

# Special Court Act, 2059 (2002)

Date of Publication

2059/3/5 (19 June 2002)

## Amendment

1. Special Court (First Amendment) Act, 2064 (2007) 2064/5/19 (5 Sep. 2007)
- \*2. Strengthening Republic and Some Nepal Laws Amendment Act, 2066 (2010) 2066.10.7 (24 Jan. 2010)

Act Number 2 of 2059

## Act enacted to make provision with regard to the constitution, power and procedure of the Special Court

**Preamble:** Whereas it is expedient to make timely provision with regard to the constitution, power and procedure of Special Court in order to accomplish the trial and decision of the special types of cases in an expeditious, prompt and effective manner,

Now, therefore, this Act has been enacted by the parliament in the first year of the reign of His Majesty King Gyanendra Bir Bikram Shahadev.

### **Chapter-1**

#### **Preliminary**

1. **Short title and commencement:** (1) This Act may be called "Special Court Act, 2059".

(2) This Act shall come into force immediately.

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\* The word "Kingdom of" has been deleted by this Amendment.

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

- (a) "Special Court" means the Special Court constituted in accordance with Section 3.
- (b) "Special types of cases" means the special types of cases as specified by the Government of Nepal by publishing a Notice in Nepal Gazette for the purpose of Sub-section (1) of Section 3.
- (c) "Chairperson" means the chairperson of the Special Court.
- (d) "Member" means the member of Special Court and this expression also includes the chairperson.

## Chapter-2

### Constitution of Special Court

3. **Constitution of Special Court:** (1) The Government of Nepal may constitute Special Court, having the judges in required number<sup>•</sup> in order to accomplish the trial and decision of the special types of cases in a expeditious, prompt and effective manner, by publishing a notice in Nepal Gazette, in consultation with Judicial Council.

<sup>†</sup>(1a) In case the Special Court is constituted having more than three members in accordance with Sub-section (1), a bench shall be formed of three members in each.

(2) The Government of Nepal shall designate the chairperson and member of the Special Court constituted in accordance with Sub-section (1), in consultation with judicial council, from amongst the judges of appellate court.

(3) While constituting the Special Court in accordance with Sub-section (1), Government of Nepal shall have to specify the territorial jurisdiction and location of such Special Court.

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

<sup>†</sup> Inserted by the First Amendment.

(4) In addition to the place of the location of Special Court, Government of Nepal may also specify the location of a bench to remain in other place by publishing a notice in Nepal Gazette for a specified period mentioned therein.

4. **Cases may be increased or decreased:** The Government of Nepal may increase or decrease the cases offered to the Special Court constituted in accordance with Section 3 by publishing a notice in Nepal Gazette.
5. **Facilities of Member:** The salary and other facilities of chairperson and member of Special Court shall be as prescribed by Government of Nepal in addition to those one has been enjoying.

### Chapter-3

#### **Jurisdiction of Special Court and Its Exercise**

6. **Jurisdiction of Special Court and Exercise:** (1) The trial and decision of the special types of cases shall be made by the Special Court.

●(2) The exercise of the jurisdiction of Special Court shall be made by all members present in the bench collectively.

Provided that, a member attending in the bench may conduct other hearing except for a hearing regarding the detention (pretrial) of an accused and two members attending bench may conduct a hearing regarding the detention (pretrial) and decision of a case.

(3) The opinion shall be considered as the decision of the court in case there is unanimity of the all three members present in the bench or a majority of two members is maintained in the bench.

(4) In case of failing to maintain unanimity in a two judges attending bench, the matter regarding to hearing shall have to be done according to the opinion of the chairperson if a bench is including of the chairperson and according to the opinion of the senior most member if a

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● Amended by First Amendment.

bench is excluding of chairperson. In the case of the decision or final order of a case, it shall be made out by presenting before a member absent previously and the opinion adhered by him/her shall be regarded as the final decision of the court.

(5) In case of failing to maintain a majority decision despite the matter presented before the member absent previously in accordance with Sub-section (4), the matter shall have to be referred to the Supreme Court.

(6) The Supreme Court shall hear the case submitted in accordance with Sub-section (5) by giving priority.

(7) The hearing of the case submitted in accordance with Sub-section (5) shall be done by a bench of single judge of the Supreme Court and the decision rendered into by such bench shall be considered as the decision of the Special Court.

<sup>+</sup> (8) The job regarding to assignment of a case shall be done by the chairperson in case it is required to form more than one bench in the Special Court.

<sup>+</sup>(9) In the absence of the chairperson, the power of the chairperson in accordance with Sub-section (8) shall be exercised by the senior most member amongst the members present.

