

Election (Offences and Punishment) Act, 2063 (2007).

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Act Number 2 of the Year 2063

An Act Made to Amend and Consolidate Prevailing Laws Relating to Election
Offences and Punishment

Preamble: Whereas, it is expedient to amend and consolidate the prevailing laws relating to election offences and punishment;

Now, therefore, The Legislative-Parliament has enacted this Act.

Chapter-1

Preliminary

1. **Short title and commencement:** (1) This Act may be called as the "Election (Offences and Punishment) Act, 2063 (2007)."

(2) This Act shall come into force immediately.

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

- (a) "Constitution" means the Interim Constitution of Nepal, 2063 (2007).
- (b) "Election" means an election to the members of the Constituent Assembly or such other elections as to be held pursuant to the prevailing laws in force, and this expression also includes by-elections.
- (c) "Period of election" means the period from the date for filing of nomination papers by candidates to the date of declaration of election results.
- (d) "Candidate" means a person whose name is included in the list of candidates.
- (e) "Political party" means a political party registered pursuant to the prevailing laws for the purpose of election.
- (f) "Voter" means a person whose name is registered in the Electoral Rolls for election pursuant to the prevailing laws.
- (g) "Voting right" means the right of any person to vote in the concerned election pursuant to the prevailing laws.

- (h) "Commission" means the Election Commission referred to in Article 128 of the Constitution.
- (i) "Constituency" means the constituency delimited for election pursuant to the prevailing laws.
- (j) "Polling station" means a polling station established for the purpose of casting votes in election pursuant to the prevailing laws, and this expression also includes a sub-station.
- (k) "Returning Officer" means the Chief Returning Officer or Returning Officer appointed by the Commission, and this expression also includes the Assistant Returning Officer.
- (l) "Polling Officer" means the Polling Officer appointed by the Commission, and this expression also includes the Assistant Polling Officer.
- (m) "Electoral Rolls" means the Electoral Rolls, along with the details of voters, prepared in accordance with the prevailing laws.
- (n) "Ballot paper" means the ballot paper in the format as specified by the Commission to be used by the voter to vote in an election, and this expression also includes any electronic device that safely retains the expression of vote, if any, cast through electronic device.
- (o) "Ballot box" means such ballot box used to contain ballot papers expressing votes as managed by the Commission for containing the ballot papers, and this expression also includes any electronic device that safely retains the expression of vote, if any, cast through electronic device.
- (p) "Court" means the court specified by the Government of Nepal, in consultation with the Supreme Court, and by a notification in the Nepal Gazette so as to try and settle cases related with election, and, in the case of the election to the Constituent Assembly, this expression also includes the Constituent Assembly Court referred to in Article 118 of the Constitution.
.....also includes the Constituent Assembly Court to be constituted pursuant to Article 118 of the Constitution.

- (q) "Investigating Officer" means such officer as designated by the Commission by a notification in the Nepal Gazette pursuant to sub-section (1) of Section 23 so as to investigate and enquire into the offences punishable under this Act.
- (r) "Monitoring Team" means a Monitoring Team formed by the Commission under the prevailing laws so as to monitor the election activities.

Chapter - 2

Electoral Offences

3. **Prohibition on voting by impersonation:** No person shall, by impersonation, obtain a ballot paper for polling or cast vote, or cause to be cast vote.
4. **Prohibition on making influence:** No person acting on behalf of any political party or candidate or his or her agent or other person shall, in the course of election, influence, in any manner, any candidate or voter or any person with whom any of them has concern or interest in an election by committing any of the following acts:
- (a) Making obstruction, obstacle or intimidation, or causing such act to be made, with intent to prevent any person from making candidacy in an election or canvassing election or exercising the right to vote;
 - (b) Demonstrating or using weapons or explosive substances of any kind;
 - (c) Causing any kind of damage;
 - (d) Showing any kind of fear, threat, terror or menace;
 - (e) Threatening to boycott socially;
 - (f) Showing gratification or greed or economic benefit in any manner;
 - (g) Causing to swear or promise.
5. **Prohibition on damaging character:** No person acting on behalf of any political party or candidate or his or her agent or other person shall, with intent prejudice the results of election, damage, in any manner, the character of any candidate or his or her family member, by making false accusation of any matter which relates to the character or conduct of the candidate or his or her family member.

