

# **Black-marketing and Some Other Social Offenses and Punishment Act, 2032 (1975)**

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## **Amending Act:**

1. Administration of Justice Act, 2048(1991) 2048.2.16 (30 May 1991)
2. Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010) 2066.10.7 (21 Jan. 2010)

Act number 10 of the year 2032 (1975)

## **The Black-marketing and Some Other Social Offenses and Punishment Act**

**Preamble:** Whereas, it is expedient to control black-marketing, profiteering, adulteration and some other social offenses in order to maintain health, convenience and economic interests of the general public;

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

1. **Short title, extent and commencement:** (1) This Act may be called as the "Black-marketing and Some Other Social Offenses and Punishment Act, 2032 (1975)."
  - (2) This Act shall extend to the whole of <sup>×</sup>..... Nepal.
  - (3) This Act shall come into force immediately.

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<sup>×</sup> Deleted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010).

2. **Black-marketing**: If any person commits, or causes to be committed, any of the following acts, that person shall be deemed to have committed black-marketing and be liable for the punishment as follows:

- (a) If any person sells any goods by receiving the price higher than the price fixed, if any, by Government of Nepal, and than the price fixed by the producer, importer or main distributor of the goods prescribed by Government of Nepal upon a Notification published in the Nepal Gazette, where Government of Nepal has not fixed the price, such person shall be punished with imprisonment for a term not exceeding Ten years and with also a fine, and the price of the goods received by such person shall be returned and the goods forfeited.

**Explanation**: While fixing the wholesale or retail price, it shall be fixed generally, by having regard to the following matters and also hearing the concerned sector so that the consumer gets it at a fair price:

- (a) the price of goods,  
(b) fare and rent,  
(c) customs duties,  
(d) taxes, fees and all reasonable expenses permissible under the prevailing law payable while importing or producing goods,  
(e) enterprise expenses,  
(f) reasonable commission of the dealer, retailer or agent,  
and  
(g) reasonable profit of the producer or the importer.

- (b) If any person, who has taken any goods referred to in Clause (a) which are not easily available in the open market in the required quantity at the fixed price with or without getting an order or coupon for personal consumption, sells such goods or order or coupon at a higher price with or without receiving commission or gives the same in any other manner, such person may be punished with imprisonment for a term not exceeding Three years or with a fine or both, and the price, commission received for such goods or order or coupon shall be returned and the order or coupon shall be cancelled.

Provided that,-

- (1) If the goods do not remain necessary after the goods have been taken, the goods shall be given to the person designated by the person whose coupon has been used to get the goods with his/her consent in writing at the price obtained by him/her immediately upon being the goods not necessary. If the goods have not been taken, the order or coupon shall be returned immediately.

- (2) The giving of such goods in a small quantity to manage the need of personal consumption of one's near person or neighbour without receiving higher price shall not be deemed to be an offense under this Clause.

- (c) If any person sells a ticket for the fee or fare payable for any recreation or transportation service by receiving the price higher than the price of ticket, such person may be punished with imprisonment for a term not exceeding one year or with a fine or with both, and the amount of the price received in excess shall be forfeited.

(d) Government of Nepal may, as per necessity, form price fixation advisory committees for the purpose of fixing the price under this Section.

3. **Profiteering**: (1) Except as the price has been fixed under Section 2, in cases where a person trading any goods prescribed by Government of Nepal has taken profit in excess of Twenty percent normally or sell the goods, by receiving undue profit, taking advantage of the shortage, such a person may be punished with imprisonment for a term not exceeding Five years or with a fine or with both.

(2) Notwithstanding anything contained in Section 2, in the case of the goods imported by recovering loss in export, a person may receive profit pursuant to Sub-section (1) in a manner also to recover the loss sustained in exporting the goods.

(3) Each wholesaler or retailer shall display a price index of the goods as prescribed by Government of Nepal at the place of sale in a manner conspicuous to all. One who fails to display may be punished with imprisonment for a term not exceeding One year or with a fine or with both.

4. **Deflection of goods**: If any person takes elsewhere or sells elsewhere the goods of the quota prescribed by Government of Nepal for distribution in any Zone or District or the goods made available to such person as an agent, dealer or retailer or sells in contravention of the terms of agency or dealership or in a manner that may not have proper distribution among the consumers, such person may be punished with imprisonment for a term not exceeding Five years or with a fine or both.

5. **Hoarding and artificial shortage**: If any person hoards the goods with an intention to sell them in the market to receive undue profit by getting the

price of the goods increased in a manner to create an artificial shortage of such goods, such person shall be punished with imprisonment for a term not exceeding Five years or with a fine or with both.

