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CONSTITUTION OF THE KINGDOM OF NEPAL 2047

AND

ELECTORAL LAWS

Published by
Legal Research Associates
Balaju Ring Road, Post Box 828, Kathmandu Nepal

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CONSTITUTION OF
THE KINGDOM OF NEPAL

2047 (1990)

This Constitution of the Kingdom of Nepal was promulgated on Kartick 23, 2047 corresponding to November 9, 1990 and was published in the Nepal Gazette, Part II, Vol. 40, Extra-ordinary No. 37, dated 2047/7/23 (November 9, 1990). The promulgation was made through the Royal Proclamation issued on the same day.

PREAMBLE

WHEREAS, WE are convinced that in the independent and sovereign Nepal, the source of sovereign authority is inherent in the people, and, therefore, We have, from time to time, made known Our desire to conduct the government of the country in consonance with the popular will;

AND WHEREAS, in keeping with the desire of the Nepalese people expressed through the recent people's movement to bring about constitutional changes, We are further inspired by the objective of obtaining to the Nepalese people justice social, political and economic, to be available long into the future;

AND WHEREAS, it is expedient -

To enact and enforce this Constitution, made with the widest possible participation of the Nepalese people, to guarantee basic human rights to every citizen of Nepal;

And also to consolidate Adult Franchise, Parliamentary System of Government, Constitutional Monarchy and Multi-Party Democracy by promoting amongst the people of Nepal the spirit of fraternity and the bond of unity on the basis of liberty and equality;

And also to establish an independent and competent system of Justice with a view to transforming the concept of the Rule of Law into a living reality;

NOW, THEREFORE, keeping in view the desire of the people that the State authority and sovereign powers shall, after the commencement of this Constitution, be exercised in accordance with the provisions of this Constitution, L KING BIRENDRA BIR BIKRAM SHAH DEVA, by virtue of the State authority as exercised by Us, do hereby Enact and Promulgate this CONSTITUTION OF THE KINGDOM OF NEPAL upon advice and with consent of the Council of Ministers.

PART - I **PRELIMINARY**

1. **Constitution as the Fundamental Law:** (1) This Constitution is the fundamental law of Nepal and all laws inconsistent with it shall, to the extent of such inconsistency, be void.

(2) It shall be the duty of every person to uphold the provisions of this Constitution.
2. **The Nation:** The people of Nepal being united by a bond of common aspirations and faith in the independence and integrity of the Nation, irrespective of religion, race, caste or tribe, collectively constitute this Nation.
3. **The Sovereignty:** The Sovereignty of Nepal is vested in the Nepalese people and shall be exercised in accordance with the provisions of this Constitution.

4. **The Kingdom:** (1) Nepal is a multi—ethnic, multi—lingual, democratic, independent, indivisible, sovereign, Hindu and a Constitutional Monarchical Kingdom.
- (2) The territory of Nepal shall comprise of:
- (a) the territory existing at the commencement of this Constitution; and
- (b) such other territory as may be acquired after the commencement of this Constitution.
5. **National Flag:** The national flag of Nepal, as handed down by tradition, consists of two juxtaposed triangular figures with crimson-coloured base and deep blue borders, there being a white emblem of the crescent moon with eight rays visible out of sixteen in the upper part and a white emblem of twelve rayed sun in the lower part. The method to draw out the flag and other particulars relating thereto shall be as laid down in Schedule-I.
6. **National Language:** (1) The national language of Nepal shall be Nepali in Devnagari script. Nepali language shall be the official language.
- (2) All languages spoken as mother tongue in various parts of Nepal are the languages of this nation.
7. **National Anthem etc.:** (1) The national anthem of Nepal shall be as provided in Schedule-II.
- (2) Rhododendron Arboreum is the national flower, Crimson color is the national color, the Cow is the national animal and the Lophophorus is the national bird of Nepal.
- (3) The coat-of-arms of Nepal shall be as laid down in Schedule-III. The shape of the coat-of-arms may be enlarged or reduced as required and the color to be used therein shall be as specified by His Majesty's Government.

PART - II
CITIZENSHIP

8. **Citizenship at the Commencement of Constitution:**
Following persons, who have their permanent residence in Nepal shall be deemed to be the citizen of Nepal:

(a) a person who is a citizen of Nepal pursuant to the provision of either Article 7 of the Constitution of Nepal, 2019 (1962) or Section 3 of Nepal Citizenship Act, 2020 (1964).

(b) a person who is a naturalised citizen of Nepal pursuant to the provisions of Section 6 of Nepal Citizenship Act, 2020 (1964).

9. **Acquisition and Termination of Citizenship after the Commencement of Constitution:** (1) A person who is born after the commencement of this Constitution and whose father at the time of his birth is a citizen of Nepal shall be a citizen of Nepal by descent.

(2) Any child who is found within the Kingdom of Nepal and whose paternity is not known shall, unless the father of the child is traced, be deemed to be the citizen of Nepal by descent.

(3) Whenever any territory is acceded to the Kingdom of Nepal, the people having their domicile within such territory shall become the citizen of Nepal subject to the provisions of the existing law.

(4) After the commencement of this Constitution, law may regulate the acquisition of citizenship of Nepal by foreigners upon fulfillment of, among others, the following conditions:

(a) He can read and write the national language of Nepal;

(b) He is engaged in an occupation in Nepal;

(c) He has renounced his citizenship of other country; and

(d) He has resided in Nepal for at least fifteen years.

(5) Notwithstanding anything provided in clause (4), a woman of foreign nationality having matrimonial relation with a Nepalese citizen and having initiated proceedings for renunciation of her foreign citizenship, and any other person, who, having renounced the citizenship of Nepal, had gone to a foreign country, and who has thereafter renounced his foreign citizenship, shall be qualified to become a citizen of Nepal.

(6) Notwithstanding anything provided in Sub-clause (c) and (d) of Clause (4), the son or daughter or a descendant of a citizen of Nepal, who has resided in Nepal for a period of two years, shall be qualified to become a citizen of Nepal on the terms and conditions as specified by law.

Provided that this Clause shall not be applicable in respect of descendants of naturalised citizens.

(7) The termination of citizenship of Nepal shall be determined by law.

10. **Conferment of Honorary Citizenship:** Notwithstanding anything provided in Article 9, honorary citizenship may be conferred on a person of international distinction.

PART - III **FUNDAMENTAL RIGHTS**

11. **Right to Equality:** (1) All citizens shall be equal before law. No person shall be denied equal protection of the laws.

(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideology or any of them.

(3) The State shall not discriminate citizens on grounds of religion, race, sex, caste or ideology or any of them.

Provided that special provisions may be made by law to protect or promote the interests of women, children, aged or persons who are

physically and mentally incapacitated or those who belong to a class which is economically, socially and educationally backward.

(4) No person shall be discriminated on the basis of caste as untouchable or be denied access to any public place or be deprived from the use of public utilities. Any act in violation of this provision shall be punishable by law.

(5) No discrimination in respect of remuneration shall be made between man and woman for the same work.

12. **Right to Freedom:** (1) No person shall be deprived of his personal liberty save in accordance with law and no law shall be made which provides for capital punishment.

(2) All citizens shall have the following freedoms:

(a) freedom of thought and expression;

(b) freedom to assemble peacefully and without arms;

(c) freedom to form unions and associations;

(d) freedom to move and reside in any part of Nepal;
and

(e) freedom to carry out any profession, occupation, trade or industry.

Provided that -

(1) nothing mentioned in Sub-clause (a) shall be deemed to prevent the making of law to impose reasonable restriction on any act which undermines the sovereignty and integrity of the Kingdom of Nepal or which disturbs the harmonious relations subsisting among the people of different caste or communities, or on any act of sedition or defamation or contempt of court or the instigation of crime, or any act against public decency or morality;

(2) nothing provided in Sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restriction on any act which undermines the sovereignty and integrity of the Kingdom

of Nepal or causes disturbance in the law and order situation within the country;

(3) nothing mentioned in Sub-clause (c) shall be deemed to prevent the making of laws to impose reasonable restriction on any act which undermines the sovereignty and integrity of the Kingdom of Nepal, or disturbs the harmonious relation subsisting among the various caste and communities, or instigates violence or any act against public morality;

(4) nothing mentioned in Sub-clause (d) shall be deemed to prevent the making of law which is in the interest of the general public or which is made to impose restriction on any act which disturbs harmonious relations subsisting among various castes and communities;

(5) nothing mentioned in Sub-clause (e) shall be deemed to prevent the making of laws to impose restriction on any act which is against public health or morality, or to confer on the State exclusive right to undertake specified industry, business or services, or to impose any condition or qualification for carrying out any industry, business, profession or occupation.

13. **Press and Publication Right:** (1) No news item, article or any other reading material shall be censored.

Provided that nothing shall prevent making of laws to restrict any act which tends to undermine the sovereignty and integrity of the Kingdom of Nepal or disturbs the harmonious relation subsisting among the people of different caste or classes or communities, or any act of sedition or defamation or contempt of court or instigation of crime, or any act against decent public behaviour or morality.

(2) No press shall be closed or seized for printing any news item, article or any reading material.

(3) The registration of a newspaper or periodical shall not be cancelled merely for publishing any news article or any reading material.

14. **Right Regarding Criminal Justice:** (1) No person shall be punished for an act which was not punishable by law when the act was done, nor shall any person be subjected to a punishment greater than that prescribed by the law in existence at the time of commission of the offence.

(2) No person shall be prosecuted or punished more than once for the same offence in a court of law.

(3) No person accused of any offence shall be compelled to be a witness against himself.

(4) No person detained during investigation or for trial or for any other reason shall be subjected to physical or mental torture nor shall he be given any cruel, inhuman or degrading treatment. Any person so treated shall be compensated in the manner determined by law.

(5) No person who is arrested shall be detained in custody without being informed at the earliest of the grounds of such arrest nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

Explanation: For the purpose of this Clause, the word "legal practitioner" shall mean any person who is authorised by law to represent any other person in any court.

(6) A person who is arrested and detained in custody shall be produced before a judicial authority within twenty-four hours of such arrest excluding the period of journey from the place of arrest to such authority, and no such person shall be detained in custody beyond the said period except on the order of such authority.

(7) Nothing provided in Clauses (5) and (6) shall apply to a citizen of an enemy State and nothing provided in Clause (6) shall apply to a person who is arrested or detained under a law providing for preventive detention.

15. **Right against Preventive Detention:** (1) No person shall be kept under preventive detention without sufficient ground of

existence of threat to sovereignty, tranquility, indivisibility or public peace and order of the Kingdom of Nepal.

(2) Any person kept under detention shall, if his detention was against law or malafide, have the right to be compensated in the manner laid down by the law.

16. **Right to Information:** Every person shall have the right to demand and receive information on any matter of public importance.

Notwithstanding anything provided in this Article, no person shall be compelled to provide information on matters about which secrecy need to be maintained by law.

17. **Right to Property:** (1) All citizens shall, subject to the provision of law for the time being in force, have the right to acquire, enjoy, dispose of and deal in other manner with their property.

(2) The State shall not, except for public purposes, requisition, acquire or create any encumbrance on the property of any person.

(3) The basis of compensation and procedure for giving compensation for the property requisitioned or acquired or encumbered by the State for public purposes shall be as laid down by law.

18. **Cultural and Educational Right:** (1) Every community residing within the Kingdom of Nepal shall have the right to conserve and promote its language, script and culture.

(2) Each community shall have the right to establish schools for providing primary level education to the children in their mother tongue.

19. **Right to Religion:** (1) Every person shall have the freedom to profess and practise his own religion as coming down to him hereditarily having due regard to the traditional practices.

Provided that no person shall be entitled to convert the religion of any person.

(2) Every religious denomination shall have the right to maintain its independent existence and for that purpose to manage and protect its religious places and trusts.

20. **Right against Exploitation:** (1) Traffic in human beings, slavery, serfdom or forced labour in any form is prohibited. Any violation of this provision is punishable by law.

Provided that nothing mentioned herein shall be a bar to provide for compulsory service by law for public purposes.

(2) No minor child shall be employed in any factory, mine or similar other hazardous work.

21. **Right against Exile:** No citizen shall be exiled.

22. **Right to Privacy:** The person, house, property, documents, correspondence or information belonging to any person are inviolable except in circumstances laid down by law.

23. **Right to Constitutional Remedy:** Right to proceed in accordance with Article 88 for the enforcement of rights conferred by this Part, is guaranteed.

PART - IV

DIRECTIVE PRINCIPLES OF THE STATE

24. **Application of Directive Principles and Policies:** (1) The principles and policies provided in this Part shall not be enforceable in any court.

(2) The principles and policies laid down in this Part shall be fundamental in the activities and governance of the State and shall be implemented in stages through enactments having regard to the means and resources available in the country.

25. **Directive Principle of the State:** (1) The State shall have the fundamental objective to promote conditions of welfare on the

basis of principles of open society by establishing a just system in all aspects of national life, including social, economic and political through the protection of life, property and liberty of the general public.

(2) The State shall have its economic objectives to transform national economy into an independent and self-reliant system by preventing the concentration of available means and resources of the country within a limited section of the society, by making arrangements for equitable distribution of economic gains on the basis of social justice, by making such provisions as to prevent economic exploitation of any class or individual by another class or individual and by giving preferential treatment and encouragement to the national private and public enterprises.

(3) The State shall have its social objectives to establish and develop a healthy social life on the foundation of justice and morality by eliminating all types of economic and social inequalities which is possible through the establishment of harmony amongst various castes, tribes, religions, languages, color and communities.

(4) The State shall have the main responsibility to bring about conditions for the enjoyment of fruits of democracy by providing opportunities for the maximum participation of people in the governance of country by means of decentralisation of administration and to promote general welfare by means of protection and promotion of human rights together with the maintenance of peace and order in the Society.

(5) The State, in its international relations shall be guided by the objective of enhancing the national dignity in the Comity of Nations together with the maintenance of sovereignty, integrity and independence of the country.

26. **State Policies:** (1) The State shall adopt a policy of raising the standard of living of general public through development of basic structures, like public education, health, housing and employment of the people of all the regions by means of equitable distribution of investment of economic resources for the balanced development in various geographical regions of the country.

- (2) The State shall, while maintaining cultural divergence of the country, adopt a policy towards strengthening national unity by means of promoting healthy and cordial social relations amongst various religious groups, castes and classes, communities and linguistic groups of the society and also by helping in the promotion of language, literature, script, art and culture of all.
- (3) The State shall adopt a policy for mobilisation of natural wealth and resources of the country in a manner which shall be suitable, useful and beneficial to the interests of country.
- (4) The State shall give priority to the protection of environment of the country and also to prevent damage due to physical developmental activities by means of enhancing consciousness of the general public about the environmental purity. The State shall also make special arrangements for the protection of rare animal species, forests and vegetation of the country.
- (5) The State shall, by increasing productivity in the agriculture sector, create conditions for economic progress of the majority of the people dependant upon agriculture, and shall develop agriculture as industry by implementing the land reform programmes.
- (6) The State shall adopt a policy of increasing participation of labour force, which is the socioeconomic backbone of the country, in the management of enterprises by providing it with gradual employment and guarantees to their right to work by ensuring their rights and interests.
- (7) The State shall adopt a policy of providing opportunities for maximum participation of women in the task of national development by making special provisions for their education, health and employment.
- (8) The State shall make necessary provision for the protection of rights and interests of children by safeguarding them from exploitation of any kind and gradually implement a program of free-education.
- (9) The State shall adopt a policy of taking special measures on education, health and social security of the orphans, helpless

woman, aged, disabled and incapacitated persons for their protection and welfare.

(10) The State shall adopt a policy of raising the standard of socially and economically backward tribes and communities by making special provisions with regard to their education, health, and employment.

(11) The State shall, with a view to bringing general prosperity in the country, adopt a policy of giving priority to the development of science and technology together with due consideration for the development of local technology.

(12) The State shall adopt a policy of attracting foreign capital and technology by promoting indigenous investment for the purposes of national development.

(13) The State shall adopt a policy of accelerating the pace of rural development keeping in view the welfare of the majority of rural population.

(14) The State shall, in the process of establishing justice for all, adopt a policy of providing free legal aid to the disadvantaged person for their legal representation in keeping with the principle of rule of law.

(15) The foreign policy of Nepal shall be guided by the principles of the United Nation's Charter, Non-alignment, Panchsheel, international laws and faith in world peace.

(16) The State shall adopt a policy of making continuous efforts to institutionalise peace in Nepal through international recognitions by promoting cooperative and cordial relations in economic, social and other aspects on the basis of equality with friendly neighbours and all other countries of the world .

PART - V HIS MAJESTY

27. **His Majesty**: (1) In this Constitution, the words "His Majesty" means His Majesty the King for the time being reigning, being a

descendant of Great King Prithvi Narayan Shah and adherent of Aryan Culture and Hindu Religion.

(2) His Majesty is the symbol of the Nepalese nation and the unity of the Nepalese people.

(3) His Majesty shall abide by and protect this Constitution for the best interest and progress of the people of Nepal.

28. **Provision Relating to Succession to Throne:** (1) Nothing in this Constitution shall affect the custom, usage and tradition relating to the order of succession to the throne by the descendants of His Majesty.

(2) His Majesty shall have the exclusive power of enacting, amending and repealing the law relating to succession to the Throne by the descendants of His Majesty.

29. **Expenditure and Privileges of His Majesty and Royal Family:** Expenditures and privileges relating to His Majesty and the Royal family shall be as determined by law.

Provided that no law shall be enacted to reduce the privileges and expenditures as provided by the existing laws.

30. **Income and Property of His Majesty to be Exempt from Tax and Inviolable:** (1) The income and personal property of His Majesty shall be exempt from all kinds of tax, fee or other charges.

(2) The personal property of His Majesty shall be inviolable.

31. **Question not to be Raised in Courts:** No question shall be raised in any court about any act performed by His Majesty.

Provided that nothing provided in this Article shall be deemed to restrict any right under law to initiate proceedings against His Majesty's Government or any official of His Majesty.

32. **Royal Representative, Council of Royal Representatives, Regency and Council of Regency:** (1) In this Constitution, unless a different meaning is construed with reference to the subject or context, the words His Majesty shall mean and include the Royal Representative or the Council of Royal Representatives exercising powers pursuant to Clause (2) and the Regent or Council of Regency exercising power pursuant to Article 34.

(2) His Majesty may, by warrant under His Royal seal, appoint any person or a Council as His Representative to carry out, subject to such conditions as may be specified in such Warrant, such functions as His Majesty is to perform pursuant to this Constitution and the existing law during His Majesty's absence from Nepal or during any other period. Any act done by the Royal Representative subject to the conditions and scope of the Warrant, shall for the purposes of this Constitution and the existing law be deemed to be an act of His Majesty.

33. **Royal Standard:** (1) Square in shape and crimson in colour having borders in white, the Royal Standard traditionally comprises of a crescent moon, in the upper corner near the Flag-staff, with eight out of sixteen rays, shown in white colour, a white sun with twelve white rays in the upper corner, opposite to the flag-staff, a white flag showing six angled figure and a sword in the middle of the standard, and an upright white lion facing the flag with both its paws holding and the right hind leg supporting the flag-staff.

(2) The National Anthem of Nepal shall be the Royal Salute.

PART - VI **RAJ PARISHAD**

34. **Raj Parishad:** (1) His Majesty shall constitute a Raj Parishad, the function of which shall be as laid down in this Constitution.

(2) The Raj Parishad shall consist of the following Members-

(a) Members of the Royal Family as designated by His Majesty;

- (b) Prime Minister
ex-officio Member
- (c) Chief Justice
ex-officio Member
- (d) Speaker of the House of Representatives
ex-officio Member
- (e) Chairman of the National Assembly
ex-officio Member
- (f) Chairman of the Standing Committee of
Raj Parishad
ex-officio Member
- (g) Deputy Prime Minister
ex-officio Member
- (h) Ministers
ex-officio Member
- (i) Leader of the Opposition in the House of
Representatives
ex-officio Member
- (j) Field Marshall
ex-officio Member
- (k) Bada Gurujyu
ex-officio Member
- (l) Commander-in-chief
ex-officio Member
- (m) Mukhya Sahebju
ex-officio Member
- (n) Chief Commissioner of the Abuse of
Authority Investigation Commission
ex-officio Member

- (o) Auditor General
ex-officio Member
- (p) Chairman of the Public Service Commission
ex-officio Member
- (q) Chief Election Commissioner
ex-officio Member
- (r) Attorney General
ex-officio Member
- (s) Mukhya Chautariya
ex-officio Member
- (t) Principal Secretary or Secretary of His Majesty
ex-officio Member
- (u) Chief Secretary of His Majesty's Government
ex-officio Member
- (v) Inspector General of Police
ex-officio Member
- (w) Such other Members as His Majesty may appoint from among persons distinguished in different fields of national life or who having rendered distinguished service to the country are considered appropriate to become Members of Raj Parishad.

(3) Persons nominated by His Majesty pursuant to Sub-clause (a) of Clause (2) shall remain Members during the pleasure of His Majesty.

(4) The meetings of the Raj Parishad shall be summoned by the command of His Majesty and shall be presided by Him if present at the meeting. In the absence of His Majesty, the Crown Prince, if He has attained the age of eighteen years, shall preside over such meetings, and if He has not attained that age, or if He is not present, such person as designated by His Majesty shall so preside. And if no person is designated, the Chairman of the National Assembly shall preside.

(5) The Chairman of the Raj Parishad shall summon a meeting of the Raj Parishad in the following circumstances:

(a) On the demise of His Majesty or if His Majesty proclaims His abdication; or

(b) if at least one-fourth of the total number of Members of the Raj Parishad make a written requisition declaring that His Majesty is unable, by reason of mental or physical infirmity, to carry out His functions.

(6) The meeting summoned under Sub-clause (a) of Clause (5) shall proclaim the accession to the throne of the heir-apparent to His Majesty in accordance with the law, custom and usage relating to the succession to the Throne. It shall also proclaim the appointment of a Regent or a Council of Regency, subject to the Rules made by His Majesty, in case His Majesty is below the age of eighteen years.

Provided that the Regent or the Council of Regency proclaimed under this Clause shall cease to exist on His Majesty attaining the age of eighteen years.

(7) The meeting of the Raj Parishad summoned under the circumstances of Sub-clause (b) of Clause (5) shall, by a resolution to this effect passed by a majority of two-third of its total Membership, decide whether His Majesty is mentally or physically so unable. Upon such decision, the Raj Parishad shall proclaim the Crown Prince to be the Regent if He has attained the age of eighteen years and, if He has not attained that age, it shall, subject to the Rules made by His Majesty, proclaim a Regent or a Council of Regency.

Provided that the Regent or the Council of Regency proclaimed under this Clause shall, subject to the Rules made by His Majesty, cease to exist on the demise of or abdication by His Majesty, or on His Majesty informing the Raj Parishad that He is able to resume the Royal functions.

(8) The Regent or Council of Regency proclaimed under clauses (6) or (7) shall not have any power to decide or to give

approval to anything which shall be prejudicial to the interest of His Majesty or His successor.

(9) Nothing mentioned in clause (6) and (7) shall prevent the heir apparent to His Majesty from exercising the powers of the Crown pending a Proclamation to that effect.

(10) The Raj Parishad shall transact its business notwithstanding the absence of any of its Members at any meeting, if-

(a) a notice of such meeting has been sent to all Members existing on the date of the issue of the notice;

(b) at least one-third of the total number of Members are present.

(11) The Raj Parishad may make Rules to regulate its business, and until such Rules are made, its business shall be conducted by the Rules made by His Majesty.

(12) Members of the Raj Parishad shall take oath in the manner specified by His Majesty.

(13) His Majesty shall appoint the Secretary of the Raj Parishad.

