the guard soldier who is on duty at that time and by at least Four Detainees or Prisoners, if available, credit the property of the deceased Detainee or Prisoner to the security deposit and give information thereof to the Office or Court through which he/she has been detained or imprisoned and to the heir to the deceased Detainee or Prisoner.

(2) If the heir applies for the property of the deceased Detainee or Prisoner within Thirty Five days, except the time required for journey, after the service of the information as referred to in Sub-section (1), the said heir shall be provided with the said property by fulfilling the prescribed procedures. If no heir applies within the said

¹⁴ Deleted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

time-limit, such property shall be auctioned and proceeds of the sale shall be credited to the cash revenue and paid to the government fund.

(3) If the heir to a deceased Detainee or Prisoner wishes to take away the dead body, the dead body shall be handed over to the heir unless it is necessary to do otherwise. If the heir does not so take away the dead body or there is no heir, action shall be taken as prescribed.

- 14. Visits and correspondences:** (1) If a Detainee or Prisoner desires to visit or correspond with any other person or *vice versa*, such visit or correspondence shall be allowed as prescribed, except in prescribed circumstances.

Provided that, nothing contained in this Sub-section shall prevent the legal practitioner of any Detainee or Prisoner from visiting such a Detainee or Prisoner as prescribed.

(2) If any correspondence or communication is made contrary to the provision contained in Sub-section (1), all such correspondence or communication may be destroyed.

- 15. Making presence of Detainee or Prisoner in Office or Court:**

(1) If any Office or Court needs to require any Detainee or Prisoner to be present in order to examine evidence or enquire as to any necessary matter in any law suits, it shall be dealt with as follows:

- (a) In the case of a Court, it shall send a requisition slip directly to the Prison Office where such a Detainee or Prisoner is detained or imprisoned,
- (b) In the case of other Office, it shall send a requisition slip to the Office or Court through

which that Detainee or Prisoner is detained or imprisoned.

(2) Upon receipt of the slip as referred to in Clause (b) of Sub-section (1), the Office or Court which has ordered for the detention or imprisonment of such Detainee or Prisoner shall send a slip to the concerned Prison Office to present such Detainee or Prisoner before the Office having sent the slip.

(3) Upon receipt of the slip as referred to in Clause (a) of Sub-section (1) or Sub-section (2), the Jailer shall make such Detainee or Prisoner present as prescribed.

16. Provisions relating to Prison Administration: (1) It shall be the duty of the concerned Chief District Officer¹⁵ to carry out general supervision of the administration of Prison under its jurisdiction, as well as all other arrangements pertaining thereto.

(2) Each Prison shall consist of one Jailer and other subordinate employees in such number as may be specified by the Government of Nepal.

17. Duties of Jailer and other employees: (1) The duties of the Jailer shall be as follows:

- (a) To retain safely all the files, books, documents and goods of the Prison and all the things and goods handed over to him/her pursuant to this Act or the Rules framed hereunder,
- (b) To make arrangements for guarding in such a manner that no Detainee or Prisoner can escape,

¹⁵ Amended by the Some Nepal Acts Amendment Act, 2048 (1992).

and to supervise and monitor as to whether the persons assigned for such guarding are on their duty or not or have properly fulfilled their functions and duties or not

- (c) To perform such other duties as referred to in the other Sections of this Act or the Rules framed hereunder or other prevailing Nepal Law.

(2) Each Jailer shall reside at a place specified by the government for him/ her and shall not generally leave the Prison and go to another at night, without permission of the concerned Chief District Officer.¹⁶

(3) The guard or soldier on duty at the moment in the Prison shall examine any things or goods carried in or outside the Prison and also search a suspect, and if any person is found carrying any prohibited goods in or outside or carrying outside any property of the Prison, the guard or soldier shall give an information thereof to the Jailer at once.

(4) No employee of the Prison shall remain absent from the Prison without permission of the Jailer or the concerned Chief District Officer.¹⁷

(5) Other duties of the employees of the Prison shall be as prescribed.

18 No detention or imprisonment in excess of the term: (1) The Jailer shall release from detention or confinement the Detainee or

¹⁶ Amended by the Some Nepal Acts Amendment Act, 2048 (1992). Inserted by Sub-section (4) of Section 18 is inserted by the First Amendment.

