

## **NATIONAL LAWS**

### **The Constitution of the Kingdom of Bhutan, 2008**

(Article 10 Section 25)

#### *Article 10*

#### **Parliament**

25. Except for existing International Conventions, Covenants, Treaties, Protocols and Agreements entered into by Bhutan, which shall continue in force subject to section 10 of Article 1, all International Conventions, Covenants, Treaties, Protocols and Agreements duly acceded to by the Government hereafter, shall be deemed to be the law of the Kingdom only upon ratification by Parliament unless it is inconsistent with this Constitution.

## **Extradition Act, 1989 (1991)**

WHEREAS it is expedient to introduce national legislation for extradition of fugitive offenders;

NOW therefore, the National Assembly of Bhutan enacts this legislation.

### **I. Preliminary**

- A.. This Act may be called the Extradition Act, 1989 (1991)
- B.. This Act shall come into force immediately.
- C.. This Act shall apply to the return of persons to, and to persons returned from a treaty state.
- D.. This Act may also apply to non-treaty state where the Royal Government of Bhutan considers it expedient to surrender the suspected fugitive offender to that state notwithstanding that there is no extradition treaty with that state, subject to modifications, exceptions, conditions and qualifications, if any, as may be made by the Royal Government of Bhutan.

### **II. Definitions:**

In this act, unless there is anything repugnant in the subject or context:

- A.. “Court” means High Court of Bhutan unless it is specified otherwise.
- B.. “Extradition Offence” means an offence included in the Schedule to this Act constituting an offence against the law of Bhutan, or an offence specified in the extradition treaty or arrangement with the foreign state.
- C.. “Treaty State” means a foreign state with which an extradition treaty is in operation.
- D.. “Extradition Treaty” means a treaty or agreement between Bhutan and foreign state for the extradition to or from such state of a person accused or convicted of an extradition offence.
- E.. “Fugitive offender” means a person who, being accused or convicted of an extradition offence within the jurisdiction of a foreign state is, or is suspected to be, in Bhutan.
- F.. “Requesting state” means a treaty state which requests another treaty state for extradition of a fugitive offender.

### **III. Request for extradition or punishment :**

- A.. Request for extradition or punishment of the fugitive offender who, after committing an offence, has absconded to the Kingdom of Bhutan may be made in writing through the diplomatic mission of the foreign country in Bhutan or through the Bhutanese diplomatic mission in that country. If such a request cannot be made through these channels, the foreign country may make the request directly to the Royal Government of Bhutan.

- B.. While making the request for extradition or punishment pursuant to sub-section 3.1 above, the requesting state shall provide all relevant evidence and information about the fugitive offender including those submitted by him and state the location of his stay in Bhutan.

**IV.. Proceedings:**

- A.. On receipt of the request for extradition or punishment of a fugitive offender, the Royal Government may, if it thinks fit, order the High Court to investigate the matter.
- B.. The Court, after receiving the Government order, shall issue a summon or warrant for arrest of the fugitive offender.
- C.. When the fugitive offender appears or is produced before the Court, the Court shall inquire into the case and take such evidence as if it were a similar case triable under its jurisdiction.
- D.. On completion of the inquiry, the Court shall submit a report to the Royal Government on the results of its inquiry and its recommendations. The report shall include all pertinent information and evidence received in connection with the inquiry including other submissions as may be requested by the fugitive offender.
- E.. Pending the decision of the Royal Government on the report, the fugitive offender shall remain under police custody for a period not exceeding thirty days from the day of the submission of the report by the Court to the Royal Government of Bhutan.

**V.. Extradition of fugitive offender:**

- A.. If the Royal Government decides to extradite any fugitive offender on the basis of the recommendations made by the Court, it shall inform the requesting state of its decision. The Royal Government shall also issue an order specifying the place where the fugitive offender is to be handed over and the name of the person who is to receive him.
- B.. While extraditing the fugitive offender pursuant to sub-section 5.1. above, the cash or kind seized from him shall also be handed over to the person who received the fugitive offender if such cash or kind is not claimed by any other person.
- C.. If a fugitive offender who has been detained for extradition under sub-section 5.1. above, has not been taken out of Bhutan within 60 days after issuing the order for extradition, the High Court upon receipt of petition submitted by the fugitive offender or on his behalf, may acquit him unless a reasonable case is made out on the contrary.

**VI.. Restriction on extradition:**

- A.. The Royal Government shall not extradite the fugitive offender for whom a request has been made for extradition on the following conditions:
- B.. If such fugitive offender is deemed to have committed a political offence on the basis of the evidence received from the requesting country or on the basis of evidence produced by the fugitive offender during the course of the investigation by the Court or if it is found that the fugitive offender is being demanded for punishment on political offence.

