

Election to the Members of the Constituent Assembly Act, 2064 (2007)

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An Act No. 2 of the Year 2064 (2007),

An Act Made to Provide for the Election to the Members of the Constituent Assembly

Preamble: Whereas it is expedient to make legal provisions on election to Members of the Constituent Assembly, electoral system and election procedures in order to constitute the Constituent Assembly for the purpose that Nepali people in exercise of sovereign and state power shall themselves make new constitution for themselves;

Now, therefore, Legislature-Parliament has enacted this Act.

Chapter - 1

Preliminary

- 1. Short title and commencement:** (1) This Act may be called “Election to the Members of the Constituent Assembly Act, 2064 (2007).”
 - (2) This Act shall come into force immediately.
 - (3) This Act shall remain valid for the period till the Constituent Assembly.
- 2. Definitions:** Unless the subject or the context otherwise requires, in this Act, -
 - (a) “Constitution” means the Interim Constitution of Nepal, 2063 (2007).
 - (b) “Constituent Assembly” means the Constituent Assembly to be constituted pursuant to Article 63 of the Constitution.
 - (c) “Election” means the election to the members of the Constituent Assembly to be held pursuant to this Act and this term also includes the by-election to be held in such a circumstance where the post of the member elected under First Past The Post Electoral System falls vacant.
 - (d) “Constituency” means the constituency as referred to in Section 3.
 - (e) “Mixed Electoral System” means the electoral system as referred to in

Section 4.

- (f) “First Past The Post Electoral System” means the electoral system as referred to in Section 5.
- (g) “Proportional Electoral System” means the electoral system as referred to in Section 6.
- (h) “Political Party” means the Political Party registered pursuant to the prevailing law.
- (i) “Commission” means the Election Commission as referred to in Article 128 of the Constitution.
- (j) “Voter” means the person whose name has been registered in the Electoral Rolls pursuant to prevailing law for election.
- (k) “Candidate” means the person who has been nominated as a candidate for a Member of Constituent Assembly pursuant to Section 21 and this term also includes the person whose name has been included in the closed list of the candidates submitted to the Commission pursuant to Section 7 by the Political Parties for the purpose of election under the Proportional Electoral System.
- (l) “Closed list of candidates” means the list submitted to the Commission by the Political Parties as provided for in Section 7 for the purpose of filing candidacies ensuring proportional representation of Women, *Dalits*, Oppressed tribes/ Indigenous tribes, Backward regions, *Madhesi*, including other groups for election under the Proportional Electoral System where the Political Parties shall be voted upon considering the entire country as a single constituency.
- (m) “Member” means the Constituent Assembly Member elected pursuant to this Act.
- (n) “Returning Officer” means the Chief Returning Officer and Returning officer appointed by the Commission and this term also includes the Assistant Returning Officer.

- (o) “Polling Officer” means the Polling Officer appointed pursuant to Section 14 and this term also includes the Assistant Polling Officer.
- (p) “Ballot paper” means the ballot paper as referred to in Section 36 arranged for casting the vote in the election and this term also includes to the electronic device used for voting and the vote cast in case where arrangement has been made for voting by the electronic device.
- (q) “Court” means the Constituent Assembly Court constituted in accordance with the Article 118 of the Constitution.
- (r) “Prescribed” or “as prescribed” means prescribed or as prescribed in this Act or the Rule framed under this Act or in the order issued by the Commission by a notification to the Nepal Gazette.

Chapter – 2

Constituency and Electoral System

- 3. Constituency:** For the election to the Members of the Constituent Assembly, there shall be the following election constituencies and number of members pursuant to Article 63 of the Constitution:
- (a) Two hundred forty members elected from two hundred forty constituencies for the election to be held under First Past The Post Electoral System.
 - (b) *Three hundred thirty Five members elected from the constituency set upon considering the entire country as a single constituency for the election to be held under the Proportional Electoral System where the Political Parties shall be voted.
 - (c) Seventeen members to be nominated by the Council of Ministers on the basis of understanding from amongst the persons of high reputation who have rendered significant contribution in national life.
- 4. Mixed Electoral System:** The following mixed electoral system shall be adopted for election to the Members of the Constituent Assembly:

* Amended by Some Election Related Nepal Acts Amendment Act, 2064 (2008)

- (a) First Past the Post Electoral System, and
- (b) Proportional Electoral System where the Political Parties shall be voted.

5. **First Past The Post Electoral System:** (1) The candidate securing the highest number of votes shall be elected to the Member of the Constituent Assembly on the basis of one member in one constituency for the constituencies determined pursuant to Clause (a) of Section 3 under the First Past The Post Electoral System.

(2) In the election under First past The Post Electoral System, one person may file his/her candidacy for two election constituencies in maximum. If a person so filing candidacies for two constituencies were elected from both constituencies, he/she should submit resignation before the Chairperson of the Constituent Assembly in writing by denouncing membership of any one constituency from where he/she was elected and thereby maintaining membership of other constituency within thirty days from the date of declaration of election result. The Commission shall forthwith fulfill place of the member of the Constituent Assembly so fallen vacant through by-election.

(3) The Political Parties must take into account the principle of inclusiveness while nominating candidates for the First Past the Post Electoral System.

6. **Proportional Electoral System:** (1) Persons representing under Proportional Electoral System on behalf of a Political Party shall be elected to the Members of the Constituent Assembly in proportion of the number of total votes secured by such a Political Party in the election held pursuant to the Proportional Electoral System where the Political Parties shall be voted upon considering the entire country as a single constituency.

(2) No name of a person to be a candidate for the First Past The Post Electoral System shall be allowed to be included in the list under the Proportional Electoral System.

7. **Closed list of candidates:** (1) Any Political Party willing to participate in the election under the Proportional Electoral System shall prepare a closed list of candidates contesting on behalf of such a party for such election.

(2) While preparing the closed list pursuant to Sub-section (1), the Political Parties shall prepare such list in a manner that candidacies shall be filed to cover at least 10 per cent of the members of the total number to be elected under the Proportional Electoral System.

(3) While enlisting the candidates, the Political Parties must prepare the closed list pursuant to Schedule-2 thereby ensuring the proportional representation of Women, *Dalits*, Oppressed tribes/ Indigenous tribes, backward region, Madhesi including others groups on the basis of the population per cent as referred to in Schedule-1. While so enlisting the candidacies of women, the same must be done as per the principle of inclusiveness thereby ensuring proportional representation of, *Dalits*, Oppressed tribes/ Indigenous tribes, backward region, *Madhesi* including others groups. While nominating candidates from *Madhesi*, the closed list of candidates must be prepared thereby ensuring proportional representation of *Dalits*, and indigenous tribes including other group on the basis of the per cent of population. The concerned Political Party shall submit the closed list of the candidates so prepared to the Commission in such format as referred to in Schedule-2 within the time limit as specified by the Commission.

Explanation : (1) For the purpose of this Section ‘basis of the population per cent ‘means the basis of the population per cent as per the last national census preceding the holding of the election of the Constituent Assembly.

(2) While enlisting the candidates pursuant to this Section, the Political Parties must pay proper attention to the representation of the oppressed group, poor farmers, and labors including disabled.

(4) There must be at least one-third women candidates of the totals number comprising the number of women candidates to be fielded under the Proportional Electoral System as referred to in Section 6 and the number of women candidates to be fielded under the First Past The Post Electoral System as referred to in Section 5.

(5) The Commission shall confirm as to whether representation is made on

the basis of the principle of inclusiveness and proportion or not after submission to the Commission of the closed list of the candidates received from the Political Parties pursuant to Sub-section (3) and inform the concerned Political Party to make correction therein within seven days. After getting information accordingly, the concerned party shall amend and forward the closed list of candidates within seven days and the closed list of candidates so received shall remain as the final list.