- 6. Prohibition on propagation:** No person acting on behalf of any political party or candidate or his or her agent or other person shall, while propagating, or causing to be propagated, the policies and programs of such political party or candidate in the course of election, propagate, or cause to be propagated, with any of the following intentions:
- (a) Undermining the independency, sovereignty, territorial or national integrity of Nepal;
 - (b) Prejudicing the state authority vested in the people or competitive multi party democracy;
 - (c) Jeopardizing the harmonious relations subsisting among various religions, castes, tribes or communities or inciting to commit any violent act or creating hatred or enmity on the basis of any language, religion, community or region;
 - (d) Inciting others to commit any act that is considered to be an offence pursuant to the prevailing laws.
- 7. Prohibition on exchange of cash or kind:** No person acting on behalf of any political party or candidate or his or her agent or other person shall, during the period of election, give or agree to give any voter cash or kind as a present, reward, gratification, donation or gift to exercise or refrain from exercising his or her right to vote or for the exercise of or refraining from exercising his or her right to vote; and even the voter shall not receive or agree to receive such cash or kind for himself or herself or any other person for that purpose.
- 8. Employee not to influence election:** No Returning Officer, Polling Officer or other officer, employee or officer or security personnel deputed at any polling station or observer deputed by the Commission shall, in the course of performing any act of election, perform, or cause to be performed, any act in favour of or against any candidate in an election, except the act of giving his or her vote for any candidate pursuant to laws.
- 9. Prohibition on disturbing peace:** No person shall, from three hours prior to the

commencement of the polling to the completion of the polling on the day for polling for any election, disturb, or cause to be disturbed, peace by doing any of the following acts in the house, building or place where the polling station is located or in any private or public house, building or land situated within two hundred meters from such house, building or place in such a manner as to cause obstruction in the act of polling or to the voters or the persons or employees engaged in the act of polling at the polling station:

- (a) Using loudspeakers, megaphones or similar other devices, or
- (b) Playing musical instruments, singing and dancing, holding public parties, demonstrating rallies or organizing assembly or function of any kind whatsoever or making or, causing to be made, commotion or manhandling or shouting.

10. Prohibition on going armed or using arms: No person other than the employee deputed in for the security shall make movement taking arms, poisonous or explosive substances or stick, spear, *Khukuri*, gun, pistol or any other arms of a similar nature, exhibit or use or explode, or cause to be exhibited or used or exploded, such substances.

11. Prohibited acts: No person shall commit, or cause to be committed, any of the following acts:

- (a) To insert any matter in, deface, correct, remove any matter from, any details, notice or any other document relating to election affixed by, or caused to affixed by, any person or employee engaged in the acts relating to election or tear or destroy or damage or mutilate such details, notice or other document in any other manner;
- (b) To delete, deface, correct, forge, damage or tear the signature or seal of the Returning Officer or the Polling Officer affixed to any ballot paper or any mark or sign affixed to the ballot paper;
- (c) To supply a ballot paper obtained by any voter in accordance with the law to cast vote to any other person in any manner or put into any ballot box

- anything other than the ballot paper which he or she is authorized to put into;
- (d) To grab, loot, steal, tear or otherwise damage, destroy or mutilate the ballot paper or any other document that is to be used or has been used in the act of election, with or without the use of force of any kind;
 - (e) To grab, loot, steal, damage or otherwise mutilate any ballot box to be used or used in the act of election, to break seal of such ballot box or to open it in an unauthorized manner with or without the use of force of any kind;
 - (f) To take any ballot box, ballot paper, vote marking seal, stamp pad, ink or any other material to be used or used for the polling out of a polling station or to anywhere else during the period of polling, without the permission of the Polling Officer;
 - (g) To show or exhibit the ballot paper after ascribing the symbol on it,
 - (h) To cause obstruction of any kind in any manner to the employees engaged in the act of election in the performance of their functions.

