

¹**Election Commission Act, 2047 (1991)**

Date of Royal Seal and Publication

2047-10-28 (11 Feb. 1991)

Amendments:

1. Elections and Local Authorities Related Some
Nepal Acts Amendment Act, 2053 (1996) 2053-8-12 (27 Nov. 1996)
2. Some Nepal Acts Amendment Act, 2055
(1999) 2055-10-21 (4 Feb. 1999)

Act No. 20 of the Year 2047 (1991)

An Act Made to Provide for the Functions, Duties and Powers of the Election Commission

Preamble : Whereas, it is expedient to make provisions on the functions, duties and powers of the Election Commission;

Be it enacted by His Majesty King Birendra Bir Bikram Shah Dev, on the advice and with the consent of the Council of Ministers, pursuant to Article 129 of the Constitution of the Kingdom of Nepal, 2047 (1990).

Chapter - 1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called as "Election Commission Act, 2047 (1991)".

¹ Repealed by Election Commission Act, 2063.

(2) This Act shall come into force immediately.

2. **Definitions:** Unless the subject or the context otherwise requires, in this Act,-

(a) "Commission" means the Election Commission referred to in Article 103 of the Constitution of the Kingdom of Nepal, 2047 (1990).

(b) "Commissioner" also includes the Chief Election Commissioner of the Commission.

²(c) "Election" means an election or by-election of members to the House of Representatives to be constituted pursuant to Article 45 or the National Assembly to be constituted pursuant to Article 46 of the Constitution of the Kingdom of Nepal, 2047 (1990) or the Village Development Committee, Municipality or District Development Committee to be constituted pursuant to the prevailing law.

(d) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act or in the order issued by the Commission upon a Notification published in the Nepal Gazette.

Chapter - 2

Functions, Duties and Powers of the Commission

³3. **Establishment of Central Secretariat and Local Offices of the Commission:** There shall be a secretariat of the Commission at the central level; and the Commission may establish such offices as may be

² Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

³ Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

required for the functions to be discharged at the regional, zonal, district and local levels.

⁴ 3A. **Provisions relating to Employees** : (1) The Commission may create such other post including the posts of the chief name registration official, name registration official, assistant name registration official, electoral roll collector in such number as may be required for the preparation of electoral rolls and the chief returning officer, returning officer, assistant returning officer, polling officer, assistant polling officer for the act of Election as deemed necessary, and may appoint or designate employees to such posts as required.

(2) The Commission may depute or engage any employee of His Majesty's Government or of an autonomous body owned by His Majesty's Government in any act of Election.

(3) The employee appointed, designated or deputed pursuant to Sub-sections (1) and (2) shall be deemed to be an employee of the Commission until the act of Election is complete; and notwithstanding anything contained in the law relating to the conditions of service of such employee, the authorised person shall not transfer such employee or depute him/her in other work or remove him/her from his/her post or service without the consent of the Commission.

4. **Power to Obtain Assistance**: (1) The Commission may establish direct contact with and obtain any assistance from any Ministry, Department or Office of His Majesty's Government or Constitutional Body or autonomous body owned by His Majesty's Government for the act of Election.

⁴ Inserted by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

(2) The Commission may obtain necessary assistance from, or get any act done by, a private or public or local authority for the act of Election.

⁵(3) The office of His Majesty's Government, authority or corporation, board and autonomous body owned by His Majesty's Government shall have to give priority to the assistance sought by the Commission pursuant to Sub-section (1) or (2) and make available the assistance so sought.

5. **Appointment of Observer** : The Commission may appoint observers to supervise, inquire or monitor the act of polling, counting of votes or any other act of Election.

6. **Power to Avail of and Use Physical Means** : (1) The Commission may, as per necessity and by giving a prior notice, avail itself of and use the land, building, vehicle, furniture or other physical means belonging to His Majesty's Government or any autonomous body corporate owned by His Majesty's Government to conduct the act of Election.

(2) The Commission may, as per necessity and by giving a prior notice, avail itself of and use the land, building, furniture or other physical means belonging to any public or local body or public or private school or higher school to conduct the act of Election.

(3) The Commission may, on hire basis, use the land, building, vehicle, furniture or other physical means belonging to any person or organisation or body to conduct the act of Election.

7. **Power of Removal (Detach)**: (1) If the Commission deems it necessary to remove (detach) any employee appointed or designated or

⁵ Inserted by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

deputed by it pursuant to Section ⁶ 3A to complete any act of Election, it may remove (detach) him/her from doing that act.

(2) The Commission may, if it deems necessary, order the police personnel deputed for security in connection with Election to do or not to do any act directly or indirectly related with Election or may remove (detach) such personnel from doing such act.

8. Power to Cancel Election: If a complaint is filed in the Commission claiming that any act of Election or polling in any constituency has not been free and fair or has suffered from corrupt practices and rigging or the Commission receives information thereof, the Commission may cause the Commissioner or Secretary of the Commission or any official authorised by the Commission to make inquiries on that matter; and if the Commission is satisfied with that matter from the report of the inquiries, it may cancel the Election of that constituency or the polling of any or all of the polling stations of that constituency.