¹⁷ Amended by the Some Nepal Acts Amendment Act, 2048 (1992). Inserted by Sub-section (4) of Section 18 is inserted by the First Amendment.

Prisoner, who has been detained or imprisoned for any specified term, after the expiry of such term, and shall release the Detainee or Prisoner in respect of whom a release order issued by a competent authority under the Nepal Law has been received, no later than Twenty Four hours, pursuant to that order.

(2) If, in the case of a Detainee detained for trial, the term of his/her imprisonment is not specified or any order is not received to release him/her from detention even until Six months after his/her being detained in the Prison, the Jailer shall make a report, setting out all the matters related thereto, to the court empowered to hear an appeal of the Court issuing the order to detain such Detainee, within Three days after the expiry of that period of Six months.

¹⁸(3) If any order or judgment is made to release any Detainee or Prisoner, a notice thereof shall be sent to the concerned Prison as soon as possible.

¹⁹(4) The Chief Judge or Judge of the Court of Appeal shall inspect the Prisons within jurisdiction of the Court of Appeal at least once a year; and if, on such inspection, any person is found imprisoned in excess of the term of imprisonment as specified and awarded to that person or detained for a period in excess of the period during which that person can be detained pursuant to the prevailing law, he/she may give an order to release such Detainee or Prisoner immediately. It shall be the duty of the concerned Jailer to observe the order, if any, so given. If the Chief Judge or Judge of Court of Appeal gives an order to release any Detainee or Prisoner immediately and if he/she finds, upon inspection of the Prison, any other matter not done

¹⁸ Inserted by the First Amendment.

¹⁹ Amended by Some Nepal Acts Amendment Act, 2048.

or taken pursuant to this Act, he/she shall forward a report, setting out these matters, to the Supreme Court and the Government of Nepal, Ministry of Home Affairs.

²⁰(5) If it appears that any Detainee or Prisoner has remained in detention or imprisonment for a period of time in excess of that specified by the prevailing law as a result of the recklessness of any employee or that any other matter has not be done or taken pursuant to this Act, such employee shall be subject to departmental action and punished accordingly.

19. Examination of Prison: (1) Each ²¹Chief District Officer shall personally examine or cause any assistant subordinate to him/her to examine the Prison. He/ she shall examined, or cause to be examined, the Prisons under his/her jurisdiction once in Six months and at any time if he/she so deems necessary.

(2) ²²The Chief District Officer or the assistant making examination under Sub-section (1) shall examine the following matters:

- (a) Whether the Prisoner whose term of imprisonment is specified has been released on the day of expiration of his/her term,
- (b) Whether any other act or action required to be done or taken pursuant to the prevailing Nepal Law have been done or taken accordingly.

(3) If, upon examination of the matters as referred to in Sub-section (2), any act or action appears to have been done or taken in

²⁰ Inserted by the First Amendment.

²¹ Amended by the Some Nepal Acts Amendment Act, 2048 (1992).

²² Amended by the Some Nepal Acts Amendment Act, 2048 (1992).

contravention of the prevailing Nepal Law, any matter mentioned in Section 20 shall be dealt with accordingly, and in the case of any other matters not mentioned in that Section, such act and action as prescribed shall be done and taken.

20. Action to be taken after examination of Prison: The Chief District Officer²³ or the assistant examining a Prison pursuant to Section 19 shall, after examination of the Prison, deal with the following matters as follows:

- (a) If any Detainee or Prisoner appears to have been detained or imprisoned for a period of time in excess of that specified, to immediately release such Detainee or Prisoner from detention or imprisonment and to give information thereof to the Office or Court detaining and imprisoning such Detainee or Prisoner.
- (b) If the Jailer has failed to take action pursuant to Sub-section (2) of Section 18 in respect of the person detained for trial, to required the Jailer to take such action.
- (c) If it appears that any employee of the Prison has failed to fulfill his/her duties or has fulfilled his/her duties recklessly and if a case is to be instituted or action taken against him/her, the Chief District Officer or the assistant shall take such action if he/she is authorized to take such action pursuant to the prevailing Nepal Law, and shall give information thereof to the concerned authority if he/she is not so authorized.