12. Prohibition on receiving or giving ballot paper illegally: (1) No person shall, for the purpose of casting votes illegally, acquire, or cause to be acquired, any ballot paper from any other person, by giving or agreeing to give cash, kind, service or any kind of gratification to anyone by coercing, intimidating or threatening or by using or not using any kind of force.

(2) The authorized officer taking custody of ballot papers shall not supply such ballot papers to any unauthorized person by receiving or not receiving or by agreeing or not agreeing to receive cash, kind, service or any other kind of benefit.

13. Restriction on election Propagation: (1) For the purpose of canvassing election, no poster, wall painting, *Tul* or other banner shall be used, or caused to be used, or printed or caused to be printed, except for the distribution of simple pamphlets in such size, shape and color as specified by the Commission.

(2) For the purpose of canvassing election, no mike and loud speaker shall be used in other places, except for the purpose of a public assembly or disseminating information of such assembly.

(3) Any pamphlets prepared pursuant to sub-section (1) for the purpose of election canvassing shall have to bear the name and address of the press and the political party or person getting them printed.

(4) No person shall affix, or cause to be affixed, any posters, pamphlets to, or write, or cause to be written on, any religious, archaeological or historical or government owned or controlled buildings, monuments, walls or structures for election canvassing.

(5) No person shall affix, or cause to be affixed, any posters, to any private house, shop, wall or other structure without the permission of the owner thereof, for election canvassing.

(6) No person shall, with the object of soliciting or giving votes for or against any candidate, convene or organize meetings, processions or raise slogans and canvass in any other manner within the election area during the period from forty-eight hours prior to the day for polling to the completion of the act of polling.

14. Prohibition on making entry in unauthorized manner or causing obstruction to counting of votes or other acts of election: (1) Except for the candidate or his or her agent or person permitted by the Commission, no other person shall be allowed to enter the vote counting place.

(2) No person shall grab, loot, damage or destroy in any manner any ballot boxes or ballot papers or any other documents relating to the election during the counting of votes in any election with or without the use of force or take them elsewhere from the place for counting of votes without the permission of the Returning Officer or cause obstruction of any kind in any manner to any other acts relating to election.

15. Prohibition on divulgence of secrecy: No Returning Officer, Polling Officer, any other employee or security personnel deputed by the Commission and involved in the act of election or any observer or monitor deputed by the Commission or any candidate or any of his or her agents or any voter or any other person shall, in any election, divulge to anybody or write or disclose in any manner the matter as to

whether any voter has voted or not or for which candidate he or she has voted or who has secured how many votes or other matter pertaining to the counting of votes as well as any kind of symbol or sign or any other matters in a manner to identify the voter from the ballot paper.

Provided that, this Section shall not be deemed to bar the publicly announcing by the Returning Officer or the officer authorized by him or her of the number of votes received by candidates, in the course of counting of votes or the making of statements, writing or publishing any thing on the basis of such information.

16. Use of vehicles: (1) No political party or candidate or his or her agent or any other person shall, in the course of election canvassing, use, or cause to be used, vehicles exceeding the number as permitted by the Commission.

(2) No political party or candidate or his or her agent or any other person shall, in the course of election canvassing, use or cause to be used any vehicles belonging to the government or organizations owned by the government or the local body.

(3) Notwithstanding anything contained elsewhere in this Section, any political party or candidate or his or her agent or observer related to the act of election, human right activist, journalist or similar other person may use a vehicle on the election day only if the Commission so permits.

17. Prohibition on attempt, aid or incitement: No person shall attempt to commit, aid in the commission of, or incite the commission of, any offence referred to in this Chapter.

18. Power to arrest: (1) The Returning Officer or Polling Officer or Monitoring Team may order any person whoever causes obstruction or attempts to or aids or abets to cause obstruction to the polling or counting of votes or any other act of election to refrain from doing such act and to go out of that place.

