

Judicial Council Act, 2047 (1991)

Date of Authentication and Publication

2047-12-27 (10 April, 1991)

Amendments

1. Judicial Council (First Amendment) Act, 2050 (1993) 2050-7-4
(Oct. 20, 1993)
2. Judicial Management and Administration of Justice 2059.5.27
Related Some Nepal Acts (Amendment) Act, 2059 (Sept. 12, 2002)
3. Some Nepal Laws (Amendment) Act, 2063 2063.6.28
(Oct. 14, 2006)
4. Republic Strengthening and Some Nepal Laws 2066/10/7
Amendment Act, 2066 (Jan. 21, 2010)

Act No. 27 of the Year 2047

An Act Enacted to Provide Provisions for Powers and Functions of the Judicial Council

Preamble: Whereas, it is expedient to make necessary provisions relating to powers and functions of the Judicial Council;

Now, therefore, be it enacted by His Majesty the King Birendra Bir Bikram Shah Dev in accordance with Article 129 of the Constitution of the Kingdom of Nepal, on the advice and with the consent of the Council of Ministers.

1. Short Title and Commencement: (1) This Act may be called “Judicial Council Act, 2047 (1991).”

(2) This Act shall come into force immediately.

2. Definition: In this Act, unless the subject or context otherwise requires:

- (a) “Constitution” means the Interim Constitution of Nepal, 2063.
- (b) “Council” means the Judicial Council constituted in accordance with Article 113 of the Constitution.
- (c) “Chairperson” means the Chairperson of the Council.
- (d) “Members” means the Members of the Council.
- (e) “Inquiry Committee” means the Inquiry Committee formed in accordance with Sub-article (5) of Article 113 and Clause (c) of Sub-article (10) of Article 109 of the Constitution.

3. To Prepare the Records: (1) The Council shall, in accordance with the Constitution and other laws, prepare and keep the records of the persons who are eligible for the appointment of judges at different levels.

(2) All the concerned institutions including the Supreme Court, the Ministry of Law and Justice and the Office of the Attorney General shall provide for necessary assistance to the Council in the course of preparing the records pursuant to Sub-section (1).

(3) The Report of the Inspection of Work Performance and other details relating to the service of the judges of Supreme Court, Court of

→ Amended by the Republic Strengthening and Some Nepal Laws Amendment Act, 2066

Appeal and District Courts and the details on work performance and other matters relating to the service of the officers of judicial service shall be collected from concerned courts and offices and be kept with the report to be prepared pursuant to Sub-section (1).

(4) The records to be prepared in accordance with this Section shall be confidential and shall remain under the responsibility of the Secretary of the Council. Except the order pursued by the Council, such records shall not be disclosed to any body.

→ Provided that, nothing in this Sub-section shall be deemed to bar to provide necessary records to the Inquiry Committee.

4. Procedure to be followed in making the Recommendation for the

Appointment: (1) The Council shall, in addition to the matters provided hereunder, explicitly mention other reasons and basis in the course of making recommendation for the appointment of any person as a judge:

- (a) Eligible for the appointment of a judge under the Constitution and other laws;
- (b) Competent to be appointed as a judge from the standpoint of seniority, experience, knowledge on subject-matters, skills, honesty, impartiality and moral conduct etc.

(2) The Council shall, for the purpose of Clause (b) of Sub-section (1), in the course of making recommendation for the appointment of any person sitting as a District Court Judge to the Chief Judge or a Judge of a Court of Appeal, of any person sitting as an Court of Appeal Judge to the Chief Judge of Court of Appeal or a Justice of the Supreme Court and, of

→ Amended by the Republic Strengthening and Some Nepal Laws Amendment Act, 2066

any person sitting as a Chief Judge of the Court of Appeal to the Justice of the Supreme Court, take the following matters into consideration:

- (a) Matters mentioned in respect of such person in the report submitted by the Supreme Court or Court of Appeal to the Supreme Court after periodic or surprise inspection of respective inferior Courts;
- (b) Details of his\her service and report relating to work performance;
- (c) If an appellate judge has expressed any comment on the judgment delivered by such person, details of such comment.

(3) The Council shall, in the course of making recommendation for the appointment of any officer of Nepal Judicial Service as a Judge, for the purpose of Clause (b) of Sub-section (1), also take into consideration the report regarding the details of service and work performance of such person.