9. Temporary Positions and Appointment of Employees : (1) The Commission may, in order to conduct and complete the act of Election, create temporary positions of up to the Gazetted ⁷ First Class in the required number for a period not exceeding Six months.

(2) The Commission may extend the period of a position created pursuant to Sub-section (1) for another period of up to Six months at one time or several times.

(3) The Commission may make appointment to the position created pursuant to Sub-section (1) on temporary or contract or wages basis.

⁶ Amended by Some Nepal Acts Amendment Act, 2055.

⁷ Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

10. Provision of Facilities :⁸ (1) The Commission may provide the official or employee involved in any act of Election with such amount as an extra facility as may be fixed by the Commission and also with such tiffin, food and overtime allowances as may be fixed by the Commission in the event of getting him to work overtime.

(2) The Commission may, as per necessity, add such amount to the daily and travelling allowances receivable by the official or employee deputed to perform any act of the Commission or an act relating to Election pursuant to the prevailing law as may be fixed by the Commission, and provide the same to him.

(3) The Commission may provide additional allowances in such amount to the official or employee deputed to perform any act of the Commission or any act of Election for up to the period of his deputation as may be fixed by the Commission.

11. Power to Provide Rent or Compensation : (1) In cases where any land, building, vehicle, furniture or other physical means belonging to any person or organisation or body has been used on hire basis under Section 6 by, or with the order of, the Commission for any act of Election, the Commission shall provide the rent of the land, building, vehicle, furniture or other physical means so used for that whole period.

(2) In cases where the land, building, vehicle, furniture or other physical means used by, or with the order of, the Commission for any act of Election has to be repaired due to wear and tear or compensation has to be provided therefor, the Commission may provide compensation in a reasonable amount according to the actual loss upon considering the amount that may be required for or has been expended for doing such repair or required to be paid for compensation.

⁸ Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

- 12. Power to Make Expenditure in Election:** (1) The daily allowances, travelling allowances, other allowances and facilities to be received by any employee deputed in the act of Election pursuant to the prevailing law may be credited and paid out at the very time of the deputation of the employee. The concerned employee shall not be required to submit statements and bills and receipts of the expenditure of the amount which he has received pursuant to this Sub-section.

(2) The expenditure required for the conduct of Election shall be so credited as per the rate fixed by the Commission that the employee deputed in Election may expend it.

(3) The Commission may issue orders exempting the employee deputed in the act of Election from submitting bills and receipts of such amount out of the amount referred to in Sub-section (2) as may be prescribed after his return upon the completion of the act of his deputation.

- 13. Power to Procure Goods :** (1) If, while procuring goods in-kind or services required for the act of Election, it is not possible to invite a tender in accordance with the prevailing law, the Commission may procure the goods in-kind or services through quotations and even directly from the market if it is not possible to obtain quotations.

(2) If the Commission decides that it is not possible or practicable to invite tenders or quotations pursuant to the prevailing law to procure goods required for preparing electoral rolls, printing ballot papers required for Election or operating computers, printers or photocopy machines or spare parts thereof or software materials to be used therein and papers of special type it shall not be required to invite such tenders or quotations.

14. **Approval Not Required**: (1) While expending, pursuant to this Act, the amount under the head of casual expenses of the Commission in the budget set aside by His Majesty's Government, the Commission shall not be required to obtain approval of the Ministry of Finance.

(2) While expending or approving the amount referred to in Sub-section (1), decisions shall have to be made by the Commission.

15. **Auditing**: The accounts of the expenditure incurred in the act of Election pursuant to this Act shall be duly audited.

Chapter - 3

Miscellaneous

16. **Power to Seek Opinion** : ⁹(1) If the Commission deems it appropriate to seek opinion of any person prior to taking decision on any constitutional or legal question, it may seek opinion of the Attorney General of the Kingdom of Nepal or other non-governmental organisation, legal practitioner or any other person.

(2) The Commission may make direct contact and consultation with, or seek opinion of, any constitutional body or any Ministry, Department, Office of His Majesty's Government or any other body in respect of its functions and duties.

17. **Power to Have Discussions or Consultations**: In the Course of holding free and fair Election, the Commission or official of the Commission may have discussions or consultations with any political organization or party or person.

⁹ Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

18. Decision of the Commission: (1) All the functions required to be performed by the Commission pursuant to the Constitution and prevailing law shall be performed by the Chief Election Commissioner in cases where he/she is the sole member of the Commission and where it consists other Commissioners too, such functions shall be performed by the decision of their joint meeting.

(2) The Secretary of the Commission shall have to duly maintain the records of the decisions of the Commission.

(3) The Secretary of the Commission shall authenticate and implement, and cause to be implemented, the decisions of the Commission.

(4) The Commission shall itself set the Rules of procedures of its meetings.

19. Delegation of Powers: The Commission may, as per necessity, delegate any of its powers to the Chief Election Commissioner, Election Commissioner, Secretary of the Commission,¹⁰ Chief Name Registration Official, Assistant Name Registration Official, Chief Returning Officer, Returning Officer, Observer, Polling Officer, Assistant Polling Officer or official or employee engaged in the act of Election.

