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NATIONAL ASSEMBLY MEMBERS' ELECTION ACT, 2048

The following Act was published in the Nepal Gazette, Part II, Vol. 41, Extra-ordinary Number 14, dated 2048/2/23 (June 6, 1991).

Act No. 12 of 2048 AN ACT TO PROVIDE FOR THE ELECTION OF THE MEMBERS OF NATIONAL ASSEMBLY

Preamble

Whereas it is expedient to make Provisions for the election of the Members of the National Assembly;

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, 2047.

CHAPTER - I Preliminary

1. Short Title and Commencement :

- (1) This Act may be cited as "National Assembly Members Election Act, 2048".
- (2) This Act shall come into force immediately.

2. Definitions:

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

- (a) "Constitution" means Constitution of the Kingdom of Nepal, 2047.
- (b) "Commission" means the Election Commission as mentioned Article 103 of the Constitution.
- (c) "Election" means the election to be held to elect Members of the National Assembly in accordance with Sub-clauses (b) and (c) of Clause (1) of Article 46 of the Constitution.
- (d) "Voter" means the Members of the House of Representatives.
- (e) "Member" means the Member of the National Assembly elected or to be elected pursuant to the provisions of this Act.
- (f) "Returning Officer" means the Returning Officer appointed under Section 3.
- (g) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Order issued by the Commission published in the Nepal Gazette.

CHAPTER - II

Returning Officer, Voters' List and Election Notice3. Appointment of Returning Officer:

(1) The Commission shall conduct the election of the Member of National Assembly in accordance with the Constitution and the Commission shall appoint the Returning Officer for the purpose of the election.

(2) The Returning Officer, appointed pursuant to Sub-section (1), shall appoint requisite employees for purpose of the election.

4. Preparation of Voters' List:

(1) The Returning Officer shall prepare, in the manner determined by the Commission, different voters' list for each of the following election --

(a) Election to be held for three women Members among thirty five Members as provided in Sub-clause (b) of Clause (1) of Article 46 of the Constitution;

(b) Election to be held for other thirty two Members, excepting those provided in Clause (a) above;

(c) Election to be held for each three Members representing each Development Region as provided in Sub-clause (c) of Clause (1) of Article 46 of the Constitution.

(2) The Returning Officer shall publish the voters' list prepared pursuant to Sub-section (1) in his Office.

5. Notice and Program of Election :

(1) The Commission shall fix the date and time for election to be held to elect the Members of the National Assembly and issue a notice to such effect. Such notification shall be published in the Nepal Gazette.

(2) After the publication of notice according to Sub-section (1), the Returning Officer shall fix the date, time and place and publish the election program for the purposes 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, withdrawal of name by any candidate, publication of final list of the candidates.

CHAPTER - III

Candidates and Their Nomination6. Nomination of Candidates:

(1) Each voters shall be entitled to nominate, in respect of each of the following elections, one person who is not disqualified pursuant to Section 7, as a candidate --

(a) Election to be held for thirty two Members;

(b) Election to be held for three women Members;

(c) Election to be held for each three Members from each Development Region.

(2) Any person proposed as a candidate for the election to be held pursuant to Clause (c) of Sub-section (1), shall have permanently resided in the concerned Development Region.

(3) Any candidate proposed pursuant to Sub-section (1) shall have been seconded by at least three voters.

(4) Any voter who had been the proposer or seconder in respect of any candidate shall not be the proposer or seconder of another candidate.

(5) While proposing a candidate pursuant to Sub-section (1), a nomination paper in the format as determined by the Commission shall be duly filled in and submitted at such place and within such time as may be specified by the Returning Officer. Such nomination paper shall mandatorily contain the signatures of the proposer, the seconder and the candidate.

7. Disqualification of a Candidate :

(1) The following person shall not be qualified to be a candidate in the election --

(a) Who has not completed the age of thirty five;

(b) Who is not a citizen of Nepal;

(c) Who is mentally retarded or insane;

(d) Who is an insolvent;

(e) Who is an employee of His Majesty's Government, or of a corporate body owned or controlled by His Majesty's Government;

(f) Who is holding an office of profit;

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

(g) Who is convicted and sentenced with imprisonment on an offence relating to election by the Election Tribunal constituted under an existing law and a period of six years has not 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.

(2) The disqualification as stipulated in Clause (h) of Sub-section (1) shall not be applicable in respect of the first election to be held after the commencement of this Act.

(3) Any person who has been convicted in any offence against State or who has been pardoned on political ground as included in a notice published in the Nepal Gazette shall not be deemed as disqualified for the purposes of Clause (h) of Sub-section (1).

8. Computation of Age of the Candidate :

For the purposes of computing the age of a candidate, he shall have completed the age of thirty five years on the date of publication of election notice pursuant to Section 5.

9. Filing of Nomination Papers :

(1) The nomination paper of a candidate shall be submitted either by the candidate himself or by his proposer to the Returning Officer.

(2) The Returning Officer shall scrutinize all nomination papers as to the completion of formalities, and, if found completed, he shall register it and issue a receipt thereof to the candidate or his proposer.

(3) If any nomination paper filed pursuant to Sub-section (1) is found deficient of any formality, the Returning Officer shall require to complete such formalities prior to the registration thereof. If the person submitting such nomination paper still insists on filing thereof without completing the required formalities, such refusal shall be noted on the concerned nomination paper and the information thereof shall be given to the person filing such nomination paper.