21. Procedures for submission of petition, application etc. by Detainee or Prisoner: (1) If any Detainee or Prisoner submits such a plaint, note of defense, appeal, petition, application, information etc.

²³ Amended by the Some Nepal Acts Amendment Act, 2048 (1992).

as required to be filed by him/her in any Office or Court in respect of any case/law suit to the Prison Office where he/she has been detained or imprisoned for the purpose of filing the same with such Office or Court, the Prison Office shall, within Three days, forward the same, accompanied by a dispatch, to the Office or Court where the same is to be forwarded to, after getting the same signed by him/her where it is within the required time-limit, collecting the required fee, if any, chargeable by virtue of the prevailing Nepal Law; and a receipt thereof, indicating the date of submission of the document and fee, shall be given to such Detainee or Prisoner

(2) The concerned Office or Court shall receive the documents dispatched by the Prison Office pursuant to Sub-section (1) and take action pursuant to the prevailing Nepal Law.

(3) If a Detainee or Prisoner files and deposits the documents and fees as referred to in Sub-section (1) with the Prison where he/she is detained or imprisoned within the set time-limit, the time-limit shall not be expired.

- 22. Offense Relating to Prison:** (1) If any person carries any things or goods in or outside the Prison or attempts to do so or gives or supplies any prohibited things or goods to any Detainee or Prisoner or attempts to do so, or makes a correspondence to any Detainee or Prisoner, in contravention of the Rules framed under this Act, or if any employee of the Prison has intentionally or recklessly allowed the commission of such act or if any person abets any offense as set forth above, such a person or employee may be punished with imprisonment for a term not exceeding Six months or a fine not exceeding Two Hundred Rupees or with both.

(2) Any Detainee or Prisoner who commits any of the following acts may be warned or may be deprived of any such facility for exemption from punishment as may be granted for good conduct or may be detained in a lonely place or room for a period not exceeding Fifteen days or may be imposed with fetters where he/she was not imposed with a fetter previously, with a handcuff where he/she was imposed with a fetter previously and with a manacle where he/she was imposed with a fetter and handcuff previously, for a period not exceeding One month, except in the case of a woman or sick Detainee or Prisoner.

- (a) Using criminal force against any person in any manner,
- (b) Using insulting or threatening language against any person,
- (c) Bearing immoral or indecent or disorderly conduct,
- (d) Taking off or breaking fetters or handcuffs,
- (e) Intentionally damaging or destroying any property of the Prison,
- (f) Defacing, tempering or tearing any file or document,
- (g) Receiving, holding or transferring any prohibited things or goods,
- (h) Intentionally bringing a false accusation against any employee or Detainee or Prisoner,
- (i) Pretending to be sick,

- (j) Omitting to report or refusing to report, as soon as it comes to his/her knowledge, the occurrence of any fire, any plot, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any Detainee or Prisoner or any employee of the Prisoner,
- (k) Assisting in escaping any Prisoner or Detainee or making an attempt thereto,
- (l) Committing any other activity in contravention of the Rules framed under this Act.

(3) A separate book shall be maintained as prescribed in respect of the offenses as referred to in Sub-section (1); and if any punishment is inflicted on a Detainee or Prisoner this Section, the Jailer shall enter the record thereof in and initial the book

23. Dispatch of Detainee or Prisoner: A Detainee or Prisoner shall be dispatched from one place to another as prescribed.

24. Punishment where Prisoner or Detainee absconds or is assisted in absconded: (1) If any person, other than a Detainee or Prisoner, assists a Detainee or Prisoner in absconding or attempts thereto, such person shall be punished as follows:

- (a) If any employee of the concerned Office or Court or Prison has got the Prisoner or Detainee to abscond (flee) , by taking a bribe or by flattering, the amount of bribery shall be forfeited where he/she has taken the bribe, and he/she:

- (1)²⁴
- (2) Shall be punished with imprisonment for a term of Ten years if he/she has got absconded (fled) a Prisoner serving a sentence of branding (*Damal*) or life imprisonment or a Detainee accused of a crime carrying such punishment,
- (3) Shall be punished with imprisonment for a term from Two years to Six years and with a fine equivalent to the amount of bribe, if any, taken, if he/she has got absconded (fled) other Detainee or Prisoner.