## Chapter-4

### **Power and Procedure of Special Court**

7. **Power of the Special Court:** The power of the Special Court shall be as mentioned hereunder:
- (a) Summoning the other persons or evidence relevant with a case as deemed appropriate apart from the witness of the plaintiff and defendant,

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<sup>+</sup> Inserted by the First Amendment.

- (b) Recording the statement of defendant or witness failing to attend within the dates given by arresting through issuing warrant,
  - (c) Conducting the trial of the case by giving a party due date of presence or by requiring him/her to be present as and when necessary without giving a due date,
  - (d) Demanding the security or guarantee keeping in view the amount of loss or damage or amount illegally accepted by him/her and the imprisonment or fine to be inflicted to him/her in case it is not deemed to have a trial of the case by putting an offender in the custody from the evidence so collected,
  - (e) Notwithstanding anything contained in the prevailing law, conducting a trial of the case by putting the offender in custody in case there is an adequate and reasonable cause to have a trial of the case by putting one in custody,
  - (f) May accept the security or guarantee taken by the agency for investigation in course of investigation extent it covers,
8. **Asset and passport may be hold/frozen:** An order may be made to the concerned authority to hold any asset of such offender, not to issue a passport to such offender or to hold it if a passport has already been issued, on the ground of the seriousness of the accusation on and condition of offender, degree and nature of crime.
9. **Additional charge-sheet may be filed:** (1) Notwithstanding anything contained in the prevailing law, in case other additional relevant evidence of a case are found after having a charge-sheet filed against any offender in the Special Court, the Government Attorney may submit an application in the Special Court for an approval describing the reason to make additional claim in addition to the previous claim or to carry out additional investigation over the offender against whom case has already

been filed by continuing the past investigation carried or to make an additional claim by filling a case against other offender as well.

(2) Special Court may issue an order for an approval, as required, in case the reason for an application filed in accordance with Sub-section (1) is considered to be reasonable, and in case of such order, an additional claim may be made over the offender against whom charge-sheet has already been filed or an additional charge-sheet may be filed against any other offender.

**10. Procedure regarding service of the summons:** (1) While sending the summon in the name of a defendant against whom a case has been filed in the Special Court, a summon may be issued by specifying the period of thirty days excluding the time for a journey in case such person is out of the country and of fifteen days in case such person is within Nepal.

(2) While issuing summons in the name of a defendant residing out of the country in accordance with Sub-section (1), it shall be issued in the name of any office or representative in case there is any office or representation of such defendant located within Nepal. The summon issued in this manner shall be considered a duly issued summon.

(3) In case of non-availability of such office or representative in accordance with Sub-section (2), a summon shall be issued by telex, telefax or through any other recordable means of telecommunication or by post with a registry letter at the place in case there is any main place of the business of such defendant or a permanent place of residence or an address of correspondence made available by him/her while carrying the transaction and the summon issued in this manner shall be considered a duly issued summon.

(4) Notwithstanding anything contained in Sub-section (2) or (3), this Section shall not be considered as an obstruction in case of the existence of a separate provision made therein by an agreement, with regard to issuing a summon in the name of any defendant residing out of

the country, of which Nepal as a state or the Government of Nepal is a party.

(5) While issuing summon by the Special Court in the name of a witness of a case filed in it, it shall issue summon by specifying a period of up to Seven days excluding the time for journey.

(6) A summon issued in accordance with this Section may be issued by an employee of the Special Court or district court or through any other nearest government office. It shall be the principal duty of the court officer (*Shrestedar*) of the concerned district court or office chief of such office to accomplish summon, it so dispatched by the Special Court, with a priority.

(7) The official deputed from the Special Court shall have to accomplish the summon procedure within Two days excluding the time for journey and the Special Court shall inflict a fine upto Five Hundred Rupees to such official if found causing delay in completing the summon procedure without the presence of any reasonable cause.

(8) In case any person is applying for acknowledging summon issued in his/her name after being known that a summon has been issued in his/her name, at the Special Court or the court or office dispatched to issue such summon, such summon may be issued to him/her. While making an application so, no fees shall be levied.

(9) In case a report has been filed of being failed to accomplish the summon procedure issued in the name of any person due to the reason that the address has not been noticed or any other reason, then a public notice shall be published at least two times in national-level newspaper (in English in the case of foreigner) by giving a time of thirty days to be present in the Special Court by mentioning a short description of a case filed in it. And, in case of publication of such notice, it shall be considered an issuance of summon to such person.

(10) Except otherwise provided in this Section, the other provisions with regard to serving summon shall be as per the prevailing law.