(6) The Political Party shall submit to the Commission within such time as specified by the Commission the name list of candidates selected by the decision of the Central Working Committee of the concerned Political Party thereby ensuring proportional representation as prescribed in Sub-section (3) from amongst the candidates whose names have been enlisted to closed list of candidates submitted to the Commission pursuant to the said Sub-section in the proportion of the votes secured by that Political Party in the election held under Proportional Electoral System . The Commission shall declare that the candidates whose names have been enlisted in the name list of candidates so received by the Commission have been elected.

(7) In cases where the number of the concerned group in the name list of the elected candidates to be submitted by a Political Party pursuant to Sub-section (6) is indices but not full mark, the Election Commission shall recognize the name list of candidates sent by the concerned Political Party by setting out the name in the full mark rightly below or above such indices in the group not exceeding the seats which the concerned Political Party is entitled to declare as elected.

(8) The Commission shall scrutinize as to whether the name-list of the candidates submitted to the Commission upon selection pursuant to Sub-section (6) ensures proportional representation as referred to in Sub-section (3) or not.

Provided that, while examining the candidates, the Commission may recognize an increase or decrease of up to ten per cent of the total number of each group.

(9) If it appears upon scrutinizing by the Commission pursuant to Sub-section (8) that the name list of candidates submitted by the concerned Political Party after selection does not ensure the proportional representation as referred to in Sub-section (3), the Commission shall write to the concerned Political Party to correct and submit the name-list accordingly.

(10) The concerned Political Party shall submit the amended name list of candidates to the Commission for the purpose of Sub-section (6) within three days from the date of request made by the Commission pursuant to Sub-section (9).

(11) If proportional representation as referred to in Sub-section (3) is not found in the amended name list of candidates submitted to the Commission pursuant to Sub-section (10), the Commission shall declare that the candidates of the concerned Political Party have proportionately been elected to the seats in such *per cent* as the name list of the candidates in such number of any group that ensures representation as referred to in Sub-section (3) is received.

Provided that, the Commission may recognize an increase or decrease of up to ten per cent of the total number of each group while declaring the elected candidates.

(12) The Commission must make public the information of election of candidates pursuant to this Section and must give notification thereof to the concerned Political Party.

(13) The names of the candidates shall not be allowed to be enlisted in the closed list of candidates to be prepared and submitted to the Commission pursuant to this Act thereby getting exceeded the number of total member determined for the Proportional Electoral System.

(14) Notwithstanding anything contained elsewhere in this Section, the Election Commission shall recognize an increase or decrease made by a political party, which enlists less than twenty percent candidates out of the total number of the members to be elected under the proportional electoral system, in the percentage by having representation of the other groups, to the extent possible, in

such a manner as to have equal number of women and men candidates in the percentage specified under Schedule-1 while preparing a closed list by that political party for the purpose of the election under that electoral system pursuant to sub-section (3), and the selection of any candidate selected from amongst the candidates enlisted in the closed list of candidates by the concerned political party of which only one candidate is elected.

- 8. The Closed list of candidates to remain valid throughout the term of office of the Constituent Assembly:** (1) The closed list of candidates submitted by the Political Parties pursuant to Section 7, shall remain valid throughout the term of office of the Constituent Assembly.

(2) If any post of a member of the Constituent Assembly elected under the Proportional Electoral System falls vacant due to death, resignation, defection or for any other reason, the candidates selected by the Central Working Committee of the concerned Political Party from amongst the list enlisted in the closed list of candidates upon ensuring representation pursuant to Sub-section (3) of Section 7 shall be deemed elected.

- 9. Election to be invalidated:** (1) If a question arises that any candidate enlisted in the closed list of candidates by any Political Party for the purpose of election under the Proportional Election System is ineligible and becomes ineligible pursuant to Article 65 of the Constitution and if the Commission holds him/her ineligible upon making necessary investigation to that effect, the candidacy of such candidate shall be invalid.

Provided that, the Commission shall give reasonable opportunity to the concerned candidate to defend him/her prior to deciding by the Commission.

Chapter - 3 **Returning Officer, Polling Officer and Other Employees**

- 10. Appointment of Returning Officer :** (1) The Commission may as per necessity, appoint the Returning Officer to carry out, or cause to be carried out, the functions

required to be carried out in the election constituencies pursuant to the onstitution,

(2) While appointing the Returning Officer pursuant to Sub-section (1), the Commission may appoint a judge with the approval of the Judicial Council as referred to in proviso clause of Sub-article (1) of Article 110 of the Constitution and at least Gazetted Second-class Officer of the Nepal Judicial Service in consultation with the Judicial Service Commission.

11. Functions, duties and powers of Chief Returning Officer: (1) It shall be the duty of the Chief Returning Officer to give necessary directions upon co-ordinating and supervising the functions relating to election in the election constituencies within the District assigned to him/her subject to the direction given by the Commission.

(2) The Chief Returning Officer shall also carry out the functions and duties of Returning Officer in the election constituency assigned to him/her.

12. Functions, duties and powers of Returning Officer: (1) It shall be the duty of the Returning Officer to freely and impartially carry out, or cause to be carried out, all the functions relating to holding election in the election constituency assigned to him/her, subject to the directions given by the Commission.

(2) Other functions, duties and powers of the Returning Officer shall be as mentioned in the orders, directives and manuals issued by the Commission.

(3) The Returning Officer may delegate his/her powers to the personnel assigned to the act of election as and when so required.

(4) No powers to examine accept or invalidate or cancel the nomination papers, and to count votes and declare the results of the vote counting may be delegated.

13. Appointment of Assistant Returning Officer and other employees: (1) The Returning Officer may appoint an Assistant Returning Officer and other employees in such a number as prescribed by the Commission.

(2) The Returning Officer may, as per necessity, depute for the act of election the employees of the Government of Nepal or organizations owned or

controlled by the Government of Nepal or run under the grant of the Government of Nepal or employees of local bodies or teachers of community schools.

- 14. Appointment of Polling Officer :** (1) The Returning Officer may appoint the employees of the Government of Nepal or organizations owned or controlled by the Government of Nepal or run under the grant of the Government of Nepal or employees of local bodies or teachers of community schools as the Polling Officers or Assistant Polling Officers in the required number for the concerned constituency.

(2) The Polling Officer and the Assistant Polling Officer appointed pursuant to Sub-section (1), shall get fairly, freely and impartially carried out all of the functions relating to the polling to be held as specified by this Act and the Rules or orders framed under this Act.

(3) Other functions, duties, and powers of the Polling Officer and the Assistant Polling Officer shall be as mentioned in the orders, directives, and manuals issued by the Commission.

Chapter - 4

Notification of Election

- 15. Election :** The Commission shall hold elections for members of the Constituent assembly to be held pursuant to this Act on such date as specified by the Government of Nepal in accordance with Sub-article (2) of Article 63 of the Constitution.

- 16. Notification of Election:** (1) In order to complete the holding of polling for members of the Constituent Assembly on such date as specified by Government of Nepal in accordance with Sub-article (2) of Article 63 of the Constitution, the Commission shall specify the time for polling and issue a notification thereof and publish such notification in the Nepal Gazette.

(2) The Government of Nepal may, taking into consideration the

geographical situation, weather and other circumstances as well, specify the single day date or different dates for taking polls for the election in one or more election constituencies and election held as per the election program on the single day date or different dates so specified by the Government of Nepal shall be deemed to have been held simultaneously.

17. Notification of Election Program: (1) After the publication of the notification of the election pursuant to Section 16, the concerned Returning Officer, in accordance with the program determined by the Commission, shall publish a notification of the election to be held under First Past The Post Electoral System, specifying the date, time and place for the registration of nomination papers of candidates, publication of the list of candidates whose nomination papers have been registered, the filing of petitions against candidates, scrutiny of nomination papers, publication of the name list of candidates nominated, withdrawal of candidature, publication of the final list of candidates and allotment of election symbols to the candidates.

(2) After the publication of the notification of election pursuant to Section 16, the Commission shall publish the program for submission of the closed list of candidates for the election to be held under the Proportional Electoral System to the Commission, filing of petitions against candidates and publication of the final closed list of candidates as well.