(4) The Council shall, in the course of making recommendation for the appointment of any lawyer or person other than the judges or officers of Nepal Judicial Service, working in the field of law or justice, as a judge, for the purpose of Sub-section (1), take into consideration the matters like reputation of such person and public feelings or perception in respect of his\her profession or work, and details regarding his/her previous service, if any.

+4A. Basis for Assessment of Competence or Conduct of a Judge: (1)

During the course of assessing the competence or conduct of the judge for

⁺ Inserted by the First Amendment.

the purpose of →Sub-article (10) of Article 109 of the Constitution, in addition to other matters, the matters contained in Sub-sections (2), (3) and (4) shall also be taken into consideration.

(2) In the following circumstances, the judge shall be deemed of lacking the work competence:

- (a) He\she has not decided or initiated the case within the time limit as prescribed by the law without any reasonable cause;
- (b) He\she has unduly delayed cases by not issuing order or decision at once though it has to be done or could be done at once or by adopting unnecessary, irrelevant or unlawful proceedings or decision;
- (c) He\she has accomplished the work lesser than the work assigned by the Council to the judge in respect to proceedings and decision of the case;
- (d) He\she has made undue effect on the proceedings and decision by applying clearly inapplicable law or by forcefully adopting the different meaning or interpretation by way of avoiding the clear and unambiguous interpretation or meaning in the course of case proceedings or decision;
- (e) He\she has made different opinion in the same legal questions reflected to different cases and taken proceedings or decision accordingly;

→ Amended by the Republic Strengthening and Some Nepal Laws Amendment Act, 2066

Provided that, nothing in this provision shall be applicable if the judge has changed his\her opinion given in the previous cases on the basis of grounds and reasons.

- (f) He\she created the situation of unnecessarily delay in the proceedings or decision of case by keeping case into pending which is, in accordance with law, not supposed to be kept into pending or by not reopening the pending case which is, in accordance with law, supposed to be reopened.
- (g) He\she has, without mentioning any work or reason, caused to make the party of the case to be present at the court unnecessarily or has been escaped from performing the prescribed work to be done in the prescribed date for presence without any reasonable cause;
- (h) He\she has, during the course of issuing order for inquiry of evidence, issued an order just for asking the inquiry of evidence without mentioning the facts or questions in which both of the parties are agreed and the facts or questions to be decided in which the parties are not agreed upon and the evidences as are appeared to be taken into inquiry;
- (i) He\she has delivered judgments contrary to the precedent or legal principle established by the Supreme Court.

Provided that, nothing in this provision shall be applicable in case there is no uniformity or certainty in the precedent or legal principle established by the Supreme Court because of the reason that different Benches have delivered different decisions or held different interpretation in the same legal question reflected to different cases.

(3) In the following conditions, a judge may be deemed not to have performed his\her duties of the office honestly:

- (a) He\she has, with a motive to avoid, linger, or make an undue influence on the case, deliberately performed any of the acts as mentioned under part (a) to (i) of Sub-section (2);
- (b) He\she has, without any reasonable cause, not been present in the Bench in the prescribed time or avoid the case from making the hearing though there has been enough time to do so;
- (c) He\she has, without any reasonable cause, made delays in writing the judgment or order within the time prescribed by law.
- (d) He\she has, without approving the leave from the leave issuing authority or without taking pre-permission from such authority, been absent in the court;
- (e) He\she has not followed or reluctant to follow the order given by the superior courts or directives relating to administrative affairs given by the Chief Justice or

the Chief Judge or any judge who looks after the court administration.

(4) In the following conditions, the judge's conduct shall be deemed as misconduct:

- (a) He\she has performed any work to be deemed as corruption under the current law;
- (b) He\she has used narcotic drugs;
- (c) He\she has used alcohol during court's time;
- (d) He\she has performed indecent or emotional conduct in public place or ceremony in contrary to the dignity of post;
- (e) He\she has taken participation in politics;

Provided that, nothing in this provision shall be deemed to bar to exercise the voting right in accordance with law.

- (f) He\she has, under the political or any other kind of undue influence initiated any proceedings or delivered the judgment which is not supposed to be done under the law or initiated any proceedings or delivered the judgment which is supposed to be done under the law;
- (g) He\she has, deliberately misused the property of the court or any facilities received to him/her.
- (h) He\she has, performed any unusual conduct in the Bench in a manner to destroying the dignity of the court in contrary to discipline of the office;

- (i) He\she has, committed any criminal offences involving moral turpitude.

