Impeachment (Regulation of Procedure) Act, 2059 (2002)

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Amendment:
Republic Strengthening and Some Nepal Laws Amendment Act, 2066 (2010)
2066.10.7 (21 Jan. 2010)

Act Number 11 of the Year 2059 (2002)

An act made to provide for provisions to regulate the Procedures of the Impeachment

Preamble: Whereas, the Interim Constitution of Nepal 2063 (2006) has provided for provisions on the proceedings of impeachment against sitting officials of constitutional bodies; and

Whereas, it is expedient to provide for legal provisions to regulate the procedure of impeachment;

Now, therefore, be it enacted by the Parliament in the First year of reign of His Majesty the King Gyanendra Bir Bikaram Shah Dev.

1. **Short Title and Commencement:** (1) This Act may be called "Impeachment (Regulation of Procedure) Act, 2059 (2002)".

   (2) This Act shall come into force immediately.

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1 This Act come into force from 15 Jestha 2065 and "Prasati" has been deleted.
2 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
2. **Definition:** Unless the subject or context otherwise requires, in this Act:-

3(a) "Officials of constitutional bodies" means sitting officials of constitutional bodies appointed on the recommendation of the Constitutional Council pursuant to Sub-article (1) of Article 149 of the Interim Constitution of Nepal, 2063 and this expression also includes the sitting judges of the Supreme Court.

(b) "Incompetence" means a condition where an official of constitutional body becomes unable to discharge his/her official duties due to physical or mental reasons

(c) "Misconduct" means a condition where an official of constitutional body lacks conduct in consonance with his/her office and this expression also includes an act to be deemed corruption pursuant to prevailing law.

(d) "Failure to discharge the duties of office honestly" means a condition where an official of constitutional body fails to discharge the duties of his/her office in good faith.

(e) "Inquiry Committee" means an Inquiry Committee to be constituted pursuant to Sub-section (1) of Section 4.

3. **Motion of impeachment may be submitted:** (1) At least Twenty Five percent members of Legislature Parliament⁴ may submit a motion of impeachment against any of the officials of constitutional bodies to remove him/her from his/her office in any of the following circumstances:

   (a) If an official of constitutional body becomes incompetent to discharge the duties of his/her office;

   (b) If an official of constitutional body shows misconduct;

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³ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
⁴ Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
(c) If an official of constitutional body fails to discharge the duties of his/her office honestly.

(2) Members who intend to submit a motion pursuant to Sub-section (1) shall have to give a notice thereof with such motion to the Speaker of Legislature Parliament through the General Secretary of Legislature Parliament upon setting out the reasons and grounds of the motion.

(3) The evidence which supports the motion pursuant to Sub-section (2) shall have to be submitted along with such motion as far as possible.

(4) After receiving the motion pursuant to Sub-section (2) the Speaker shall fix the date and time for the submission and discussion of the motion in the meeting of Legislature Parliament and shall give a notice thereof to the members of Legislature Parliament.

4. **Constitution of Inquiry Committee:** (1) Legislature Parliament shall, for making an inquiry into the reasons and grounds mentioned in the motion received pursuant to Sub-section (2) of Section 3, constitute a Inquiry Committee, which consists of not exceeding Eleven members to be represented from more than One political party as far as possible and a legal expert.

(2) A person who has already been a justice of Supreme Court or a person who is eligible to be a justice of Supreme Court may be qualified to be a legal expert member in the committee pursuant to Sub-section (1)

(3) Legal expert shall take an oath of this/her office before Speaker prior to undertaking of his/her office.

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5 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
6 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
7 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
8 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
9 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.
4. Among the members of Legislature Parliament the member as prescribed by the Legislature Parliament shall be the chairperson of the Inquiry Committee.

5. Inquiry Committee shall, as far as possible, make decision unanimously and if it fails to take unanimous decision the decision of majority members shall be deemed as the decision of Inquiry Committee.

5. **Office and employees of inquiry committee:**
   (1) The office of inquiry Committee shall be located in the place as prescribed by the Speaker.

   (2) The Secretariat of Legislature Parliament shall provide employees as may be required for the function of the Inquiry Committee

   (3) Notwithstanding anything contained in Sub-section (2), the Government of Nepal shall, on the request of the inquiry committee, provide employees of the Government of Nepal or of the body owned by it for the function of inquiry committee.

6. **The tenure of inquiry committee:** The tenure of inquiry committee shall be Three months.

   Provided that, if there are reasonable grounds, the speaker may extend the term of Inquiry Committee for not exceeding Thirty days.

7. **Powers of inquiry Committee:**
   (1) The Inquiry Committee shall have following powers in the course of holding an investigation and inquiry into the reasons and grounds mentioned in the motion submitted pursuant to Sub-section (2) of Section 3

   (a) To issue summon, notice or *banda sawal* as per necessity for Summoning and enforcing the attendance

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10 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
11 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
12 Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066
of accused official of constitutional body or any other person before the Inquiry Committee.

(b) To order a person, body or an official to produce a document or evidence before the Inquiry Committee within such time as prescribed by it.

(c) To record the statement of accused official of constitutional body.

(d) To conduct inquiry with, or to record the statement of, any person, expert, witness or any other person who knows the relevant fact of inquiry.

(e) To perform or cause to perform any other necessary acts or activities relevant to the investigation.

(2) In case inquiry committee is constituted to probe into accusation of corruption against an official of constitutional body, the committee may also exercise the powers conferred on investigating officer pursuant to the prevailing law of corruption.