(2) The Returning Officer, Polling Officer or Monitoring Team may order the concerned security personnel to arrest any person who commits any act

prohibited under Sections 3, 9, 10, 11, 12 or Section 14 and who does not carry out the order issued by the Returning Officer or Polling Officer or Monitoring Team pursuant to sub-section (1).

(3) The security personnel shall carry out the order issued by the Returning Officer, Polling Officer or Monitoring Team pursuant to Sub-section (2).

(4) If the security personnel fails to carry out the order issued pursuant to sub-section (2), the Returning Officer, Polling Officer or Monitoring Team shall write to the Commission for departmental action against such security personnel.

Chapter - 3

Penalties

19. To impose fine immediately: (1) The following officer shall punish any person who commits the following act with a fine ranging from five hundred rupees to ten thousand rupees, depending on the gravity of offence:

- (a) Except for voting by a person who is not a citizen of Nepal, in the case of commission of any act in contravention of Section 3 or Clauses (b), (c), (f) and (g) of Section 11, the Polling Officer;
- (b) In the case of commission of any act in contravention of Section 9 or Clauses (d) and (e) of Section 11, the Polling Officer or Monitoring Team;
- (c) In the case of commission of any act in contravention of Section 10 or Clauses (a) and (h) of Section 11 or Section 13 or Section 14 or Section 16, the Returning Officer, Polling Officer or Monitoring Team.

(2) Upon receipt of the amount of fine imposed pursuant to Sub-section (1), the fine imposing officer shall immediately give a receipt of payment of such fine to the concerned person.

(3) A person who is not satisfied with the decision of the fine imposing officer pursuant to sub-section (1) may make an appeal to the concerned Appellate Court within thirty five days.

(4) The fine imposing officer may hand over any person who does not pay

the fine pursuant to Sub-section (1) to the concerned police office to imprison such person for the amount of fine in accordance with the prevailing laws.

(5) Where any person acting on behalf of a political party or candidate or his or her agent or any other person uses any vehicle in contravention of Section 16, the fine imposing officer referred to in Clause (c) of Sub-section (1) shall seize the vehicle for the period of election, and where such vehicle belongs to any governmental or government owned body or local body, shall write to the Commission for departmental action against the officer who has provided such vehicle.

(6) Where any person acting on behalf of a political party or candidate or his or her agent or any other person uses pamphlet or poster, wall painting, *Tul* or other banners in contravention of Section 13, the fine imposing officer referred to in Clause (c) of Sub-section (1) may seize such pamphlet, poster, *Tul* or banner and issue an order to maintain the place where such poster, wall painting, *Tul* or other banner has been used as it was before.

(7) The fine imposing officer referred to in clause (c) of Sub-section (1) may fine a candidate who does not carry out the order issued pursuant to Sub-section (6) with additional sum not exceeding ten thousand rupees and recover from such candidate the expenditures incurred in making the place where such pamphlet, poster, wall painting, *Tul* or other banners have been used as it was before.

(8) Where any person, after marking vote on a ballot paper, shows or exhibits the ballot paper to any one, the fine imposing officer referred to in Clause (a) of Sub-section (1) shall, while imposing fine, put the ballot in a separate sealed envelope, containing such details, and execute a recognizance deed, and such a ballot paper shall not be counted in a case where such ballot paper has not yet been inserted to the ballot box.

(9) Notwithstanding anything contained elsewhere in this Section, once a person has been fined for any offence by the fine imposing officer pursuant to this

Section, the other fine imposing officer referred to in this Section shall not fine such person again for the same offence.