20. Power to Give Direction: (1) The Commission may give necessary direction to the Chief Returning Officer, Returning Officer, Polling Officer, Assistant Polling Officer, Observer or Voter's Name Registration Official or any other person deputed in Election in respect of the functions to be performed by him/her.

(2) It shall be the duty of the concerned person to abide by the direction given by the Commission pursuant to Sub-section (1).

¹⁰ Inserted by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

¹¹ **21. Pleading** : (1) If the Commission has to file a petition to, or institute a case being plaintiff in, any office or court with respect to any legal right or dispute, it may, on the basis of necessity or propriety, cause the Attorney General of the Kingdom of Nepal or a private legal practitioner or both to prepare such application, file such case and make pleading therein or to prepare and file an affidavit, note of defence, or plead and defend, in cases where anyone has instituted any legal proceedings, or filed any case against the Commission.

(2) In any case or legal proceedings filed or instituted against the officials and employees as well as persons appointed, deputed, designated or engaged by the Commission for any or all of the acts of Election including the preparation of electoral rolls in the course of their discharging the functions to be discharged by them under the prevailing law in good faith, the Commission shall, on the basis of necessity and propriety, manage their defence through any governmental attorney or private legal practitioner.

¹² **22. Departmental Action and Punishment** : (1) If any civil employee or any employee of governmental corporation or development board who has been appointed, deputed or designated in the act of Election including the preparation of electoral rolls or who has the duty to abide by the orders and directions of the Commission carries out any act and action deliberately violating the prevailing law or orders or directions of the Commission or with any *mala fide* intention in the course of discharging such act, the Commission may, in exercise of the powers of the authority under the prevailing law relating to the conditions of service of such employee, take departmental action against, and impose punishment on, him/her in accordance with that law.

¹¹ Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

¹² Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

(2) If any employee or official other than that mentioned in Sub-section (1) carries out any act and action in regard to the act of Election contrary to the prevailing law or directions given by the Commission, the Commission shall write to the concerned body for departmental action against such an employee or official in accordance with the prevailing law relating to the conditions of his/her service. The concerned body shall, if so written to it by the Commission, take departmental action against such an employee or official and give information thereof to the Commission.

(3) The employee who is not satisfied with a decision on departmental action and punishment made by the Commission pursuant to Sub-section (1) may file an appeal in the Appellate Court, *Patan* against that decision within Thirty-Five days of the receipt of time-limit of appeal or information thereof.

¹³ **23. Powers to Frame Rules:** The Commission may frame necessary Rules in order to carry out the objective of this Act.

¹⁴ **24. Issuance of Order** : (1) The Commission may issue orders for the purpose of conducting, monitoring, directing and controlling Elections pursuant to the Constitution of the Kingdom of Nepal, 2047 (1990). Such orders shall be published in the Nepal Gazette.

(2) It shall be the duty of the following bodies, institutions, organisations or persons including His Majesty's Government and all organs related with His Majesty's Government:

¹³ Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

¹⁴ Amended by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

- (a) Governmental, semi governmental or non-governmental institutions, organisations or corporations,
- (b) Political organisations or parties or office-bearers thereof,
- (c) Candidates and their agents,
- (d) Persons who are engaged in the propagation of Election.

¹⁵ **24A. Making Code of Conduct** : (1) To maintain fairness and impartiality in the Election, the Commission may make codes of conduct to be abided by His Majesty's Government, the offices and employees of governmental and semi-governmental agencies, political organisations or parties, candidates and persons related with them.

(2) In making codes of conduct under Sub-section (1), the Commission may make codes of conduct particularly on matters restraining His Majesty's Government from declaring a new policy, planning and programme, mobilising manpower and means and resources and using governmental communication media for propagation of Election in such a manner as to affect the fairness and impartiality of the Election, for a period from the declaration of the date of Election to the declaration of the final results.

(3) The codes of conduct made by the Commission pursuant to Sub-section (2) shall be published in the Nepal Gazette; and it shall be the duty of all the concerned to abide by such codes of conduct.

¹⁵ Inserted by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.

¹⁶ **24B. Implementation and Monitoring of Codes of Conduct:** (1) The Commission shall enquire and monitor as to whether the orders referred to in Section 24 or the codes of conduct made pursuant to Section 24A. have been abided by or not.

(2) If, in the course of holding inquiry or monitoring pursuant to Sub-section (1), it appears that anyone has not abided by or has violated the orders or codes of conduct, the Commission shall order the concerned person or official or body to stop or invalidate such act immediately.

25. Preparation of Manuals: The Commission may prepare and enforce manuals for the guidelines to the officers engaged in Election as well as for the purpose of conducting, or causing to be conducted, the act of Election in a smooth manner.

26. Repeal: The Election Commission Act, 2024 (1967) and the Election Commission (Internal Functions Management) Rules, 2025 (1968) are, hereby, repealed.

¹⁶ Inserted by Election and Local Authorities Related Some Nepal Laws Amendment Act, 2053.