- C.. If it appears to the Royal Government that by reason of the trivial nature of the case or by reason of the request for surrender or return of a fugitive offender not being made in good faith or in the interest of justice or for any other reasons deemed important by the Royal Government, it is unjust or inexpedient to extradite the fugitive offender.
- D.. If the fugitive offender is undergoing a trial or punishment in Bhutan for offence committed within the kingdom till the trial or punishment is over.
- E.. If the prosecution for the offence in respect of which the surrender is sought, is according to the law of the requesting state, barred by time.

**VII.. Punishment within Bhutan:**

- A.. If the Royal Government finds it reasonable to punish than extradite any fugitive offender on the basis of the report submitted by the Court, it may order the Court to initiate the proceedings for punishment. In such a case, the Royal Government shall inform the requesting state of the intention to punish the fugitive offender in Bhutan.
- B.. Although an appeal under the prevailing law may lie against the decision made by the Court, the fugitive offender may plead for clemency to His Majesty the King of Bhutan.

**VIII.. Special provision:**

- A.. Notwithstanding the provisions of the law of Bhutan the evidence, proof and documents received from the requesting state in connection with the case whose proceedings have been initiated under this Act may be admitted as evidence by the Court.

**IX..Jurisdiction of the High Court for purposes of criminal proceedings:**

- A.. If any person whether a citizen of Bhutan or not, commits in a treaty state any of the extradition offenses under this Act, such person shall be guilty in Bhutan of the offence constituted by commission of the act in Bhutan.

**X.. Surrender of fugitive offender to Bhutan:**

- A.. A requisition for the surrender to Bhutan of a person who being accused or convicted of an extradition offence, is or is suspected to be in a treaty state may be made by the Kingdom of Bhutan in the same manner as specified in Article 3 above.
- B.. Any person accused or convicted of an extradition offence who is surrendered or returned by a treaty state may be brought into Bhutan and delivered to the authority specified in the warrant of arrest or surrender issues by the treaty state for facing charges in accordance with the law of Bhutan.

- C.. A person surrendered or returned to Bhutan by a treaty state in pursuance of provision 9.1. of this Act shall not be tried in Bhutan for an offence committed prior to the surrender or return, other than the offence proved by the facts for which he has been surrendered.
- D.. The Royal Government may arrange for the person surrendered to Bhutan by the treaty state to be sent back at the cost of the Royal Government if the proceedings against him have not begun within ninety days from the date of his surrender or return to Bhutan and if he is acquitted or discharged after trial.

**XI.. Power to frame rules:**

- A.. The Royal Government may frame rules, as required, for implementing the provisions of this Act.
- B.. The Royal Government may amend this Act.

**Schedule**  
**(Alternative 1)**

The following list of extradition offenses is to be construed according to the law in force in Bhutan on the date of the alleged offence:

1. Culpable homicide
2. Attempt to murder
3. Causing miscarriage and abandonment of child
4. Kidnapping, abduction, slavery and forced labour
5. Rape and unnatural offenses
6. Theft, extortion, robbery and dacoity
7. Criminal misappropriation and criminal breach of trust.
8. Cheating
9. Mischief
10. Forgery, using forged documents and other offenses relating to false documents
11. Offenses relating to coins and stamps
12. Sinking or destroying a vessel at sea or attempting or conspiring to do so.
13. Damaging or destroying an aircraft in the air or attempting or conspiring to do so.
14. Assault on board a vessel on the high seas or an aircraft in the air outside Bhutan or the Bhutanese air space with intent to destroy life or to do grievous bodily harm.
15. Revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas or an aircraft in the air outside Bhutan or the Bhutanese air space against the authority of the master or the pilot in command.
16. Smuggling of gold, gold manufactures, diamonds and other precious stones or of any narcotic substance.
17. Immoral traffic in women and girls.
18. Any offence which is committed in Bhutan would be punishable under any other section of the law of Bhutan.

**(Alternative 2)**

Any offence which, in accordance with law of the Kingdom of Bhutan, is punishable with death or imprisonment for life or a term exceeding twelve months shall be treated by the Court as an extradition offence under this Act.

## **The Enabling Act for Suppression of Terrorism, 1991**

WHEREAS the Kingdom of Bhutan is a party to the SAARC Regional Convention on suppression of Terrorism which came into force on 22 August 1988.

ANDWHEREAS it is necessary to make legal provisions to implement the aforesaid Convention.

NOW therefore, the National Assembly of Bhutan enacts this legislation:

### *Article I*

This legislation may be called The Enabling Act for Suppression of Terrorism 1991, and shall come into force immediately upon enactment by the National Assembly of Bhutan.

### *Article II*

#### **Definition of Terms**

1. Unless specified otherwise in this Act:
  - (a) “Convention” means the SAARC Regional Convention on Suppression of Terrorism.
  - (b) “Member States” means the members of the South Asian Association for Regional Cooperation as specified in Schedule A to this Act.
  - (c) The term “Treaty State” used in the Extradition Act, 1991 shall apply to the Member States for the purposes of the SAARC Regional Convention on Suppression of Terrorism.