Chapter - 5

Candidates and Nomination Papers

18. Qualifications for Candidate: A person shall have the following qualifications to become a candidate for election:

- (a) A Nepali citizen,
- (b) Completed the age of at least twenty-five years of age,
- (c) Not been convicted of a criminal offence involving moral turpitude,
- (d) Not holding an office of profit.

Explanation: For the purpose of Clause (d) above, “office of profit” means any

position other than a political position to be filled by election or nomination, for which a remuneration or economic benefit is paid out of a Government fund.

19. Disqualification of a Candidate : (1) Notwithstanding any thing contained elsewhere in this Act, the following persons shall be deemed disqualified to become a candidate in the election:

- (a) A person whose name is not enlisted in the Electoral Rolls,
- (b) An incumbent office-bearer of the Government of Nepal or any institution owned or controlled by, or receiving grants from the Government of Nepal subject to receiving remuneration,
- (c) A person who has not completed two years after serving sentence upon being sentenced pursuant to the prevailing laws relating to election,
- (d) A person who has been finally sentenced by a court of law on corruption charges,
- (e) A person who has been enlisted in the blacklist pursuant to the prevailing laws upon deliberately defaulting loan of a bank and financial institution,
- (f) A person who has loses **mental balance**,
- (g) A person who has held the political appointment and has been shown guilty in the report of the Probe Commission constituted pursuant to the Inquiry Commission Act, 2026 (1969) for loss and damage of lives and properties, abuse of power, authority and position, violation of human rights or misuse of state treasury at the time of Peoples' Movement held for democracy in 2062 (2006) and 2063 (2006).

20. Computation of age of candidate: While computing the age of a person to become a candidate for the election, he/she must have reached twenty-five years of age by the date of filling nomination paper for First Past The Post Electoral System and submitting the closed list of candidates to the Commission for the Proportional Electoral System.

21. Nomination of a candidate: (1) A person who is qualified to be a candidate pursuant to the Constitution and this Act, and whose name registered in the

Electoral Rolls as a voter of any constituency may be nominated as a candidate for the election to be held pursuant to this Act.

(2) While nominating a candidate for a constituency pursuant to Sub-section (1), there shall be one proposer and one seconder. Such proposer and seconder shall be voters registered in the Electoral Rolls of the same constituency.

(3) In the case of a candidate set up by a Political Party registered for the purpose of election, such a party shall have to provide a formal letter to him/her and the office bearer of the party authorized to provide such a formal letter shall forward a copy of such a letter to the Returning Officer, as well.

(4) In cases where any person is proposed pursuant to Sub-section (1), he/she shall have to set down his/her consent in the nomination paper and sign it.

(5) A person may be nominated by three nomination papers in maximum for the election of the same election constituency.

(6) Notwithstanding anything contained any elsewhere in this Section, while filing a nomination for the candidate under the Proportional Electoral System, the nomination shall be deemed to have been filed if a Political Party has included the names of the qualified candidates in the closed list of candidates and has submitted such closed list to the Commission. Such list shall contain the places of the Electoral Rolls where the names of each candidate so nominated are registered and the duplicates of their Nepalese citizenship certificates as well as their address.

22. Provision on Office-bearer certifying Nomination Paper: (1) Any Political Party registered with the Commission for the purpose of election shall have to provide the Commission with the name, surname and post of the Office bearer of the Political Party authorised to provide a formal letter nominating candidates, as well as his/her specimen signature certified by the official designated by the Central Executive Committee of the Political Party, prior to at least seven days from the last date for filing nomination papers.

(2) In cases where a nomination paper is filed without fulfilling the

procedures as referred to in Sub-section (1), the candidate of the concerned Political Party shall not be recognized as the candidate of that Political Party.

23. Filing of Nomination Paper: (1) The Candidate himself/herself or his/her agent or proposer or seconder shall have to deliver the nomination paper of the candidate to the Returning Officer of the concerned constituency.

(2) The concerned Returning Officer shall scrutinise as to whether the nomination paper delivered pursuant to Sub-section (1) fulfils the requirement pursuant to this Act, and if it is found to be due, file the nomination paper and provide a receipt thereof as prescribed to the person delivering the nomination paper.

(3) If any nomination paper which does not contain the names of the proposer or seconder or where the proposer and seconder are duplicated, which is not accompanied by the receipt of deposit as required under this Act or which does not bear the signatures of the proposer or seconder or the person to be candidate or does not fulfill other requirements, the Returning Officer shall have to file the nomination paper after getting corrected the matter not in compliance with the formalities. If one wishes to get the nomination paper filed without correcting such matter not in compliance with the formalities as required to be corrected, the same matter shall have to be mentioned in the nomination paper and a notice thereof shall have to be issued to the person delivering the nomination paper.

(4) After the expiry of the time for filing the nomination, the Returning Officer shall publish a list of candidates whose nomination papers have been filed on the date, at the time and place as specified in the notification of the election program.

(5) Any candidate or his/her agent intending to make an objection to the qualification of any candidate mentioned in the list published pursuant to Sub-section (4) may make an objection before the Returning Officer on the date, at the time and place specified in the notification of the election program.

(6) Notwithstanding anything contained anywhere else in this Section, the

nomination papers of the candidates shall be deemed to have been filed as per the closed list of candidates submitted for the purpose of nominating candidates by the Political Party pursuant to Sub-section (6) of Section 21 for the election to be held under the Proportional Electoral System.

24. Scrutiny of Nomination Paper: (1) The proposer, seconder or the candidate him/herself or attorney authorized by him/her in writing shall have to be present on the date, at the time and place as specified in the notification of the election program for scrutiny of the nomination papers filed for the election to be held under First Past The Post Electoral System.

(2) The Returning Officer shall scrutinise the nomination papers of all the candidates in the presence of the persons as referred to in Sub-section (1).

Provided that, this Sub-section shall not be deemed to be barred from the scrutinising the nomination papers and making decision thereon according to the law even if any proposer, seconder or candidate or his/her attorney required to be so present is not present.

(3) While scrutinising the nomination papers of the candidates pursuant to Sub-section (2), the Returning Officer shall also have to make decision by holding necessary inquiries into objection, if any, made against any candidate pursuant to Sub-section (5) of Section 23. While scrutinising accordingly, if the proposer and seconder are found to be duplicated, the concerned candidate must be given an opportunity to make correction thereof and a nomination paper shall not be invalidated only by virtue of minor error and omission contained in the nomination paper.

Explanation: For the purposes of this Sub-section, "minor error and omission" means any technical error or error of letters, numbers or vowel signs relating to the writing or printing or name, surname, address or serial number of a candidate, proposer or the person related with them contained in the Electoral Rolls or nomination paper, which does not cause any substantial difference.

(4) The Returning Officer may, in the following circumstances, postpone

the proceedings on scrutiny of the nomination papers as required by this Section.

- (a) If any mobbing including other abnormal situation erupts in the place and at the time of scrutiny of nomination papers, or
- (b) If there occurs any situation beyond control owing to natural calamity.

(5) If the proceedings on the scrutiny of the nomination papers are postponed under Sub-section (4), the Returning Officer shall specify the time and place for the scrutiny of nomination papers and scrutinise them as soon as possible.

25. Invalidity of nomination paper: A nomination paper shall be invalid under the following circumstances:

- (a) If the Candidate does not possess the qualifications as referred to in the Constitution and this Act,
- (b) If there does not exist the consent of the candidate or the nomination paper does not bear his/her signatures or the signature of the proposer and seconder nominating him/her as a candidate or contains forged signature,
- (c) If the deposit required to be furnished pursuant to Section 67 is not furnished,
- (d) If the nomination paper is not filed within the time pursuant to Section 17,
- (e) If the nomination paper is not filed as referred to in Section 22 and 23,
- (f) If other requirement as referred to in the Act are not fulfilled.