(14) His Majesty shall constitute a Standing Committee of the Raj Parishad from amongst the Members of the Raj Parishad consisting of a Chairman and fifteen other Members including the following ex-officio Members, --

(a) Prime Minister;

(b) Chief Justice;

(c) Speaker of the House of Representatives;

(d) Chairman of the National Assembly;

(e) Bada Guruju; and

(f) Commander-in-Chief.

(15) The tenure of office of the Members of the Standing Committee, except the ex-officio Members, shall be four years from the date of appointment. Such Members shall be eligible for reappointment.

(16) The office of the Chairman and Members of the Standing Committee of the Raj Parishad shall be deemed vacant, if --

- (a) he dies;
- (b) he is relieved from office by His Majesty;
- (c) his resignation submitted in writing is accepted by His Majesty; or
- (d) his tenure pursuant to Clause (15) is completed.

(17) A person must fulfill the following conditions for appointment as the Chairman or the Member of the Standing of the Raj Parishad:

- (a) He has completed the age of fifty years;
- (b) He is not disqualified under any law.

(18) The duties, powers and functions of the Standing Committee of the Raj Parishad shall be as follows:

- (a) To advise on matters referred to by His Majesty;
and
- (b) To carry out the function of the Royal Family as specified by His Majesty.

(19) Subject to the provisions of this Article, the Standing Committee of the Raj Parishad shall have the powers to frame Rules for regulating its business. Until these Rules are approved by His Majesty, the Rules framed by His Majesty shall be applicable.

(20) The remuneration of the Chairman and other Members of the Standing Committee of the Raj Parishad shall be as determined by His Majesty.

(21) The meetings of the Standing Committee of the Raj Parishad shall be summoned by its Chairman. During discussion on any specific issue in any meeting, any other Member of the Raj Parishad may also be invited.

(22) The Secretary of the Raj Parishad shall also act as the Secretary of its Standing Committee.

(23) The Members of the Standing Committee of the Raj Parishad shall take oath in the manner laid down by His Majesty.

PART - VII **EXECUTIVE**

35. **Executive Power:** (1) The executive power of the Kingdom of Nepal shall, pursuant to this Constitution and other laws, be vested in His Majesty and the Council of Ministers.

(2) The powers of His Majesty, under this Constitution, except those which are specifically mentioned as to be exercised exclusively by Him or at His discretion or on the recommendation of any institution or official, shall be exercised by and with the advice and consent of the Council of Ministers. Such advice and consent shall be submitted through the Prime Minister.

(3) The responsibility of giving general direction, keeping control and conduction of the administration of the Kingdom of Nepal shall, subject to this Constitution and other laws, vest in the Council of Ministers.

(4) Excepting the functions to be performed in the name of His Majesty according to this Constitution and other laws, all other executive functions shall be expressed in the name of His Majesty's Government.

(5) Any decision or order of His Majesty and any testimonial required to be issued thereunder in the name of His Majesty according to this Constitution and other laws, shall be authenticated in the manner laid down in the Rules framed by His Majesty at His discretion. All other decisions or orders and testimonials thereof to be issued in the name of His Majesty's

Government pursuant to clause (4) above, shall be authenticated in the manner specified in the Rules laid down by His Majesty.

(6) No question shall be raised in any court on matters whether any advice or recommendation has been made to His Majesty and, if so, what advice or recommendation was offered by the Council of Ministers or any authority or official pursuant to this Constitution.

36. **Council of Ministers:** (1) His Majesty shall appoint the leader of the Parliamentary party having a majority in the House of Representatives as the Prime Minister and shall constitute the Council of Ministers under his chairmanship.

(2) The Council of Ministers shall consist of, in addition to the Prime Minister, such Deputy Prime Minister and other Ministers as may be required.

(3) His Majesty shall, on the recommendation of the Prime Minister, appoint the Deputy Prime Minister and such other Ministers, as may be required, from amongst the Members of Parliament.

(4) The Prime Minister and other Ministers shall be collectively responsible to the House of Representatives. The Ministers shall be personally responsible in respect of functions in their Ministries to the Prime Minister and the House of Representatives.

(5) The Prime Minister shall be relieved from his office in the following circumstances:

(a) If his resignation in writing submitted to His Majesty is accepted; or

(b) If His Majesty relieves him from office, pursuant to a no-confidence resolution passed by a majority of the total number of Membership of the House of Representatives in accordance with the provisions of Article 59; or

(c) If he ceases to be a Member of the House of Representatives; or

(d) If he dies.

(6) The Deputy Prime Minister and other Ministers shall be relieved from their office in the following circumstances:

(a) If his resignation in writing submitted to His Majesty through the Prime Minister is accepted;

(b) If the Prime Minister is relieved from his office pursuant to the provisions of Clause (5) above;

(c) If he ceases to be a Member of Parliament; or

(d) If he is relieved from his office by His Majesty on the recommendation of the Prime Minister.

(7) In case the Prime Minister is relieved from his office pursuant to clause (5), the existing Council of Ministers shall continue to function until a new Council of Ministers is constituted.

Provided that His Majesty shall, upon the death of the Prime Minister, designate either the Deputy Prime Minister or the seniormost Minister to act as Prime Minister until a new Prime Minister is appointed.

37. **State Ministers and Assistant Ministers:** (1) His Majesty shall, on the recommendation of the Prime Minister, appoint State Ministers from amongst the Members of Parliament.

(2) His Majesty shall, on the recommendation of the Prime Minister, appoint Assistant Ministers to assist the Ministers in carrying out their responsibilities.

(3) The provision of Clause (6) of Article 36 relating to the Ministers shall also apply to the State Ministers and the Assistant Ministers.

38. **Appointment of Non Members of Parliament as Minister:** Notwithstanding anything contained in Articles 36 and 37, any person who is not a Member of any house of Parliament may also be appointed a Deputy Prime Minister, Minister, State Minister or Assistant Minister.

Provided that such Deputy Prime Minister, Minister, State Minister or Assistant Minister must become a Member of Parliament within six months from the date of his appointment.

39. **Remuneration and Other Privileges:** The remuneration and other privileges of the Prime Minister, Deputy Prime Minister, Minister, State Minister and the Assistant Minister shall be as determined by law and until so determined, such remuneration and privileges shall be as specified by His Majesty in the Rules made by Him.
40. **Oath:** The Prime Minister, Deputy Prime Minister and other Ministers shall take their oath of office and secrecy before His Majesty and the State Ministers and Assistant Ministers before the Prime Minister.
41. **Government Administration:** (1) The Allocation and Transaction of Business of His Majesty's Government shall be as provided in the Rules approved by His Majesty.
- (2) No question shall be raised in any court on matters whether the Rules made pursuant to clause (1) above have been complied with.
42. **Special Provisions Concerning the Council of Ministers:** (1) If none of the parties is able to command a clear majority in the House of Representatives, His Majesty shall appoint such Member as Prime Minister who may command confidence of the majority of Members of the House of Representatives with the support of two or more parties represented in the House.
- (2) If none of the Members is able to command a majority in the House of Representatives in pursuance of Clause (1) above, His Majesty shall appoint as Prime Minister the leader of the Parliamentary party which holds the largest number of seats in the House of Representatives.
- (3) The Prime Minister appointed pursuant to Clause (1) must secure a vote of confidence of the House of Representatives within thirty days.

(4) If the Council of Ministers constituted pursuant to Clause (2), fails to secure the vote of confidence of the House of Representatives, His Majesty shall dissolve the House of Representatives and promulgate an Order to hold another election within six months.

43. Communications to and Suggestions from His Majesty: (1) It shall be the duty of the Prime Minister to communicate to His Majesty on the following matters:

(a) Decisions of the Council of Ministers on matters relating to general administration of the Kingdom of Nepal;

(b) Bills to be introduced in Parliament;

(c) Additional information required by His Majesty on matters mentioned in sub-clauses (a) and (b).

(d) Matters relating to existing state of affairs, peace and security in the country as well as political, economic, social, administrative and external relations situations of the country.

(2) His Majesty may offer suggestions or encouragements to or alert the Council of Ministers on matters of national importance.

PART - VIII **LEGISLATURE**

44. Constitution of Legislature: There shall be a Legislature, called as the Parliament, consisting of His Majesty and the two Houses of Parliament, namely, the House of Representatives and the National Assembly.

45. Constitution of the House of Representatives: (1) The House of Representatives shall consist of two hundred and five Members.

(2) For the purpose of election to the House of Representatives, the existing administrative districts shall be designated as the election districts and the number of seats to be allocated to each district shall be in proportion to the population of that district which has been determined by the national census held prior to the concerned election. The ratio of seats to be allocated to each district shall be based on the number of such population of a district, and the number of seats for any district shall be as equal as possible to the ratio between the population and the number of seats amongst all the districts. The electoral constituencies shall be determined in equal to such seats and one Member shall be elected from each of such constituencies.

Provided that the electoral constituency and the number of Members to be elected from the districts shall be so allocated that at least one Member is elected from one district irrespective of its population.

(3) Unless dissolved earlier pursuant to the provisions of this Constitution, the term of each House of Representatives shall be five years.

Provided that during the existence of State of Emergency the term of the House of Representatives may be extended by an Act for a period not exceeding one year.

(4) The term of the House of Representatives, extended pursuant to the Proviso to the Clause (3), shall automatically terminate after the expiry of six months from the date of withdrawal of the State of Emergency.

(5) Subject to the provisions of this Constitution, Members of the House of Representatives shall be elected on the basis of one-man-one-vote through secret ballots in accordance with the provisions of law.

(6) Any citizen of Nepal who has completed the age of eighteen years shall be entitled to vote in one electoral constituency in the manner specified by law.

(7) Any person entitled to vote in the election for the House of Representatives may, subject to provision of Article 47 and the existing laws, contest election from any of the electoral constituencies.

(8) Any vacancy of a Member during the term of the House of Representatives shall be filled through by-election.

(9) Subject to the provisions of this Article, election to the House of Representatives and other matters pertaining thereto shall be as provided in the law.

46. **Constitution of National Assembly and Tenure of Members:** (1) The National Assembly shall consist of the following sixty Members :

(a) Ten Members to be nominated by His Majesty from amongst distinguished persons who have rendered eminent service in various field of national life.

(b) Thirty five Members, including at least three women Members, to be elected by the House of Representatives according to the proportional representation system by means of a single transferable vote, as provided in the law.

(c) Fifteen Members at the ratio of three Members from each of the Development Regions to be elected by an electoral college consisting of Chairmen and Deputy Chairmen of Village and Town Level Local Authorities and Chairmen, Deputy Chairmen, and Members of District level Local Authority, by means of a single transferable vote, as provided in the law.

Provided that pending the elections of local level authorities, such electoral college shall, for the first time, consist of Members of the House of Representatives representing the concerned Development Region.

(2) The National Assembly shall be a permanent body. The tenure of one-third of its Members shall expire in every two years.

(3) The term of office of the Members of the National Assembly shall be six years.

Provided that the initial term of office of the Members after the commencement of this Constitution, shall be determined by lot in such manner that term of one-third Members expires in two years, another one-third in four years and the rest one-third in six years.

(4) The term of office of all the Members, including those remaining vacant, shall commence from the date on which the National Assembly convenes in its first session.

(5) Vacancies of Members in the National Assembly shall be filled in the same manner of election or nomination in which the seat of the vacating Member was filled.

(6) If any seat of a Member of the National Assembly falls vacant during his term, such vacancy shall be filled for the remaining period through election or nomination, as the case may be, in accordance with Clause (5).

47. Qualification for Membership: (1) In order to become a Member of Parliament, a person shall -

- (a) be a citizen of Nepal;
- (b) have completed twenty Five years of age for the House of Representatives and thirty five years for the National Assembly;
- (c) not be disqualified under any law; and
- (d) not be holding an office of profit.

Explanation: For the purpose of this Clause, the term "office of profit" means and includes position, other than a political position to be filled by election or nomination, of which the salary or remuneration is paid out of the Government treasury.

(2) No person shall be a Member of both the Houses simultaneously.

48. **Decision as to Disqualification of Members:** If a question arises whether a Member of Parliament possesses or has ceased to possess any of the qualification as laid down in Article 47, the matter shall be referred to the Chief Justice or any other Judge of the Supreme Court designated by him for final decision.
49. **Vacation of Seat:** (1) The seat of a Member of Parliament shall become vacant in the following circumstances:
- (a) if he dies; or
 - (b) if he resigns in writing; or
 - (c) if he does not or has ceased to possess the qualification mentioned in Article 47; or
 - (d) if the tenure of his office or the term of the House, as provided in this Constitution, expires ; or
 - (e) if he absents himself consecutively for thirty meetings from the concerned House without its permission; or
 - (f) if the party, as whose candidate he was elected to be Member, notifies, in the manner laid down by law, that he has ceased to be a Member of that party.
50. **Oath:** Members of each House of Parliament shall, before taking part for the first time in the meeting of the House or any of its Committees, take oath in the specified form.
51. **Speaker and Deputy Speaker of the House of Representatives:** (1) After the commencement of its first session, the House of Representatives shall, as soon as possible, elect a Speaker and a Deputy Speaker from among its Members. If the office of the Speaker or Deputy Speaker falls vacant, the House of Representatives shall fill up the vacancy through election from among its Members.
- (2) The Deputy Speaker of the House of Representatives shall, in the absence of the Speaker, act as Speaker of the House of Representatives.

(3) If at any time the election of the Speaker or Deputy Speaker has not taken place or if both the positions fall vacant, the Member of the House of Representatives who is the seniormost by age shall chair the meeting.

(4) The Office of Speaker or Deputy Speaker shall become vacant in the following circumstances:

(a) if he ceases to be a Member of House of Representatives; or

Provided that the Speaker and the Deputy Speaker holding their respective office at the time of dissolution of the House of Representatives according to this Constitution shall, continue in their respective office till the last date of filing of candidacy for election to the House of Representatives.

(b) if he tenders in writing his resignation from the post; or

(c) if a resolution affirming the incompatibility of his conduct is passed by a majority of two-third of the total Membership in the House of Representatives.

(5) Any meeting of the House of Representatives deliberating on the resolution relating to the conduct of the Speaker being incompatible to his position, shall be chaired by the Deputy Speaker. The Speaker shall be entitled to participate and vote in such deliberations.

52. Chairman and Vice Chairman of National Assembly:

(1) After the commencement of its first session, the National Assembly shall, as soon as possible, elect a Chairman and Vice-Chairman from among its Members. If the office of the Chairman or Vice-Chairman falls vacant, the National Assembly shall fill up the vacancy through election from among its Members.

(2) The Vice-Chairman of the National Assembly shall, in the absence of Chairman, act as Chairman of the National Assembly.

(3) If at any time the election of the Chairman or Vice-Chairman has not taken place, or if both the positions fall vacant, the Member of the National Assembly who is the seniormost by age shall act as Chairman.

(4) The office of the Chairman or Vice-Chairman shall become vacant in the following circumstances:

(a) if he ceases to be a Member of the National Assembly;

(b) if he tenders in writing his resignation from the post; or

(c) if a resolution affirming the incompatibility of his conduct with his position is passed by a majority of two-third of the total Membership in the National Assembly.

(5) Any meeting of the National Assembly deliberating on the resolution relating to the conduct of the Chairman being incompatible to his position, shall be chaired by the Vice-Chairman. The Chairman shall be entitled to participate and vote in such deliberations.

53. **Summoning and Prorogation of Sessions and Dissolution of the House of Representatives:** (1) His Majesty shall summon the sessions of Parliament within one month of the election of the House of Representatives. Thereafter, His Majesty shall, from time to time, summon other sessions thereof, in accordance with this Constitution.

Provided that the intervening period between the prorogation of one session and summoning of another session shall not be more than six months.

(2) His Majesty may prorogue the sessions of both or any of the Houses of Parliament.

(3) During the prorogation or recess of the House of Representatives, if one-fourth of the total Members present a petition desiring the summoning of the House in session or

meeting, His Majesty shall appoint a date and time for such session or meeting. The House shall meet or commence its session on the date and time so appointed.

(4) His Majesty may dissolve the House of Representatives on recommendation of the Prime Minister. His Majesty shall, while so dissolving the House of Representatives, designate a date to hold an election within six months for a new House of Representatives.

54. **Address and Message by His Majesty:** (1) His Majesty may address either House or the Joint Session of Parliament, and for such purpose may command the attendance of the Members.

(2) His Majesty shall address the first Session of Parliament to be convened after the election to the House of Representatives, and thereafter, the joint session of the two Houses of Parliament after the commencement of its session every year.

(3) His Majesty may send messages to any or both Houses of Parliament. The House to which such message has been sent shall as early as possible deliberate on the message and submit its opinion to His Majesty.

55. **Quorum:** Notwithstanding anything mentioned in this Constitution, no resolution shall be moved for decision in the meetings of any House of Parliament unless one-fourth of the total number of Members of the concerned House are present.

56. **Restriction on Discussion:** (1) The conduct of His Majesty, Her Majesty and the successor to His Majesty shall not be subject to discussion in either House of Parliament.

Provided that nothing mentioned in this Article shall be deemed to bar on the criticism of His Majesty's Government.

(2) No discussion shall take place in either House of Parliament on a matter which is sub judice in any court of Nepal.

(3) No discussion shall take place in either House of Parliament on any act performed by a Judge in course of his duties.

Provided that nothing mentioned in this Clause shall be deemed to prevent expressing any opinion on the conduct of a Judge during the proceedings held on resolution pursuant to Clause (7) of Article 87.

57. **Transaction of Business During Vacancy of Members:** Any House of Parliament may conduct its business notwithstanding any vacancy of Members and no proceeding shall become invalid merely on grounds of subsequent discovery that any person not entitled to take part in the proceeding of the House had actually participated.
58. **Voting in the House:** Unless otherwise provided in this Constitution, all questions submitted for decision in either House of Parliament shall be decided by a majority vote of the Members present and voting. Normally, the presiding Member shall have no right to vote; but, in case of a tie in votes, he may exercise his casting vote.
59. **Vote of Confidence:** (1) Whenever the Prime Minister deems it necessary or appropriate, during the term of his office, to ascertain the confidence of the House of Representatives on him, he may move resolution for a vote of confidence in the House of Representatives.
- (2) One-fourth of the total number of Members in the House of Representatives may move a no-confidence motion in writing against the Prime Minister.
- Provided that such no-confidence motion shall not be moved more than once in the same session.
- (3) A decision on the resolution moved pursuant to Clauses (1) and (2) shall be made by a majority of total number of Members of the House of Representatives.
60. **Ministers Entitled to Take Part in Both House:** A Minister shall be entitled to attend and participate in the

proceedings and deliberations of either Houses of Parliament and its Committees.

Provided that he shall not be entitled to vote in the House or Committee of which he is not a Member.

61. **Penalty for Unauthorized Presence or Voting:** If any person attends or votes as a Member in a meeting of either House of Parliament without taking oath pursuant to Article 50 or intentionally having knowledge of the lack of qualification for the Membership of the concerned House, he shall, on an order from the person presiding the meeting of the House, be liable to a penalty of one thousand rupees for each day of such attendance or voting. Such penalty shall be realised as governmental dues.
62. **Privileges:** (1) Subject to the provisions of this Constitution, there shall be full freedom of speech in both Houses of Parliament. No Member shall be arrested, detained or prosecuted in any court of law for anything said or any vote cast in the Houses.
- (2) Subject to the provisions of this Constitution, each House of Parliament shall have full powers to regulate its internal affairs and it shall be the exclusive right of the House concerned to decide on the regularity or otherwise of a matter. No question shall be raised in any court on matters relating thereto.
- (3) Subject to the provisions of this Constitution, no criticism shall be made suspecting the *bona-fide* of any proceeding conducted in any House of Parliament and, as regards anything said by any Member, nothing shall be published by willfully distorting or misleading the meaning thereof.
- (4) Subject to the provisions of this Constitution, the provision of Clauses (1) and (3) shall also apply to any person entitled to participate in the deliberations of the House other than the Members of the House.

(5) No proceedings shall be initiated in any court of law against any person for publication of any document, report, voting or proceeding which is done according to the authority granted by a House of Parliament subject to the provisions of this Constitution.

Explanation: For the purpose of this Clause and the Clauses (1), (2), (3) and (4) above, the word "House" shall mean and include the Committees of the House as well as the Joint Session of Parliament and the meetings of its joint committees.

(6) No Member of Parliament shall be arrested from the date of notice summoning it in session and till the duration of the session.

Provided that nothing mentioned in this clause shall be deemed to prevent arresting any Member on a criminal charge. If any Member is so arrested, the arresting officer shall immediately inform the person presiding the concerned House.

(7) Any breach of privileges of any House of Parliament shall be deemed to constitute a contempt of Parliament itself. The question whether or not any privilege has been breached shall be decided only by the concerned House.

(8) If any person commits a contempt of any House of Parliament, the person presiding the concerned House may, as per the decision of the House to that effect, censure or reprimand the person concerned or sentence with an imprisonment for the duration of the session of the House but not exceeding three months or with a fine upto five thousand rupees. Such amount of fine shall be realised as the governmental dues.

Provided that the House may pardon or remit or commute the sentence, if the person so accused apologises to the satisfaction of the House.

(9) Other aspects relating to privileges not provided herein shall be as determined by law.

63. **Procedures relating to Conduct of Business:** (1) Each House of Parliament shall, subject to the provisions of this Constitution, make Rules for conducting its proceedings, to

maintain order during its meetings, to provide for formation, functions and procedures of the Committees and to regulate other matters of the House or its Committee. These Rules shall come into force after approval by His Majesty.

(2) The proceedings of the Joint Session of Parliament and the formation as well as procedures of its Joint Committee shall be as laid down in the Rules made by His Majesty upon recommendation of the Speaker of the House of Representatives and the Chairman of the National Assembly.

(3) Until such time the Rules mentioned in clauses (1) and (2) are made, matters mentioned in those Clauses shall be governed by the Rules laid down by His Majesty.

64. **Committee:** The House of Representatives shall regulate by Rules the procedures of constituting and functioning of the Committees on Finance, Public Account, Human Rights, Foreign Policy, Natural Resources and Assets, Protection of Environment, Population and other subject Committees as required.

65. **Joint Committee:** (1) A Joint Committee shall be set up when a resolution requiring the constitution of a Joint Committee of two Houses is passed by either House for the purpose of regulating working procedure, or for resolving disagreement on any Bill, or for any other specific purpose between the two Houses.

(2) The Joint Committee shall consist of not more than fifteen Members to be nominated by each House at the ratio of two Members from the House of Representatives and one Member from the National Assembly.

66. **Secretariat of Parliament:** (1) His Majesty shall appoint the Secretaries of the House of Representatives and the National Assembly on the recommendation of its Speaker and the Chairman respectively and the Secretary-General of Parliament in consultation with both the Speaker and the Chairman.

(2) The establishment of a secretariat and other related matters for the purpose of conducting business of Parliament shall be as determined by law.

67. **Remuneration:** The remuneration and other privileges of the Speaker and Deputy Speaker of the House of Representatives and the Chairman and Vice Chairman of the National Assembly, and other Members of both Houses shall be determined by law, and until so determined, shall be fixed by His Majesty.

PART - IX **LEGISLATIVE PROCEDURE**

68. **Procedure to Introduce Bills:** (1) Bills may be introduced in either House of Parliament.

Provided that Finance Bill may be introduced only in the House of Representatives.

(2) Finance Bill and any Bill relating to Royal Nepalese Army and Armed Police Force may be introduced only as Government Bill. Any amendment to these Bills may be introduced only upon prior approval of His Majesty. Such approval shall be obtained through the person presiding the House.

(3) Finance Bill denotes any or all matters concerning the following subjects:

(a) any matter relating to imposition, collection, abrogation, remission, alteration of tax or regulation of taxation system;

(b) any matter relating to preservation of consolidated Fund or any other Public Fund, deposit of amounts in such Funds, appropriation or expenditure from these Funds or any reduction, increment or revocation of any amount intended to be appropriated or expended from such Funds;

(c) matters relating to raising of loans or regulating guarantees on loans to be endorse by His Majesty's Government or relating to amendment of laws concerning financial liability incurred or may incur by His Majesty's Government;

(d) matters relating to accepting, holding and investing of all kinds of revenue, repayment of loan and grant to be received in the Public Fund or relating to audit of the accounts of His Majesty's Government; and

(e) ancillary matters related directly to the above subjects.