(b) If any government employee, other than that mentioned in Clause (a) has got a Prisoner or Detainee to abscond (flee), by taking a bribe or by flattering, the amount of bribe, if any taken by him/her, shall be forfeited, and he/she:

- (1)²⁵
- (2) Shall be punished with imprisonment for a term of Six years if he/she has got absconded (fled) a Prisoner serving a sentence of *Damal* or life imprisonment or a Detainee accused of a crime carrying such punishment,

²⁴ Deleted by Punishment Related Some Nepal Acts Amendment Act, 2055.

²⁵ Deleted by Punishment Related Some Nepal Acts Amendment Act, 2055.

- (3) Shall be punished with imprisonment for a term from Two to Six years and with a fine equivalent to the amount of bribe, if any, taken, if he/she has got absconded other Detainee or Prisoner.
- (c) If any employee of the concerned Office or Court or Prison has got absconded (fled) a Prisoner or Detainee not by doing the acts mentioned in Clause (a) but only by recklessly performing his/her duties, such employee shall be punished with imprisonment for a term not exceeding Six months or a fine not exceeding Two Hundred Rupees or with both.
- (d) If any person, other than a government employee, has got absconded (fled) a Prisoner or Detainee, he/she:
- (1) Shall be punished with imprisonment for a term of Five years if he/she has got absconded (fled) a Prisoner serving a sentence of²⁶ or *Damal* or life imprisonment or a Detainee accused of a crime carrying such punishment,
- (2) Shall be punished with imprisonment for a term not exceeding Two years or a fine not exceeding Five Hundred Rupees if he/she

²⁶ Deleted by Punishment Related Some Nepal Acts Amendment Act, 2055.

has got absconded other Detainee or Prisoner.

Provided that, while imposing punishment pursuant to this Clause, no punishment shall be imposed in a manner to exceed the half of the remaining term of imprisonment which has been imposed or may be imposed on the fleeing or absconding Prisoner or Detainee.

- (e) If any person attempts to get any Detainee or Prisoner absconded (flee) and the matter is reported prior to the absconding * of such Detainee or Prisoner, he/she shall be punished with imprisonment for a term not exceeding Six months or a fine not exceeding Two Hundred Rupees.

(2) If the person as referred to in Clause (a), (b) or (c) of Sub-section (1) has got any Detainee or Prisoner absconded (flee) and if any amount is also to be received or recovered, the same shall be recovered from that person.

(3) If a Prisoner whose term of imprisonment is specified absconds (flees), he/she shall be punished with imprisonment for additional term of One and half of the remaining term of imprisonment, after he/she has been apprehended.

(4) If any Detainee absconds (flees), the punishment to be imposed on him/her shall be fixed by adding One and half to the punishment to be set by deducting the period during which he/she had remained in detention prior to his/her absconding (fleeing) from the

punishment awarded to him/her by judgment in the case, and by deducting a total period of time during which he/she remained in detention before or after his/her absconding (fleeing), and he/she shall be liable to the punishment to be set after such deduction.

(5) Notwithstanding anything contained in Sub-section (3) or (4), while setting the punishment by increasing One and half as referred to in these Sub-sections, no punishment shall be fixed in such a manner as to exceed One Hundred Twenty Five percent of the upper ceiling of the punishment that may be imposed for the crime for which the absconding Detainee or Prisoner is imprisoned.

(6) Notwithstanding anything contained in Sub-section (3), (4) or (5), while imposing punishment pursuant to these Sub-sections, no punishment shall be imposed in such a manner that the term of imprisonment exceeds Twenty years.

25. Punishment to employee of Prison for failure to perform

duty: If the Jailer or any other employee of the Prison fails to perform his/her duty by violating this Act or Rules framed under this Act or order given by the competent authority or recklessly performs his/her duty knowingly or is found to have left his/her job and gone outside or remained absent without permission, the Jailer or such other employee shall be liable to the specific punishment, if any, mentioned in other sections of this Act for any specific matter, and, failing the mentioning of such specific punishment, be punished with imprisonment for a term not exceeding Three months or a fine not exceeding Two Hundred Rupees or both according to the circumstance.