26. Name list of candidates: After the nomination papers have been scrutinised, the Returning Officer shall have to prepare a name list of the candidates as referred to in the nomination papers meeting the requirements as per the law in the prescribed manner and publish a copy of the name list at his/her office.

Provided that, the Commission shall make public the name list of the closed list of candidates submitted by the Political Parties for election under the Proportional Electoral System.

27. Withdrawal of names: (1) If any candidate wishes to withdraw his/her name in order to get his/her name removed from the list of candidates, such a candidate

may withdraw his/her name by giving a notice in writing to the Returning Officer within the time specified pursuant to Sub-section(1) of Section 17.

(2) The notice of withdrawing name pursuant to Sub-section (1) shall have to be submitted by the candidate him/herself or his/her representative.

(3) After the notice of withdrawing name pursuant to Sub-section (1) has been submitted to the Returning Officer, the notice shall not be allowed to be cancelled or withdrawn.

(4) The Returning Officer shall, if he/she is satisfied with the genuineness of the notice submitted pursuant to Sub-section (1), remove the name of the candidate withdrawing his/her name from the name list of candidates, and immediately publish a notice of the name removal at his/her office.

(5) If the authorized person of any Political Party so writes to the Returning Officer as to withdraw the name of any *candidate set up by within the time limit specified pursuant to Sub-section (1) of Section 17, he/she shall not be retained as a candidate of that party.

(6) If a candidate enlisted in the closed list of candidates wishes to remove his/her name from the closed list of candidates within the time as specified pursuant to Sub-section (1) of Section 17, an application shall have to be filed before the Commission. When such an application is filed, the Commission shall remove the name of such candidate from the closed list of candidates and the same must be notified to the concerned Political Party.

28. Final name list of candidates: (1) After the expiry of the time specified for the withdrawal of names by the candidates pursuant to Sub-section (1) of Section 17, the Returning Officer shall have to prepare a final name list of the remaining candidates in such a manner as may be prescribed and immediately publish a copy of the name list at his/her office. A copy of the name list shall have to be forwarded to the Commission, as well, immediately.

* Amended by The Act Amending Some Election Nepal Acts, 2064

(2) The names of the candidates shall be arranged in an alphabetical order in the name list as referred to in Sub-section (1), and in the case of a candidate nominated by any Political Party, the name of that party shall also be mentioned in the address as mentioned in their nomination papers

29. Provision regarding objection to the candidates under the Proportional Electoral System:

(1) The Commission shall have to make necessary scrutiny of the closed list of the candidates received pursuant to Section 7 and make it public.

(2) While publishing the closed list of candidates pursuant to Sub-section (1), a notice must be published inviting to make objection thereto along with an application within seven days, if any candidate whose name is enlisted in such list does not possess qualification as referred to in the constitution and this Act,

(3) The Commission may publish and broadcast the closed list of candidates as well as the contents publishing a notice inviting objection thereto pursuant to Sub-section (1) and (2) at the national level media as and when so required.

(4) Any Political Party or any candidate having his/her name on the closed list, may raise an objection with evidence to the Commission within the specified time, indicating that the candidate of the closed list of the candidates is not qualified in accordance with the Constitution and this Act pursuant to Subsection (1).

(5) When an application of objection is received pursuant to Sub-section (1), the Commission may make a necessary scrutiny and if the person of the closed list of candidates is not found to possess the qualifications as referred to in the Constitution and this Act, the Commission, shall remove such a name from the list setting out the same contents.

(6) After the completion of all the procedures regarding the raising of objection the Commission shall publish a final closed list of candidates at its office.

(7) After the completion of all the procedures regarding the raising of objections the Commission shall have to certify the final closed list of candidates and send it to the concerned Political Party.

30. **Unopposed Election** : If there remains only one candidate in any constituency under the First Past The Post Electoral System, the Returning Officer shall declare, as prescribed, that the candidate has been elected unopposed.
31. **Election Symbols** : (1) The Commission shall specify the election symbols to be allotted to the candidates and the Political Parties for the election to be held under First Past The Post Electoral System and the Proportional Electoral System respectively.
- (2) The election symbol specified pursuant to Sub-section (1) shall be allotted to the Political Party and candidate as prescribed.
- (3) While allotting election symbol pursuant to Sub-section (2), the Commission shall so allot the symbol of the same kind to every Political Party registered under this Act as to be used by the candidate set up by it in any election constituency for the election under the First Past The Post Electoral System and to be used by that Political Party for the election under the Proportional Electoral System.
- (4) No person other than the candidate of that Political Party or the Political Party itself shall be entitled to use the election symbol allotted pursuant to Sub-section (3).
- (5) Once a candidate has received an election symbol, the election symbol shall not be subject to alteration even if he/she abandons that Political Party or joins another party. If such a candidate is elected and if the Political Party providing such election symbol files a complaint accompanied by evidence, his/her membership shall be cancelled.
- (6) While allotting election symbol pursuant to this Section, the election symbol received from the Commission for the purpose of election prior to commencement of this Act by a Political Party representing to Legislature-Parliament at the commencement of this Act must be allotted to that Political Party. If the Commission thinks that any mistake or inconsistency has occurred in the allotment of the election symbol as specified in this Section, the

Commission may alter such symbols.

(7) The Returning Officer shall allot, in such a manner as may be prescribed, an election symbol specified to be used by an independent candidate out of the group of election symbols set aside for the use of independent candidates.

32. Death of Candidate : (1) If any candidate, set up by any Political Party whose nomination paper has already been held to be due and who has not withdrawn his/her name list, dies prior to the publication of the final name list of candidates pursuant to Section 28, and a written notice of such a death is received from the concerned candidate's election agent or the concerned Political Party, the Returning Officer shall have to immediately postpone other program scheduled for that constituency and give information of the event to the Commission. The Returning Officer shall have to affix at his/her office a notice of such postponement of the program for information of the other candidates, as well.

Provided that, the election program shall not be postponed in the event of death of any candidate included in the closed list of candidates for proportional election.

(2) If after publication of the final name list of candidates pursuant to Section 28, any candidate nominated by a Political Party dies and a written notice of such death is received from the concerned candidate's election agent or the concerned Political Party, the Returning Officer shall have to immediately postpone other program scheduled for that election constituency and inform the event of death to the Commission. The Returning Officer shall have to affix at his/her office a notice of such postponement of the program for information of other candidates, as well.

Provided that, the election program shall not be postponed in the event of death of any candidate included in the closed list of candidates for proportional election.

(3) Upon receipt of information as referred to in Sub-section (1), the

Commission shall have to so determine other program that it has no real impact on the polling program in that constituency, and that the program relating to the nomination of candidates can be completed as early as possible, and send the program to the Returning Officer. While determining the program in this way, the program shall have to be determined in such a way that the party whose candidate dies can only re-nominate another candidate.

(4) Upon receipt of information as referred to in Sub-section (2), the Commission shall re-determine other program as referred to in this Chapter for election including the date for polling in that constituency and send the program to the Returning Officer.

(5) Candidate whose name is mentioned in the final name list of candidates published pursuant to Section 28 shall not be required to re-file a nomination paper, and the Political Party whose candidate died may only re-file a nomination paper on its behalf.

(6) Notwithstanding anything contained elsewhere in this Section, when election is to be postponed because of the death of a candidate, if the duration required to complete the activities as prescribed in election program remains more than fifteen days, it shall not be required to publish another program. Adjustments shall have to be made to complete the filling of the candidate's nomination paper within the period as per the said program without causing any real impact on the polling

33. Identity card of candidate: The Returning Officer shall provide the identity cards, as prescribed, to the candidates under First Past The Post Electoral System, remained on the final name list pursuant to this Chapter.

Chapter - 6
Polling Station, Ballot Paper and Ballot Box

34. Polling station: (1) The Commission shall specify the polling stations and sub-stations in the required number within the constituency and shall publish a list thereof in the manner as prescribed.