- 20. To Public:** The fine imposing officer referred to in Section 19 shall, while imposing a fine on any person, immediately publicize the matter pertaining to the offence committed by such person and the fine imposed on such person in any newspaper or any other communication media for the information of the general public.
- 21. Penalties:** (1) Where any person commits any act in contravention of Section 4, 5, 6, 7, 8, 12 or Section 15, such person shall be punished with a fine from ten thousand rupees to fifty thousand rupees or with imprisonment for a term not exceeding two years or with both, depending on the gravity of offence.
- (2) Where any person who is not a citizen of Nepal cast vote, such person shall be punished with a fine not exceeding fifty thousand rupees or with imprisonment for a term not exceeding one year or with both.
- (3) Any person who makes attempt to commit or aids or entices the commission of the offence referred to in Section 4, 5, 6, 7, 8, 12 or Section 15 shall be punished with half the punishment to be imposed on the principal offender.
- 22. Punishment under other prevailing laws :** Where any act which is considered as an offence under this Chapter is also considered as an offence under any other prevailing laws, this Act shall not be deemed to bar the imposing of punishment under the laws for such offence.

Chapter-4

Proceeding and Settlement of Cases

- 23. Investigation and filing of case:** (1) The officer designated by the Commission by a notification in the Nepal Gazette shall investigate and inquire into the offenses punishable under Section 21.
- (2) In the course of the enquiry into and investigation of a case pursuant to Sub-section (1), the investigating officer may order the concerned police office to

arrest the person who, based on sufficient proofs and evidence, is suspected of being involved in the offense, in accordance with the laws in force.

(3) Where investigation and inquiry cannot be completed within twenty four hours in relation to a person arrested pursuant to sub-section (2) and there are sufficient grounds for keeping on investigation and inquiry by holding such person in detention, the investigating officer shall produce such person before the Court and detain such person for investigation only with the permission of the Court.

(4) Where a permission for detention is requested pursuant to Sub-section (3), the Court shall consider whether or not the inquiry as well as investigation has been carried out satisfactorily and the reasons for holding the person in custody; and where it appears that inquiry as well as investigation is being carried out satisfactorily and there are sufficient ground for holding such person in detention, the Court may give permission for holding the person in detention for a maximum period of fifteen days at one time or at several times.

(5) It shall be the duty of the concerned police office to carry out the order issued by the investigating officer pursuant to this Section. If the order so issued is not carried out, the investigating officer shall write to the Commission for departmental action against such police personnel.

(6) Where it appears to institute a case against any person pursuant to this Section, the investigating officer shall file a charge-sheet in the Court within sixty days of the commission of the offence.

Provided that where the defendant is in detention and it appears that case is to be instituted, the officer shall file a charge-sheet within a maximum period of fifteen days.

(7) After the completion of enquiry and investigation process, the investigating officer shall, well in advance of the expiration of the time-limit set for the filing of charge-sheet in the Court, submit the case-file, accompanied by his or her opinion and the evidence and proof, as well, to the concerned government attorney for decision whether or not the case can be instituted.

(8) Upon receipt of the case-file pursuant to Sub-section (7), the Government Attorney shall decide whether or not to institute the case and return the received case-file well in advance of the expiration of the time-limit for filing the case where the case is to be instituted; and upon receipt of the decision of the Government Attorney to institute the case, the investigating officer shall prepare a charge sheet and file it in the Court.

(9) The Government Attorney shall defend the case filed by the investigating officer under this Act.

24. To be Government case: The Government shall be plaintiff in any cases related with the offences referred to in Section 21.

25. Trial and settlement of cases: (1) The Constituent Assembly Court shall try and settle cases related with any offence punishable under Section 21 in relation to the election to the Constituent Assembly and with the election to be voided pursuant to Chapter-5.

(2) The Court designated under this Act, other than the Constituent Assembly Court, shall try and settle cases related with any offence punishable under Section 21 in relation to any election, other than the election to the Constituent Assembly and with the election to be voided pursuant to Chapter-5.

(3) An appeal may be made to the court designated by the Government of Nepal by a notification in the Nepal Gazette against the decision made by the court as referred to in Sub-section (2); and the decision made by the court so designated shall be final.

26. Procedures for settlement of cases : Notwithstanding any thing contained in Sub-section (1) of Section 3 of the Summary Procedures Act, 2028 (1972), the procedures set forth in the said Act shall be followed while trying and settling cases under this Act.