### *Article III*

#### **Authority of the convention**

1. Notwithstanding any provisions in the Extradition Act, 1991, an offence specified in Article I of the Convention and contained in Schedule B of this Act shall be deemed not to be an offence of a political character or an offence connected with a political offence, or an offence inspired by political motives, so far only as the request for the extradition of any person accused or convicted of any such offense is made by a Member State.
2. The offences enumerated in Article I of the Convention which are contained in Schedule B to this Act shall be treated as extraditable offences under the Extradition Act, 1991.

## *Article IV*

### **Provision Regarding Extradition Arrangements**

1. Where there is an extradition arrangement made by the Kingdom of Bhutan with any state specified in the Second Schedule to this Act, in force on the date on which this Act comes into operation, such arrangement shall be deemed, for the purposes of the Extradition Act 1991 to include provisions for extradition in respect of the offences specified in the Schedule B of this Act.
2. Where there is no extradition arrangement made by the Kingdom of Bhutan with a state specified in the Schedule A to this Act, in force on the date on which this Act comes into operation, the Royal Government may treat the Convention for the purposes of the Extradition Act 1991, as an extradition arrangement made, by the Kingdom of Bhutan with that state providing for extradition in respect of the offences specified in Schedule B.
3. Where a request is made to the Kingdom of Bhutan, by a Member State for the extradition of any person accused or convicted of an offence specified in Schedule B, the Kingdom of Bhutan, shall expeditiously inform the Government of the Requesting State of the actions which the Kingdom of Bhutan has taken, or proposed to take, for the extradition or prosecution that person for that offence.
  - (a) Where it is decided that no order should be made under the Convention for the extradition of a person accused or convicted of an offence specified in Schedule B, pursuant to an extradition request under the Convention by a Member State, the case shall be submitted to the relevant authorities, so that prosecution for the offence which such person is accused of, or other appropriate action, may be considered.
4. Member States shall not be obliged to extradite, if it appears to the Requested State that by reason of the trivial nature of the case or by reason of the request for the surrender or return of a Fugitive Offender not being made in good faith or in the interests of justice or for any other reason it is unjust or inexpedient to surrender or return the Fugitive Offender.
5. Member States shall, subject to their national laws, afford one another the greatest measure of mutual assistance in connection with proceedings brought in respect of the offences referred to in Article I of the Convention or agreed to in terms of Article II in the convention, including the supply of all evidence at their disposal necessary for the proceedings.
  - (a) Member States shall cooperate among themselves, to the extent permitted by their national laws, through consultations between appropriate agencies, exchange of information, intelligence and expertise and such other cooperative measures as may be appropriate, with view to preventing terroristic activities through precautionary measures.



***Article V***

**Jurisdiction for purposes of Criminal Proceedings.**

1. If any person, whether or not a citizen of Bhutan, does in a Member State any act, which if done in Bhutan, would have constituted an offence specified in Schedule B, such person shall be guilty in Bhutan, of the offence constituted by the commission of that act in Bhutan.
2. If a person who is a national of a Member State but not a citizen of Bhutan, does outside Bhutan and that Member State any act which had he been a citizen of Bhutan would have made him guilty of an offence specified in Schedule B to this Act, he shall be guilty of the offences aforesaid in Bhutan.
  - (a) If a citizen of Bhutan does outside Bhutan or any Member State any act which, if such act had been committed in Bhutan, would have made him guilty of an offence specified in Schedule B, he shall be guilty of the offence aforesaid in Bhutan.
3. The High court of Bhutan is hereby vested with jurisdiction to try the offences referred to in sections 5.1 and 5.2.

***Article VI***

**Framing of Implementation Rules**

1. The Royal Government may frame rules to implement the Convention which are in keeping with the Articles of the Convention.

#### **SCHEDULE A**

Peoples Republic of Bangladesh  
Republic of India  
Republic of Maldives  
Kingdom of Nepal  
Islamic Republic of Pakistan  
Democratic Socialist Republic of Sri Lanka  
Kingdom of Bhutan

#### **SCHEDULE B**

List of offences referred to in Article I of the SAARC Regional Convention on Suppression of Terrorism.

- (a) An offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft signed at the Hague on December 16, 1970;
- (b) An offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;
- (c) An offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed at New York on December 14, 1973;
- (d) An offence within the scope of any convention to which the SAARC member states concerned are parties and which obliges the parties to prosecute or grant extradition;
- (e) Murder, Manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property;
- (f) An attempt or conspiracy to commit an offence described in sub-paragraphs (a) to (e) above, aiding abetting or counselling the commission of such an offence or participating as an accomplice in the offences so described.