(2) The basis, process and other provisions of specifying polling stations shall be as prescribed.

(3) The Returning Officer may, if required, add to, and decrease the number of polling stations or transfer polling stations to a place that is more appropriate from the viewpoint of convenience or practicality, with the prior approval of the Commission.

(4) There may be more than one polling station or sub-station or polling compartment within the area of one polling station.

35. Ballot Paper : (1) The Commission shall have to make arrangements of separate ballot papers in separate colours in such format as specified[∞] for the election to be held under First Past The Post Electoral System and the Proportional Electoral System.....[∞]

(2) Other provision regarding ballot papers shall be as specified by the Commission.

36. Ballot box: The Commission shall have to make arrangement for separate ballot boxes to be used for the polling in the elections to be held under the First Past The Post Electoral System and Proportional Electoral System.

Chapter - 7

Polling

37. Time for Polling : The time for polling on the polling date shall be as specified in the notification as referred to in Sub-section (1) of Section 16.

[∞] Deleted by Some Election Related Nepal Acts Amendment Act, 2064 (2008)

[∞] Deleted by Some Election Related Nepal Acts Amendment Act, 2064 (2008)

38. Polling : (1) A voter, whose name is registered in the Electoral Rolls of any ward of a Village Development Committee or Municipality of any constituency, shall be entitled to vote in the same ward of the same Village Development Committee or Municipality of that constituency.

Provided that, this restriction shall not be applicable to the Provisional Voters.

(2) A voter shall be entitled to cast vote only at the polling station assigned to him/her in accordance with the Electoral Rolls.

(3) A voter shall first obtain the ballot paper for the First Past The Post Electoral System at the polling station assigned to him/her and cast his/her vote in the ballot box kept therefor and thereafter he/she shall obtain the ballot paper for the Proportional Electoral System and cast vote in the ballot box kept therefor.

Provided that, a provisional voter may cast his/her vote only for the election under the Proportional Electoral System, as prescribed.

(4) No one other than a voter shall cast vote in the name of the voter whose name is registered in the Electoral Rolls.

(5) No one who is not qualified to cast vote pursuant to this Act shall cast vote.

(6) No voter shall vote at the same election in more than one constituency or at more than one polling station of the same constituency.

(7) No voter shall vote more than once in any constituency other than the elections under the First Past The Post Electoral System and Proportional Electoral System.

39. Polling Method: (1) The Polling Officer shall give prescribed ballot paper to the voter present at the polling station for voting by fulfilling the procedure as prescribed.

(2) Before giving the ballot paper to a voter, the Polling Officer shall enter the matter as prescribed in the Electoral Rolls and give the ballot paper as prescribed.

(3) The voter shall have to vote by marking in the ballot paper with such

seal or sign as prescribed in a secret manner.

(4) The voter shall vote for the First Past The Post Electoral System by marking the seal or sign in the ballot paper's box contenting the election symbol of any one candidate whom he/she choose and for the Proportional Electoral System in the box of the ballot paper's box containing the election symbol or sign of any one Political Party whom he/she chooses as referred to in Sub-section (3) and drop the ballot papers into the designated ballot box.

(5) Notwithstanding any thing contained elsewhere in this Act where electronic device are used for polling purposes, the voter shall have to cast vote through electronic device as prescribed.

40. Power to postpone polling in special circumstances: (1) Where the Polling Officer appointed to a polling station or the Returning Officer of that constituency is satisfied that the act of polling cannot be conducted owing to any commotion as well as other extra-ordinary situation at the polling station or owing to non operation of electronic device or any riot or natural calamity or any *force majeure*, he/she may postpone the polling at that polling station immediately and publish a notice thereof at that place. Where the Polling Officer has postponed the polling, he/she shall give a notice thereof to the Returning Officer immediately.

(2) The Returning Officer should give information of the postponement of polling pursuant to Sub-section (1) to the Commission immediately and to other concerned authorities, as well.

(3) Upon receipt of the information pursuant to Sub-section (1), except as otherwise directed by the Commission, the Returning Officer publish a notice indicating the date and time for re-polling in that polling station and conduct such re-polling.

41. Unauthorized seizure of polling station: (1) A polling station shall be considered seized in the following circumstances:

(a) If any one, by using force or coercion, or showing intimidation or giving threat, takes control over the polling station or the voting compartment (or

place fixed for voting) or electronic device and affects the polling or allows only the voters supporting any candidate to vote or prevents other voters from voting,

- (b) If any one, with or without using force, shows threat or fear to the voters to or not to vote for any candidate or prevents the voters from going to or entering into the polling station for polling,
- (c) If any one, with or without using force, prevents the employees involved in the act of polling from discharging their duty, or snatches the ballot papers, ballot boxes, electronic device for voting or other election materials or so affects that the polling cannot be held in an impartial and free manner by doing similar other acts.

(2) Where any event as referred to in sub-section (1) occurs, the Polling Officer shall give a report thereof, accompanied by his /her opinion, to the Returning Officer, and the Returning Officer shall give such report to the Commission immediately.

(3) On receipt of the report as referred to in sub-section (2), the Commission may depute a Monitoring Team to make inquiry in that place; and the Commission may, based on the report given by the Monitoring Team, if any, so deputed and other state of affairs, as well, cancel the polling of that polling station. The Returning Officer should, as directed by the Commission, specify the date and time for conducting re-polling at the polling station where polling has been so canceled.

(4) Where it appears from the report as referred to in Sub-section (2) and other state of affairs that the unauthorized seizure of the polling stations could affect the results of election, the Commission may cancel the election of that constituency; and the Returning Officer may specify the date and time for re-polling.

42. In case of damage or destroy of ballot box and electronic device: (1) Where any ballot box used for polling or electronic device installed at the polling station is lost accidentally or knowingly destroyed, the Polling Officer shall have to give a report

thereof to the Returning Officer of the election constituency where the polling station is located immediately and the Returning Officer shall have to give a report thereof to the Commission.

(2) Where any ballot box used or electronic device for polling and already handed over by the Polling Officer to the Returning Officer is snatched in any way or lost accidentally or is knowingly destroyed, the Returning Officer shall give a report thereof, accompanied by his/her opinion on the event, to the Commission immediately.

(3) The Commission upon receipt of the report along with the opinion as referred to in Sub-section (1) or (2), depute a Monitoring Team to investigate all the related incidents and circumstances, also upon studying the report of the Monitoring Team, if so deputed, cancel the polling of that polling station.

(4) The Concerned Returning Officer shall, at the direction of the Commission, specify the date and time for re-polling at the polling station where the polling has been cancelled pursuant to Sub-section (3) and publish a notice thereof.

43. Objection to impersonation of a voter : (1) If any person falsely impersonating any other voter presents himself/herself to receive a ballot paper to vote, a Political Party or candidate or their agent may register an objection with the Polling Officer in such a manner and along with a deposit of such sum as may be prescribed.

(2) If an objection is made pursuant to Sub-section (1), the Polling Officer shall make a summary investigation and decide immediately and shall forthwith record the objection so made and the decision thereof in such a minute book as may be prescribed.

(3) If the objection as referred to in Sub-section (1) is held to be correct, the Polling Officer shall return the sum of the deposit to the concerned person. If the objection is not held to be correct, the sum of the deposit shall be forfeited.

44. Admission to polling station: (1) The Polling Officer shall not allow other persons except the following persons to enter into the polling station:

- (a) Voters,
- (b) Agent of a Political Party or a candidate or one of his/her agent,
- (c) Observers permitted by the Commission,
- (d) Persons permitted by the Commission or Returning Officer or Polling Officer,

(2) No voters other than those who have already entered into the polling station shall be entitled to enter into the polling station after the expiry of the time for polling.

45. **Inspection by Polling Officer:** If a voter stays in the voting compartment for more than reasonable time or the Polling Officer has any suspicion, he/she may enter into the voting compartment and inspect there.