(5) The Council may, as per the circumstances, in the condition mentioned under Sub-sections (2), (3) and (4), give warning to the concerned judge and also initiate the action against such judge in case he/she has not improved his/her performance or conduct as warned in accordance with the Constitution and this Act,

Provided that, it shall not be necessary to give warning, pursuant to this Sub-section, for initiating action in charge of bad conduct. The Council may, in accordance with the Constitution and this Act, initiate proceedings directly in such charge if it deems reasonable or necessary.

4B. The Chief Judge shall send the Report of Inspection and

Assessment: (1) The Chief Judge of the Court of Appeal shall, after the assessment, send the assessment report regarding the functions and activities of the judge of Court of Appeal and District Courts and information including judicial activities of the inferior courts to the Secretariat of Judicial Council. In addition to other matters, the following matters shall be mentioned in such report:

- (a) Details of the checked annual attendance of the place where such judge has been posted;
- (b) Judgments delivered by the judge throughout the year as per ratio of the cases registered in the concerned courts;

Inserted by the Judicial Management and Administration of Justice Related Some Nepal Acts (Amendment) Act, 2059

- (c) Details of the judgments delivered by such judge which have been reversed by the superior courts, if any;
- (d) Other activities regarding court management and regulation.

(2) The Council shall also take the report prepared by the Chief Judge pursuant to Sub-section (1) as a basis for assessment and for action against a judge.

5. Initial Inquiry may be Conducted: [•](1) In case, in accordance with the Constitution and this Act, any complaint or report seeking for an action against any judge has been filed or it has been informed from any other source that the existing circumstance is in favour of such action, the Council as it deems necessity may, before the formation of Inquiry Committee to inquire upon such charge against the judge in accordance with →Sub-article (10) of Article 109 of the Constitution, give authority to conduct initial inquiry by the Chairperson or Members or Judge of Appellate Courts. The Chairperson, Members or Judge of the Court of Appeal who conduct such initial inquiry shall submit his/her report to the Council.

(2) The proceedings of initial inquiry to be conducted in accordance with Sub-section (1) shall generally be confidential and the person conducting such initial inquiry may, as per necessity, make inquiry upon the alleged judge or other related persons.

(3) In case the charge alleged against the judge has been found groundless from the initial inquiry conducted in accordance with Sub-section (1), the Council may keep such proceedings in postponement.

[•] Amended by the First Amendment
→ Amended by the Republic Strengthening and Some Nepal Laws Amendment Act, 2066

6. Formation of an Inquiry Committee: (1) The Council shall, based on the inquiry conducted in accordance with Section 5 or even at a time such inquiry has not been conducted, form an Inquiry Committee, as it deems necessary to make inquiry by the Inquiry Committee on the charge alleged against any judge in accordance with →Sub-article (10) of Article 109 of the Constitution and shall publish notification of the same in Nepal Gazette.

(2) The Inquiry Committee may keep its office at anywhere in Nepal.

(3) The Supreme Court shall provide staff and materials necessary for the Inquiry Committee.

(4) The Secretary of the Council shall do the work as a Secretary of the Inquiry Committee.

Provided that, the Council as it deems necessary may assign any officer staff of Nepal Judicial Service to work as a Secretary of the Inquiry Committee.

7. Procedure and Powers of the Inquiry Committee: (1) The Inquiry Committee may, in respect to furnish and execute the notice to the alleged judge or record the statement, inquire witness evidence thereof, exercise the power equivalent to the courts and in respect to inquiries and investigation into the charge, exercise the powers as conferred on to the →Investigation Officer under the Prevention of Corruption Act, 2059.

(2) The Inquiry Committee may, to accomplish the work related to inquiry, also inquire, in addition to the judge who has been charged, any other persons by presenting him before it.

→ Amended by the Republic Strengthening and Some Nepal Laws Amendment Act, 2066

(3) Proceedings of the inquiry to be conducted in accordance with this Section shall be confidential. The Inquiry Committee shall not give permission to any other person, other than the judge who has been charged, lawyer and the complainant in case the proceedings have been conducted as per his\her complaint, to be present or take part in at the place where the proceedings of inquiry has been undertaken.