Chapter - 5

Provisions Relating to Invalidation of Election

27. Petition for voiding election: (1) Any concerned candidate may, in any of the

following circumstances, file a petition in the Court directly or through the District Election Officer designated by the Commission to have the election declared void within thirty five days of the date of cause of action:

- (a) the election has not been fair due to the commission of acts in contravention of Sections 3,4, 5, 6, 7, 8, 10 or Clauses (b), (c), (d), (e) or (h) of Section 11, Section 12 or 14 extensively in the election;
- (b) the result of election has been affected owing to the fact that the nomination paper filed by any person to be a candidate in the election has not been validated which should have been validated or has not been voided or cancelled which should have been voided or cancelled;
- (c) the elected candidate has made expenses in the election, in excess of the ceiling specified pursuant to the laws in force or made expenses unusually or illegally or improperly for unlawful purposes.

(2) Where a petition filed pursuant to Sub-section (1) is proved, the Court shall void the election of the elected candidate.

(3) Notwithstanding any thing contained in Sub-sections (1) and (2), the whole election or the election of the elected candidate shall not be voided if the following matter is proved:

- (a) that any activity set forth in Clause (a) of Sub-section (1) or Section 4, 5, 6 or 7 has been done without information or consent of the elected candidate or his or her agent or he or she has made an attempt to prevent such activity in the election; or
- (b) that the result of election has not been actually affected by any activity set forth in Clause (a) of sub-Section (1).

28. Recounting of votes: (1) The concerned candidate in any election may, in any of the following circumstances, file a petition in the Court directly or through the District Election Officer designated by the Commission to have the counting of votes declared void within fifteen days of the date of cause of action:

- (a) another candidate has won the election by illegally securing votes

despite that he or she or any other candidate has secured majority;

- (b) the ballot papers to be invalid have not been invalidated or the ballot papers to be valid in accordance with laws have not been validated;
- (c) the counting of votes has not been done in accordance with laws.

(2) Where a petition filed pursuant to Sub-section (1) is proved, the Court may void such counting of votes and recount the votes.

(3) Where, in recounting the votes pursuant to Sub-section (2), the petitioner candidate or any other candidate is proved to have secured majority of votes and the election result appears to have been affected by that reason, the election result of the elected candidate shall be void; and the Court shall declare the petitioner candidate or any other candidate to have been elected in accordance with the laws.

29. Procedures to be followed in the event of equality of votes: (1) The Court shall, while recounting the votes in the course of trying a petition referred to in Section 27 or 28, count the votes secured by all candidates of the concerned election constituency.

(2) The counting of the votes pursuant to Sub-section (1) shall be done in the presence of the candidate or his or her agent.

Provided that, where information on the counting of votes has been duly given, nothing shall bar the counting of votes by the reason of the absence of the candidate or his or her agent.

(3) Where, in counting the votes pursuant to Sub-section (1), two or more than two candidates secure an equal number of votes, the Court shall make decide by lot between the candidates who secure the equal number of votes; and the candidate selected as per that decision shall be deemed to have been elected by securing one additional vote.

30. Inadmissible as evidence: Any reply made by any witness to any question asked by the Court in the course of trying a case referred to in this Act shall neither be admissible as evidence in any case instituted against him or her nor be permitted to be furnished as evidence.

31. **Withdrawal of petition:** Any petitioner may, with the permission of the Court, withdraw the petition filed by him or her pursuant to Section 27 or 28.

Provided that, where the Court considers that the petitioner has made an application to withdraw the petition for any undue benefit, it shall not grant the permission for the withdrawal of such petition.

Chapter – 6

Miscellaneous

32. **Question not to be asked about voting:** Notwithstanding any thing contained in this Act or the prevailing laws, in any case or legal proceeding instituted under this Act, any witness or any other person shall not be asked whom he or she has voted for.
33. **Deposit to be furnished:** (1) While filing a petition pursuant to Section 27 or 28, a deposit of ten thousand rupees has to be furnished.
- (2) Where the petition is held to be false, the deposit referred to in Sub-section (1) shall be forfeited.
34. **Repeal:** The Election (Offence and Punishment) Act, 2047 (1990) is, hereby, repealed.