46. **Disabled Voters:** (1) If any voter being unable to vote by him/herself owing to physical disability or any other reason requests for permission to be accompanied by any person whom he/she trusts and the Polling Officer shall, if he/she considers it to be reasonable, allow such a person accompanied by the voter to enter into the voting compartment.

(2) If any voter being unable to vote by him/herself requests the Polling Officer to mark his/her vote in the box containing the symbol of his/her choice on the ballot paper or requests the Polling Officer for permission to be accompanied by another person to mark his/her vote in the box containing the symbol of his/her choice, arrangements shall have to be made so that the Polling Officer or the person whom the voter has with his/her free will and consent, chosen on his/her behalf, shall assist the voter in marking the vote.

(3) Notwithstanding anything contained elsewhere in this Act, the Commission may make special arrangement for voting by the blind, disabled, elderly persons, pregnant women and other voters suffering from other similar physical infirmities.

Chapter – 8

Counting of Votes and Election Results

47. Returning Officer to carry out, or cause to be carried the counting of votes:

The Returning Officer shall carry out, or cause to be carried the act of counting of votes of his/her election constituency under his/her direct supervision and control.

48. Notice of counting of votes: After receiving from the Polling Officers all the ballot boxes used for polling at all the polling stations in the constituency, the Returning Officer shall publish a notice specifying the place, date and time for counting of votes for information of the Political Parties and candidates. While specifying the time for counting of votes, the time shall be specified as far as possible in such a manner that the counting of votes of both the electoral system shall coincide and if it is impossible to so carry out the counting of votes simultaneously the priority shall be given for counting of votes under the First Past The Post Electoral System.

49. Counting of votes: (1) The Returning Officer, as far as possible, shall have to commence the act of counting of votes under both Electoral System simultaneously at the place, date and time as referred to in the notice under Section 48 and if it is not possible to commence the act of counting of votes simultaneously, the Returning Officer shall have to commence first the act of counting of votes of the election under the First Past The Post Electoral System as prescribed and after completion of such counting of votes , the Returning Officer shall have to carry out the act of counting of votes secured by the Political Parties in the election under the Proportional Electoral System.

(2) The Political Parties, candidates or their agents and necessary counting agents may appear at the place, time and on the date for the counting of votes as referred to in Sub-section (1).

(3) If re-polling is to be held at any polling station of any constituency pursuant to this Act, the counting of votes of other polling stations of that election constituency shall not be commenced until the completion of the polling at that

polling station.

50. Entry into the place for counting of votes: (1) The Returning Officer may allow representatives of the Political Parties or candidates or their election agents and counting agents, the person deputed in the counting of votes, persons deputed for observation and monitoring, employees deputed for security, and the person deputed by the Commission to enter into the place for counting of the votes.

(2) The Returning Officer may order any person who causes obstruction in the act of counting of votes to go out from the place of counting of votes, and the person receiving such an order shall have to go out of the place for counting of votes. The employees deputed for security in that place shall, by the order of the Returning Officer, expel from that place the person who does not carry out that order and becomes self-willed.

51. Counting of votes to be continuous : (1) Once the counting of votes is commenced, the Returning Officer shall keep on the act of counting of votes continued until the completion of the counting of votes.

(2) If, owing to any circumstances of *force majeure* , the act of counting of votes has to be adjourned in the meantime, the Returning Officer shall prepare an inventory of the ballot papers already counted, documents relating to the counting of votes, ballot papers remain to be counted, and the ballot boxes of which ballot papers have not been counted, and keep them in different envelopes, bags or sacks and seal them with his/her own seal. The Political Parties or candidates or their vote counting agents or election agents, as well may, if they so wish, also put their own seal on the envelopes, bags or sacks.

(3) The act of counting of votes adjourned pursuant to Sub-section (2) shall have to be resumed as soon as possible. A notice on the resumption of the counting of votes pursuant to this Sub-section shall have to be given to the Political Parties or candidates or their election agents or counting agents present in that place and be published also in the place for counting of votes.

Provided that, the counting of votes shall not be barred for the reason that

the Political Parties or candidates or their agents are not present.

52. Loss of ballot papers prior to completion of the counting of votes: (1) If, prior to the completion of the counting of votes, the ballot papers and ballot boxes containing the ballot papers used at any polling station or the electronic device kept for polling are taken elsewhere out of the custody of the Returning Officer in an illegal manner or opened or destroyed or deliberately broken or lost or damaged accidentally, the Returning Officer shall adjourn the act of counting of votes, and give a report thereof to the Commission immediately.

(2) After the counting of votes has been adjourned pursuant to subsection (1), the Commission shall declare the whole polling of such polling station to be illegal; and the Returning Officer shall, at the direction of the Commission, publish a notice specifying the place, date and time for re-polling at such polling station.

53. Unlawful seizure of place for counting of votes: (1) The place for counting of votes shall be deemed to have been unlawfully seized in the following circumstance:

(a) If any one by using force or coercion, or showing intimidation or giving threat, seizes the place for counting of votes or seizes the ballot papers or ballot boxes containing such ballot papers or electronic device kept for voting from the custody of any official or employee engaged in the counting of votes or interferes with, or affects, the counting of votes by committing similar other acts, or

(b) If any person engaged in the counting of votes commits the act as referred to in Clause (a) or aids to or acquiesces in the commission of such act.

(2) Where the place for counting of votes is seized unlawfully pursuant to Sub-section (1), the Returning Officer shall immediately adjourn the counting of votes and give a report thereof to the Commission immediately.

(3) Upon receipt of the report as referred to in Sub-section (2), if the Commission may, if it deems necessary to hold inquiries into the incident, depute a

Commissioner of the Commission, or a Monitoring Team, to hold inquiries there into.

(4) If, on the basis of the report as referred to in Sub-section (2), or of the report of the Commissioner or the Monitoring Team deputed to hold inquiries pursuant to Sub-section (3), the Commission holds that the place for counting of votes was unlawfully seized as referred to in Sub-section (1), it may declare invalid all the ballot papers of the polling station affected from that seizure and cancel the polling.

(5) The Returning Officer shall publish a notice specifying the place, date and time for re-polling at the concerned polling station in respect whereof the polling have been cancelled by the Commission pursuant to Sub-section (4).

54. Invalidity of ballot papers : A ballot paper shall be invalid in the following circumstances:

- (a) If it does not bear the signature of the concerned Polling Officer,
- (b) If the mark indicating the vote is not placed as prescribed but marked with any other manner or it bears any other symbol,
- (c) If the mark indicating the vote is so used that cannot be identified,
- (d) If it bears the mark indicating vote elsewhere than in a box containing the symbol of the candidate or Political Party,
- (e) If it has been returned to the Polling Officer with the intention of abstaining from voting,
- (f) If the mark indicating the vote is so placed that it is not clear to signify definitely as to which candidate or Political Party the vote has been given for,
- (g) If the mark indicating the vote is placed in the boxes of more than one box in a manner that it cannot be ascertained as to which candidate the vote was given,
- (h) If the vote is cast with a ballot paper other than the ballot paper specified for the concerned polling station,

- (i) If the ballot paper other than that issued by the Commission are used,
and
- (j) If the ballot paper specified for the concerned constituency has been used
for another constituency.

55. Recounting of votes : (1) A representative of any Political Party with regard to counting of votes of election held under the Proportional Electoral System and any candidate of the concerned constituency or his/her election agent or counting agent with regard to counting of votes of election held under the First Past The Post may, before the completion of the counting of votes or prior to sealing the counted ballot papers, make an application in writing setting out the reason there for to the Returning Officer forthwith for recounting of any or all the ballot papers.

(2) If an application is made pursuant to Sub-section (1), the Returning Officer shall immediately register the application and may recount the votes if it seems necessary to recount the votes.

(3) If it is not necessary to recount the votes pursuant to Sub-section (2), the Returning Officer shall make a decision accordingly and give a notice of the decision to such candidate, his/her election agent, or counting agent so present at that place prior to the declaration of the election result.