(4) The Inquiry Committee may impose fine up to three thousand rupees or imprisonment for one month or both for the person disobeying order issued during the course of inquiry in accordance with this Section or creating hindrance in the proceedings of inquiry.

Provided that, the Council may give pardon to such person from the punishment in case he\she has begged to do so with a believable cause to prove that such work had not been committed intentionally.

(5) The Inquiry Committee shall, after the completion of the work of inquiries, give report of such inquiry including its opinion to the Council and handover all the related files and papers to the office of Council.

- 8. To Provide Opportunity to Defend himself\herself:** (1) In case it is observed from the report of inquiry and file papers submitted in accordance with Sub-section (5) of Section 7 that the judge who has been charged is to be punished under the Constitution and other law, the Council shall, within a reasonable time, give the notice of the same enclosing the causes and reasons to the judge who has been charged to present his\her clarification. In case he\she has not presented any clarification within such time or the clarification so presented by him/her has been found unsatisfactory, the Council shall decide in accordance with →Sub-article (10) of Article 109 of the Constitution.

→ Amended by the Republic Strengthening and Some Nepal Laws Amendment Act, 2066

(2) In case the charge made against him\her has been found groundless from the report of inquiry or clarification submitted by the alleged judge in accordance with Sub-section (1), the Council may postpone the proceedings against him\her.

9. ✕.....

+9A. **Authority to initiate case into the Offence of Corruption:** In case of a need to file a case against any judge on the charge of any accusation of corruption under the current law, the case shall be initiated by submitting a complaint or report to the concerned Court of Appeal by the Secretary or by any other officer as deputed by the Council. During the course of proceedings of such case, Court of Appeal may exercise the power of an initial court and follow the appropriate procedure.

10. **Ipsa Facto Suspension if the Case is Filed:** (1) In case a case is filed in accordance with the current law against any judge on the basis of bad conduct, such judge shall be deemed suspended *ipso facto* from his\her office from the date of case filed.

(2) In case such judge receives clearance in the case filed under Sub-section (1), his\her suspension shall be *ipso facto* expired from the date of receiving the clearance.

11. **Transfer or Deputation for a Temporary Assignment of Judges:**

(1) The judge who has completed the tenure of three years in the courts of non-remote areas and two years in the courts of remote areas shall, generally, be transferred.

(2) The Chief Justice may depute any judge from one court to another court for a temporary assignment.

✕ Repealed by the Republic Strengthening and Some Nepal Laws Amendment Act, 2066
+ Inserted by the First Amendment.

(3) In case any judge has been deputed for a temporary assignment in accordance with Sub-section (1), the Chief Justice shall immediately give information of this to the Council.

12. Office of the Council: (1) The Council shall have a separate office and there shall be a Secretary as a chief-in-administration of the Council.

¶(2) There shall be Secretary of the Special class of the Nepal Judicial Service.

(3) ×.....

13. Meetings of the Council: (1) The meetings of the Council shall, as per the need, be held as prescribed by the Chairperson.

Provided that, the chairperson shall call a meeting in case any two members jointly make a written request including the agendas before the Chairperson to call a meeting of the Council.

(2) Every agenda under consideration of the meeting shall be decided on the basis of majority. In case of a tie, the Chairperson's may cast a decisive vote.

(3) The Secretary shall send the notice for the meeting of the Council to all the members at least 48 hours before the meeting by mentioning the date and agendas for discussion.

(4) In case a member who receives notice pursuant to Sub-section (3) wants to add any other agenda for discussion other than the agenda already contained in the prescribed content, he\she shall serve the notice of same to the Secretary by mentioning the reasons of such agendas at least Twenty Four hours before the meeting is held.

¶ Amended by the Some Nepal Laws (Amendment) Act, 2063
× Omitted by the Some Nepal Laws (Amendment) Act, 2063

Provided that, nothing in this Sub-section shall be deemed to bar the Council to put a verbal proposal and take decision on such proposal after discussion as per the consent of all members attending the meeting.

(5) It shall be deemed to constitute the quorum for the meeting of Council if Chairperson and other Two members are present.

(6) The Secretary shall prepare and keep the record of decisions of the Council and shall implement these under the direction of Chairperson.

NEPAL LAW COMMISSION