(4) In case any question arises as to whether a bill is a Finance Bill or not, the decision of the Speaker shall be final.

69. **Procedure for Passage of Bills:** (1) A Bill passed by one House of Parliament shall be sent to the other House as soon as may be, and such Bill, if passed by the receiving House, shall be sent to His Majesty for assent.

(2) Finance Bill passed by the House of Representatives shall be sent to the National Assembly. The National Assembly shall, after deliberation on the Bill, send back the Bill, with suggestion, if any, to the House of Representatives within fifteen days from the date of receipt of the Bill .

(3) When a Finance Bill is received back with suggestion pursuant to Clause (2) above, the House of Representatives shall, after deliberations thereon and incorporating such suggestions as deemed appropriate, submit the Bill to His Majesty for assent.

(4) If the National Assembly withholds the Finance Bill received pursuant to Clause (2) for more than fifteen days, the House of Representatives may notwithstanding submit the Bill to His Majesty for assent.

(5) The National Assembly shall, except for the Finance Bill, return other Bills received from the House of Representatives either as passed or with suggestions to the House of Representatives within two months from the date of its receipt. If the National Assembly defaults to return the Bill, the House of Representatives may, by a resolution passed by a majority of more than fifty

percent of the existing Members, submit the concerned Bill for assent of His Majesty.

(6) If any Bill passed by one house is either rejected or passed with amendment thereon by another House, such Bill shall be sent back to the House where the Bill had originated.

(7) If any Bill, received back by the House of Representatives after being rejected or passed with amendment thereon by the National Assembly pursuant to Clause (6), is passed again, after reconsideration, in the original form or with amendment thereon through a resolution to that effect with a majority of more than fifty percent of its existing Members by the House of Representatives, such Bill shall be submitted for the assent of His Majesty.

(8) If any Bill, received back by the National Assembly with amendments from the House of Representatives, is passed again by the National Assembly with such amendment, such Bill shall be submitted to His Majesty for assent.

(9) The following Bills shall be introduced in the Joint Session of the two Houses and if the Bill is passed with or without amendment, the House in which the Bill had originated shall submit it to His Majesty for assent:

(a) Bill passed by the National Assembly but rejected by the House of Representatives; or

(b) Bill returned by the House of Representatives with amendment and the National Assembly having failed to agree on such amendment.

(10) Any Bill, which has been under consideration in any House, may be continued for discussion in the subsequent session despite the prorogation of the session.

Provided that any Bill introduced in the House of Representatives, either during its consideration by the House or such Bill, having been passed by that House, is under consideration in the National

Assembly, shall be deemed to have lapsed if the House of Representatives is either dissolved or its term expires.

70. **Withdrawal of Bill:** A Bill may be withdrawn by the Member introducing it with the approval of the concerned House.

71. **Assent on the Bill:** (1) Any Bill, to be submitted for assent to His Majesty pursuant to Article 69, shall be so submitted by the Speaker or the Chairman of the House of origin of the concerned Bill, after having been duly certified by him under his hand and seal.

Provided that, in respect of a Finance Bill, the Speaker shall certify it as the Finance Bill.

(2) When a Bill, submitted for assent pursuant to this Article, is assented to by His Majesty, both Houses shall be duly informed thereof.

(3) If His Majesty is of the opinion that any Bill, excepting Finance Bills, needs further consideration, He may revert the Bill with His message to its House of origin within one month from the date of submission of the Bill to Him.

(4) A Bill reverted with a message by His Majesty shall be submitted to the Joint Session of the two Houses for its consideration. If the Bill, passed again with or without amendment by the Joint Session, is submitted to His Majesty, He shall assent to such Bill within thirty days.

(5) A Bill assented to by His Majesty shall become an Act and such assent shall be deemed to have been granted after the Royal Seal is affixed thereon.

72. **Ordinance:** (1) Except when both Houses of Parliament are in session, if His Majesty is satisfied that the existing circumstances demand an immediate action, He may, without any prejudice to the provisions of this Constitution, promulgate such Ordinance as may be deemed expedient.

(2) An Ordinance promulgated under clause (1) shall have similar force and effect as an Act of Parliament.

Provided that every such Ordinance -

(a) shall be laid before both Houses of Parliament, and shall *ipso facto* cease to become effective if not approved by both Houses;

(b) may be repealed at any time by His Majesty;

(c) unless rendered ineffective or repealed under Subclause (a) and (b), shall *ipso-facto* cease to have effect after six months of its promulgation, or after sixty days of the commencement of the session of both the Houses.

Explanation: If the two House of Parliament sits on different dates, the date on which a House last commences its session shall be deemed to be the date of commencement of its session for the purpose of calculation of time in pursuance of this clause.

PART - X FINANCIAL PROCEDURE

73. **Prohibition to Levy Tax or to Raise Loans Without Authority of Law:** (1) No tax shall be levied and collected except in accordance with law.

(2) No loan shall be raised or guaranteed by His Majesty's Government except in accordance with law.

74. **Consolidated Fund:** Except the revenues of Guthi, all revenues received by His Majesty's Government, all loans raised on the security of these revenues, and all moneys received in repayment of any loan made under the authority of an Act shall, unless otherwise provided by an Act, be credited to a Public Fund to be known as the Consolidated Fund.

75. **Expenditures From the Consolidated Fund or Public Fund:** (1) No expenditure shall be incurred out of the Consolidated Fund or any other Public Fund except the following:-

(a) expenses charged on the Consolidated Fund;

- (b) expenses to be incurred under the Appropriation Act;
- (c) expenses to be incurred as Vote on Account under an Act, pending the enactment of Appropriation Bill; or
- (d) expenses to be incurred during exceptional situation under Vote of Credit Act giving only the particulars of the proposed expenditure.

Provided in respect of Contingency Fund, the provision of Article 82 shall apply.

76. **Expenditure Chargeable on The Consolidated Fund:** The expenses relating to the following heads shall be charged on the Consolidated Fund. Annual approval of Parliament for these expenses shall not be required.

- (a) The amount as provided by an Act relating to the expenditure of the Royal Family;
- (b) The amount required as remuneration, privileges and pension payable to the Chief Justice of Nepal and other Judges of the Supreme Court;
- (c) The amount required as remuneration and privileges payable to the following officials:-
 - (1) Speaker and Deputy Speaker of the House of Representatives;
 - (2) Chairman and the Vice-Chairman of the National Assembly;
 - (3) Chairman and Members of the Standing Committee of the Raj Parishad;
 - (4) Chief Commissioner and other Commissioners of the Abuse of Authority Investigation Commission;
 - (5) Auditor General;

(6) Chairman and the Members of the Public Service Commission;

(7) Chief Election Commissioner and Other Election Commissioners.

(d) The administrative expenses of the Supreme Court, the Raj Parishad, the Abuse of Authority Investigation Commission, the Department of Auditor General, the Public Service Commission, and the Election Commission;

(e) All charges relating to the debts within the liability of His Majesty's Government;

(f) Any sum required to satisfy any judgement or decree of a court against His Majesty's Government; and

(g) Any other sum determined by law to be chargeable on the Consolidated Fund.

77. **Estimates of Revenue and Expenditure:** (1) His Majesty shall, in respect of every financial year, cause to be laid before the Joint Session of Parliament an annual estimate explaining among others the following matters:-

(a) The estimates of revenue;

(b) The requisite amount to be charged on the Consolidated Fund; and

(c) The requisite expenses to be incurred under the Appropriation Act;

(2) While presenting the annual estimates pursuant to Clause (1), a statement on the expenses allocated to each Ministry in the previous financial year and the particular whether or not the objectives have been achieved in respect of such expenses, shall also be included therein.

78. **Appropriation Act:** The sums required to meet the expenditure to be provided for by an Appropriation Act shall be specified under appropriate heads in an Appropriation Bill.
79. **Supplementary Estimates:** (1) His Majesty shall, in respect of any financial year, cause to be laid before the House of Representatives, a supplementary estimate if it is found -
- (a) that the sum authorised to be spent for a particular service by the Appropriation Act for the current financial year is insufficient, or that expenditure on a new service not envisaged by the Appropriation Act for that year has become apparent; or
 - (b) that the expenditure made during that financial year is in excess of the amount authorised by the Appropriation Act.
- (2) The sums included in the supplementary estimate shall be specified under appropriate heads in a Supplementary Appropriation Bill.
80. **Votes on Account:** (1) Notwithstanding anything mentioned in this Part, any portion of the expenditure estimated for the financial year may, pending the enactment of Appropriation Bill, be incurred in advance by an Act.
- (2) A Vote on Account shall not be submitted until the estimates of revenue and expenditure have been presented in accordance with the provisions of Article 77 and the amount required under the Vote on Account shall not exceed one-third of the expenses estimated for the financial year.
- (3) The expenditure incurred in accordance with Vote on Account Act shall be included in the Appropriation Bill.
81. **Votes of Credit:** Notwithstanding anything mentioned in this Part, if His Majesty, owing to a local or national emergency due to either natural cause or threat of external aggression or internal disturbance or otherwise, is of the opinion that it is impractical or inexpedient in view of the security or interest of the State to specify the details required under Article 77, He may cause to be

laid before the House of Representatives a Vote of Credit Bill giving only the particulars of the proposed expenditure.

82. **Contingency Fund**: An Act may create a Contingency Fund into which shall be paid from time to time such sums as may be determined by law. Such fund shall be under the control of His Majesty's Government, and unforeseen expenditures shall be met out of such Fund by His Majesty's Government. The amount of the expenditure so met shall be reimbursed as soon as possible by an Act.
83. **Act Relating to Financial Procedure**: Matters relating to the transfer of the sums, as appropriated by an Act, from one head to another head, and other financial procedures may be regulated by an Act.

PART XI **JUDICIARY**

84. **Courts to Exercise Judicial Powers**: Judicial Powers of the Kingdom of Nepal shall be exercised in accordance with the provisions of this Constitution, the laws for the time being in force and the established principles of justice by the Courts and other judicial institutions.
85. **Courts of Kingdom of Nepal**: (1) The Courts in the Kingdom of Nepal shall comprise of the following three tiers:
- (a) Supreme Court;
 - (b) Appellate Courts; and
 - (c) District Courts.
- (2) In addition to the Courts mentioned in clause (1) above, law may also establish other Courts or tribunals for the purpose of hearing special types of cases.

Provided that no Court or tribunal shall be constituted for the purpose of hearing a particular case.

86. **Supreme Court:** (1) The Supreme Court shall be the apex Court in the judicial hierarchy. All Courts of Nepal and other institutions exercising judicial powers, except the Military Court, shall be under the Supreme Court. The Supreme Court shall have powers to inspect, supervise and give directives to its subordinate Courts and all other institutions which exercise judicial powers.

(2) The Supreme Court shall be a Court of Record and shall have power to initiate proceedings and impose punishment, as laid down by law, for contempt of itself or of its subordinate Courts or institutions exercising judicial powers.

(3) The Supreme Court shall consist of, in addition to the Chief Justice, a maximum of fourteen other Judges. If the number of existing judges become insufficient at any time due to escalation in the number of pending cases, a number of Ad Hoc Judges may be appointed for a fixed term.

87. **Appointment, Qualification and Conditions of Service of the Judges of Supreme Court:** (1) His Majesty shall appoint the Chief Justice on the recommendation of the Constitutional Council and other Judges of the Supreme Court on the recommendation of the Judicial Council. The tenure of office of the Chief Justice shall be seven years from the date of appointment.

(2) A person, in order to be eligible for appointment as Chief Justice, must have worked for at least five years as a Judge of the Supreme Court.

(3) A person, in order to be eligible for appointment of Judge of the Supreme Court, must have worked for at least ten years in the Appellate Court or any other equivalent post in the Judicial Service, or being a law graduate, has practised law as an Advocate or a Senior Advocate for at least fifteen years, or is a distinguished jurist having worked for at least fifteen years in the judicial or legal field.

Explanation: For the purposes of this Clause the services rendered prior to the commencement of this Constitution as a Judge of the Regional or Zonal Court shall be deemed as the service rendered in the Appellate Court.

(4) Whenever the office of the Chief Justice becomes vacant or the Chief Justice is unable to carry out the duties of his office due to illness or any other reason, or he cannot be present in office due to leave of absence or his being outside Nepal, His Majesty may designate the senior-most Judge to work as the Acting Chief Justice.

(5) The Chief Justice and other Judges of the Supreme Court shall hold office until the completion of sixty five years of age.

(6) The Chief Justice or any other Judge of the Supreme Court may by submitting in writing his resignation to His Majesty retire at any time.

(7) The Chief Justice or any other Judge of the Supreme Court shall be relieved from his office if, for reasons of incapacity, misbehaviour or having dishonestly neglected his official duties, the House of Representatives by a two third majority of the total number of its membership passes a resolution for his removal and the resolution is approved by His Majesty.

(8) The Chief Justice or any other Judge of the Supreme Court, who has been indicted as mentioned in Clause (7), shall be given reasonable opportunity to defend himself. For the purpose of such indictment, the House of Representative may constitute an Inquiry Committee consisting of its members and legal experts to record his statement, collect evidence and submit report with its recommendation. The working procedure of the Committee shall be as laid down by law.

(9) After the commencement of impeachment proceedings under Clause (7), the Chief Justice or the Judge of the Supreme Court shall not perform his duties till the indictment proceedings ends.

(10) The remuneration, allowances, leave, pension, gratuity and other conditions of service of the Chief Justice and other Judges of the Supreme Court, unless otherwise provided for in this Constitution, shall be as laid down by law.

(11) The remuneration, Privileges and other conditions of service of Chief Justice and other Judges of the Supreme Court shall not be altered to the detriment of the incumbent.

(12) Any person who has once held the office of the Chief Justice or any Judge of the Supreme Court shall not be eligible for appointment in any Government Service, neither shall he be entitled to engage in legal practice in any Court.

Provided that nothing in this Clause shall be deemed to prevent him for appointment in a political position or in a position of conducting judicial inquiry or in a position with responsibility of conducting study, research and investigations in the field of justice or law and giving advice, opinion and recommendation thereon.

(13) The Chief Justice may, on the recommendation of the Judicial Council, appoint a retired Judge of the Supreme Court or a person qualified to be appointed as a Judge of the Supreme Court pursuant to this Article as an Ad hoc Judge for a fixed term. The Ad hoc Judge thus appointed shall, during his tenure of office, be entitled to remuneration, allowances, leave and transportation privileges like comparable to a Judge of the Supreme Court.

Provided that the Chief Justice must obtain prior approval from His Majesty to appoint any Ad Hoc Judge under this Clause.

88. Jurisdiction of the Supreme Court: (1) Any citizen of Nepal shall be entitled to file petition in the Supreme Court for declaration of any Nepal law or any part thereof as void due to its inconsistency with the provision of this Constitution on grounds of unreasonable restriction imposed in the enjoyment of fundamental rights conferred by this Constitution or on any other ground. The Supreme Court shall have extraordinary jurisdiction, if it finds that the impugned law is inconsistent with the provisions of the Constitution, to declare such law as void and inapplicable *ab initio* or from the date of its decision.

(2) The Supreme Court, either for the enforcement of Fundamental Rights conferred by the Constitution, or for the enforcement of any legal right for which the existing law does not provide any remedy or despite such remedy it is inadequate or ineffective, or for determination of any constitutional or legal question involved in any dispute of public right or interest, shall have the extraordinary power to issue necessary and appropriate order either for the enforcement of concerned right or for settlement of the dispute. For this purpose, the Supreme Court shall, with a

view to impart full justice and to provide appropriate remedy, have the power to issue appropriate orders or writs including Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo warranto.

Provided that -

(a) The Supreme Court shall not, except on the ground of absence of Jurisdiction, interfere in any proceeding or decision of the Military Court or on any action taken against or punishment given to a non-military person for an offence other than an offence under the Army law.

(b) The Supreme Court shall not, except on the ground of absence of jurisdiction, interfere in any proceeding commenced or penalty imposed by the Parliament on the breach of its special privilege .

(3) The Supreme Court shall have the original and appellate jurisdiction as defined by law.

(4) The Supreme Court may review its own judgement or final order, subject to the conditions and circumstances as may be specified by law.

(5) If His Majesty seeks opinion of the Supreme Court on any complicated question of interpretation of any provision of the Constitution or of any other law, the Supreme Court shall, after due deliberation on the question referred to it, submit to His Majesty a report with its opinion thereon.

(6) The other powers and procedure of the Supreme Court shall be as laid down by law.

89. **Establishment and Operation of Appellate Court and District Court:** Subject to the provisions of this Constitution, the establishment, constitution and jurisdiction of the Appellate Courts, District Courts and other Courts subordinate to the Supreme Court shall be as provided by law.

90. Qualifications of Judges of Appellate Court and District Court: (1) Any person who is a citizen of Nepal shall be eligible for the appointment as the Chief Judge or any other Judge of the Appellate Court if he, having a Bachelor's Degree in law, has either worked as a District Judge or in any other equivalent post for a period of at least seven years, or being a law graduate has practised law as advocate or senior advocate for at least a period of ten years, or has worked for ten years either as a teacher of law or is a distinguished Jurist having done significant work in the field of law for at least a period of ten years.

(2) A person who is a citizen of Nepal shall be eligible to be appointed as a District Judge if he possesses a Bachelor Degree in law and has worked for at least four years as a second class gazetted officer in the Judicial Service.

Provided that nothing shall prevent the continuance or reappointment of a Judge who at the time of commencement of this Constitution is working as a Judge.

(3) The word "Judge" as mentioned in this Clause and the ensuing Clauses, unless a different meaning is intended with reference to any subject or context, shall include the Additional Judge.

91. Appointment and Service Condition of the Judges of Appellate Court and District Court: (1) The Chief Judge or other Judges of the Appellate Court and the Judges of the District Court shall be appointed by His Majesty on the recommendation of the Judicial Council.

Provided that His Majesty may authorise the Chief Justice to appoint District Judges on the recommendation of the Judicial Council.

(2) The Chief Justice shall have the power to transfer a Judge of the Appellate or District Court from one Court to another on the recommendation of the Judicial Council.

(3) The Chief Judge or any other Judge of the Appellate Court or any Judge of a District Court shall be relieved from his office or prosecuted in accordance with law, if the Judicial Council

recommends that, for reasons of incapacity, misbehaviour or dishonestly neglecting his official duties, it is necessary or expedient to remove or prosecute the concerned Chief Judge or any other Judge of the Appellate Court or any Judge of the District Court and such recommendation is approved by His Majesty.

Provided that, prior to recommending as such, the indicted Chief Judge or Judge shall be given a reasonable opportunity to defend himself. For the purpose of such indictment, the Judicial Council shall set up an inquiry Committee under the Chairmanship of a Judge of the Supreme Court to record his statement, collect evidence and submit report with its recommendation.

(4) The Chief Judge or any Judge of the Appellate Court or any Judge of the District Court may retire from his office by submitting his resignation in writing to His Majesty .

(5) The Chief Judge and other Judges of the Appellate and District Court shall hold office until the completion of sixty three years of age.

(6) The remuneration, allowances, leave, pension, gratuity and privileges and other condition of service of the Chief Judge and other Judges of the Appellate and District Courts shall be determined by law.

(7) The remuneration, privileges and conditions of service of the Chief Judge and other Judges of the Appellate and District Court shall not be altered to the detriment of the incumbent.

92. **Transfer or Engagement of Judges in other Assignment:** No Judge shall be transferred or engaged or deputed to any other work except that of a Judge.

Provided that His Majesty may, in consultation with the Judicial Council, depute a Judge of the Supreme Court or a Chief Judge of the Appellate Court to a work oc conducting judicial inquiry, or to any work of research or investigation concerning law and justice for a specific period, or to any work of national importance. The Chief Justice may depute Judges of the Appellate Court and District Court on the aforesaid works, including election, in consultation with the Judicial Council.

93. **Judicial Council**: (1) There shall be constituted a Judicial Council to recommend and advice, pursuant to the provisions of this Constitution, on matters of appointment and transfer of and disciplinary action against the Judges and on other matters relating to judicial administration. The Council shall consist of the following Chairman and Members --

- (a) Chief Justice - Ex Officio Chairman;
- (b) Minister of Justice - Ex Officio Member;
- (c) Two senior most Judges of the Supreme Court - Ex Officio Members; and
- (d) One distinguished jurist to be nominated by His Majesty.

(2) Notwithstanding anything mentioned in Clause (1), when the Judicial Council is to deliberate on any matter relating to a Judge or to make any recommendation to His Majesty about such Judge, who is also a Member of the Council, another Judge next in seniority shall participate as the Member.

(3) The term of office and privileges of the Member appointed pursuant to sub-Clause (d) of Clause (1) shall be determined by His Majesty.

(4) Except in so far as mentioned in Clause (1) above, other powers and duties of the Judicial Council shall be as specified by law.

(5) The Judicial Council shall frame Rules to regulate its procedures. Such Rules shall come into force after approval by His Majesty.

94. **Judicial Service Commission**: (1) His Majesty's Government shall, on the recommendation of the Judicial Service Commission, make appointments, transfers or promotion of or award departmental punishment to the Gazetted Officers of Judicial Service in the manner as provided by law.

Provided that while making any permanent recruitment in the Gazetted post of the Judicial Service from persons who are not already in the government service or while promoting any non-gazetted employee to a gazetted post within the Judicial Service, His Majesty's Government shall consult the Public Service Commission.

(2) The Judicial Service Commission shall consist of the following persons as Chairman and Members --

(a) Chief Justice - Ex-officio Chairman;

(b) Minister of Justice - Ex-officio Member;

(c) Seniormost Judge of the Supreme Court - Ex- officio Member;

(d) Chairman, Public Service Commission - Ex- officio Member;

(e) Attorney General - ex officio Member;

(3) Other powers, duties and procedures of the Judicial Service Commission shall be as laid down by law.

95. **Duty to Extend Cooperation:** It shall be the duty of His Majesty's Government and all offices and officials subordinate to His Majesty's Government to assist the Supreme Court and other Courts in performance of the function of dispensing Justice.

96. **Order and Decision of the Court to be Binding:** (1) An order or decision of a Court rendered in respect of any case or judicial proceeding shall be binding upon all.

(2) An interpretation of law or a legal principle laid down by the Supreme Court in respect of any case or judicial proceeding shall be binding upon His Majesty's Government and all other Courts and offices.

PART XII
ABUSE OF AUTHORITY INVESTIGATION COMMISSION

97. **Abuse of Authority Investigation Commission:** (1) There shall be constituted in the Kingdom of Nepal a commission to be called Abuse of Authority Investigation Commission consisting of the Chief Commissioner and such number of other Commissioners as may be required. If other commissioners, in addition to the Chief Commissioner, are also appointed, the Chief Commissioner shall act as the Chairman of the Commission.
- (2) His Majesty shall appoint the Chief Commissioner and other Commissioners on the recommendation of the Constitutional Council.
- (3) The tenure of the Chief Commissioner and other Commissioners shall be six years from the date of appointment and they shall be eligible for reappointment.

Provided that -

- (a) the Chief Commissioner or Commissioner shall retire from his post if he completes sixty five years of age prior to the completion of tenure;
- (b) the Chief Commissioner and the Commissioners may be removed from their post on the same ground and in the same manner as has been laid down for the removal of a Judge of the Supreme Court.
- (4) The office of the Chief Commissioner and Commissioners shall be deemed vacant under the following circumstances:
- (a) if he dies;
- (b) if his resignation in writing is accepted by His Majesty ; or
- (c) if his tenure is completed, or he is removed pursuant to Clause (3) above.