Provided that, if the producer, importer or main distributor or any of his/her dealer or agent commits the same offense in regard to the goods as prescribed by Government of Nepal to be essential goods, he/she shall be punished with imprisonment for a term not exceeding Ten years or with a fine or with both.

6. **Sale and distribution by misrepresentation:** If any person sells or distributes the goods by misleading any sub-standard goods to be standard ones or by misrepresenting any goods to be another goods or by adulterating any goods to reduce the standard of the goods and without disclosing that fact, such person may be punished with imprisonment for a term not exceeding Two years or with a fine or with both.
7. **Adulteration in medicine and sale of adulterated medicine:** (1) If any person, with an intention of getting any medicine sold or used as of pure medicine, adulterates in a manner to make the medicine non-effective or less effective or change it or make it injurious or with a knowledge that there is a possibility of such sale or use or sells or attempts to sell such medicine with a knowledge that such medicine is adulterated or its date is expired, or keeps it for sale or gives it to anyone for treatment or causes any one, who does not have information on adulteration, to consume such medicine, such person shall be punished as follows:
- (a) With life imprisonment or imprisonment for a term not exceeding Ten years and with a fine, in the event of the existence of a possibility of causing threat to the human body,

- (b) With imprisonment for a term not exceeding Ten years or a fine in the event of the lessening of, or deprivation of, or the possibility of deprivation of, the strength of any organ of the body, and
- (c) With imprisonment for a term not exceeding Five years or a fine or with both, in other cases.

(2) In the event of selling any other thing by misleading it to be a medicine, one shall be liable to the punishment as if the offense referred to in Sub-section (1) were committed.

8. **Upper ceiling of fine and imprisonment for fine:** (1) In punishing with a fine for an offense referred to in this Act, one shall be liable for the punishment according to claimed amount up to Twenty-Five Thousand Rupees, whichever is higher.

Provided that, excessive fine shall not be imposed in a manner that may not be in harmony with the situation of the offender or with circumstances in which the offense was committed.

(2) In imposing the punishment of a fine, the adjudicating authority shall also indicate in his/her judgment as to how long one may be imprisoned for the non-payment of the fine, if one fails to pay it.

(3) In cases where the offense for the commission of which punishment of fine has been imposed also carries punishment of imprisonment, no punishment of imprisonment exceeding a period of Five years shall be imposed for the non-payment of fine under Sub-section (2). Where life imprisonment has been imposed, no additional imprisonment shall be set for the fine.

9. **Commission of offense by a corporate body:** (1) If a person who commits an offense as referred to in this Act is a corporate body or company, the

director, general manager, any other official or person having control over the activities of the concerned corporate body or company shall, except in cases where such person fails to prove that the offense took place without his/her knowledge or that he/she has exercised all due diligence to prevent the offense to the extent possible, be liable to the punishment for such offense.

(2) Notwithstanding anything contained in Sub-section (1), where it is proved that an offense committed by a corporate body has been committed with the connivance of or by the reason of negligence of the director, general manager or any other official of such corporate body or company, such a director, general manager or official shall be liable for the punishment pursuant to this Act.

10. **Commission:** If any person informs the concerned official that anyone has committed or is going to commit any offense referred to in this Act, and the offender is arrested and held to be guilty, the informant shall be entitled to Twenty-Five percent of the fine imposed to the offender.
11. **Punishment for false clue or complaint:** If a person makes a false complaint with a knowledge of its being false or with a reason for believing it to be false or by making fabricated proof or without any reasonable ground or suspicion with an intention of frightening, threatening, defaming, troubling or harassing any one, such person may be punished with imprisonment for a term not exceeding Three months or with a fine not exceeding Five Thousand Rupees or with both.
12. **Disqualification:** Any person who has been convicted with imprisonment for more than Six months under this Act, except in the case of Section 11, shall not be eligible to serve, or to obtain a contract, license of, Government of Nepal or a corporate body owned by Government of Nepal prior to the expiry of Five years of the serving of punishment by such a person.

**13. Power to arrest and search:** (1) If a person commits an offense punishable under this Act or any reasonable suit is filed claiming that such a person has committed such an offence or any reliable information thereof has been received or a warrant is issued by the official referred to in Sub-section (2) upon a reasonable suspicion, the police officer up to the rank of Sub-inspector may arrest such a person.

(2) In the circumstance referred to in Sub-section (1), <sup>∞</sup> ....., Chief District Officer or even the official designated by Government of Nepal in this regard may him/herself arrest or order to arrest such a person.