11. **Provision for sustaining the lapsed time:** In case an application is filed to sustain a lapsed time along with the reason and ground resulting from the circumstance beyond (*force majeure*) the control in a case filed in the Special Court and an appeal filed over the decision of it, a lapsed time may be sustained for a period of up to Fifteen days in maximum if such circumstance is proved to be reasonable.
12. **Other power and procedure:** For the matters in relation to the trial and decision of a case, the Special Court may exercise the power and procedure according to this Act to the extent mentioned in it, for the matters except for that it may exercise the power and procedure equivalent to the district court.

## **Chapter-5**

### **Miscellaneous**

13. **Oath:** The chairperson and member before to take office shall have to undergo for an oath in front of the chief justice of the Supreme Court in the format in accordance with the schedule.
14. **Contempt:** Special Court may proceed for a case in the contempt of its own and it may inflict a fine up to Five Thousand Rupees and Six months imprisonment or both in case it decides of the commission of contempt.

Provided that, Special Court may excuse him/her or pardon from such punishment, reduce or order for not executing the punishment by postponing it up to Six months on the conditions determined if the offender begs for excuses in a way that the Special Court be satisfied.

15. **Case file or document regarding to case or response demanded by the Special Court to be sent:** In case a Special Court issues an order to



any office to send any file necessary for a proof of case, document or to submit or send any other matter or demands the clarification or response, such office shall have to abide by the order issued so. In case an obstruction is caused in conducting the hearing or deciding the case or any party suffers undue trouble or realizes an adverse effect due to failure to abide by such order, the Special Court shall inflict fine to the concerned head of the office or employee up to Five Hundred Rupees for each instance.

Provided that, in case the concerned head of office or employee makes a requisition, after having ordered for such fine, by mentioning the reasons for being failed to abide by such order requesting that such order would not be made and if deemed satisfactory, the Special Court may cancel the order for such fine.

- 16. Time frame to decide a case:** (1) The Special Court shall have to decide a case generally within Six months from the date of filing.
- (2) The Supreme Court shall have to decide on the appeal made over the decision of the Special Court generally within three months from receiving a case file with priority.
- 17. Appeal:** A party not being satisfied with the decision or final order of the Special Court may file an appeal in the Supreme Court within Thirty Five days of having such decision or order.
- 18. Execution of the judgment:** In case the Special Court writes down in decision or final order made by it to be executed its decision by any authority, such authority shall execute it and in absence of writing so, the concerned district court shall execute it.
- 19. To be tabled in parliament:** Government of Nepal shall have to table the Notice published under this Act in the legislature- parliament<sup>7</sup>.

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<sup>7</sup> Amended by the Strengthening Republic and Some Nepal Laws Amendment Act, 2066 (2010)

- 20. Dissolution of the Special Court:** (1) Government of Nepal may dissolve the Special Court by publishing a Notice in Nepal Gazette.
- (2) In case of a dissolution of the Special Court in accordance with Sub-section (2), the cases or complaints filed in it, but remaining yet to be decided shall be transferred to concerned appellate court having territorial jurisdiction.
- 21. Provision for employees:** (1) Government of Nepal shall make available the employees required for the Special Court.
- (2) The official designated by the Government of Nepal, by publishing a notice in Nepal Gazette shall work as the Departmental Chief or Administrative Chief of the Special Court.
- 22. Liaison with the Government of Nepal:** The Special Court shall have to have a linkage through the Ministry of Law, Justice and Parliamentary Affairs while keeping a link with the Government of Nepal.
- 23. Power to frame Rules:** The Government of Nepal may frame necessary Rules in order to execute the objective of this Act.
- 24. Repeal and saving:** (1) The Special Court Act, 2031 has been repealed.
- (2) The proceedings made under The Special Court Act, 2031 shall be considered to have been done under this Act.
- 25. Transfer of cases:** Cases filed in the Special Court constituted under the Special Court Act, 2031 at the time of constituting the Special Court in accordance with this Act shall be transferred to the Special Court.
- 26. Alteration:** An alteration has been made by inserting the word "Special Court Act, 2059" instead of the word "Special Court Act, 2031" used in the prevailing law.

## **Schedule**

(Relating with Section 13)

### **Oath**

I..... swear with truth and loyalty/ take an oath in the name of God that I shall perform the responsibilities of the ..... post assumed by me, by being honest with the Nepali people, prevailing constitution and other laws, without contradicting the value of judicial impartiality and honour and without fear, flattering, prejudice, malice or greed, but with honesty and shall not disclose any matter known to me in the course of discharging my duties in any situation whether while holding the post or not, to any one, except in the course of observing the prevailing law.

Date:

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Signature:

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Amended by the Strengthening Republic and Some Nepal Laws Amendment Act, 2066 (2010)