(5) No person shall be eligible for appointment as the Chief Commissioner or Commissioner unless he fulfills the following qualifications:

- (a) he holds a graduate degree from any University recognised by His Majesty's Government; and
- (b) he is not a member of any political organisation immediately prior to his appointment; and
- (c) he has experience of at least ten years in the field of law, accounts, revenue, construction, development or research and is distinguished in the related field; and
- (d) he has completed the age of forty five years.

(6) The remuneration and other conditions of service of the Chief Commissioner and other Commissioners shall be as determined by law. The terms and conditions of service of the Chief Commissioner and other Commissioners shall not be altered to the detriment of the incumbent.

(7) Any person once appointed as the Chief Commissioner or other Commissioners shall not be eligible for appointment in any other Government service.

(a) Provided that nothing mentioned herein shall prevent on the appointment of a Commissioner of the Abuse of Authority Investigation Commission as its Chief Commissioner. While computing the tenure of a Commissioner appointed as the Chief Commissioner, the period of his service as Commissioner shall also be reckoned.

(b) Provided further that nothing mentioned in this Clause shall prevent on his appointment in a position of political nature or in a position with the duty of conducting investigation, inquiry or probe, or in a position with responsibility of conducting study or research in any field and submit his advice, opinion or recommendation therein.

98. **Function, Duties and Powers of the Abuse of Authority Investigation Commission:** (1) The Abuse of Authority Investigation Commission shall have the powers to conduct, either by itself or through others, inquiries and investigations upon its own information or upon receipt of a complaint from any person about the misuse of authority by means of improper conduct or corruption of a person holding public office.

Provided that the Abuse of Authority Investigation Commission shall not have jurisdiction over the following officials -

(a) the official against whom such action is provided separately by this Constitution;

(b) the official to whom the Army Act applies.

(2) If the Abuse of Authority Investigation Commission detects through inquiry or investigation performed pursuant to Clause (1) that any person holding public office has misused his authority by improper conduct, the Commission may either alert the concerned person or recommend the concerned authority to take disciplinary or other appropriate actions against such person.

(3) If the Abuse of Authority Investigation Commission detects through inquiry or investigation performed pursuant to Clause (1) that any person holding public office has committed any act defined as corruption according to law, the Commission may file or authorise to file a case in the manner laid down by law against such person or any other person involved therein, in the Court having jurisdiction.

(4) Subject to the provision of this Constitution, other functions, duties, powers and procedures of the Abuse of Authority Investigation Commission shall be as laid down by law.

(5) The Abuse of Authority Investigation Commission may delegate some of its duties, powers and functions relating to inquiry, investigation or filing of cases to the Chief Commissioner or any Commissioner or any Officer of His Majesty's Government to be exercised subject to the conditions specified in the delegating instrument.

(6) The Abuse of Authority Investigation Commission shall submit to His Majesty annual reports regarding its activities carried pursuant to this Constitution. His Majesty shall cause such reports to be laid before the Parliament.

PART XIII AUDITOR GENERAL

99. **Auditor General:** (1) There shall be an Auditor General of the Kingdom of Nepal who shall be appointed by His Majesty on the recommendation of the Constitutional Council.

(2) The term of office of the Auditor General shall be six years from the date of appointment and he shall be eligible for reappointment.

Provided that

(a) the Auditor General shall retire from his post if he completes sixty five years of age prior to the completion of tenure; or

(b) the Auditor General may be removed from office on the same ground and in the same manner as has been laid down for removal of a Judge of the Supreme Court.

(3) The office of the Auditor General shall be deemed vacant in the following circumstances:

(a) if he dies;

(b) if his resignation in writing is accepted by His Majesty ; or

(c) if his tenure is completed, or is removed from office pursuant to Clause (2) above.

(4) No person shall be eligible for appointment as the Auditor General, unless he fulfills the following qualifications:

(a) he holds a Graduate Degree from any university recognized by His Majesty's Government;

(b) he has worked for at least five years as a Special Class Officer of His Majesty's Government or has an experience in the field of accounting of not less than fifteen years;

(c) he is not a member of any political organisation immediately prior to his appointment; and

(d) he has completed the age of forty five years.

(5) The remuneration and other condition of service of the Auditor General shall be as determined by law. The terms and conditions of service of the Auditor General shall not be altered to the detriment of the incumbent.

(6) Any person once appointed to the office of the Auditor General shall not be eligible for appointment in any other Government service.

Provided that nothing mentioned in this Clause shall prevent his appointment in a position of political nature, or of research or investigation on any subject or of submitting recommendation or opinion after such research or investigation.

100. **Function, Duties and Powers of the Auditor General:**

(1) The Auditor General shall audit the account of the Supreme Court, the Parliament, Raj Parishad, Abuse of Authority Investigation Commission, Auditor General Office, Public Service Commission, Election Commission and other offices of Constitutional Organisations, Royal Nepal Army and Nepal Police

and all other government offices and Courts in the manner laid down by law, and with particular attention to the regularity, austerity, efficiency, effectiveness and the propriety of the expenses.

(2) The Auditor General shall be consulted on appointment of auditors for the audit of the corporate bodies having more than fifty percent shares and assets owned by His Majesty's Government. The Auditor General may also issue necessary directives in respect of the principles to be adopted in auditing such corporations.

(3) The Auditor General and his assistants shall have at all times access to the documents concerning the accounts for the purpose of carrying out the function mentioned in Clause (1) above. It shall be the duty of the concerned office to provide all such documents or information which may be demanded by the Auditor General or his subordinates.

(4) Subject to the provision of the concerned law, all such accounts liable to be audited pursuant to Clause (1) shall be maintained in the manner specified by the Auditor General.

(5) In addition to the accounts of the offices mentioned in Clause (1) above, law may also provide for the audit of accounts of other offices or organisations specified therein, to be conducted by the Auditor General.

(6) The Auditor General shall submit annual report of the works of his office to His Majesty. His Majesty shall cause such report to be laid before the Parliament.

PART XIV **PUBLIC SERVICE COMMISSION**

101. **Public Service Commission:** (1) There shall be a Public Service Commission of the Kingdom of Nepal consisting of a Chairman and such other Members as may be required.

(2) The Chairman and the Members of Public Service Commission shall be appointed by His Majesty on recommendation of the Constitutional Council.

(3) At least fifty percent of the total number of the Members of Public Service Commission shall be appointed from persons who have worked for ten or more years in any government office and the rest of the Members shall be appointed from persons distinguished for their contributions in the fields like science, art, literature, law and other spheres of national life through research works, intellectual skills, or academic teaching or any other significant work.

(4) The term of office of the Chairman and the Members of Public Service Commission shall be six years from the date of appointment and they shall be eligible for reappointment.

Provided that:

(a) the Chairman or any Member of Public Service Commission shall retire from his post if he completes sixty five years of age prior to the completion of tenure;

(b) the Chairman and the Members of Public Service Commission may be removed from their post on the same ground and in the same manner as has been laid down for removal of a Judge of a Supreme Court.

(5) The office of the Chairman and the Members of Public Service Commission shall be deemed vacant in the following circumstances:

(a) if he dies;

(b) if his resignation in writing is accepted by His Majesty; or

(c) if his tenure is completed, or is removed from office pursuant to Clause (4).

(6) No person shall be eligible for appointment as the Chairman or the Member of Public Service Commission, unless he fulfills the following qualifications:

(a) he holds a post graduate degree from any university recognised by His Majesty's Government;

(b) he is not a member of any political party immediately prior to his appointment; and

(c) he has completed the age of forty five years.

(7) The remuneration and other conditions of service of the Chairman and the Members of Public Service Commission shall be as determined by law. The remuneration and conditions of service of the Chairman and the Members of the Commission shall not be altered to the detriment of the incumbent.

(8) Any person once appointed as the Chairman or Member of Public Service Commission shall not be eligible for appointment in any other Government service.

(a) Provided that nothing mentioned herein shall prevent on the appointment of a Member of the Public Service Commission as Chairman thereof. While computing the tenure of a Member appointed as the Chairman, the period of his service as Member shall also be reckoned.

(b) Provided further that nothing mentioned in this Clause shall prevent on his appointment in a position of a political nature, or in a position with the duty of conducting investigation, inquiry or probe, or in a position with responsibility of conducting study or research in any field and submit his advice, opinion or recommendations therein.

102. **Powers, Functions and Duties of Public Service Commission:** (1) It shall be the duty of Public Service Commission to conduct examination for selection of suitable candidates to be appointed in the posts of civil service.

Explanation: For the purpose of this Article, all other services and posts of His Majesty's Government, except the officers and other ranks of Army and the Police service and posts thereof and such other services or posts as are excluded from the civil service by any law, shall be deemed as civil service or posts.

(2) No permanent appointment in the posts carrying benefits of pension shall be made without any consultation with the Public Service Commission.

(3) The Public Service Commission shall be consulted on the following subjects -

(a) matters concerning law relating to the conditions of civil service;

(b) matters relating to the principles to be applied in the course of appointment, promotion and departmental action concerning civil service or post;

(c) matter concerning the suitability of any candidate for appointment for more than six months in any civil post;

(d) matter concerning the suitability of any candidate for transfer or promotion from one cadre to another within the civil service or from other government services to civil service;

(e) matter concerning the permanent transfer or promotion of any employee from a position generally exempted from the requirements of consultation with the Public Service Commission to any post in respect of which consultation of the Public Service Commission is required; and

(f) matter relating to departmental punishment to any civil servant.

(4) Notwithstanding anything mentioned in Clause (3), matters falling within the jurisdiction of the Judicial Service Commission, as provided in Article 94, shall be dealt with accordingly.

(5) The Public Service Commission may delegate any of its function, duties and powers to any of its Members or a Committee of such Members or to any employee of His Majesty's Government to be exercised and executed subject to the conditions prescribed during delegation.

(6) Subject to the provisions of this Constitution, other functions, duties and powers of the Public Service Commission shall be as laid down by law.

(7) The Public Service Commission shall submit to His Majesty annual report on the performance of its functions. His Majesty shall cause such report to be laid before the Parliament.

PART XV ELECTION COMMISSION

103. **Election Commission**: (1) There shall be an Election Commission of the Kingdom of Nepal consisting of the Chief Election Commissioner and such number of other Election Commissioners as may be deemed necessary. Where other Election Commissioners are also appointed in addition to the Chief Election Commissioner, the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(2) His Majesty shall appoint the Chief Election Commissioner and other Election Commissioners on the recommendation of the Constitutional Council.

(3) The term of office of the Chief Election Commissioner and other Election Commissioners shall be six years from the date of appointment and they shall be eligible for reappointment.

Provided that -

(a) the Chief Election Commissioner or any Election Commissioner shall retire from his post if he completes sixty five years of age prior to the completion of tenure;

(b) the Chief Election Commissioner and other Election Commissioners may be removed from office on the same ground and in the same manner as has been laid down for removal of a Judge of the Supreme Court.

(4) The office of the Chief Election Commissioner and any Election Commissioner shall be deemed vacant in the following situations:

- (a) if he dies;
- (b) if his resignation in writing is accepted by His Majesty ; or
- (c) if his tenure is completed, or is removed from office pursuant to Clause (3) above.

(5) No person shall be eligible for appointment as the Chief Election Commissioner or Election Commissioner, unless he fulfills the following qualifications -

- (a) he holds a Graduate Degree from any university recognised by His Majesty's Government;
- (b) he is not a member of any political organisation immediately prior to his appointment; and
- (c) he has completed the age the forty five years.

(6) The remuneration and other conditions of service of the Chief Election Commissioner and other Election Commissioners shall be as determined by law. The remuneration and conditions of service of the Chief Commissioner and other Election Commissioners shall not be altered to the detriment of the incumbent.

(7) Any person once appointed as the Chief Election Commissioner or an Election Commissioners shall not be eligible for appointment in any other Government service.

- (a) Provided that nothing mentioned herein shall prevent on the appointment of an Election Commissioner as the Chief Election Commissioner. While computing the tenure of the Commissioner appointed as the Chief Election Commissioner, the period of his service as the Commissioner shall also be reckoned.

(b) Provided further that nothing mentioned in this Clause shall prevent on his appointment in a position of a political nature, or in a position with the duty of conducting investigation, inquiry or probe, or in a position with responsibility of conducting study or research in any field and submit his advice, opinion or recommendations therein.

104. Functions, Duties and Powers of the Election Commission:

(1) The Election Commission shall, subject to the provisions of this Constitution and other laws, conduct, supervise, direct and control the election to the Parliament and other local organisations of village, town and district levels. The electoral rolls of the voters for the above purposes shall also be prepared by the Election Commission.

(2) If a question, whether a candidate is or has become disqualified pursuant to Article 47, arises after the nomination of candidacy for election to Parliament has been filed and prior to the election is held, the Election Commission shall make a final decision thereon.

(3) The Election Commission may delegate any of its function, duties and powers to the Chief Election Commissioner or the Election Commissioners or to any officers of His Majesty's Government to be exercised and executed subject to the conditions prescribed during delegation.

(4) Subject to the provision of the Constitution, other functions, duties and procedures of the Election Commission shall be laid down by law .

105. Electoral Constituency Delimitation Commission:

(1) His Majesty shall on the recommendation of the Constitutional Council constitute an Electoral Constituency Delimitation Commission. The tenure of this Commission shall be as fixed by His Majesty.

(2) The Electoral Constituency Delimitation Commission shall, subject to the provisions of Article 45, determine the number of seats of Members to be elected from each district to the House of Representative and thereafter delimit the Constituencies

of the districts having more than one seat. The Commission, while delimiting the constituencies, shall take into consideration the boundaries of the administrative districts, geographical factors, density of population, transportation facilities and communal homogeneity or heterogeneity of the local residents.

(3) No question shall be raised in any Court of law on the matter of allocation of seats and the delimitation of constituencies made by the Electoral Constituency Delimitation Commission pursuant to Clause (2).

(4) The remuneration and conditions of service of the Chairman and other Commissioner of the Electoral Constituency Delimitation Commission shall be comparable to the Chief Election Commissioner and the Election Commissioner respectively.

(5) Subject to the provisions of this Constitution, other functions, duties and procedures of the Electoral Constituency Delimitation Commission shall be laid down by law .

106. **Election Tribunal**: Complaints relating to election shall be heard and decided by the Tribunal as provided by law.
107. **Restriction on Courts to Interfere in matters relating to Election**: Notwithstanding anything mentioned in other Articles of the Constitution, no question shall be raised in any Court regarding any election to the membership of the Parliament except on matters where election petition has been filed in the Election Tribunal pursuant to Article 106.
108. **His Majesty's Government to Provide Employees to the Election Commission**: His Majesty's Government shall provide to the Election Commission such number of employees and other materials as may be required to carry out its functions.

PART XVI
ATTORNEY GENERAL

109. **Appointment of Attorney General:** (1) There shall be an Attorney General of the Kingdom of Nepal to be appointed by His Majesty on the recommendation of the Prime Minister. The Attorney General shall hold office during the pleasure of His Majesty.

(2) No person shall be eligible to be appointed as Attorney General unless he is qualified to be appointed as a judge of the Supreme Court.

(3) The position of the Attorney General shall be deemed vacant under the following circumstances:

(a) if he dies; or

(b) if his resignation in writing is accepted by His Majesty ; or

(c) if he is relieved from office by His Majesty on the recommendation of the Prime Minister.

(4) The remuneration and other conditions of service of the Attorney General shall be as determined by law.

110. **Powers, Functions and Duties of the Attorney General:** (1) The Attorney General shall be the Chief Legal Advisor of His Majesty's Government. It shall be the duty of the Attorney General to give advice on Constitutional and legal matters to His Majesty's Government and such other authorities as His Majesty's Government may specify.

(2) The Attorney General or officers subordinate to him shall represent His Majesty's Government in suits wherein the right or interest of His Majesty's Government is involved or in suits which concerns His Majesty's Government. The Attorney General shall have the ultimate authority to decide as to whether or not any suit shall be filed on behalf of His Majesty's Government in any Court or judicial authority.

(3) In addition to the powers, functions and duties as mentioned in Clause (1) and (2), other powers, functions and duties of Attorney General shall be as specified in this Constitution and other laws.

(4) In course of his official duty, the Attorney General shall have the right to appear in any Court, office or authority of the Kingdom of Nepal.

(5) The Attorney General may delegate his powers, functions and duties to his subordinates to be exercised and executed subject to the conditions specified during delegation.

(6) The Attorney General shall submit every year to His Majesty an annual report on the performance of his functions as provided in this Constitution and other laws, including the statistics on crime in the Kingdom of Nepal. His Majesty shall cause such report to be laid before the Parliament.

111. **Right of Appearance in the Parliament:** The Attorney General shall have the right to appear and express his opinion on any legal question in either House or any of its Committee or Joint Session of the Parliament.

Provided that he shall have no right to vote.

PART XVII **POLITICAL ORGANISATIONS**

112. **Prohibition to Ban Political Parties:** (1) Persons committed to a common political objective and programme may, subject to the laws made pursuant to the Proviso (3) of Clause (2) of Article 12, form and run political organisation or party of their choice and may propagate and broadcast or to cause to do so in order to secure support and cooperation of the general public towards their objectives and programmes, and may perform any other acts for such purposes. Any law promulgated to impose a ban on any of such activities or any measure undertaken or any decision made to this effect shall be inconsistent with this Constitution and shall, therefore, be void.

(2) Any law promulgated with effect to permit participation only of a single political organisation or party or of persons having the same political ideology in the administration or elections of the country, or any measure undertaken or any decision made to this effect shall, being inconsistent with this Constitution and be void.

(3) The Election Commission shall withhold its recognition to any political organisation or party which has been formed with the objectives mentioned in Clause (2) above or on the basis of religion, community, caste, tribe or regionality.

113. Registration of Political Organisation or Party to be Recognised for Contesting Elections :

(1) Each political organisation or party desiring to secure recognition from the Election Commission for the purpose of election, shall register themselves in the office of the Election Commission in accordance with the procedure laid down by the Commission. An application submitted for registration shall also contain clear and complete information about the name of the concerned political organisation or party, the names and address of the members of its Executive Committee or any Committee similar thereto. Such application shall also accompany the Rules and Manifesto of the organisation or party.

(2) The political organisations or parties, in order to qualify for registration pursuant to Clause (2) above, shall also fulfill the following conditions in addition to the requirements mentioned in this Part :

(a) That the Constitution and the Rules of such political organisation or party must adhere to the norms of democracy;

(b) That the Constitution and the Rules of the organisation or party shall provide for election of the office bearers of the organisation or party every five year;

(c) That the organisation or party must have complied with the provisions of Article 114; and

(d) That the organisation or party must have secured a minimum of three percent of the total votes cast in the last election to the House of Representatives.

Provided that the conditions and restrictions mentioned in this Sub-Clause shall not be applicable in respect of contesting the first election to the House of Representatives to be held pursuant to this Constitution.

Explanation: If any candidate belonging to a party which has obtained less than three percent of the total votes cast is elected to the House of Representatives, such person shall be deemed to be an independent candidate irrespective of his affiliation to any party or organisation.

(3) The Election Commission shall refuse to register any political organisation or party which prejudicially restrict any citizen of Nepal is from becoming its member on the basis of religion, caste, tribe, language or sex, or if the name, objective, symbol or flag indicates as belonging to any particular religion or being communal or of a nature tending to disintegrate the country.

114. **Women Candidate:** In any election to the House of Representatives, at least five percent of the total number of candidates contesting election from any organisation or party must be woman candidates.

PART XVIII EMERGENCY POWERS

115. **Emergency Powers:** (1) If a situation of grave emergency exists due to war or external aggression or armed revolt or extreme economic depression, whereby the sovereignty and integrity of the Kingdom of Nepal or the security of any part of the country is threatened, His Majesty may, by a Proclamation declare or Order a State of Emergency throughout the Kingdom of Nepal or on any specified part thereof.

(2) Any Proclamation or Order made pursuant to Clause (1) above shall be laid before the House of Representatives within three months for its approval.

(3) If the Proclamation or Order placed for approval pursuant to Clause (2) is approved by a two third majority of the House of Representatives, the said Proclamation or Order shall remain effective for a period of six months from the date of its first announcement.

(4) If the Proclamation or Order placed in the House of Representatives pursuant to Clause (2) is not approved pursuant to Clause (3), the Proclamation or Order shall be deemed to be ineffective *ipso facto*.

(5) The House of Representatives may, by a resolution passed by a two third majority of the members present and voting in the House prior to the expiration of the period mentioned in Clause (3) to the effect that circumstances mentioned in Clause (1) above continue to exist, extend the period of Proclamation or Order declaring the State of Emergency once for another period as specified in the resolution but not exceeding six months. The Speaker shall submit information to His Majesty about such extension.

(6) The powers conferred by Clause (2), (3), (4) and (5) on the House of Representatives shall be exercised by the National Assembly, during the period when the House of Representatives remains dissolved.

(7) When a State of Emergency is declared pursuant to Clause (1), His Majesty may issue necessary orders to meet the exigencies. Such orders shall be applicable as law during the period of the State of Emergency.

(8) At the time of Proclamation or Order of Emergency pursuant to Clause (1), His Majesty may also suspend sub-Clauses (a), (b), (d) and (e) of Clause (2) of Article 12, Clause (1) of Article 13, Articles 15, 16, 17, 22 and 23 till the validity of the Proclamation of emergency.

Provided that the right to remedy of Habeas Corpus shall not be suspended.

(9) While any Article of this Constitution is suspended by His Majesty pursuant to Clause (8), no petition for the enforcement of rights guaranteed by the said Articles shall lie in

any Court and no question shall be raised in respect thereof in any Court.

(10) During the existence of Proclamation or Order issued under Clause (1), if any officer having acted in contravention of any law or maliciously, causes damage to any person, the affected person may within three months from the date of termination of the Proclamation or Order file a petition for compensation for the said damage. If the Court finds the claim valid, it may require the payment of reasonable compensation to the petitioner.

(11) His Majesty may at any time revoke, during its continuance, the Proclamation or Order of the State of Emergency declared pursuant to Clause (1).

PART XIX **AMENDMENT OF THE CONSTITUTION**

116. **Amendment of Constitution:** (1) Any bill purporting to amend or repeal any Article of this Constitution may be introduced, without contravening the spirit of the Preamble of this Constitution, in either House of the Parliament.

Provided that this Article shall not be subject to amendment.

(2) A Bill introduced pursuant to Clause (1) and passed by both Houses by a two third majority of the Members present and voting during the presence of two third of the total number of Members in each House, shall be submitted to His Majesty for assent and His Majesty may within thirty days either grant assent to such bill or send the bill back with his message for reconsideration to the House where the bill had originated.

(3) Any bill so referred back by His Majesty pursuant to Clause (2) above, shall be reconsidered in each House of the Parliament. If the bill, passed by both Houses after undergoing the procedures mentioned in Clause (2) in its original or amended form, is resubmitted to His Majesty for assent, His Majesty shall grant assent to the bill within thirty days.

PART XX
MISCELLANEOUS

117. **Constitutional Council**: (1) There shall be a Constitutional Council to make recommendation for appointment of officials of the Constitutional bodies provided in this Constitution. The Council shall consist of the following Chairman and Members.
- (a) Prime Minister
Chairman
 - (b) Chief Justice
Member
 - (c) Speaker of the House of Representative
Member
 - (d) Chairman of the National Assembly
Member
 - (e) Leader of the opposition party in the House of Representatives
Member
- (2) For the purpose of submitting recommendation for appointment of Chief Justice, the Minister of Justice and a Judge of the Supreme Court shall also participate in the Constitutional Council.
- (3) The powers, functions and duties of the Constitutional Council shall be as specified by this Constitution and other laws.
- (4) The Constitutional Council constituted pursuant to Clause (1) shall have the power to regulate its own business.
118. **Provision regarding Royal Nepal Army**: (1) There shall be a National Defense Council of Nepal consisting of the following Chairman and Members.