(3) The police up to the rank of Sub-inspector or the <sup>∞</sup> ....., Chief District officer, or the official designated by Government of Nepal in this regard or a government employee up to the rank of *Kharidar* (non-gazetted second class ) authorized by them in writing may, according to the prevailing Nepal law, search any village, house/building or vehicle reasonably suspected of being placed there the goods related with the offense under this Act or the person to be arrested is hiding therein.

(4) In making a search, the goods, vehicles, documents and cash, as well, related with the offense referred to in this Act may be seized.

**14. Procedures for filling case:** (1) No case under this Act shall be filed without the consent of Government of Nepal or of the official designated by Government of Nepal by a Notification published in the Nepal Gazette.

(2) If any retailer keeping a mini shop on a roadside or elsewhere commits an offense referred to in Sections 3, 4 and 5, the official referred to in Sub-section (1) may, if such a person has committed the offense for the first time, cause the concerned person to return the profit received

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<sup>∞</sup> Deleted by Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010).

unreasonably, get the person to make a deed covenanting that he/she shall not repeat the commission of such offense thereafter and terminate the case.

(3) A case under this Act has to be instituted within Ninety days of the disclosing or the commission of the offense.

**15. Adjudicating Authority:** (1) The court or authority designated by Government of Nepal by a Notification published in the Nepal Gazette shall have the powers to initiate the proceedings and adjudicate the cases relating to the offenses punishable under this Act; and in cases where no such designation has been made, the Chief District Officer shall have such powers.

(2) The court or official as referred to in Sub-section (1) shall, while initiating the proceedings under this Act, follow the procedures and exercise the powers referred to in the Special Court Act, 2059 (2002)<sup>⊗</sup>.

(3) An appeal may be made to the Court of Appeal<sup>∇</sup> against a decision made by the official designated under sub-section(1) or by the Chief District Officer, and to the court empowered to hear appeal against a decision made by the Court of Appeal<sup>∇</sup> pursuant to Nepal law against a decision made by the Court of Appeal<sup>∇</sup>.

**16. Condemning of offender publicly:** If it appears that it is useful, for comprehensive public interest, to publish setting out the name, address of and the nature of the offense, and punishment for the offense committed by, the person convicted of an offense under this Act following the final decision, the authority making the final decision may give direction to

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<sup>⊗</sup> Substituted by Special Court Act, 2059(2002).

<sup>∇</sup> Amended by the Administration of Justice Act, 2048 (1991).

condemn the offense publicly by getting the same published in a newspaper or by any other means.

17. **Saving of act and action done under this Act:** No suit, complaint or legal proceedings may be instituted against any person for any act and action done or attempted to be done in good faith under this Act.
18. **Sale and distribution of goods forfeited:** The sale and distribution of goods forfeited under this Act shall be arranged by Government of Nepal; and if the goods so forfeited require to be destroyed, such expenses may be realized from the concerned person as governmental dues.
19. **Circumstance where the accused is to remain in custody:** In cases where there is a possibility that the accused may not appear on the appointed dates or may abscond if he/she is released on bail or surety or he/she may interfere with the proofs and evidence or he/she may commit any other offense under this Act, the case shall be tried by keeping the accused in custody.
20. **Government of Nepal to be the Plaintiff:** The cases under this Act shall be Government cases and be deemed to be included in Schedule 1 to Government Case Act, 2049 (1992)<sup>✳</sup>
21. **Institution of case according to other prevailing law:** In cases where any act which is an offense under this Act also becomes an offense under the other prevailing Nepal Act, this Act shall not be deemed to bar in instituting of case according to the other Act.
22. **Delegation of powers:** Government of Nepal may delegate any or all of the powers conferred to it under this Act to any officer by issuing a notified order in the Nepal Gazette.

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<sup>✳</sup> Substituted by Some Nepal Acts Amendment Act, 2055 (1999).

23. **Powers to frame Rules:** Government of Nepal may, by publishing a Notification in the Nepal Gazette, frame Rules for the accomplishment of the objectives of this Act.
24. **Repeal:** Black-marketing Act, 2008 (1951), Control of Black Marketing and Smuggling of Cotton Thread and Cloths Manufactured in the Mills Act, 2008 (1951), Nepal Prevention of Food Hoarding Act, 2009 (1952), and Clause (c) of Sub-section (1) of Section 8 of the Local Administration Act, 2028 (1971) are, hereby, repealed.

NEPAL LAW COMMISSION