56. In case of tie : If, after the completion of the counting of votes of the election under the First Past The Post Electoral System, two or more candidates receive equal number of votes, the Returning Officer shall decide by drawing lots amongst the candidates receiving equal number of votes.

57. Publication of the result of the First Past The Post Electoral System: (1) After the completion of the act of counting of votes of all the polling stations polled in any constituency under the First Past The Post Electoral System, the Returning Officer shall prepare a chart of counting of votes as prescribed and publish the election results as prescribed and shall have to forthwith send a copy of the result chart to the Commission.

(2) While publishing the results of the election pursuant to Sub-section (1),

the Returning Officer shall have to declare the candidate receiving the highest number of valid votes as elected and award the certificate to him/her indicating his/her election as prescribed.

(3) After the publication of the results of the election, the Returning Officer shall prepare his/her report including the details relating to the election as prescribed and send it to the Commission as soon as possible.

(4) Upon receipt of the chart of the results of election pursuant to Sub-section (1), the Commission shall prepare a name list of the elected members and send copy of that name list of the candidates elected accordingly to the Prime Minister and the Legislature-Parliament and the Commission shall also publish the name list in the Nepal Gazette.

58. Declaration of the result of the proportional election results: (1) The Returning Officer shall have to count the votes cast for the election under the Proportional Electoral System and forthwith send the total number of valid votes secured by each Political Party to the Commission by setting out in a chart as prescribed.

(2) After receiving the report of total number of valid votes secured by the Political Parties through out the country in the election under the Proportional Electoral System upon considering the entire county as a single constituency, the Commission shall declare elected the candidates presented to the Commission upon selecting by the Central Executive Committee of each Political Party pursuant to Sub-section (6) of Section 7 from amongst the candidates enlisted in the closed list of candidates submitted by the Political Party to the Commission in proportion to the votes secured by that Political Party. The Commission shall send the name list of the candidates so elected to the Prime Minister and to the Legislature-Parliament and also publish the said name list in the Nepal Gazette.

(3) For the purpose of determining the number of seats to be won by a Political Party in proportion to the total valid votes secured by that Political Party in the election held under the Proportional Electoral System, the Commission shall apply the Results Divisor Method as mentioned in Schedule-5 and decide the

number of seats to be won by that Political Party accordingly.

(4) If more than one Political Party are found secured an equal number of votes with regard to any seat while distributing number of seats to be won by the parties upon dividing total valid votes secured by the Political Parties as per the Result Divisor Method as referred to in Sub-section (3), the issue as to which Political Party shall win such a seat shall be decided by lots.

59. Date of Election (1) With regard to the election held under the First Past The Post Electoral System, the date of declaration of the results of election by the Returning Officer pursuant to Section 57 shall be deemed to be the date on which the concerned candidate has been elected.

(2) With regard to the election held under the Proportional Electoral System, the date of the declaration of the candidate of the Political Parties elected from the closed list of candidates by the Commission pursuant to Section 58 shall be deemed to be the date on which the concerned candidate has been elected.

Chapter – 9

Agents of Candidate

60. Election agent: (1) If any candidate appoints a person as an election agent, the notice thereof shall have to be given in writing to the Returning Officer.

(2) The Political Party may appoint its election agent as prescribed for all the activities of election under the Proportional Electoral System.

(3) The candidate or Political Party may, at any time remove the election agent appointed pursuant to Sub-section (1) and (2) and appoint another agent and shall have to give a notice thereof to the Returning Officer immediately.

(4) The qualification of the election agent shall be as prescribed.

61. Duty of election agent : It shall be the duty of the election agent appointed pursuant to Section 60 to perform such functions as mentioned in this Act and the Rules framed under this Act to be performed by the election agent.

62. Polling agent and counting agent : (1) A candidate or his/her election agent, a

Political Party or its agent may appoint polling agent in such number as prescribed for each polling station and shall have to give a notice thereof in writing to the Polling Officer and the Returning Officer.

(2) A candidate or his/her election agent or a Political Party or its agent may appoint counting agents in such a number as prescribed to be present at the place of counting of votes and shall have to give a notice thereof in writing to the Returning Officer.

(3) Any candidate or election agent may at any time remove the polling agent or counting agent appointed pursuant to sub-section (1) or (2) and appoint another polling agent or counting agent, and shall have to forthwith give a notice thereof to the Polling Officer in the case of appointment of polling agent and to the Returning Officer in the case of appointment of counting agent.

(4) The qualification of the polling agent and the counting agent shall be as prescribed.

63. Duty of the polling agent and the counting agent: (1) It shall be the duty of the polling agent to perform all functions required to be performed by him/her at the polling station pursuant to this Act and the Rules framed under this Act.

(2) It shall be the duty of the counting agent to perform all the functions required to be performed by him/her pursuant to this Act and the Rules framed under this Act.

64. Absence of candidate or any agent: If an election agent or polling agent or counting agent is not appointed pursuant to this Act and the Rules framed under this Act, or the candidate or any of his/her agent is not present as and when required, or any of them fails to perform such functions as are required to be performed, the act of polling or counting of votes shall not be adjourned and such act shall not be deemed to be invalid merely on that ground.

Chapter – 10

Miscellaneous

65. **Bye-election:** If a post of Member of the Constituent Assembly elected under the First Past The Post Electoral System falls vacant at the time when the term of office of the Constituent Assembly shall remain valid for a period more than six months, the Commission shall fulfill such vacant post through bye-election.
66. **Provision for tendered ballot papers :** (1) If anyone has, by impersonation, already obtained the ballot paper or voted in the name of another voter, and the person who has come afterwards to vote, is found, from the evidence submitted by him/her, to be the real voter, the Polling Officer shall give a tendered ballot paper to such a voter. Where such tendered ballot paper is given, after the voter has indicated his/her vote on the ballot paper, such a ballot paper shall not be inserted into the ballot box but shall be placed in a separate envelope kept for that purpose.
- (2) The procedures for giving and placing of the tendered ballot paper pursuant to Sub-section (1) and other procedures pertaining thereto shall be as prescribed.
- (3) While counting the votes pursuant to the provisions of this Act, the tendered ballot papers placed in a separate envelope pursuant to Sub-section (1) shall not be counted at that time. If a petition relating to the election is filed and the court holds that the tendered ballot papers are necessary to settle the petition, the court may also count such tendered ballot papers.
67. **Deposit to be furnished:** (1) To be a candidate under First Past The Post Electoral System from any election constituency, a sum of three thousand Rupees shall have to be deposited, and a Political Party submitting a closed list of the candidates before the Commission for an election under the Proportional Electoral System shall have to deposit a sum of ten thousand Rupees.
- (2) If more than one nomination paper is filed for one candidate in one election constituency for election under First Past The Post Electoral System, it shall be sufficient to furnish the deposit for one nomination only.

(3) While filing a nomination paper for a candidacy of the election under First Past The Post Electoral System, the nomination paper submitted to the Office of the Returning Officer must include the cash or bank receipt of the cash deposit. When a Political Party submits a closed list of the candidates before the Commission for the election under the Proportional Electoral System, the closed list must be accompanied by a receipt of a cash deposit or bank receipt in favour of the Commission.

68. Forfeiture of Deposits: (1) The deposit of the candidate who receives less than ten per cent of the total valid votes cast in any election under First Past The Post Electoral System shall be forfeited.

Provided that, in the case of the elected candidate, this provision shall not be applicable.

(2) If any Political Party fails to win at least one seat from the total valid votes cast in the election under the Proportional Electoral System, the deposit furnished by such Political Party shall be forfeited.

(3) Except where the deposits are liable to be forfeited pursuant to sub-section (1) or (2), the candidates and persons whose nomination papers have been rejected or who have withdrawn their names, shall get back their deposit within three months after the declaration of election results.

(4) If the deposit is not withdrawn within the time frame as referred to in Sub-section (3), the sum of deposit shall be credited to the Consolidated Fund.

