

## **Amendments made by the National Council on the Civil and Criminal Procedure Code of Bhutan 2001**

*Amendments to the Civil and Criminal Procedure Code of Bhutan 2001 were elaborately deliberated by the National Council on 09/07/2010 and 12/07/2010, and adopted as follows.*

### **Section 4 (d)**

protecting the privacy of a ~~juvenile~~ **child in conflict with law**; and

### **Section 9 (d)**

The Supreme Court shall:

- (d) have ~~such number of four~~ **four** Drangpons ~~appointed by as His Majesty the Druk Gyalpo by warrant under His Hand and Seal may appoint upon the recommendation of in consultation with~~ the National Judicial Commission.

### **Section 10**

The High Court shall:

- (b) have ~~eight such number of~~ **eight** ~~Drangpons appointed by as His Majesty the Druk Gyalpo King by warrant under His hand and Seal shall appoint upon on~~ the recommendation of the National Judicial Commission;

### **Section 13**

~~His Majesty the King shall appoint legally qualified, experienced and competent persons of high integrity as~~ **The Druk Gyalpo shall, by warrant under His Hand and Seal, appoint:**

- (a) the Chief Justice of Bhutan, **in consultation with the National Judicial Commission;**  
(b) Drangpons of the Supreme Court, ~~upon the recommendation of in consultation with~~ the National Judicial Commission;  
(c) Chief Justice and Drangpons of the High Court, upon the recommendation of the National Judicial Commission; and  
(d) ~~Drangpons of the Dzongkhag Courts, upon the recommendation of the National Judicial~~

### **Section 13.1**

The Chief Justice of Bhutan shall ~~appoint legally qualified, experienced and competent persons of high integrity as~~ *Drangpons* of the ***Dzongkhag and Dungkag*** Courts, upon the recommendation of the Royal Judicial Service Council.

### **Section 14**

~~His majesty the King~~ **The Druk Gyalpo** shall appoint ~~qualified, experienced and competent persons of high integrity as~~ members of the National Judicial Commission **by warrant under His Hand and Seal. The National Judicial Commission shall comprise:**

- (a) **The Chief Justice of Bhutan as Chairperson;**  
(b) **The senior most Drangpon of the Supreme Court;**  
(c) **The Chairperson of the Legislative Committee of the National Assembly; and**  
(d) **The Attorney General.**

### **Section 14.1**

*(Repeal: It is already covered under 14 (a.)*

### **Section 15**

*Every Drangpon shall:*

- ~~(a) — enjoy security of tenure, *quamdiu se bene gesserint*; and~~
- ~~(b) — be censured, suspended or removed from office only by an order of His Majesty the *Druk Gyalpo* upon the recommendation of the National Judicial Commission for proven misbehavior or incapacity.~~

**The independence of the Drangpons of the Supreme Court and the High Court shall be guaranteed, provided that a Drangpon may be censured or suspended by a command of the Druk Gyalpo on the recommendation of the Commission for proven misbehaviour, which, in the opinion of the Commission, does not deserve impeachment.**

### **Section 29**

The Royal Courts of Justice shall apply International Conventions, Covenants, Treaties and Protocols that are duly acceded to by the Royal Government of Bhutan and ratified by the National Assembly **Parliament** of Bhutan.

### **Section 42 (b)**

daily allowance at the prevailing rate prescribed by the **Daily Minimum Wage Rate**.

### **Section 42.1**

If the Court summoned the witness *sua sponte*, after considering it necessary, expedient or otherwise in the interest of justice to do so, the Government shall pay reasonable travelling fare and daily allowance at the prevailing rate prescribed by the **Daily Minimum Wage Rate**.

### **New Section 96A**

**The judgment of the Court shall be made accessible in the public domain which shall include libraries.**

### **Section 97**

It shall be the discretion of the Appellate Court based on the outcome of a case to determine an appropriate assignment of costs and other expenses related to the suit.

### **Section 98**

The Court may order a defaulting party to pay costs to the attending party calculated at the rate prescribed under the **Daily Minimum Wage Rate**.

### **Section 99.6(c)**

agricultural land to the extent of minimum acre ceiling prescribed by the **prevailing Land Act of Bhutan, 1980**;

### **Section 101.3**

~~Where a Jabmi engages in professional or other misconduct, the High Court may:~~

- ~~(a) — admonish/reprimand the *Jabmi*;~~

~~(b) — suspend the *Jabmi* from appearing before a Court for such period as it may deem fit; or  
(c) — bar the *Jabmi* from practice, if convicted of a cognizable offence or otherwise.  
(Repeal since this power is given to the *Jabmi Tshogdey* under the *Jabmi Act*)~~

### **Section 107.1**

Finding of civil contempt shall result in fine/imprisonment **or civil confinement in lieu of imprisonment** until the civil order has been complied with.

### **Section 112**

*(Repeal)*

### **Section 114**

*(Repeal)*

### **Section 148.1**

Such person shall be, in the case of a **child in conflict with law juvenile**, be represented by the parents/family member/guardian/*Jabmi*.

### **Section 150**

At any stage of the proceedings, it shall be open to the parties to take the help of **members of the concerned Local Government** ~~a *Chimi, Gup, Chipon, Mang mi* or *Barmi*~~ as mediators for mutual settlement of a civil case in accordance with the requirements of this Code.