- | | | |
|------------------------|---|----------|
| (a) Prime Minister | - | Chairman |
| (b) Defense Minister | - | Member |
| (c) Commander-in-chief | - | Member |

(2) His Majesty shall perform the operation and deployment of Royal Nepal Army on the recommendation of the National Defense Committee.

(3) The establishment, management and other matters concerning Royal Nepal Army shall be as determined by law.

(4) The National Defence Council may regulate its own working procedure.

119. **Supreme Command of the Royal Nepal Army and Appointment of Commander-in-Chief:** (1) His Majesty is the Supreme Commander of the Royal Nepal Army.

(2) His Majesty shall, on the recommendation of the Prime Minister, appoint the Commander-in-Chief of Royal Nepal Army.

120. **Royal Nepalese Ambassador and Envoy:** (1) His Majesty shall appoint the Royal Nepalese Ambassadors.

(2) His Majesty may designate Royal Representatives to represent Him on special occasions. He may also appoint Special Envoy for specified purposes.

121. **Provisions regarding Employees of Royal Palace:** The conditions of service of the employees of the Royal Palace including appointment, dismissal, salary, allowances, leave and pension, shall be determined by the Rules made by His Majesty at His discretion.

122. **Pardon:** His Majesty shall have power to grant pardon and to suspend, commute or remit any sentence passed by any Court, Tribunal, Court Martial, or by any other judicial or quasi-judicial or administrative authority or institution.

123. **Titles, Honours and Decorations:** (1) His Majesty shall confer the titles, honours or decorations of the Kingdom.
- (2) No citizen of Nepal shall, without the approval of His Majesty, accept any title, honour or decoration from the government of a foreign country.
124. **Constitution of Civil Service:** His Majesty's Government, may, in order to run the administration of the country, constitute different cadres within the civil service. The constitution, administration and condition of service of these services shall be determined by law.
125. **Citizenship for Appointment of Constitutional Positions:** In order to be eligible for appointment to Constitutional positions under this Constitution, a person must either be a citizen of Nepal by birth or descent, or being a naturalised citizen must have resided in Nepal for at least ten years.
126. **Ratification, accession, acceptance and approval of Treaty and Agreements:** (1) The ratification, accession, acceptance and approval of treaty and agreement in which the Kingdom of Nepal or His Majesty's Government is a party shall be made in the manner prescribed by law.
- (2) The law to be made pursuant to Clause (1) shall, in addition to other provisions, also incorporate a provision that the ratification, accession, acceptance and approval of a treaty or agreement relating to the following matters shall be made only by a two third majority of the members present in the Joint Session of the Parliament:
- (a) Peace and Friendship;
 - (b) Defense and Strategic alliance;
 - (c) Boundaries of Nepal; and
 - (d) Natural resources and distribution in the utilisation thereof.

Provided that among the treaties and agreements relating to the matters mentioned in Sub-Clauses (a) and (d), if any treaty or agreement of an ordinary nature having no extensive, severe and enduring effect upon the country, such treaty or agreement may be ratified, acceded, accepted or approved by the House of Representatives by a simple majority of the Members present and voting.

(3) Any treaty or agreement concluded after the commencement of this Constitution shall not be binding upon the Kingdom of Nepal or His Majesty's Government until it is ratified, acceded, accepted or approved pursuant to this Article.

(4) Notwithstanding anything mentioned in Clause (1) or (2), no treaty or agreement shall be made which compromises the territorial integrity of Nepal.

127. Power to Remove Difficulties: If any difficulty arises in bringing this Constitution into force, His Majesty may issue necessary orders to remove these difficulties. The orders so issued shall be placed in the Parliament.

PART XXI TRANSITIONAL PROVISIONS

128. Provision Regarding Council of Ministers: (1) The Council of Ministers existing at the commencement of this Constitution shall be deemed to have been constituted pursuant to this Constitution.

(2) If the Council of Ministers, as mentioned in Clause (1), is dissolved for any reason, His Majesty shall constitute another Council of Ministers consisting of representatives from the main political parties.

(3) The Council of Ministers constituted pursuant to Clause (2) above shall consist of a Prime Minister and, on his recommendation, such other Ministers, State Ministers and Assistant Ministers, as may be required.

129. **Enactment of Laws Prior to First Session of Parliament:** After the commencement of this Constitution, His Majesty may, until the convening of the first session of Parliament, enact and promulgate necessary laws on the advice and consent of the Council of Ministers.
130. **Provision Regarding Constitutional Organisations and Officials Appointed Pursuant to the Constitution of Nepal 2019 (1962):** (1) Among the Constitutional Bodies and the Officials thereof existing at the time of the commencement of this Constitution, such Bodies and Officials thereof, which are not reestablished under this Constitution, shall cease to exist and continue after the commencement of this Constitution. As regards the Officials holding positions in the Constitutional Bodies, which continue to exist after the commencement of this Constitution, they shall cease to continue in their respective positions unless reappointed within nine months from the date of commencement of this Constitution.

Provided that His Majesty may, if deemed necessary, relieve any Official of such Constitutional Bodies prior to the expiry of the said period.

(2) The powers, functions and duties of the Constitutional Council shall be exercised and performed by the Council of Ministers, until the convening of the first session of Parliament after the election held under this Constitution.

(3) The Zonal and Regional Courts established under the Judicial Administration Reform Act, 2031 (1975) shall continue to exist until the Appellate Courts are constituted pursuant to Article 89, and the Judges incumbent in such Courts shall continue to hold their respective positions.

(4) The District Courts existing at the time of commencement of this Constitution shall, until provided otherwise, continue as existent and the Judges incumbent in such Courts shall continue to hold their positions until provided otherwise.

(5) All applications and complaints pending in the Prevention of Abuse of Authority Commission shall be transferred to the Abuse of Authority Investigation Commission.

(6) All cases pending in the Prevention of Abuse of Authority Commission shall be transferred to the Central Regional Court existing pursuant to Clause (5) and the said Court shall try and decide such cases in accordance with the existing law.

(7) All appeals pending in the Prevention of Abuse of Authority Appellate Court and the petitions and reports relating thereto shall be transferred to the Supreme Court and the Supreme Court shall decide such appeals or petitions in accordance with the existing law.

(8) The petitions filed in the Judicial Committee in accordance with law and pending their disposal, shall be transferred to the Supreme Court after the commencement of this Constitution. If the Supreme Court considers any of such petitions reasonable, the Court shall dispose it by exercising its jurisdiction to review.

131. **Existing Laws to Remain in Operation:** All laws in force immediately before the commencement of this Constitution shall remain in operation until repealed or amended.

Provided that the laws inconsistent with this Constitution in so far as they are inconsistent, shall *ipso facto* cease to operate after one year from the commencement of this Constitution.

PART XXII **DEFINITION AND INTERPRETATION**

132. **Definition and Interpretation:** (1) Unless a different meaning is intended with references to any subject or context, in this Constitution the word:

- (a) "Article" means the Articles of this Constitution.
- (b) "Nepal" means The Kingdom of Nepal.
- (c) "Citizen" means a citizen of Nepal.

(d) "Bill" means the draft form of a proposed Act as introduced in the Parliament.

(e) "Petition" means any document bearing the signature of the petitioner.

(f) "Remuneration" means salary, allowances, pension and any other form of remuneration inclusive.

(2) Unless a different meaning is intended with reference to any subject or context, the provisions of Nepal Law Interpretation Act, 2010 (1953) shall, subject to the provisions of this Constitution, apply in matters of interpretation of the provision of this Constitution in the same manner as that law applies to the interpretation of Nepal laws.

PART XXIII SHORT TITLE AND COMMENCEMENT

133. Short Title and Commencement: (1) This Constitution may be called "The Constitution of The Kingdom of Nepal, 2047 (1990)".

(2) This Constitution shall come into force on Friday, the Twenty Third day of the month of Kartik, Two Thousand and Forty Seven Year of the Bikram Sambat.

SCHEDULE - I
(Relating to Article 5)

NATIONAL FLAG

- (A) Method of making the shape inside the Border.
- (1) On the lower portion of a crimson cloth draw a line AB of the required length from left to right.
 - (2) From A draw a line AC perpendicular to AB making AC equal to AB plus one third AB. From AC mark off D making line AD equal to line AB. Join BD.
 - (3) From BD mark off E making BE equal to AB.
 - (4) Touching E draw a line FG, starting from the point F on line AC, parallel to AB to the right hand side. Mark off FG equal to AB.
 - (5) Join CG.
- (B) Method of making the moon
- (6) From AB mark off AH making AH equal to one fourth of line AB and starting from H draw a line HI Parallel to line AC touching line CG at point I.
 - (7) Bisect CF at J and draw a line JK parallel to AB touching CG at point K.
 - (8) Let L be the point where lines JG and HI cut one another.
 - (9) Join JG.
 - (10) Let M be the point where line JG and HI cut one another.
 - (11) With center M and with a distance shortest from M to BD mark off N on the lower portion of line HI.
 - (12) Touching M and starting from O, a point on AC, draw a line from left to right parallel to AB.

(13) With center L and radius LN draw a semi-circle on the lower portion and let P and Q be the points where it touches the line OM respectively.

(14) With center M and radius MQ draw a semi-circle on the lower portion touching P and Q.

(15) With center N and radius NM draw an arc touching PNQ at R and S. Join RS. Let T be the point where RS and HI cut one another.

(16) With center T and radius TS draw a semi-circle on the upper portion of PNQ touching it at two points.

(17) With center T and radius TM draw an arc on the upper portion of PNQ touching at two points.

(18) Eight equal and similar triangles of the moon arc to be made in the space lying inside the semi-circle of No.(16) and outside the arc of No. (17) of this Schedule.

(C) Method of making the sun

(19) Bisect line AF at U, and draw a line UV parallel to AB line touching line BE at V.

(20) With center W, the point where HI and UV cut one another and radius MN draw a circle.

(21) With center W and Radius LN draw a circle.

(22) Twelve equal and similar triangles of the sun are to be made in the space enclosed by the circles of No.(20) and of No.

(23) with the two apexes of two triangles touching line HI.

(D) Method of making the border

(24) The width of the border will be equal to the width TN. This will be deep blue colour and will be provided on all the side of the flag. However, on the five angles of the flag the external angles will be equal to the internal angles.

(25) The above mentioned border will be provided if the flag is to be used with a rope. On the other hand, if it is to be hoisted on a pole, the hole on the border on the side AC can be extended according to requirements.

Explanations - The lines HI, RS, FE, ED, JG, OQ, JK, and UV are imaginary. Similarly the external and internal circles of the sun and the other arcs of the except the crescent moon are also imaginary. These are not shown in the flag.

SCHEDULE - II
(Relating to Clause (1) of Article 7)

NATIONAL ANTHEM

SHRIMAN GAMBHIRA NEPALI
PRACHANDA PRATAPI BHUPATI
SHREE PANCH SARKAR MAHARAJADHIRAJKO
SADA RAHOS UNNATI
RAKHUN CHIRAYU EESALE
PRAJA FAILIYOS PUKARAUN JAYA PREMALE
HAMI NEPALI SARALE

BAIRI SARA HARAUN SHANT HOUN SABAI
BIGHNA VYATHA
GAUN SARA DUNIYALE SAHARSA NATHKO
SUKIRTI-KATHA
RAKHAUN SHASANA, BHARI BEERATALE,
NEPAL MATHI SANDHAI NATHKA
SHRI HOS THULO HAMI NEPALIKO

SCHEDULE - III
(Relating to Clause (3) of Article 7)

THE COAT-OF-ARMS OF NEPAL



HOUSE OF REPRESENTATIVES MEMBERS ELECTION ACT, 2047

The following Act was published in the Nepal Gazette, part II, Vol. 40, Extra-ordinary Number 53, dated 2047/10/28 (February 11, 1991)

Act No. 19 of 2047

An Act Made to Provide for Election of the Members of House of Representatives

Preamble:

Whereas it is expedient to make legal provisions for election of the Members of the House of Representatives of the Parliament,

Now, therefore, His Majesty King Birendra Bir Bikram Shah Deva has, with the advice and consent of the Council of Ministers, made this Act pursuant to Article 129 of the Constitution of the Kingdom of Nepal.

CHAPTER - I

Preliminary

1. Short Title and Commencement:

(1) This Act may be cited as "House of Representatives Members Election Act, 2047" (1991).

(2) It shall come into force immediately.

2. Definitions:

Unless repugnant to the subject or context, in this Act--

(a) "Constitution" shall mean the Constitution of the Kingdom of Nepal, 2047 (1991).

(b) "Election" shall mean the General Election, Mid-Term Election and By-Election to be held to elect Members of the House of Representatives in accordance with the provisions of this Act.

- (c) "Commission" shall mean the Election Commission as mentioned in Article 103 of the Constitution.
- (d) "Voter" shall mean the voter as mentioned in Section 10 of this Act.
- (e) "Candidate" shall mean the Candidate as mentioned in Section 31 of this Act.
- (f) "Member" shall mean the Member of the House of Representative elected or to be elected pursuant to the provisions of this Act.
- (g) "Returning Officer" shall include the Chief Returning Officer.
- (h) "Polling Officer" shall include the Assistant Polling Officer.
- (i) "Prescribed" or "as prescribed" shall mean prescribed or as prescribed in the Rules made pursuant to this Act or in the Order issued by the Commission published in the Nepal Gazette.

CHAPTER - II Constituency

3. Constituency:

- (1) There shall be 205 Electoral Constituencies as provided in Article 45 of the Constitution for election of the Members of the House of Representatives of the Parliament.
- (2) The Constituencies shall be as delimited by the Electoral Constituency Delimitation Commission constituted pursuant to the provisions of Article 105 of the Constitution.
- (3) The boundaries of the electoral constituencies as determined pursuant to Sub-section (2) above shall, unless otherwise provided by law, remain valid until such boundaries are redefined after the next national census.

CHAPTER - III
Registration Officer, Returning Officer
and Polling Officer

4. Voter Registration Officer:

(1) The Commission may, for the purpose of preparing the electoral roll of each constituency, appoint or designate Voter Registration Officer.

(2) The Voters Registration officer may, subject to the provisions of the Rules made under this Act and the directives of the Commission, depute such number of employees or qualified persons as may be necessary for collecting the names of the Voters.

5. Appointment of the Returning Officer:

(1) The Commission shall, for the purpose of conducting election, appoint a Chief Returning Officer for each District and a Returning Officer for each constituency.

(2) The Returning Officer shall have the authority to depute employees of His Majesty's Government or of the corporations owned by His Majesty's Government for the election works.

(3) The Returning Officer may delegate all or some of its powers, as required, to such employees deputed for election works. However, no power relating to the scrutiny of nomination papers, its acceptance or rejection, or counting of votes, or declaration of election result may be delegated.

6. Duties of Chief Returning Officer:

(1) Subject to the directives of the Commission, the duty of the Chief Returning Officer shall be to supervise, control, direct and coordinate all election works of the constituencies within the district assigned to him.

(2) The Chief Returning Officer shall also perform the functions and duties of Returning Officer of the constituency assigned to him.

7. **Function and Duties of the Returning Officer:**
(1) It shall be the duty of the Returning Officer to perform freely and fairly all his functions relating to election pursuant to this Act within the constituency assigned to him.
(2) The Returning Officer shall, while performing his duties under Sub-section (1), observe the directives issued by the commission or the Chief Returning Officer. Other functions, duties and powers of the Returning Officer shall be as prescribed.
8. **Appointment of Polling Officer:**
Except when the appointment has been made by the Commission, the Chief Returning Officer shall appoint Polling Officer or Assistant Polling Officers within his district from among the employees of His Majesty's Government or of the corporations owned by His Majesty's Government. The Returning Officer shall make such appointments within its constituency.
9. **Duties of the Polling Officer:**
(1) It shall be the duty of the Polling Officer within a polling center or of the Assistant Polling Officer within a Sub-center to perform freely and fairly all his functions relating to election, as are assigned to him by this Act or the Rules made or Order issued pursuant to this Act.
(2) Other functions, duties and powers of the Polling Officer and the Assistant Polling Officer shall be as prescribed.

CHAPTER - IV **Electoral Roll**

10. **Voter**
(1) Any citizen of Nepal having a permanent residence within any constituency and who has attained or is about to attain the age of eighteen years on the date of maturity specified pursuant to Section 11 shall be a voter for election of the Member to be elected from that constituency.
(2) Every voter whose name has been registered in the electoral roll of that constituency shall be entitled to cast his vote only in such constituency.

Provided that, in respect of any person temporarily residing in another constituency, the Commission may make provisions for inclusion of his name in the temporary electoral roll as a voter in the manner specified for the purpose.

11. **Date of Maturity for Voting:**

The date of maturity for voting in any election to be held pursuant to this Act shall be as specified by the Commission.

Provided that for the purpose of first election to be held after the commencement of this Act, the last day of the month of Aswin, 2047 shall be adopted as such date.

12. **Preparation of Electoral Roll:**

(1) The Commission shall prepare the electoral roll for every constituency in the prescribed manner under its own supervision, control and directions.

(2) The electoral roll prepared before the commencement of this Act incorporating the persons who have attained the age of eighteen years on the last day of Aswin, 2047 shall be deemed to have been prepared pursuant to this Act.

(3) The electoral roll as prepared according to Sub-section (2) above shall be treated as the base document and shall be amended every year so as to include those voters who have attained the age of eighteen by the last day of the month of Chaitra of that year.

Provided that nothing mentioned in this Section shall be deemed to prevent for continuing the validity of the existing electoral roll for the next year irrespective of failure to amend such electoral roll in any year.

(4) It shall be the duty of every citizen of Nepal possessing qualification as a voter to have his name enrolled in the electoral roll.

13. **Publication of the Electoral Roll:**

(1) During each general election, the Returning Officer shall publish the electoral roll of the constituency in the prescribed manner according to the program determined by the Commission. Such program shall also contain provisions of time-limit, as prescribed, for making claims by the omitted persons to be enrolled in the electoral roll, for correcting the entries thereof in respect of

name, age, place of residence or any other particular of such electoral roll, or for removal of name of any person contained therein.

(2) Where any claim for enrollment or any objection to the enrollment is filed pursuant to Sub-section (1) above, an inquiry shall be conducted in the prescribed manner for verification of such claim or objection and if any amendment is incorporated therein, a final electoral roll shall be prepared. The amended electoral roll shall be published in the prescribed manner.

14. Period of Validity of Electoral Roll:

After the publication of the final electoral roll of any constituency, no alteration or amendment therein shall be made and such roll shall remain effective for the concerned election.

15. Questions Not to be Raised in Court:

No question shall be raised in any court of law on the following matters:

(a) On matters of inclusion or the exclusion of any name or about the propriety of inclusion or removal of such name in the electoral roll of any constituency; and

(b) On matters of preparation of the electoral roll by Voters Registration Officer or by any person duly authorised by such Officer, or on matters of alteration in the electoral roll by the concerned officer pursuant to the provision of Sub-section (2) of Section 13.

Provided that nothing mentioned in this Section shall be applicable in respect of the Election Tribunal constituted in accordance with the existing law.

CHAPTER - V

Registration of Political Organisation or Parties

16. Petition for Recognition as the Political Organisation or Party for the Purpose of Election:

(1) Every Political Organisation or Party desirous of recognition as such by the Election Commission for the purpose of election as mentioned in Article 113 of the Constitution shall

submit a petition with the Commission observing the procedures specified in the notification published in the Nepal Gazette and within the time specified by the Commission in the same notification.

(2) The Political Organisation or Party submitting petition pursuant to Sub-section (1) above shall undertake in the petition that at least five percent of the Candidates contesting election in pursuance of this Act will be female Candidates as mentioned in Article 114 of the Constitution.

17. **Registration of Political Organisation or Party:**

(1) Upon receipt of petitions pursuant to Sub-section (1) of Section 16, if the Commission deems necessary to seek any further information from any Political Organisation or Party, it shall require such Organisation or Party to submit such information. After scrutiny of the formalities required to be satisfied under this Act and the Constitution, the Commission shall decide in favour of or against the registration of the Political Party or Organisation.

(2) If the Commission considers against the registration, it shall give a reasonable opportunity to the concerned Political Organisation or Party to submit its views thereon. Where such opportunity has been given, the Commission shall give due consideration to the explanations of the concerned Organisation or Party. The Commission shall decide thereafter whether or not to register such Organisation or Party and such decision of the Commission shall be final.

(3) Where it is found that two or more Political Organisation or Parties, filing petition pursuant to Sub-section (1) of Section 16 have applied under the same name, the Commission shall, after consultations with such Organisations or Parties, register them in such manner that they may be identified separately.

18. **Non-Registration of Political Parties Under the Same Name:**

No other Political Organisation or Party shall be registered bearing the same name one Organisation or Party has been registered.

19. Registration of the Splinter of Political Party :

If at least forty percent of the Members of the Central Executive Committee of a Political Organisation or Party submit a petition claiming their split or separation from the principal Political Organisation or Party with proof of their Membership and status, and such splinter group requests for registration as such under a separate name or as a splinter group under the same name, the Commission may, after making necessary inquiry, register such group as a Political Organisation or a Party. No such petition shall be entertained after the notice announcing the election programme pursuant to Sub-section (1) of Section 25 is published.

20. Merger of Political Organisation or Party:

(1) If the Members of the Central Executive Committees of two or more political organisations or parties, registered with the Commission, decide by an agreement to unite or merge with one another and submit petition for registration either in a name already registered or under a new name, the Commission may, after making necessary inquiry, approve such unification or merger and register the Organisation or Party accordingly. No such petition shall be entertained after the notice announcing the election programme pursuant to Sub-section (1) of Section 25 is published.

(2) If, from amongst the Political Organisations or Parties seeking to unite or merge pursuant to Sub-section (1) above, at least forty percent of the Members of the Central Executive Committee submit a petition, prior to the publication of the notice announcing election programme pursuant to Sub-section (1) of Section 25, objecting to such unification or merger and desiring to retain the original status of the concerned political organisation or party, the Commission may, after making necessary inquiry if it finds the claims made in the petition as proper and reasonable, retain the original registration of Organisation or Party. Where the name of such Political Organisation or Party has been decided to be retained as earlier, the Members of the Executive Committee of such Organisation or Party shall be recorded by the Commission as provided in the petition.

21. Notice of Amendment of Constitution or Other Description of Organisation or Party:

If any amendment is made in the Constitution, Manifesto or Rules of any Political Organisation or Party registered as such pursuant

to this Act, or any alteration or changes is made or has appeared in the particulars contained in the petition submitted in accordance with Sub-section (1) of Section 16 of this Act, the Commission shall be informed of such amendment or alteration within fifteen days thereof.

22. **Name and Signature Specimen of Authorised Person:**

(1) Where any information relating to the Political Organisation or Party registered under this Act is required to be furnished to the Commission pursuant to the provisions of this Chapter, such information shall be furnished in writing by the Chairman of the Central Executive Committee of such Organisation or Party, or the Chief Executive of the Secretariat.

(2) For the purpose of Sub-section (1) above, a certified specimen signature of such concerned official, together with his name, surname and address, shall be provided to the Commission.

23. **Publication of the Names of Political Organisations and Parties:**

The Commission shall from time to time publish in the Nepal Gazette a list of the Political Organization or Party registered pursuant to this Act.

CHAPTER - VI

Notification of Election

24. **Election:**

(1) The Commission shall, for the purpose of constituting the first House of Representatives after the commencement of this Act, and thereafter, on the expiry of the term of each House of Representatives or on the dissolution of House pursuant to the provisions of the Constitution, announce a general election to fill all the seats of the House.

(2) If any House of Representative is dissolved prior to the expiry of its term as mentioned in Sub-section (1) above, the Commission shall announce a Mid-term election.

(3) If any seat of a Member elected from any constituency falls vacant for any reason prior to the expiry of his terms, a By-

election shall be held to fill such vacancy for the remaining term of the vacating Member.