26. Powers to institute and try cases under this Act: (1)

Notwithstanding anything contained in the other prevailing Nepal Law, the powers to try and settle cases on the absconding (fleeing) of a Detainee or Prisoner or aiding such absconding or the case as referred to in Sub-section (1) of Section 22 shall vest in the District Court having territorial jurisdiction over the Prison where the Detainee or Prisoner is in detention or imprisonment.

(2) The Jailer shall have powers to impose punishment after making a summary inquiry into the crimes as referred to in Sub-section (2) of Section 22; and no appeal shall be entertained against any order given by him/her under this Sub-section.

Provided that, if the Jailer punishes any Detainee or Prisoner under this Sub-section, information thereof shall be given to the concerned Chief District Officer²⁷.

(3) Notwithstanding anything contained in the other prevailing Nepal Law, the concerned Chief District Officer²⁸ shall have the powers to try and settle cases on the offenses as referred to in Section 25.

(4) It shall be the duty of the concerned Jailer to institute cases by investigating the offenses as referred to in Sub-section (1) of Section 22, Section 24 and Section 25; and while making such investigation, the Jailer shall have all such powers including the powers to arrest any person charged with an offense, to search any person or place, to take statement of the accused and to execute a public enquiry deed (*Sarjamin Muchulka*) as the Police have under the prevailing Nepal Law, and, in the course of such investigation, the

²⁷ Amended by the Some Nepal Acts Amendment Act, 2048 (1992).

²⁸ Amended by the Some Nepal Acts Amendment Act, 2048 (1992).

Jailer shall, as required, also have the same powers about requiring the accused, other than one who has already remained in detention or imprisonment, to make presence or releasing the accused on bail as the Court has.

(5) If any person arrested by the Jailer under Sub-section (4), other than one who has already remained in detention or imprisonment, is to be detained for more than twenty four hours except the time required for journey, the Jailer may detain him/her for a period not exceeding Seven days after obtaining approval from the adjudicating authority.

27. Powers to frame Rules: (1) The Government of Nepal may frame Rules to implement the objectives of this Act.

(2) Without prejudice to the generality of the powers conferred by Sub-section (1), such Rules may in particular provide for the following matters:

- (a) Control of entry of Detainees or Prisoners into the Prison and their release,
- (b) Classification of Detainees or Prisoners
- (c) Clothes, food as well as other facilities to be provided at governmental expense to the Detainee or Prisoners,
- (d) Provisions relating to visits and correspondences to and with the Detainees or Prisoners and vice versa,
- (e) Provisions relating to the transmission of petitions, applications, complaints, notes of defense or appeals filed by the Detainees or Prisoners to the concerned Office or Court,

- (f) Provisions on maintaining records of the conduct of Detainees or Prisoners and provisions and powers to lessen the punishment inflicted on the Detainees or Prisoners who have good conduct,
- (g) Provisions relating to the education, health, decency and economic interests of the Detainees or Prisoners,
- (h) Provisions on using arms against the Detainees or Prisoners in such circumstance where they attempt to abscond or create disturbance or disorder in the Prison,
- (i) Provisions on prohibiting any goods from being brought into or taken out of the Prison,
- (j) Arrangements and action to be made and taken while dispatching or carrying Detainees or Prisoners,
- (k) Arrangements and action to be made and taken in the course of examination or after the examination of the Prison by the²⁹Chief District Officer or his/her assistant,
- (l) Procedures to be followed by the Jailer while punishing any Detainee or Prisoner under Sub-section (2) of Section 22, and the book to be retained to that effect.

²⁹ Amended by the Same Nepal Act Amendment Act, 2048.

- (m) Action to be taken where any Detainee or Prisoner is to be released for his/her falling in serious sickness or for other reason.

28. Repeal: The following prevailing Nepal Laws are, hereby, repealed.

- (a) The Chapter on Jail of the General Code (*Muluki Ain*),
- (b) All Orders (*Sawal Sanad*) on Jail,
- (c) No. 51 of the Chapter on Court Proceedings of the General Code (*Muluki Ain*).

NEPAL LAW COMMISSION