### **Section 153.1**

The party may be liable for such costs as the Court may award calculated in accordance with the **Daily Minimum Wage Rate**.

### **Section 171**

A search shall be made in the presence of ~~*Chimi/Gup/Chipon/ member of Dzongkhag and Geog Yargye Tshokchung*~~ **one or more members of the concerned Local Government.**

### **Section 178**

A vehicle/aircraft/vessel/**train**/conveyance may be searched where reasonable cause exists or upon the arrest of the driver/pilot/passenger.

### **Section 178.1**

If the vehicle/aircraft/vessel/**train**/conveyance itself is being subjected to a valid warranted search, closed containers found in the vehicle/aircraft/vessel/**train**/conveyance may be searched without a warrant.

### **Section 186**

The Court may order an accused to be remanded to police/judicial custody, if there exists reasonable cause that he/she has perpetrated a crime, **within the limits prescribed by this Code.**

### **New Section 186.1**

**The Court may, depending on the nature of the crime, order the accused to be released on bail or placed under house arrest, in lieu of detention.**

### **Section 191.1**

The Court, prior to the preliminary hearing, may **from time to time** authorize the detention of the accused for ~~an additional period not exceeding~~ **a reasonable duration calculated from the date of issuance of the first detention order which in the whole shall not exceed**

- (a) Forty nine days, if satisfied that adequate grounds exist for doing so; and
- (b) One hundred and eight days, where the investigation relates to a heinous crime.

### **New Section 191.2**

**A person detained prior to conviction under this Code shall have the rights of access to and advice from a *Jabmi* and of access to family members.**

### **Section 194**

Persons accused of the same offence or any offence that can be reasonably construed to have been committed during the same criminal transaction may be charged and presented together in the Preliminary Hearing except **child in conflict with law juvenile**.

### **Section 195.1**

In the case of **child in conflict with law juvenile**, his/her parents/member of family/legal guardian/*Jabmi* may make a plea of guilty or *Nolo Contendere* only in the best interest of the **child in conflict with law juvenile**.

### **Section 197.3**

Before confirming a plea bargain, the prosecution shall determine whether the defendant is mentally competent and is a **child in conflict with law juvenile**, and if so is represented by parent/member of a family/legal guardian/ *Jabmi*, and understands:

### **New Section 199.8 A after Section 199.8**

#### **Non-Bailable Offence**

**The Court shall not grant bail to a person who has been charged with;**

- (a) **an offence against the security and sovereignty of the country; and**
- (b) **an offence of or above felony of the second degree.**

### **Section 205**

The prosecution may ~~move motion~~ the Courts for new trials based on newly discovered evidence or on other grounds.

### **Section 208(a)**

~~awarded capital punishment~~  
(*Repeal*)

### **New Section 212 (A)**

**An acquitted person or a person subjected to illegal detention is entitled to be compensated by the relevant agencies for the loss of income caused by the criminal proceedings or illegal detention and to be reinstated at the former place of work.**

## Title for Chapter 44

~~Juvenile~~ **Child in Conflict with Law**

### Sub-title before Section 213

~~Juvenile~~ **Child in Conflict with Law**

#### Section 213

A **Child in conflict with law** ~~Juvenile~~ arrested on a criminal charge shall:

##### Section 213.1

In making the determination to allow a **Child in conflict with law** ~~Juvenile~~ to go home after advice/admonition or release the **Child in conflict with law** ~~Juvenile~~ on probation, the Court shall consider the:

##### Section 213.1 (b)

~~juvenile~~'s past criminal record **of the child in conflict with law**;

##### Section 213.1 (d)

~~juvenile~~'s age and physical/mental health condition **of the child in conflict with law**; and

##### Section 213.2

A Court shall take into consideration the following factors in making orders concerning **child in conflict with law** ~~juvenile~~:-

##### Section 213.2 (a)

age of the **child in conflict with law** ~~juvenile~~;

##### Section 213.2 (c)

circumstances in which the **child in conflict with law** ~~juvenile~~ was living;

##### Section 213.2 (e)

other circumstances as are, in the opinion of the Court, required to be taken into consideration in the best interest and welfare of the **Child in conflict with law** ~~Juvenile~~.

#### Section 214

~~The original text of this Code is the text as passed by the National Assembly in *Dzongkha*. The *Dzongkha* text and the English translation are equally authoritative, except that, in any instance of a difference in meaning between the two texts, the *Dzongkha* text shall prevail. In any instance of a difference in meaning between the *Dzongkha* and the English texts of this Act, *Dzongkha* text shall be regarded as the authoritative text.~~

#### Section 215

*Drangpons* of the:

- (a) ***Dungkhag and Dzongkhag*** Court shall be addressed as Judges in English; **and**
- (b) High Court **and Supreme Court** shall be addressed as Justices; ~~and~~
- (c) ~~Supreme Court shall be addressed as Justices.~~

**New Section 215.8 A**

**“Police” shall mean an authorized personnel of the Royal Bhutan Police. However, the procedures laid down in this Code relating to arrest, search and investigation by the Police shall also be extendable to other law enforcement and investigative agencies.**