Provided that no such By-election shall be held, if the remaining term of such Member is of a period less than six months.

25. **Notification of Election:**

(1) The Commission shall fix the date and time of the election to be held for filling the seats of the House of Representatives and issue a notice to such effect. Such notification shall be published in the Nepal Gazette.

(2) The Commission may, in consideration of the geographical factors, climatic conditions and other situations, announce any one or different dates for election to be held in more than one constituencies. The election held on the same or different dates as per the Election Programme determined by the Commission shall be deemed to have held simultaneously.

26. **Notice of Election Programme:**

(1) After the publication of Election Notice under Sub-section (1) of Section 25, the concerned Returning Officer shall, issue notice in their respective constituency, conforming to the Election Programme determined by the Commission, for the purpose of filing of nomination papers, publication of the list of Candidates whose nomination papers have been filed, raising objection to the nomination of any Candidate, scrutiny of the nomination papers, publication of the list of duly nominated Candidates, publication of the final list of Candidates and the date, time and place for distribution of electoral symbols to the Candidates.

(2) While preparing the Election Programme as mentioned in Sub-section (1) above, due consideration shall be given to the days and time that may be required for the filing of nomination papers, objecting to such nominations, scrutiny of the nomination papers, publications of the name of the Candidates and the withdrawal of names etc.

(3) While issuing a notice pursuant to Sub-section (1) above, a period of at least thirty days between the date of publication of final list of Candidates and the Polling Date shall be allowed.

- (4) The procedure as laid down in the Sub-section (1), (2) and (3) above shall be observed in respect of the Mid-term Election and By-elections to be held under Subsection (2) and (3) of Section 24.

CHAPTER - VII
Candidates and Nominations

27. Disqualifications:

(1) The following persons shall not be eligible as a Candidate for election;

- (a) Who has not completed the age of twenty five years;
- (b) Who is not a citizen of Nepal;
- (c) Who is mentally deranged or of unsound mind;
- (d) Who is declared financially insolvent or bankrupt;
- (e) Who is an employee of His Majesty's Government, or of the corporate body owned or controlled by His Majesty's Government, or of any institution receiving grants from His Majesty's Government;
- (f) Who is holding an office of profit for which salary or other benefits are paid from the government treasury, except a pensioner or a person engaged in a political position to be filled by election or nomination;
- (g) Who is convicted and sentenced with imprisonment on an offence relating election by the Election Tribunal constituted under an existing law and a period of six years has not been elapsed from the date of completion of such sentence;
- (h) Who has been convicted in a criminal offence of the nature involving moral turpitude and sentenced for a term exceeding two years and a period of six years has not elapsed from the date of completion of such sentence;

(1A) The qualifications as stipulated in Clauses (g) and (h) of Subsection (1) shall not be applicable in respect of the first election to be held after the commencement of this Act.^{1/}

(2) For the purpose of Clause (f) of Sub-section (1), the following positions shall not be deemed to be the office of profit;

(a) Prime Minister, Deputy Prime Minister, Minister, State Minister, Assistant Minister;

(b) Speaker, Deputy Speaker and Member of the House of Representative;

(c) Chairman, Deputy Chairman and the Member of the National Assembly;

(d) Leaders of the Opposition on the House of Representative and National Council;

(e) Chairman and the Deputy Chairman of the various Committees of the Parliament;

(f) Chiefs, Deputy Chief, or Member of local bodies of Village, Town and District level;

(g) Office of Senate, Executive Committee or Executive Council of the University;

(h) Office of Members of delegation or Commission sent by his majesty's government to a foreign country for a specified purpose ; or

(i) Such other office as are declared to be offices of non-profit by his Majesty's Government.

(3) Any person convicted in any Offence against State or who has been pardoned on political grounds as included in a notice

1. As amended by the First Amendment of the Act, 2047 as published in the Nepal Gazette, Part II, Vol. 40, Extra-ordinary Number 64, dated 2047/12/14 (March 28, 1991).

published in the Nepal Gazette shall not be deemed as disqualified for the purpose of Clause (h) Subsection (1).

28. **Computation of Age of the Candidate:**

For the purpose of computing the age of Candidate for being eligible to contest election, he must have completed the age of twenty five on the date of maturity specified in Section 11.

29. **Removal from Membership:**

(1) If the election of any Member is annulled by the decision of an Election Tribunal constituted under the existing law, the Membership of the concerned Member in the House of Representative shall be deemed to have terminated from the date of such decision.

(2) If a Member of the House of Representative is elected or nominated to the Membership of the National Assembly, his Membership shall be deemed to have automatically terminated from the date on which he is so elected or nominated.

30. **Vacancy of Seat of Member Elected at Multiple Constituencies:**

(1) If a Candidate is elected from more than one constituencies, he shall opt within thirty days from the date of commencement of the session of Parliament one of the seats in which he intends to retain his Membership and resign in writing from the rest of the seats. Such resignation shall be submitted to the Speaker of the House.

(2) If such Member does not submit his resignation as mentioned in Sub-section (1), the Commission shall request the Speaker of the House of Representative for his decision as to the seat which the Member will be allowed to retain and the others which will be deemed as vacated. The Commission shall, on the basis of such decision, publish a notice in the Nepal Gazette indicating the constituencies in which the Membership of the concerned Member stands terminated.

31. **Nomination of Candidate:**

(1) Any person, who is qualified to become a Candidate according to the provisions of the Constitution and this Act and whose name is registered in the electoral roll of a constituency,

may be proposed in the prescribed manner to become a Candidate in the election for Membership to be held in his constituency.

(2) Any Candidate who has been nominated pursuant to Sub-section (1) above shall be seconded in writing by another voter of the same constituency.

(3) In respect of the Candidate set up by a Political Organisation or Party duly registered under this Act, such Organisation or Party shall provide to the concerned Candidate an official letter of nomination. The official of the Organisation or Party, who is duly authorised to issue such letter of nomination, shall also send a copy thereof to the concerned Returning Officer.

(4) Any person proposed in the manner mentioned in Sub-section (1) above, must express his consent in writing and sign it.

(5) A person may be proposed as a Candidate in any one constituency through nomination papers not exceeding five in numbers.

(6) A person may be nominated as Candidate in more than one constituencies.

32. Candidates Contesting Election as Party Candidate :

(1) The Political Organisation or Party registered under this Act shall provide to the Commission the name, surname and position, including the Specimen Signature, of its official authorised to issue Party Nomination Letter for contesting election as its Candidate. Such authorization shall be issued only by the Chairman of the Central Executive Committee or the Chief Executive Officer of the concerned Political Party or Organisation.

(2) Any Candidate set up by the Political Party or Organisation without observing the procedures mentioned in Sub-section (1) above or carrying the Party Nomination Letter not tallying to the specimen signature of the official submitted to the Commission, shall not be recognised as the Candidate of such Party and may be treated only as an independent Candidate.

33. Filing of Nomination Papers:

(1) The nomination paper of a Candidate shall be submitted either by the Candidate himself or by his representative or his Proposer to the Returning Officer of the concerned constituency.

(2) The concerned Returning Officer shall scrutinize the nomination papers filed pursuant to Sub-section (1), and, if found to have complied with the formalities, he shall record the nomination paper and issue a receipt thereof to the Candidate, his representative or his Proposer.

(3) If any nomination paper is found to be deficient of the name of the Proposer, or the Proposer is duplicated, or the receipt of deposit required under this Act is not enclosed, or lacks the signature either of the Proposer or of the Candidate, or does not comply with other formalities, the Returning Officer shall require to complete such formalities prior to recording thereof. If the person submitting such nomination paper still insists on filing thereof without complying to the required formality, such refusal shall be remarked on the concerned nomination paper and such person shall be informed of the remarks.

(4) The Returning Officer shall, after the expiry of the time allotted for the filing of the nomination paper, publish the list of Candidates filing nomination papers on the date, time, and place as specified in the Election Programme.

(5) Any Candidate or his representative having reasons to object the nomination of another Candidate included in the list published pursuant to Sub-section (4), may file his objection on the date, time and place as specified in the Election Programme.

34. Scrutiny of Nomination Paper:

(1) The Proposer or the Candidate himself or his representative must be personally present on the date, time or place specified in the Election Programme for the purpose of scrutinizing nomination papers.

(2) The Returning Officer shall scrutinize all nomination papers in the presence of persons mentioned in Sub-section (1). Provided that nothing mentioned in this Sub-section shall be deemed to prevent from scrutiny of nomination papers and deciding

thereupon according to the law despite the absence of any Proposer or Candidate or his representative required to be present therein.

(3) The Returning Officer shall, during scrutiny of nomination papers, probe on the objections, if any, filed pursuant to Sub-section (5) of Section 33 and decide thereupon.

Provided that minor discrepancies in the nomination papers shall not render them invalid.

Explanation: For the purpose of this Section "minor discrepancy" shall mean the technical mistakes relating to the letters, numbers and vowel signs in writing or printing of the name, surname, address or serial number of the Candidate, Proposer and other person relevant thereto as contained in the voters list or nomination paper and which does not cause any material difference.

(4) Except under the following circumstance, the Returning Officer shall not suspend the works of scrutiny of nomination papers ;

(a) Where any mobbing or violence erupts at the time and place of scrutiny of nomination papers;

(b) Where any situation of natural calamity beyond control exists;

(5) If the scrutiny of the nomination papers is suspended under circumstances mentioned in Sub-section (4) above, the Returning Officer shall fix the time and place of such scrutiny for the following day and continue the scrutiny onwards.

35. Conditions for Invalidity of Nomination Paper:

The nomination paper shall become invalid in the following circumstance:

(a) If the Candidate does not possess the qualification required by the Constitution and this Act,

(b) If the consent of the Candidate does not exist, or the nomination paper does not contain signature of the Proposer or the Secunder or the signature is forged;

(c) If no deposit as required by the Section 74 is enclosed therewith;

(d) If the nomination paper is not filed within the time specified for the purpose pursuant to Section 26;

(e) If the nomination paper does not comply with the conditions mentioned in Section 32 and 33;

(f) If other requirements prescribed by this Act is not fulfilled.

36. **List of the Candidates:**

The Returning Officer shall, after the scrutiny of nomination papers, prepare in the prescribed manner a list of the Candidates whose nomination papers are found to be in order as required by the law and shall publish a copy thereof in his office.

37. **Withdrawal of Names:**

(1) If any Candidate desires to withdraw his name from the list of Candidates, he may so withdraw his name by giving notice in writing to the Returning Officer in the prescribed manner within the time mentioned in Sub-section (1) of the Section 26.

(2) The notice concerning the withdrawal of name pursuant to Sub-section (1) shall be submitted by the Candidate himself or his representative.

(3) A notice for withdrawal of name once submitted to the Returning Officer shall not be allowed to cancel or withdraw such notice.

(4) If the Returning Officer is satisfied about the genuineness of the notice submitted pursuant to Sub-section (1) above, he shall remove the name of the Candidate withdrawing his name from the list of the Candidates. The Returning Officer shall immediately publish in his office a notice announcing the removal of name of the concerned Candidate.

(5) If the official authorised by the concerned Political Organisation or Party to nominate any Candidate notifies, within the time specified in Sub-section (1) of Section 26 to the

Returning Officer, the withdrawal of the person set up as its Candidate, such person shall not be retained as the Candidate set up by that Political Organisation or Party. However, he shall have the status of an independent Candidate.

38. Final list of the Candidates:

(1) The Returning Officer shall, after the expiry of time specified in Sub-section (1) of Section 26 for withdrawal of name, prepare in the prescribed manner a final list of the remaining Candidates and shall immediately publish a copy of the list in his office. He shall also send a copy of such final list immediately to the Commission.

(2) In the list prepared pursuant to Sub-section (1), the names of the Candidates shall appear in the alphabetical order and the address of the Candidate, as mentioned in the nomination paper, as well as the name of the Political Organisation or Party, if the Candidate is set up by such Organisation or Party, shall also be mentioned therein.

39. Uncontested Election:

(1) If only one nomination paper has been filed in any constituency and such nomination paper is found to have completed the required formalities, or despite the filing of more than one nomination paper, all but one Candidates have withdrawn their names, or all but one nomination papers are declared invalid, the Returning Officer shall declare, in the prescribed manner, the remaining only Candidate as elected unopposed.

(2) If the number of Candidates in any constituency remains more than one, a poll shall be held in such constituency.

40. Election Symbol:

(1) The Commission shall determine election symbols to be allocated to the Candidates. The Commission shall, while determining the symbols, designate separate sets of symbols respectively for the Candidates set up by Political Organisations or Parties and for the independent Candidates.

(2) The election symbols, determined pursuant to Sub-section (1), shall be allocated to each Candidate in the prescribed manner.

(3) The Commission shall, while allocating election symbols pursuant to Sub-section (2), allocate to each Political Organisation or Party registered as such with the Commission one election symbols to be used by the Candidates of that Party in all the constituencies where the Party is contesting the election.

(4) No person other than the Candidate of the Political Organisation or Party to whom the symbol has been allocated shall be entitled to use the election symbol allocated by the Commission pursuant to Sub-section (3).

(5) The Political Organisation or Party shall provide to the Commission and the Returning Officer of the concerned constituencies, the list of its Candidates, who will be using the symbol allocated under this Section, within the time specified by the Commission.

(6) No alteration in the election symbol once allocated to a Candidate shall be permitted, despite the Candidate abandons the Political Organisation or Party and joins another Organisation or Party.

(7) If more than one Political Organisation or Party claim for same or similar election symbol, the Commission shall determine the symbol for each Organisation or Party in the prescribed manner and allocate such symbols accordingly.

(8) If it appears to the Commission that some mistake or inconsistency has occurred in the allocation of election symbol, it may make necessary alteration in such election symbols.

(9) The election symbols designated for the use of independent Candidates shall be allocated by the Returning Officer in the prescribed manner.

41. Death of a Candidate:

(1) If any Candidate, whose nomination paper has been found to be in order and who has not withdrawn his name, dies before the publication of the final list pursuant to Section 38, and the written information of such death is provided by the election agent or any other person, and if the Returning Officer is satisfied about such information, he shall immediately suspend the remaining programs of the concerned constituency and intimate, as soon as practicable,

to the Commission with complete details on the concerned event. A notice of suspension of programs shall be served by the Returning Officer in his office for information of the rest of Candidates.

(2) If any Candidate, whose name appears in the final list published pursuant to Section 38, dies after the publication of such final list and the written information of such death is provided by the election agent of the Candidate or by any other person, and if the Returning Officer is satisfied about such information, he shall immediately suspend the remaining programs of the concerned constituency and intimate, as soon as practicable, to the Commission with complete details on the concerned event. A notice of suspension of programs shall be served by the Returning Officer in his office for information of the rest of Candidates.

(3) The Commission, on receipt of information pursuant to Sub-section (1), shall prepare another program for such constituency with least effect upon the polling program thereof and with a view to accomplishing the procedures of nomination of Candidates as early as possible and shall send such program to the Returning Officer.

(4) The Commission, on receipt of information pursuant to Sub-section (2) above, shall reschedule the election program for such constituency according to the provision of this chapter, including the polling date in the constituency, and shall send such program to the Returning Officer.

(5) The Candidates whose names appear in the final list published pursuant to Section 38 shall not be required to re-submit their nomination papers and any Candidate who had withdrawn prior to suspension of program earlier shall be entitled to re-submit their nomination papers.

42. Identity Card to the Candidates:

The Returning Officer shall provide to all such Candidates, whose names appear in the final list published according to the provisions of this Chapter, necessary documents including an identity card.

CHAPTER - VIII
Polling Centers, Ballot papers
and Ballot box

43. Polling Center:

The Returning Officer shall, with the prior approval of the Commission, determine the requisite numbers Polling Centers and Polling Subcenters within his constituency. He shall thereafter publish the list of such centers in the prescribed manner.

44. Ballot Papers:

(1) The Polling Officer shall give the Ballot Papers to the voters present at the Polling Center after completing the procedures as prescribed.

(2) The design of the Ballot Paper shall be as specified by the Commission. The Ballot Paper shall show the election symbols of the Candidates.

45. Ballot Box:

Such Ballot Box as prescribed by the Commission shall be used for polling.

CHAPTER - IX
Polling

46. Polling Period :

The polling period on the polling date shall be as specified in the notice issued pursuant to Sub-section (1) of the Section 25.

47. Polling:

A voter, whose name is enrolled in the voters' list of a constituency, shall be entitled to vote only in the same constituency.

48. Polling Methods :

(1) The voter shall vote by marking on the Ballot Paper the sign or seal prescribed by the Commission.

(2) The voter shall vote indicating the choice of his Candidate confidentially by marking the sign within the box containing the election symbol of the Candidate box allotted in the Ballot Paper.

(3) No one shall falsely impersonate any genuine voter enrolled in the voters' list of a constituency. 2/

(4) No person shall vote in any election without possessing the qualification required pursuant to the provision of this Act.

(5) No voter shall vote in more than one constituency.

(6) No voter shall cast more than one vote in any constituency.

(7) If any voter, prohibited from voting in any manner pursuant to Sub-section (4),(5) and (6), presents himself to receive Ballot Papers, the Polling Officer may refuse him to issue Ballot Paper.

49. Adjournment of Polling During Emergency:

(1) If the Polling Officer appointed in any Polling Center or the Returning Officer of that constituency is satisfied that due to violent mobbing or disruption or natural calamity or any circumstance beyond his control, the election proceedings cannot be continued, he may at once suspend all the proceedings of election in that center and publish a notice to that effect therein. If such suspension of the election proceedings is made by the Polling Officer, he shall immediately inform the Returning Officer on the facts and events thereof.

(2) The Returning Officer shall immediately despatch requisite information regarding the suspension of election proceeding under Sub-section (1) above to the Commission and all other concerned authorities.

(3) If no directives to the contrary is issued by the Commission upon receipt of information according to Subsection (2), the Returning Officer shall issue a notice of the date and time for repolling in such Polling Centers and shall conduct repolling therein accordingly.

2. Deleted by the First Amendment Act, 2047 - as mentioned in Footnote 1.

50. Unlawful seizure of Polling Centers:

(1) On occurrence of any of the following circumstances, the Polling Center shall be deemed to have been unlawfully seized;

(a) If any person by using force or coercion or threat seizes the Polling Center or any place designated for such polling, influences the election proceedings or allows only the voters supporting a particular Candidate to vote, or prevents other voters from voting;

(b) If any person, by or without use of force, threatens or coerces any voter to vote or not to vote for any particular Candidate or prevents such voter from going to or entering in the Polling Center;

(c) If any person, by or without use of force, prevents any official deputed to conduct election from carrying out his duties, or seizes the Ballot Papers, the ballot boxes, or other election material from the lawful custody of such official, or uses influence in the proceedings of the election by similar actions so that the election proceedings are not or cannot be held in a free or fair manner.

(2) If any situation, as mentioned in Sub-section (1) above, appears in any Polling Center, the Polling Officer shall immediately inform the Returning Officer who shall thereupon inform the Commission on the situation.

(3) The Commission, upon receipt of a report pursuant to Sub-section (2) above, may assign an Observer to make spot investigations. The Commission may, considering the report of such Observer and other circumstances prevailing therein, annul the election of that Polling Center. The Returning Officer shall, observing the directives of the Commission, re-schedule the date and time for repolling in such Polling Centers where the polling have been annulled.

(4) The Commission may, if it feels on the basis of report submitted pursuant to Sub-section (2) above and other circumstances relevant thereto that the illegal seizure of a Polling Center may adversely affect the result of election, annul the election of that Polling Center. The Returning Officer shall,

observing the directives of the Commission, re-schedule the date and time for repolling in such Polling Centers.

51. **Damage to or Break of Ballot Boxes:**

(1) If any Ballot Box used in any Polling Center for the purpose of election is damaged by accident or is broken intentionally, the Polling Officer shall immediately submit a report of the fact to the Returning Officer and the Returning Officer shall also immediately report the matter to the Commission.

(2) If any Ballot Box used for polling in any Polling Center, and being in the custody of Returning Officer himself, is seized in any manner or is accidentally damaged or intentionally broken, the concerned Returning Officer shall immediately submit a report to the Commission on the situation.

(3) The Commission, upon receipt of any report pursuant to Sub-section (1) or (2), may assign an Observer to investigate on the spot and inquire about the circumstances. The Commission may, upon consideration of the reports, including the report of the Observer, if any so assigned, annul the election of that Polling Center.

(4) The Returning Officer shall, observing the directives of the Commission reschedule the date and time for repolling in such Polling Center where polling had been annulled pursuant to Sub-section (3) and issue a notice to that effect.

52. **Chief Returning Officer to be Informed:**

The Returning Officer shall also inform the Chief Returning Officer in the district, if any, on the occurrence of any circumstance mentioned in Section 49, 50 and 51.

53. **Objection on False Impersonation of Voter:**

(1) If any person falsely impersonating any other voter presents himself to receive a Ballot Paper, any Candidate or his representative may, by making a deposit of the amount as prescribed, file objection with the Polling Officer.

(2) If any objection is received pursuant to Sub-section (1) above, the Polling Officer shall make summary investigation and

decide immediately. He shall record such objection and his decision in the Minute Book to be maintained in the prescribed manner.

(3) If the objection filed pursuant to Sub-section (1) above is substantiated, the deposit shall be returned to the concerned person and, if the objection is not sustained, the deposit shall be confiscated.

54. **Entry to Polling Center:**

(1) The Polling Officer shall prohibit entry to the Polling Center of all persons excepting the following;

(a) Voters;

(b) Candidate or one of his representative; and

(c) Persons who are permitted by the Commission or the Returning Officer or the Polling Officer.

(2) No voter shall be permitted to enter the Polling Center after the expiry of the time allocated for polling.

55. **Inspection by the Polling Officer:**

If any voter stays for more than a reasonable time within the place allotted for the marking of votes or if the Polling Officer suspects of any mischief, the Polling Officer may enter the place allotted for the marking of votes.

56. **Incapacitated Voter:**

(1) If any voter for reason of his physical incapacity, or for any other reason, cannot cast his vote by himself and request for the assistance of a person of his choice and the Polling Officer finds the request reasonable, he shall permit such person to accompany the concerned voter to the place allotted for the marking of votes.

(2) If any voter cannot himself mark his vote and requests the Polling Officer to mark in the box containing the symbol of the Candidate of his choice in the Ballot Paper, the Polling Officer may assist him in marking the vote according to the wish of such person.

CHAPTER - X
Counting of Votes and Election Result

57. **Chief Returning Officer to Coordinate the Counting:**
In districts having more than one constituencies, the Chief Returning Officer of that district shall supervise, control, direct and coordinate the counting of votes in his district. It shall be the duty of every Returning Officer to carry out the directives of the Chief Returning Officer.
58. **Notice About Vote Counting:**
The Returning Officer shall, after the receipt of all ballot boxes from the Polling Officers used for polling in the Polling Centers of the constituency, publish a notice, as directed by the Chief Returning Officer, informing the Candidates about the place, date and time fixed for the counting of votes.
59. **Counting of Votes:**
- (1) The Returning Officer shall commence counting of votes in the place and on the date fixed in the notice published pursuant to Section 58.
 - (2) The Candidates, his Election Agents and a required number of Counting Agents may attend at the place and on the date and time fixed pursuant to Subsection (1) for the counting of votes.
 - (3) If a repolling in any Polling Center of that constituency becomes necessary in pursuance of this Act, the counting of votes of other Polling Centers of that constituency shall be withheld until repolling in that Polling Center is completed.
60. **Entry into the Counting Center:**
- (1) The Returning Officer may permit the Candidate of the concerned constituency, his Election Agent, Counting Agents, persons engaged in the counting work, employees deputed for the security and any other person assigned or deputed by the Commission, to enter the place where the votes are being counted.
 - (2) The Returning Officer may order any person obstructing the counting of votes to leave the place where the votes are being counted and the person so ordered shall be under obligation to leave such place. If the person so ordered does not comply with such

order, the security personnel shall, upon order of the Returning officer, expel the concerned person from such place.