(3) Normally, the proceedings of inquiry to be held pursuant to this Act, shall be in camera (confidential) and no one other than the accused official of constitutional body, his/her lawyer, if any, the person and expert who is deemed necessary by the Inquiry Committee in the course of investigation and the employees who are deputed in the work of inquiry committee shall be permitted to attend or take part in the proceedings of inquiry.

(4) The Inquiry Committee may impose a fine upto Ten Thousand Rupees on a person who breaches summon notice or Banda Sawal issued pursuant to this Act, or fails to produce the document or evidence sought by
the committee or contravenes an order issued by it or hinders on an act or activity of the inquiry committee.

Provided that, in case such person submits an application to the Inquiry Committee upon setting out the reasonable grounds of failure to produce such document and evidence before it and if such grounds are appropriate the Inquiry Committee may remit the fine imposed on such person wholly or partially.

8. **Procedures of inquiry:** (1) The Inquiry Committee shall prepare a charge-sheet against accused official of constitutional body upon setting out the reasons and grounds mentioned in the motion of impeachment and shall give a reasonable opportunity to the accused person to submit his/her clarification along with the said charge-sheet.

(2) The charge-sheet pursuant to Sub-section (1) shall contain *inter alia*, the following matters:

(a) A summary of particulars of the charge mentioned in the motion of impeachment,

(b) The grounds of charge and the evidence thereof, if any,

(c) The particulars and evidence as mentioned in Clauses (a) and (b) of each charges if the motion of impeachment is submitted for more than One charges at the same time,

(d) Other necessary matters.

(3) If the official of constitutional body fails to submit his/her clarification within a time given pursuant to Sub-section (1) or if the inquiry committee finds that the said clarification is not reasonable, it shall decide as to whether the motion of impeachment is reasonable or not.
9. **Medical Board may be constituted:** (1) Where it is alleged that an official of constitutional body is unable to discharge the duties of his/her office because of incompetence and in the course of inquiry if the allegation is denied by him/her in his/her clarification, the inquiry committee may, on the consultation of Speaker, constitute a medical board which consists of Three concerned specialist to carry out medical examination of his/her physical or mental condition.

(2) The Medical Board pursuant to Sub-section (1) shall undertake medical examination of the physical or mental condition of the concerned official of constitutional body and submit a report about the physical or mental condition of such person to the inquiry committee along with the reasons and grounds thereof within such time as may be specified by the inquiry committee.

(3) If the concerned official of constitutional body refuses to undergo medical examination of his/her physical or mental condition before the Board constituted pursuant to Sub-section (1) or fails to attend before such Board within the time frame prescribed by it for medical examination, such Board shall submit a report thereof to the inquiry committee.

(4) After receiving the report pursuant to Sub section (3), except otherwise proved it shall be presumed that an official of constitutional body, who refused to undergo medical examination of his/her physical or mental condition, is unable to discharge the duties of his/her office because of physical or mental reason and the inquiry committee shall take a ground to that matter in its report.

10. **Special provisions of inquiry on allegation of corruption:** (1) Notwithstanding anything contained elsewhere in this Act, in case a committee is constituted pursuant to Section 4 to hold an investigation on the allegation of corruption against an official of constitutional body, the
inquiry committee may hold itself an inquiry or investigation or may take co-operation of any appropriate person or body for carrying out such inquiry and investigation. It shall be the duty of the concerned person or body to provide co-operation to the committee.

(2) The person or body pursuant to Sub-section (1) shall submit its report to the inquiry committee along with its opinion and conclusion after holding an inquiry and investigation pursuant to the prevailing law of corruption.

(3) The inquiry committee shall make its decision including on the basis of the report received pursuant to Sub-section (2).

11. **Submission of report:** (1) The Inquiry Committee shall, after making decision pursuant to Sub-section (3) of Section 10, submit a report thereof to the Speaker.

(2) The report to be submitted to the speaker pursuant to Sub-section (1) shall set out; *inter alia*, the following matters:

(a) Summary particulars of inquiry,

(b) The matter of decision or conclusion made by the inquiry committee in the course of inquiry,

(c) The grounds and evidence taken as a basis to decide or conclude pursuant to Clause (b),

(d) The particulars of opinion given by an expert or authority, if any,

(e) The particulars of report received pursuant to Sub-section (2) of Section 10 in case inquiry was held as regards to the misconduct involving corruption.
(f) Any other necessary matters taken as a basis to prove or disprove the charge.

12. **Motion to be considered:** (1) The Speaker shall submit the report received pursuant to Section 11 to the Legislature Parliament.\(^{13}\)

(2) The report received pursuant to Sub-section (1) shall be intrigal part of the motion submitted pursuant to Sub-section (2) of Section 3.

(3) In case the motion pursuant to Sub-section (2) of the Section 3 is approved by the Legislature Parliament,\(^{14}\) it shall be deemed to be passed the motion of impeachment against the accused official of constitutional body, official.

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14. **To be relieved from the office:** If the motion pursuant to Sub-section (2) of Section 3 is passed by the Legislature Parliament against an accused official of constitutional body, he/she shall, *ipso facto* be relieved of his/her post.

15. **Case to be filed:** (1) If an official of constitutional body is relieved of his/her office in the charge of corruption pursuant to this Act, a case of corruption shall be filed against him/her pursuant to prevailing law.

(2) The report submitted by the inquiry committee shall be taken as the evidence in the case filed pursuant to Sub-section (1).

\(^{13}\) Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

\(^{14}\) Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066

\(^{15}\) Repealed by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.

\(^{16}\) Amended by Republic Strengthening and Some Nepal Laws Amendment Act, 2066.