69. Election expenses : (1) The ceiling of the amount allowed to be expended by the candidate in the election under First Past The Post Electoral System and by the Political Party in the election under the Proportional Electoral System shall be as prescribed by the Commission upon a notification published in the Nepal Gazette.

(2) A Political Party, a candidate, or its/his/her election agent shall have to maintain the records of all expenses incurred in the election during the period of election in such a format as may be prescribed.

Explanation: For the purposes of this Section, “period of election” means the period beginning from the date of filing of the nomination paper of the candidates for the First Past The Post Electoral System or from the date of the filing of the closed list of candidates for the Proportional Electoral System to the date of declaration of the election results.

(3) The total expenditure incurred by any Political Party or candidate in the election shall not exceed the ceiling of expenses as prescribed in Sub-section (1).

(4) In the case of the Proportional Electoral System, the statement of election expenses as referred to in sub-section (2) shall have to be given to the Commission by the Political Party within thirty five days after the declaration of the election results and the expenses incurred in the case of the candidates of the election under the First Past The Post Electoral System the same shall have to be given to the District Election Office by the candidates or their agents within thirty five days after the declaration of election results. The District Election Office shall have to forward the statement of expenses so received to the Commission.

70. Secrecy of documents related to election : (1) Out of the documents used in the election, those required for the purpose of the counting of the votes shall be opened and looked into and sealed after the completion of the counting of the votes and, thereby, shall be kept in custody of the District Election Officer.

(2) The sealed envelopes, bags or sacks containing the counterfoils of the ballot papers sealed pursuant to Sub-section (1), the Electoral Rolls used in the polling, and the valid and invalid ballot papers may be opened and looked into only by the Court in connection with the petition filed pursuant to the prevailing laws.

(3) After they have been opened and looked into by the order of the Court pursuant to Sub-section (2), the Court shall seal and restore them in their original form. No official or body other than the Court shall have the authority to open and look into such sealed envelopes, bags or sacks.

(4) The documents mentioned in this Section shall be preserved for three

months from the date of the final settlement of the case, if any filed, and from the date of the expiry of limitation for filing a petition if no case has been filed.

71. Prohibition on divulgence of secrecy: (1) Except as authorized by the law, any employee deputed in performing the act relating to election or candidate or election agent or polling agent or counting agent or any other person shall not divulge to any person, write or disclose in any manner, the vote marked by the voter in the ballot paper or any other matter pertaining thereto known to him/her or which he/she comes to know.

(2) Notwithstanding anything contained in this Act or other prevailing laws, no witness or person shall be asked in the course of legal proceeding instituted under this Act any question as to whom he/she has voted for election or who has voted for whom.

72. Power to issue orders and give directives : (1) In addition to the matters contained in this Act and the Rules framed under this Act, the Commission may issue necessary orders in regards to the elections and the Commission shall publish such orders in the Nepal Gazette.

(2)The Commission may issue necessary directives to the employees deputed in the act of election for the conduct of the election.

(3) It shall be the duty of all including the Government of Nepal, governmental offices and bodies, governmental, semi governmental and non-governmental organizations and bodies, Political Parties, candidates and their agents, as well as person carrying out election canvassing and the employees deputed in the act of election to abide by the orders and directives issued by the Commission pursuant to this Section.

73. Power to seek assistance: (1) The Returning Officer, the Polling Officer or Monitoring Team, Observer or any official deputed by the Commission in the act of election may, in the course of the act of election, seek assistance from any governmental body or body relating to security including the police at the local level.

(2) If assistance is so sought pursuant to Sub-section (1), it shall be the duty of the concerned police as well as government and security related body to render the necessary assistance.

74. **Power to frame Rules:** The Commission may frame necessary Rules in order to carry out the objectives of this Act.
75. **Power to formulate and enforce directives:** The Commission may formulate and enforce necessary manuals to implement the objectives of this Act subject to this Act and the Rules framed under this Act.
- ⊕75A. **Power to make procedure** : the commission may make necessary procedure for implementation of this act or Rule made thereunder this Act and such procedure shall come into force .
76. **Power to remove difficulties:** If any difficulty arises in connection with the implementation of this Act and Rules, manuals and orders issued under this Act, the Commission may issue necessary orders to remove such difficulty.

⊕ Inserted by Some Election Related Nepal Acts Amendment Act, 2064 (2008)

Schedule-1

(Relating to Sub-section (3) of Section 7)

Percentage of candidate for closed list of candidates

SN	Group to be represented		Percentage of candidate
	Women		50%
1 .	Madhesi	Women	15.6%
		Men	15.6%
2.	Dalit	Women	6.5%
		Men	6.5%
3.	Oppressed tribes/indigenous tribes	Women	18.9%
		Men	18.9%
4.	Backward region [♦] 1	Women	2%
		Men	2%
5.	Others [♥] 2	Women	15.1%
		Men	15.1%

Explanation: As a number of candidates represent more than one group, the sum total of the percentage of the candidates of all groups appears to be more than one hundred.

Note [♦] "Backward region" means Achaham, Kalikot, Jajarkot, Jumla, Dolpa, Bajahang, Bajura, Mugu and Humla Districts.

[♥] "Other" means the group not specifically mentioned in this Schedule.

Schedule-2
(Relating to Sub-section (3) of Section 7)

-----Political party
Closed list of candidates

S.N.	Candidate's Name	Madhesi		Oppressed tribes/indigenous tribes		Dalit		Backward Region		Other	
		Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
1.											
2.											
3.											
4.											
5.											
6.											
7.											
8.											
9.											
10.											
Total											
Percentage											

Authorized person's:

Seal of the political party

Signature:

Name:

Political party's name:

Date:

Note: Political Parties shall clearly set out the names of candidates and the groups which the candidates represent as mentioned in the table as set forth in this Table and submit the same to the Election Commission. Candidates may represent more than one group.

Example: Any candidate may represent women, Madhesi, Dalit as well as other groups. “Others” means the groups not specifically mentioned in this Schedule. For the purposes of settling as to whether the requirement of percentage specified for any group has been met, the name of candidate shall be written in the table as referred to in Schedule-1 and 1-1 shall be written in the bracket of all groups which the candidate represents; and all numbers shall be added and mentioned in the column of the concerned group in the column of total. Moreover, the number in the column of total shall be calculated in the percentage of the number of total candidates and mentioned in the column of percentage.

Schedule-3

.....[∞]

[∞] Deleted by The Act Amending Some Election Nepal Acts, 2064

Schedule-4

.....[∞]

[∞] Deleted by The Act Amending Some Election Nepal Acts, 2064

Schedule-5

(Relating to Sub-section (3) of Section 58) Result

Divisor Method

According to the Result Divisor Method, the votes cast for each political party shall be divided serially according to the divisor method. According to this method, the votes secured by each Political Party shall be divided by many dividers (for example 1, 4, 3, 5, 7, 9 etc.). The result of such division is called quotient. After deriving quotient, the number of seats shall be allocated by dividing smaller ones from greater quotient until the seats are finalized. In making such allocation, even though a Political Party secures any votes whatsoever, the seats to be secured by such Political Party shall be allocated by being limited to the number of candidates enlisted by such Party in the list.

For example: If thirteen seats are to be allocated amongst five Political Parties, allocation shall be made as follows according to the results of votes secured by such Political Party.

Quotient	Party A	Party B	Party C	Party D	Party E
	Number of votes 400000	100000	200000	50000	550000
1.4	285714/2	71429/9	142857/4	35714/	392857/1
3	133333/5	33333/	66667/10	16667/	183333/3
5	80000/7	20000	40000/	10000/	110000/6
7	57143/12	14286/	28571/	7143/	78571/8
9	44444/	11111/	22222/	5556/	61111/11
11	36/364	9091/	18142/	4545/	50000/13
13	30769/	7692/	15385/	3846/	42308/
Results	4	1	2	0	6