61. Vote Counting to be Continuous:

(1) The Returning Officer shall, once the counting of votes is commenced, keep the process thereof continuous until completed.

(2) If for any reason the process of counting of votes cannot be continued and has to be adjourned, the Returning Officer shall keep the counted Ballot Papers, records concerning the counting of votes, the remaining Ballot Papers to be counted, and the list of Ballot Boxes of which votes have not been counted, in separate envelopes and seal the envelopes with official seal. The concerned Candidate or his Counting Agent or his Election Agent may also counter-sign or seal therein, if any of them so desire.

(3) The counting of votes which was adjourned pursuant to Sub-section (2) above, shall as far as possible, be resumed the following day. Notice about the resumption of counting of votes shall be given to the Candidate present in that place or his Election Agent or his Counting Agent. Such notice shall also be published in the place where the votes are being counted.

62. Loss of Ballot Papers Before Counted:

(1) If, prior to the completion of counting, either the Ballot Papers or the Ballot Box containing the Ballot Paper, used in any Polling Center, is unlawfully removed from the custody of the Returning Officer, or opened or damaged accidentally or intentionally destroyed, or is lost, the Returning Officer shall immediately report the matter to the Commission.

(2) The Commission shall, upon receipt of a report pursuant to Sub-section (1) above, after making inquiry, if deemed necessary, order the suspension of counting of the remaining ballots.

(3) The Commission shall, after suspension of the counting of votes pursuant to Sub-section (2) above, declare the annulment of polling of the Polling Center in respect of which the aforesaid incident had occurred. The Returning Officer shall, as per the directives of the Commission, publish a notice rescheduling the date, time and place of re-polling in the concerned Polling Center.

63.

Unlawful Seizure of the Place of Vote Counting:

(1) On occurrence of any of the following circumstances, the place of vote counting shall be deemed to have been unlawfully sized :

(a) If any person by using force or coercion or threat seizes the place of vote counting or takes in his possession the Ballot Papers or Ballot Boxes from the custody of any officer or employee engaged in the counting of votes or interferes or influences in the process of counting of votes or causes to interfere or influence thereupon through any similar conduct; or

(b) If any person engaged in the counting of votes act in any manner mentioned in Clause (a), or assists in or assents to the performance of such act.

(2) If any place of vote counting is unlawfully occupied as mentioned in Sub-section (1) above, the Returning Officer shall immediately report the matter to the Commission.

(3) The Commission shall, upon receipt of a report pursuant to Sub-section (2) above, after making inquiry, if deemed necessary, order the suspension of counting of votes of the remaining Polling Centers.

(4) The Commission shall, after suspension of the counting of votes pursuant to Sub-section (3) above, declare the annulment of polling of the Polling Center in respect of which the aforesaid incident had occurred. The Returning Officer shall, as per the directives of the Commission, publish a notice rescheduling the date, time and place of re-polling in the concerned Polling Center.

64.

Invalidity of Ballot Papers:

In any of the following circumstances, a Ballot Paper shall be deemed invalid:

(a) if it does not bear any signature of the concerned Polling Officer;

(b) if it is not marked in the prescribed manner and is marked differently, or bears any other different mark;

- (c) if it is mutilated or blurred or defaced beyond identification;
- (d) if the mark is found elsewhere beyond the box of a Candidate;
- (e) if the mark is found in the blank box in which no Candidate exists;
- (f) if it is surrendered to the Polling Officer with intention of abstaining from voting;
- (g) if the mark is unclear as to signify definitely the Candidate to whom the vote is intended;
- (h) (deleted) ^{3/}
- (i) if the marks are placed in more than one box.
- (j) if the Ballot Paper is other than the one allotted for that Polling Center;
- (k) (deleted) ^{4/}
- (l) if it is a fake ballot paper.

65. Recounting of Votes:

(1) Any Candidate or his Election Agent or Counting Agent may, before the completion of counting, or if completed, before the announcement of result, demand with the concerned Returning Officer, stating the reasons therefor in writing, to recount all or any of the Ballot Papers.

(2) If a request pursuant to Sub-section (1) above is filed, the Returning Officer shall record the request immediately and recount the Ballot Papers if he feels that recounting is necessary.

3. ibid.

4. ibid.

(3) If the Returning Officer considers that recounting of votes pursuant Sub-section (2) is not necessary, he shall record his decision to that effect and shall, prior to the announcement of result, inform of his decision to the Candidate or his Election Agent or Counting Agent, whosoever is present on the spot.

66. **Tie of Votes:**

After the counting of votes in any constituency is completed, if 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. The Candidate in whose favour the lot is drawn shall be deemed to have received one additional vote.

67. **Publication of Election Result:**

(1) As soon as the counting of the votes of all the Polling Centers in any constituency is completed, the Returning Officer shall prepare a result sheet of counted votes in the prescribed manner and, thereafter, publish the result of election in the prescribed manner. The Returning Officer shall immediately send the result sheet to the Commission.

(2) Together with the publication of the election result pursuant to Sub-section (1) above, the Returning Officer shall also declare as elected the name of the Candidate receiving highest number of valid votes in the election.

(3) The Returning Officer, after the publication of election result, prepare a detailed report containing other relevant facts about the election, and send it to the Commission.

(4) The Commission shall, upon receipt of result sheet of the election pursuant to Sub-section (1), prepare a list of the elected Candidates and forward such to the Secretariat of the Parliament. The Commission shall also publish such list in the Nepal Gazette.

68. **Date of Election:**

The date on which the Returning Officer declares the election result pursuant to the provision of Section 67 shall be deemed as the date of election of the concerned Candidate.

CHAPTER - XI
Agents of the Candidate

69. Election Agent:

(1) Whenever a Candidate appoints an Election Agent, he shall intimate such appointment in writing to the concerned Returning Officer.

(2) An Election Agent appointed under Sub-section (1) may be removed by the Candidate at any time and another Election Agent may be appointed therein. An intimation of such replacement shall be immediately given to the Returning Officer.

(3) The qualification for the Election Agent shall be as prescribed.

70. Duties of an Election Agent:

The duties of an Election Agent, appointed pursuant to Section 69, shall be to perform all such functions which are specified in this Act and the Rules made thereunder, as the function of the Election Agent.

71. Poll Agent and Counting Agent:

(1) Any Candidate or his Election Agent may appoint in the prescribed manner one or more Poll Agent for each Polling Center. An intimation in writing about such appointment shall be given to the Polling Officer and the Returning Officer.

(2) Any Candidate or his Election Agent may appoint in the prescribed manner one or more Counting Agent to be present at the Counting Centers. An intimation in writing about such appointment shall be given to the Returning Officer.

(3) Any Candidate or his Election Agent may at any time remove the Poll Agent or the Counting Agent appointed pursuant to Sub-section (1) or (2) above, and appoint another Poll Agent or Counting Agent. An intimation of such replacement shall be immediately given to the Polling Officer and the Returning Officer.

(4) The qualification of Poll Agent and Counting Agent shall be as prescribed.

72. **Duties of the Poll Agent and Counting Agent:**
- (1) The duty of Poll Agent shall be to perform all such functions as are prescribed in this Act or the Rules made thereunder.
 - (2) The duty of Counting Agent shall be to perform all such functions as are prescribed in this Act or the Rules made thereunder.
73. **Absence of the Candidate or Any Agent:**
Where no Election Agent or Poll Agent or Counting Agent is appointed pursuant to this Act or the Rules made thereunder, or where the Candidate or any of his Agents are not present for the purposes required by such laws, or where any of them does not perform his functions under such laws, no process of polling or counting of votes shall be adjourned simply on such grounds and nothing performed under such conditions shall be deemed illegal.

CHAPTER - XII
Miscellaneous

- 73A. **Provisions for Tendered Vote:**
- (1) If any person by false impersonation has obtained the Ballot Paper of any voter or has already polled with such Ballot Paper and if the registered voter claiming such Ballot Paper afterwards is found, through the evidence submitted by him, as the genuine person, the Polling Officer shall grant him the "Tendered Ballot Paper". Where such Tendered Ballot Paper has been granted, the voter shall, after indicating his vote in the Ballot Paper, in stead of dropping it within the Ballot Box, place it in a separate envelope kept specially for the purpose.
 - (2) The procedures for granting and placing of Tendered Ballot Paper, pursuant to Subsection (1), and other procedures relating thereto shall be as prescribed.
 - (3) During the counting of votes according to Section 59, the Tendered Votes placed in a separate envelope pursuant to Subsection (1) shall not be counted at that time. If a complaint relating to election is filed and if the Election Tribunal constituted

under the existing laws decides as essential for the disposal of the Complaint, the Tribunal may order the counting of such Tendered Votes.^{5/}

73B. **Special Provisions Relating to Polling by Persons on Election Duty:** Notwithstanding anything contained elsewhere in this Act, if any civil servant or Agent of the Candidate qualified to vote and engaged in the election duty is not a voter registered in the electoral roll of that constituency, the Commission may enroll the name of such civil servant or Agent, as prescribed, in the electoral roll of the constituency.^{6/}

74. **Security Deposit:**

(1) In order to contest election from any one constituency, a deposit of three thousand rupees is required as security.

(2) If more than one Nomination Papers have been filed in any constituency in respect of the same Candidate, the security deposit for one nomination only shall be sufficient. If such nomination papers of the same Candidate is filed in more than one constituency, separate security deposits shall be made for each constituency.

(3) During the filing of nomination papers for a Candidate, it shall accompany either the cash receipt issued by the office of the Returning Officer or a voucher of cash deposit in the account in the name of the office of the Returning Officer.

75. **Forfeiture of Security Deposit:**

(1) Any Candidate receiving less than ten percent valid votes of the total valid votes polled in an election shall forfeit his security deposit.

Provided that the provision of this Sub-section shall not apply in respect of an elected Candidate.

5. Inserted by the First Amendment Act, 2047 - as mentioned in Footnote 1.

6. Ibid.

(2) The security deposit of the Candidates, including rejected or withdrawn, excepting those forfeited pursuant to Sub-section (1) above, shall be refunded within thirty five days from the date of declaration of the election result.

(3) If the security deposit is not withdrawn within the specified time, such money shall eschew to the consolidated fund.

76. **Election Expenses:**

(1) The ceiling of election expenses allowed to be incurred by the Candidates shall be as specified by the Commission in a notice published in the Nepal Gazette.

(2) All Candidates or their Election Agents must maintain the records of all expenses incurred on election purposes during election period in the prescribed manner.

Explanation: For the purpose of this Section, the word "election period" shall mean a period beginning from the date of filing of nomination paper till the date of publication of election result.

(3) The total election expenses of a Candidate incurred in any election must not exceed the ceiling specified pursuant Sub-section (1).

(4) The Candidate or his Election Agent shall submit a Statement of Election Expenses, as prepared under Sub-section (2), to the Returning Officer within thirty days from the date of declaration of election result. The Returning Officer shall transmit such Statement to the Commission.

77. **Secrecy of Documents Relating to Election:**

(1) Among the election documents, only such documents which are required for counting of votes may be opened for such purposes and they shall be resealed after the counting is completed. All such documents shall be kept in custody of the officer designated by the Commission.

(2) Among the documents preserved pursuant to Sub-section (1), such envelopes containing the counter-foil of Ballot Papers, Voters List used during the election and the accepted and

rejected Ballot Papers may be opened and looked into only by a Court of law in connection with the election petition filed in accordance with the existing law.

(3) The Court shall, after the inspection of documents pursuant to Sub-section (2), replace the documents in original manner and reseal them. No official or institution other than a Court of law shall have the authority to open such sealed envelopes.

(4) The documents mentioned in this Section shall be preserved for a period of one year either from the date of final disposal of the suit, if any, or from the date of expiry of limitations period specified for filing election petition.

78. **Maintenance of Secrecy :**

(1) Unless authorised by law, no employee deputed in election duty or Candidate or Election Agent or Poll Agent or Counting Agent or any other person shall disclose orally or in writing or in any other manner, the vote as indicated by voter in the Ballot Paper or any other information relating thereto known to him or within his knowledge.

(2) Notwithstanding any thing mentioned in this Act or any other existing law, no witness or other person shall be asked, in any legal proceeding commenced under this Act, any question pertaining to how and to whom he or any other person has voted.

79. **Powers to Issue Orders and Directives:**

(1) In addition to the provisions made in this Act and in the Rules made thereunder, the Commission shall have powers to issue Orders as it may deem necessary. Such Orders shall be published in the Nepal Gazette.

(2) The Commission may, for the efficient conduct of the election, issue necessary Directives to the employees deputed on election duties.

(3) It shall be the duty of every Candidate, his Agents, any other persons engaged in election publicity duties and all other employees deputed on election duties, to abide by the Orders and Directives issued pursuant to Sub-section (1) and (2).

80. **Assistance:**

(1) The Returning Officer, Polling Officer or the Observer or any other official appointed by the Commission in election duties, shall be entitled to receive assistance from any government or security agency functioning at local level, including the Police personnel, in the carrying out of his election duties.

(2) If any assistance is sought pursuant to Sub-section (1) by the concerned official, it shall be the duty of the government and security agencies, including the Police personnel, to render such assistance.

81. **Power to Make Rules:**

His Majesty's Government may, in consultation with the Commission, make Rules to carry out the purposes of this Act.

82. **Saving:**

No question shall be raised in any Court of law, excepting the Election Tribunal constituted under the existing law in respect of any act relating to election performed in pursuance of the provisions of this Act or the Rules made thereunder or Orders issued by the Commission.

ROYAL SEAL OF ENACTMENT AFFIXED ON - 2047/10/28/2

ELECTION COMMISSION ACT, 2047

The following Act was published in the Nepal Gazette, part II, Vol. 40, Extra-ordinary Number 53, dated 2047/10/28 (February 11, 1991)

Act No. 20 of 2047

An Act Made To Provide For The Functions, Duties And Powers Of The Election Commission.

Preamble:

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

Now, therefore, His Majesty King Birendra Bir Bikram Shah Deva has, with the advice and consent of the Council of Ministers, made this Act pursuant to Article 129 of the Constitution of the Kingdom of Nepal.

CHAPTER - I Preliminary

1. Short Title and Commencement:

(1) This Act may be cited as "Election Commission Act, 2047 (1991).

(2) This Act shall come into force immediately.

2. Definition:

Unless repugnant to the subject or context, in this Act--

(a) "Commission" shall mean the Election Commission as constituted pursuant to Article 103 of the Constitution of the Kingdom of Nepal, 2047 (1990).

(b) "Commissioner" shall mean the Election Commissioner of the Commission.

(c) "Election" shall mean any election conducted by the Commission in accordance with the provisions of the Constitution of the Kingdom of Nepal, 2047.

(d) "Prescribed" or "as prescribed" shall mean anything prescribed or as prescribed by the Rules made under this Act or Orders issued by the Commission.

CHAPTER - II

Functions, Duties and Power of the Commission

3. Power to Appoint:

(1) The Commission shall, for the purpose of election, have powers to appoint or designate Chief Election Officer, Election Officer, Polling Officer, Assistant Polling Officer, Voters Registration Officer and other personnel as required.

(2) The Commission shall have powers to depute or engage any employee of His Majesty's Government or any Corporation in the ownership of His Majesty's Government or any other person in any work relating to election.

(3) An employee, who has there been employed, designated or deputed under this Section, shall not be removed or transferred or deputed elsewhere till the completion of election, without prior consent of the Commission.

4. Receiving of Cooperation :

(1) The Commission may, on matters relating to election, directly communicate with or seek cooperation from any Office, Department or Ministry of His Majesty's Government or from any Constitutional Body or any Corporation owned by His Majesty's Government.

(2) The Commission may, on matters relating to election, avail necessary cooperation or require performance of any work from any private, public or local organisation.

5. **Appointment of Observers:**
The Commission may appoint observers to observe, investigate or supervise on matters relating to election or polling or counting of votes in any constituency or polling station.
6. **Requisition and Use of Physical Facilities:**
- (1) The Commission may, after giving prior information, requisition and use, as may be necessary, any land, building, vehicle, furniture or other physical facilities belonging to His Majesty's Government or any Corporation owned by His Majesty's Government for the purpose of election.
 - (2) The Commission may, after giving prior information, requisition and use, as may be necessary, any land, building, furniture or other physical facilities belonging to any public or local bodies or any private school or College for conducting election or polling works .
 - (3) The Commission may, for conducting any of the election or polling functions, use on rental basis any land, building, vehicle, furniture or other physical facilities belonging to any person, or private party or organization.
7. **Power to Remove:**
- (1) The Commission, if it deems necessary to remove any employee appointed, designated or deputed pursuant to Section 3 to perform any of the election works, may remove him from such work.
 - (2) The Commission may, if it seems necessary, order any police personnel deputed on security service during the election requiring him to do or refrain from doing any act, directly or indirectly related to the election, or it may remove such personnel from such work.
8. **Annulment of Election:**
If any complaint is filed or an information is received in the Commission to the effect that the election or polling in any constituency has not been free and fair or has been disorderly conducted, the Commission may investigate it through the Commissioner, the Secretary of the Commission, or any Officer duly authorised by the Commission. If the Commission, based upon the findings of such investigation, is satisfied of the

allegation, it may annul the election as a whole of that constituency or annul the polling of any or all polling stations of that constituency.

9. Temporary Posts and Appointments:

(1) The Commission may, in order to conduct and accomplish the work concerning election, create such number of temporary posts as may be necessary, up to the rank of Class II Gazetted Officer for a maximum period of six months.

(2) The Commission may extend the tenure of the posts created pursuant to Subsection (1) above for another period of six months at a time or successively.

(3) The Commission shall be authorised to make appointments in the posts created pursuant to Subsection (1) above, on a temporary or contractual or daily-wages basis.

10. Additional Facilities:

(1) The Commission may grant such extra emoluments or facilities, as it may determine, to the Officers or employees engaged in the election works.

(2) The Commission may grant such additional amount in the per-diem and travelling allowances, which it may determine as necessary, over and above the existing rates thereof under prevalent law, to Officers or employees deputed in any work of the Commission or in any election work.

(3) The Commission may grant during the period of deputation such extra allowances, as it may determine, to the Officers or employees deputed on any work of the Commission or in any election work.

11. Rent or Compensation to be given:

(1) If any land, building, vehicle, furniture or other physical facilities belonging to a person, private body or public institutions have been used by the Commission or upon orders from the Commission for any election work on conditions of paying rent pursuant to Section 5, the Commission shall pay such rent for the duration of use of such land, building, vehicle, furniture or other physical facilities.

(2) In case of any damage to the land, building, vehicle, furniture or other physical facilities during its use by the Commission or upon orders from the Commission for the purpose of election work and if any maintenance work has to be done or compensation to be paid for that reason, the Commission may make payment, as compensation, a reasonable amount for actual damage considering the amount spent or required for such maintenance or an amount required in compensation.

12. Election Expenditures:

(1) The employees deputed for election works may be paid out in full all their per-diem and travelling allowances, other allowances and facilities which they are entitled under the existing laws. No returns of accounts of expenses and their supporting documents need to be submitted by the employees for the money received under this Subsection.

(2) Necessary amount of expenditures required to conduct election shall be paid to the concerned employees while being deputed to the election work at the rate determined by the Commission. The concerned employee shall have authority to expend such amount.

(3) The Commission may, in respect of the specified amount out of the amount paid pursuant to Subsection (2) above, issue orders exempting the concerned employees, being deputed on election work, from submitting the supporting documents of expenses after their return from deputation.

(4) The account of expenditures made in pursuance of the provision of this Section shall be audited in accordance with the existing law.

13. Purchase of Materials:

(1) In case where obtaining of tenders in accordance with the existing law to purchase materials or secure services in connection with election is not possible to the Commission, it may make such purchases or obtain services through quotations. If procurement of quotations also is not possible, the Commission may do such purchases or obtain services directly from the open market.

(2) If the Commission decides that the procurement of tenders or quotations, as required by the existing law, is not possible or is impractical in respect of materials required for the preparation of electoral rolls, printing of ballot papers or for the operation of computers, printers or photocopy machines, or for procuring spare parts or software goods for these machines or special types of paper to be used in such machines, the Commission shall not be required to obtain such tenders or quotations.

14. Prior Approval not Required:

(1) No approval of the Finance Ministry shall be required while expending the amount allocated as the contingency fund to the Commission by His Majesty's Government under the relevant budget head.

(2) All expenditures or approvals made in respect of the amount mentioned in Subsection (1) above shall be duly supported by respective decisions of the Commission.

15. Audit:

All expenses incurred for election works under this Act shall be formally audited.

**CHAPTER - III
Miscellaneous**

16. Seeking Legal Advice :

(1) The Commission may, if considered appropriate on any Constitutional or other legal question, seek the opinion of the Attorney General.

(2) The Commission, in respect of its functions, shall be at liberty to maintain direct relationship or to consult with or to seek counsel from any Constitutional Body or any Ministry, Department or Office of His Majesty's Government or with any other entity.

17. Discussion and Consultations:

The Commission or any Officer of the Commission may, for the purpose of conducting free and fair election, conduct discussions or consultation with any political organization or party or individual.

18. Decisions of the Commission:

(1) The function of the Commission, which are required to be done in pursuance of the provisions of the Constitution or the existing laws, shall be performed by the Chief Election Commissioner, if he is the sole member of the Commission, and if it consists of other members as well, such functions shall be performed by a collective decision of the Commission.

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

(3) The Secretary of the Commission shall attest and implement the decisions of the Commission or cause the implementation thereof.

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

19. Delegation of Power:

The Commission may, as and when required, delegate any of its powers to the Chief Election Commissioner, Election Commissioner, Secretary of the Commission, Chief Election officer, Election officer, Observer, Polling Officer, Assistant Polling Officer or any other Officers or employees engaged in the election work.

20. Power to Issue Directives:

(1) The Commission may issue necessary directives to the Chief Election Officer, Election Officer, Polling Officer, Assistant Polling Officer, Observer or Voters Registration Officer or to any person deputed in election work in respect of the works required to be performed by him.

(2) It shall be the duty of the concerned person to abide by the directives issued pursuant to Subsection (1).

21. Government Attorney to Act and Plead :

If the Commission or the Chief Election Officer, the Election Officer, the Polling Officer, the Assistant Polling Officer, the Observer, the Voters Registration Officer, appointed in pursuance of this Act, or any other employee deputed by the Commission sues or has been sued in respect of election works, the Government

Attorney shall act and plead on behalf of the Commission or such employees in such cases.

22. **Departmental Action:**

If any employee deputed in the Commission or in any election work commits any act in contravention of election law or directives of the Commission, the Commission shall have the authority to initiate departmental action against such employee in accordance with the laws pertaining to his service and shall either prescribe departmental punishment by itself or may cause to be punished by the competent authority relating to such employee.

23. **Framing of Rules:**

His Majesty's Government may, in consultation with the Commission, frame Rules in order to implement the provisions of this Act.

24. **Orders to be Issued:**

The Commission may, subject to the provisions of this Act or the Rules made pursuant to this Act, issue necessary Orders, published in the Nepal Gazette, for the purposes of conducting free and fair election and in order to promote healthy contest and maintainance morality. It shall be the duty of all political organization or parties or persons and such other persons who are engaged in the election propaganda to abide by such directives.

25. **Preparation of Manual:**

The Commission may prepare and enforce Manuals to provide guidelines to the officials engaged in election works and to conduct election works as well as to get them conducted efficiently.

26. **Repeal:**

Election Commission Act, 2024 (1967) and the Election Commission (Internal Functions) Rules, 2025 (1968) are hereby repealed.

ROYAL SEAL OF ENACTMENT AFFIXED ON - 2047/10/28/2

ELECTORAL CONSTITUENCY DELIMITATION ACT, 2047

The following Act was published in the Nepal Gazette, part II, Vol. 40, Extra-ordinary Number 43, dated 2047/8/23 (December 9, 1990)

Act No. 12 of 2047

An Act Made To Provide For The Function, Duties And Powers of Delimitation of Constituencies Commission.

Preamble:

Where as it is expedient to make provisions for the functions, duties and powers of the Delimitation of Constituencies Commission;

Now, therefore, His Majesty King Birendra Bir Bikram Shah Deva has, upon the advice and with the consent of the Council of Ministers, enacted this Act in accordance with Article 129 of the Constitution of the Kingdom of Nepal.

1. Short Title and Commencement:

(1) This Act may be cited as "Delimitation of Constituencies Commission Act, 1990".

(2) This Act shall come into force immediately.

2. Interpretation:

Unless repugnant to the subject or context, in this Act--

(a) "Constitution" shall mean the Constitution of the Kingdom of Nepal, 2047 (1990).

(b) "Commission" shall mean the Commission constituted pursuant to Article 105 of the Constitution.

(c) "Election" shall mean the election held for the membership of the House of Representatives pursuant to Article 45 of the Constitution.

(d) "Member" shall mean a member of the House of Representatives.

3. **Function, Duties and Powers of the Commission :**

(1) The functions, duties and powers of the Commission shall, in addition to those specified in the Constitution and elsewhere in this Act, be as hereinafter mentioned:

(a) To demarcate the territorial boundary of each electoral constituency after allocating 205 constituencies throughout the Kingdom of Nepal.

(b) To establish, for the purpose of first election after the commencement of the Constitution, electoral constituencies in any district on the basis of population existing according to the national census held preceding to such election.

(c) To establish, for the purpose of other elections to be held after the first election, conducted pursuant to clause (b) above, electoral constituencies on the basis of population existing according to the national census held preceding to such election.

Provided that nothing contained in this Section shall be deemed to prevent in establishing electoral constituencies on the basis of population as existing in the previous national census, till the results of the present national census held preceding the concerned election remains unpublished;

(d) To establish, while delimiting constituencies pursuant to clause (b) and (c) above, electoral constituencies within any district, in equal ratio, as far as possible, between the number of seats and the population existing in that district, if more than one membership is allocated for such district;

(e) To carry out all such functions as may be necessary for establishment of electoral constituencies and allocation of seats.

(2) ... The Commission shall notify decisions relating to delimitation of electoral constituencies and allocation of seats through notice published in the Nepal Gazette.

(3) The Commission shall, in order to carry out its functions, have the power to depute any of its member, employee or expert to any part of the Kingdom of Nepal.

(4) The Commission shall have power, in connection with its function, to take on deputation any government or corporation employee or to appoint on temporary basis any person as its employee.

4. **Allocation of Seats and Delimitation of Constituencies:**

(1) The Commission shall, for the purpose of electing one member from each electoral constituency pursuant to Clause (a) of Subsection (1) of Section 3, delimit the territory of administrative districts of the Kingdom of Nepal into one or more such constituencies.

(2) While delimiting electoral constituency pursuant to Subsection (1) above, the territory of the constituencies shall, subject to the provision of Section 3, be so fixed as to have at least one constituency in each of the administrative districts. In case any district is to have more than one constituency, the maximum and minimum number of population to be apportioned for each constituency in such district shall be as fixed by the Commission.

Provided that no electoral constituency shall be so delimited that any part of an administrative district is annexed to the territory of another administrative district.

(3) The Commission, while demarcating the constituencies in any district pursuant to this Section, shall take into consideration the nature of the boundaries of that district, geographical features, density of population, transportation facilities and homogeneity and heterogeneity of the community residing in such district.

(4) While demarcating the territories of electoral constituencies pursuant to Subsection (3), the existing boundaries of any Village Development Committee or any Ward of a

Municipality, as a whole and without causing any alteration thereon, shall be included in the concerned constituency.

(5) The boundaries of the electoral constituencies, as determined pursuant to the provision this Act, shall not be modified except in consultation with the Commission.

5. **Consultation:**

(1) The Commission may seek the opinion of local residents and political organization or parties in respect of delimiting the electoral constituencies under this Act.

(2) The Commission may, as and when required, summon any person or any official of His Majesty's Government and ask for his opinion on matters under its consideration.

(3) No question shall be raised in any court in respect of the consultation made or not with anyone by the Commission.

6. **Duty to Assist :**

(1) His Majesty's Government shall provide such personnel and other facilities to the Commission as may be required to carry out its functions.

(2) All concerned governmental officials or private persons or institutions shall be under obligation to render necessary assistance to the Commission in the fulfillment of its function.

7. **Secretary of the Commission:**

(1) His Majesty's Government shall appoint the Secretary of the Commission.

(2) The powers, functions and duties of the Secretary shall be as specified by the Commission.

8. **Financial Arrangements:**

(1) His Majesty's Government shall provide for the expenses required to be made by the Commission.

(2) The Commission shall be entitled to incur such expenditures which may be required to carry out its functions.

9. **Additional Facilities:**
The Commission may provide to the persons or the employees working for the Commission such extra monetary allowances as may be determined by the Commission.
10. **Coordination with Election Commission:**
The Commission shall, while carrying out its functions, remain in close contact and work in coordination with the Election Commission.
11. **Delegation of Power:**
The commission may, as and when required, delegate any of its powers to its Chairman, Member, Secretary or any employee of officer level of His Majesty's Government.
12. **Decisions of the Commission:**
The functions of the Commission shall be performed by its Chairman, if consisting of sole membership, and by a collective decision of the Commission if it consists of a Chairman and other members.
13. **Procedure of the Commission:**
(1) The Chairman shall preside over the meetings of the Commission.
(2) The decision of the Commission shall be made by a majority vote of the members of the Commission
(3) The decision shall be authenticated and implemented by the Secretary of the Commission.
(4) Other procedural matters of the Commission shall be as laid down by the Commission itself.
14. **Documents of the Commission:**
After the expiry of the term of the Commission, the Secretary of the Commission shall deposit all records and other documents of the Commission with the Election Commission.

ROYAL SEAL OF ENACTMENT AFFIXED ON - 2047/8/23/1

ELECTION (OFFENCES AND PUNISHMENT) ACT, 2047

The following Act was published in the Nepal Gazette, part II, Vol. 40, Extra-ordinary Number 54, dated 2047/11/2 (February 14, 1991)

Act No. 21 of 2047

An Act Made To Provide For The Electoral Offences and Punishment

Preamble:

Whereas it is expedient to make provisions for the electoral offences and punishment;

Now, therefore, His majesty King Birendra Bir Bikram Shah Deva has, upon and with the advice and consent of the Council of Ministers, made this Act pursuant to Article 129 of the Constitution of the Kingdom of Nepal.

CHAPTER - I Preliminary

1. Short Title and Commencement:

(1) This Act may be cited as "Election (Offences and Punishment) Act, 2047 (1990).

(2) It shall come into force immediately.

2. Definitions:

Unless repugnant to subject or context, in this Act-

(a) "Constitution" shall mean the Constitution of the Kingdom of Nepal, 2047 (1990).

(b) "Election" shall mean election of the members of the House of Representatives or the National Council or the Local Organisations of village, town, and district level pursuant to the provisions of Article 104 of the Constitution.

(c) "Election period" shall mean the period commencing from the date of filing of the nomination paper upto the date of declaration of the election result.

(d) "Candidate" shall mean a person contesting as candidate in any election pursuant to the existing laws.

(e) "Voter" shall mean a voter who has been registered as a voter in the Electoral Roll for election to be held in pursuance of the existing laws.

(f) "Right to Vote" shall mean the right of a person to vote in the concerned election pursuant to the existing laws.

(g) "Election Commission" shall mean the Election Commission constituted pursuant to the Constitution.

(h) "Constituency" shall mean electoral constituency delimited for the purpose of electing a member in any concerned election pursuant to the existing laws.

(i) "Polling Station" shall mean the polling station established for the purpose of casting of votes in any concerned election pursuant to the existing laws, and shall also include the sub-stations.

(j) "Election Officer" shall mean the election officer appointed by the Election Commission pursuant to the provision of prevailing laws, and the term shall also include the Chief Election Officer.

(k) "Polling Officer" shall mean the polling officer appointed by the Election Commission pursuant to the provisions of prevailing laws, and the term shall also include the Assistant Polling Officer.

CHAPTER - II
Election Offences.

3. **Prohibition to Make False Declaration of Name, Surname Age etc. :**

(1) No one shall falsely register his name, residence, age or citizenship in the Electoral Roll to be prepared in connexion with any election. Neither any false petition nor any false objection against an entry, shall be filed.

(2) No one shall obtain a ballot paper by false impersonation in order to cast vote. Neither shall any person caste a vote in such, nor shall he aid or attempt or abet to do so.

4. **Undue Influence Prohibited:**

No person acting on behalf of any political organisation or party, or any candidate or his representative or any other person shall in connexion with any election shall unduly influence, or abet or attempt to do so, to any candidate of an election or a voter, or any person who has any privy or interest in such candidate or voter by performing any of the following acts :

(a) Cause any kind of damage;

(b) Threaten to excommunicate socially;

(c) Coerce through making belief of befalling divine displeasure on him or bear consequence of impiety;

(d) Cause to undertake any kind of oath or promise; or

(e) Boast or flaunt or demonstrate any kind of threat .

5. **Prohibition on Character Assassination :**

No person acting on behalf of any political organisation or party, or any candidate or his representative or any other person, shall with a view to prejudice the results of any election, wreck the character by making any accusation on the character or conduct of any candidate or of his family member to appear as true which he himself knows or believes to be false, or which is likely to make others to believe that such accusations is true.

6. **Prohibition on Publicity:**

No person acting on behalf of any political organisation or party, or any candidate or his representative or any other person, while campaigning on his own or on any candidate's policies and programs in connexion with any election, shall not campaign or cause to campaign, with any of the following intentions;

(a) Which affects the independence, sovereignty or territorial integrity of the Kingdom of Nepal; or

(b) Which promotes or causes hatred, enmity or contempt on the basis of religion, community, cast, creed, language or region; or

(c) Which appeals to or causes such appeal to vote or refrain from voting on the basis of religion, community, caste, creed, language or region.

7. **Prohibition on Accepting or Giving Gratification in Cash or Kind:**

No person acting on behalf of any political organisation or party, or any candidate or his representative or any other person shall, during election period, give or agree to give a voter any gift, reward, prize, contribution or donation in cash or kind with a view to induce him to vote or refrain from voting. The voter shall also not accept or agree to accept such gratification for himself or on behalf of the person.

8. **Prohibition on Employees on Influencing the Process of Election:**

The Election Officer, Polling officer or any other officer or employee deputed at the polling stations, security guards or the Observer deputed by the Election Commission or any other official or employee while performing his functions, shall not conduct himself in a manner which may promote or prejudice the winning of a candidate in any election or cause others to do so except for exercising his right to cast vote.

9. **Prohibition on Disturbance:**

No person shall disturb the peace by perform any of the following acts in any building, house or premises occupied by the polling station or in any private or public house or building or premises

around thereof on the election day, within the period from three hours prior to the commencement of polling till the completion thereof, with a view to creating nuisance or causing obstruction in the performance of his duty of any person or official engaged in the polling station:

(a) Use loud speaker, megaphone or similar other device;
or

(b) Play musical instruments, organize group dance, organize any kind of assembly or function, make rowdy gestures or create disturbance.

10. **Prohibition on Carrying of Arms and Ammunition, their Use or Firing thereof;**

No person, except the Government employee deputed on security functions, shall carry or use or fire or explode any arms or poisonous and explosive material in the Polling Station or Vote Counting Center and around these places.

11. **Prohibited Behaviours:**

No person shall perform or cause others to perform or attempt or assist or abet the performance of any of the following acts;

(a) Insert, delete, correct, or remove the Electoral Roll prepared or published or used in the election work, or tear, deface in any manner, or destroy or damage such electoral roll;

(b) Insert, delete, correct or remove any list, notice or any document affixed or caused to be affixed any person or employee engaged in the election work, or tear, deface in any manner, destroy or damage such document;

(c) Deface, delete, rectify, forge, damage or tear the Ballot Paper of any signature appearing therein of the Election Officer or polling officer, or any official stamp or mark;

(d) Handover his Ballot Paper obtained by him in accordance with law for the purpose of exercising his right to vote, to another person, or place inside the Ballot box

anything other than the Ballot Paper obtained for casting his vote;

(e) Take in possession with or without the use of force, grab, steal, tear or deface in any manner or destroy or damage Ballot Paper or any document to be used or which has been used in the election work;

(f) Take in possession with or without use of force, grab, steal, damage or destroy any Ballot Box to be used or which has been used in the election work;

(g) Take out of the polling station or to any other place, without approval of the polling officer, any Ballot Paper, stamp for use in Ballot Paper, stamp pad, ink or any other material used or to be used in the election.

(h) Obstruct in any manner any employee engaged in the election work in the performance of his functions.

12. **Prohibition on Illegal Supply or Receipt of Ballot Paper:**

(1) No person shall, for the purpose of casting vote, illegally receive from any person or make arrangement for such procurement, or attempt or cause such attempt to be made for such procurement or abet or cause abetment for the procurement of the Ballot Paper to be used in any election by giving or agreeing to give gratification in the form of cash, kind, service or benefit of any kind, or by applying coercion, fear or undue influence, or by the use of or without force.

(2) No official, who is duly authorised to receive Ballot Paper for use in the election, shall supply any Ballot Paper to any unauthorized person by accepting any gratification in the form of cash, kind, service, or any benefit of any kind, or even without accepting any gratification.

13. **Restriction on Publicity and Broadcasting :**

(1) Posters, pamphlets, bills, advertisements etc. printed for the purpose of publicity in relation to any election shall bear the name and address of the printing press and the political organisation or party or the person concerned.

(2) No poster, pamphlet, bill, advertisement or similar document shall be affixed, or nothing shall be written or caused to be written on any religious, archaeological, historical building, memorial or structure for the purpose of publicity in relation to any election.

(3) No poster, pamphlet, bill, advertisement or similar document shall be affixed, or caused to affixed, or nothing shall be written or caused to be written on the private residential building, shop or other structures for the purpose of publicity in relation to any election without the approval of their owner.

(4) No person for the purpose of getting or persuading to give vote for or against any candidate convene or organize meetings, processions or raise slogans or make any kind of publicity within a period commencing forty eight hours prior to the day of polling and until its completion.

14. **Prohibition on Causing Obstruction in Election Works or in the Counting of Votes :**

No candidate or his representative or any other person shall during the counting of votes in any election shall snatch, loot, damage or destroy in any manner the Ballot Box, Ballot Papers or any document relating to election work by use of or without force, or remove, attempt to remove or abet such removal from the site where the votes are being counted, the Ballot Box, Ballot Paper or any document relating to the election work without the approval of Election Officer or any employee engaged in election work, or cause obstruction in any manner in the vote counting or other works relating to the election.

15. **Secrecy to be Maintained:**

No Election Officer, Polling Officer, Observer deputed by the Election Commission or any other official or employee engaged in the election work, candidate or his representative, or any voter or any other person shall communicate or write or express to any one or cause such communication, writing or expression to be made, abet the fact of casting or noncasting of vote by any voter, or the fact of his giving vote to a particular candidate or other facts relating to the counting of votes. Nor shall make any indication or sign or inscribe similar things in the Ballot Paper which may disclose the identity of the voter.

Provided that nothing mentioned above shall be deemed to prohibit the Election Officer or any official duly authorised by him to notify publicly the number of votes received by the candidates in any election.

16. **Power to Make Arrests:**

(1) The Election Officer or the Polling Officer shall have the power to issue order to any person who causes any obstruction on any work relating to election or the counting of votes, or attempts or abets prohibiting him from causing such obstruction or expelling such person from such place.

(2) The Election Officer or the Polling Officer shall have the power to order the Security Personnel deputed therein to arrest any person defying such order issued pursuant to Section 3(2), Section 9, Section 10 or Section 14, or any person who does not comply with the order issued by the Election Officer or the Polling Officer under Sub-section (1) .

(3) It shall be the duty of the security personnel deputed therein for the maintenance of security to execute the orders of the Election Officer or the Polling Officer issued pursuant to Sub-section (2).

17. **Details of Election Expenses to be Submitted:**

(1) The elected candidate himself or any person acting behalf of such candidate shall submit to the Election Commission the detail accounts of expenses incurred during the election time within one month from the date of declaration of the election result.

Provided that nothing mentioned in this Section shall be deemed to authorize to incur any expense which is otherwise prohibited by the existing law.

(2) The Election Commission may impose a fine upto five thousand rupees to any candidate not submitting the accounts of expenses under Subsection (1).

CHAPTER - III

Penalty

18. **Penalty**

(1) Any person contravening the provisions of Section 6, Clause (e) of Section 11 or Section 14 shall be liable to punishment of

fine upto two thousand rupees or an imprisonment upto two years or both.

(2) Any person contravening the provisions of Section 4, Section 5, Section 7, Section 8, Clauses (a), (b), (c), (d),(g), and (h) of Section 11, Section 12 or Section 15 shall be liable to punishment of fine upto one thousand rupees or an imprisonment upto one year or both.

(3) Any person contravening the provisions of Section 10 shall be liable in addition to the confiscation of the arms, poisonous or explosive material found in possession, to the punishment of fine upto one thousand rupees or an imprisonment upto six months or both.

(4) Any person contravening the provisions of Section 3, Section 9 or Section 13 shall be liable to punishment of fine upto one thousand rupees or of an imprisonment upto three months or both.

(5) If the Election Officer, Polling Officer or any other person or employee deputed on election work defaults in his duties, the Election Commission departmental punishment by itself, or the Commission may forward to the concerned authority for initiating departmental action such employee in according with the existing laws relating to his conditions of service. The concerned authority shall, upon receipt of such written request, take necessary departmental action against such employee.

CHAPTER - IV

Circumstances of Void Elections

19. Election to be void:

If any concerned candidate files an election petition on any of the following grounds and, if such allegation is proved, the election shall be declared void:

(a) That the election has not been fair due to rampant violation of the provisions of Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 10, Clauses (c),(d),(e) or (f) of Section 11, Section 12 or of Section 14;

(b) That the nomination paper submitted by any person standing as becoming a candidate was wrongly accepted or was not rejected or invalidated and as a result of which the election result has actually been altered; or

(c) That the elected candidate has incurred election expenses beyond the limits permitted by the existing law.

(2) Notwithstanding any thing mentioned in Sub-section (1) above, the election of an elected candidate shall not be annulled, if the following facts are proved--

(a) that the acts mentioned in Section 4, Section 5, Section 6, Section 7 or in Clause (c) of Subsection (1) were carried out without the knowledge of the elected candidate or his representative, or without his approval or despite his orders against such act, or that he had done his best to prevent occurrence of such act,

(b) that such act as mentioned in Clause (a) of Subsection (1) has not actually prejudiced the election result.

20. Circumstances for Re-counting

(1) In case any candidate concerned in any election files a petition for the declaration of an election as void on any of the following grounds, the Election Tribunal may order recounting of votes:

(a) That the petitioner candidate or other candidate has legally obtained majority of votes; or

(b) That the votes liable to be declared void or valid in accordance with law were not done so.

(2) During the recounting of votes pursuant to Subsection (1), if the petitioner or other candidate is proved to have lawfully obtained majority of votes, the result of the elected candidate shall be declared void and the Election Tribunal shall in such case declare the petitioner or any other person obtaining majority as the duly elected candidate.

21. **Procedure for Tie in Votes:**

(1) While recounting the votes in connexion with the petition filed pursuant to Section 20, the Election Tribunal shall recount all the votes obtained by all the candidates of the concerned constituency.

(2) During the recounting of votes pursuant to Sub-section (1) above, if the votes obtained validly by two or more candidates in the concerned election appears to be in equal number, the Election Tribunal shall decide by drawing lots amongst the candidates obtaining such equal number of votes. The candidate in whose favour the lot is drawn shall be deemed to have obtained one more vote and declared elected.

CHAPTER - V
Miscellaneous

22. **Jurisdiction of Cases:**

(1) The Election Tribunal shall have the jurisdiction to try and decide cases under this Act.

(2) An appeal may be filed against the decisions of the Election Tribunal in the Court prescribed by His Majesty's Government in the notice published in the Nepal Gazette. The decision of the prescribed Court shall be final.

(3) Notwithstanding any penalty imposed pursuant to the provisions of Clauses (e) and (f) of Section 11 or Section 14 after having been convicted for the offence, such conviction shall not affect the election held in that constituency or polling station in pursuance of a decision of the Election Commission.

(4) The Election Tribunal shall, in course of decision on the election petitions filed with itself, have the power to make decisions according to the existing laws on the issue of forgery or fraud involved in the concerned case.

23. **Constitution of Election Tribunal:**

His Majesty's Government shall, on the recommendation of the Election Commission, constitute Election Tribunal by notice published in the Nepal Gazette.

24. **Power to Investigate :**
The Election Officer or the person authorised by the Election Officer shall have powers to investigate and inquire on the offences punishable under this Act.
25. **Right to file Petition:**
Any person or candidate, who has any cause to file any complaint in respect any election, may file his complaint with the Election Tribunal through the concerned Election Officer. The concerned Election Officer shall thenceforth forward such complaint to the Election Tribunal.
26. **Limitation Period for Petition:**
Any complaint to be filed under this Act shall be filed within thirty five days from the date on which the case of action have arisen.
27. **Submission of Deposits:**
(1) Any person intending to file a complaint pursuant to the provision of this Act shall, in respect of election to Parliament, submit a deposit of one thousand rupees and, in respect of election to Local Authorities, a sum of two hundred rupees.

(2) If the complain is found to be false, the amount thus deposited shall be forfeited.
28. **Petition to be Rejected:**
If a complaint filed pursuant to the provisions of this Act is found not to have complied with the required procedure, or is filed after the expiry of the limitation period, such complaint shall be rejected.
29. **Time Limitation for Decision and Procedure.**
(1) The Election Tribunal shall complete the trial and decide the cases within one year from the date of filing of complaint.

(2) In respect of the trial and decision on the complaint under this Act, the procedure as laid down in the Summary Procedures Act, 2028 shall be applied.
30. **Power to Dismiss Petitions:**
In the event of death of complainant or the defendant, complaints filed pursuant to section 19 and 20 of this Act may be dismissed.

31. **Withdrawal of Petitions**

Complaint filed pursuant to Sections 19 and 20 of this Act may be withdrawn by the Complainant with the approval of the Election Tribunal.

Provided that if the Election Tribunal considers that the withdrawal is motivated by some ulterior benefit, the Tribunal may refuse permission for such withdrawal.

32. **Obligation to notify:**

The Authority or the official trying the Case pursuant to this Act shall notify its decision to the Election Commission, Parliament Secretariat and all other concerned offices within fifteen days from the date of its decision. The notification shall be accompanied by a copy of the decision.

33. **His Majesty's Government to be Prosecutor:**

In cases punishable under this Act His Majesty's Government shall be responsible for their prosecution.

34. **Evidence to be Inadmissible:**

(1) Notwithstanding anything mentioned in this Act or the existing law, no witness or any other person shall, in connexion with any suit or proceedings in pursuance of this Act, be compelled to disclose the name of the person to whom he has given his vote.

(2) No statement made by any witness in response to the question asked by the Election Tribunal in connexion with the proceedings in pursuance of this Act shall be admissible against such witness in other cases in which he is a party. Such statement shall not be produced as evidence against the said witness.

35. **Decision on the Question of Disqualification:**

In petition filed pursuant to the provisions of this Act if a question arises involving Article 48 of the Constitution, the Authority or the Official hearing the complaint shall, after making the required investigation, submit the concerned file to the Chief Justice of the Supreme Court for final decisions. Cases thus received by the Chief Justice shall be decided in accordance with the provisions of the same Article of the Constitution.

36. **Savings:**

In matters provided in this Act, the provisions of this Act shall apply and in matters not herein provided for, the provisions of Nepal law shall apply.

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