10. List of the Candidates :

(1) The Returning Officer shall, after the expiry of time specified for filing of nomination papers, publish the list of candidates filing nomination papers on the date, time and place as specified in the election program.

(2) If any voter or candidate intends to file an objection against any candidate mentioned in the list published pursuant to Sub-section (1), he may file his objection with the Returning Officer on the date, time and place as specified in the election program.

11. Scrutiny of Nomination Papers :

(1) The nomination papers shall be scrutinized on the date and time and at the place notified in the election program for scrutiny of nomination papers. The proposer and the candidate may personally attend at such place and time of scrutiny.

(2) The Returning Officer shall scrutinize all nomination papers, mentioned in Sub-section (1), in the presence of the candidates and proposers, who are present therein.

(3) The Returning Officer shall, during the scrutiny of nomination papers, probe on the objections, if any, filed pursuant to Sub-section (2) of Section 10, and decide thereupon.

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

Explanation : For the purposes of this Sub-section, "minor discrepancy" means the technical mistakes relating to the letters, numbers and vowel signs in writing or printing and where such mistakes do not cause any material difference.

12. Conditions for Invalidation of Nomination Papers :

(1) The Returning Officer may declare any nomination paper on any of the following circumstances --

(a) If the candidate is disqualified according to this Act;

- (b) If the candidate does not consent to or the signature of the candidate, proposer or seconder is missing or the signature contained therein does not appear as genuine;
- (c) If the nomination paper is not filed within the time specified in Section 5;
- (d) If the nomination paper is not filed complying with the conditions prescribed in Section 9; or
- (e) If other conditions prescribed in this Act is not fulfilled.

(2) Where the Returning Officer declares any nomination paper as invalid pursuant to Sub-section (1), he shall note the reasons thereof in the nomination paper and shall inform the concerned candidate.

13. List of the Candidates :

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

14. Withdrawal from Candidacy :

(1) If any candidate desires to withdraw his name from the list of candidates, he may so withdraw his name by giving a notice in writing to the Returning Officer within the time prescribed pursuant to Section 5.

(2) A notice for withdrawal of name once submitted to the Returning Officer shall not be allowed to be cancelled or withdrawn.

(3) 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 withdrawing candidate from the list of the candidates. The Returning Officer shall immediately publish a notice thereof in his Office.

15. Final List of the Candidates :

(1) The Returning Officer shall, after the expiry of time specified in Section 14 for withdrawal of name, prepare a final list of the remaining candidates and shall immediately publish a copy of the list in his Office.

(2) In the list prepared pursuant to Sub-section (1), the names of the candidates shall appear in alphabetical order and the address of the candidates, as mentioned in the nomination paper, shall also appear therein.

16. Declaration as Elected Uncontested :

(1) If the number of candidates to be elected is equal to or less than the number of Members to be elected, the Returning Officer shall declare such candidates elected unopposed.

(2) Where the candidate is declared elected unopposed pursuant to Sub-section (1), the Returning Officer shall inform it to the Commission.

17. Identity Card of the Candidate :

The Returning Officer shall issue identity cards to the candidates remaining in the final list of candidates as prepared pursuant to Section 15.

18. Death of a Candidate :

(1) If any candidate dies at any time after the publication of final list of candidates pursuant to Section 15 and earlier to the day preceding the polling date and a written information is received relating thereto by the Returning Officer, and if the Returning Officer is satisfied, he shall immediately suspend the polling program and shall, as soon as practicable, give information relating thereto to the Commission. A notice of suspension of program shall be served by the Returning Officer in his Office for information of the remaining candidates.

(2) The Commission, on receipt of information pursuant to Sub-section (1) above, shall re-schedule the election program including the polling date and communicate it to the Returning Officer.

(3) The candidates whose name appear in the final list published pursuant to Section 15 shall not be required to file their nomination paper again.

Provided that any person who had withdrawn prior to the suspension of polling shall be entitled to re-submit his nomination paper as a candidate.

CHAPTER - IV

Ballot Paper, Ballot Box and Polling

19. Ballot Paper :

(1) The design of the Ballot Paper shall be as prescribed by the Commission.

(2) The Returning Officer shall hand out the Ballot Paper to the voter, who is present at the polling station.

20. Ballot Box :

For the purposes of polling, the Ballot Box as provided by the Commission shall be used.

21. Polling Method :

(1) Each voter shall confidentially cast his vote by indicating in the ballot paper his preference in the manner as specified in Sub-section (2) below.

(2) While casting his vote, the voter shall indicate his first preference vote by writing the number 1 at the blank space provided for indicating the preference against the name of the candidate to whom he intends to give his first preference. After indicating the first preference in the manner aforesaid, he may, if he wishes, vote with other preferences by writing numbers 2, 3, 4, etc. at other blank spaces against the name of such other candidates.

Provided that while indicating such other preferences, no preference shall be indicated which would be in excess of the number of candidates to be elected.

(3) No one may poll by indicating the same number of preference to more than one person.

22. Adjournment of Polling During Emergency :

(1) If the Returning Officer is satisfied that the polling cannot be continued due to the existence of circumstances beyond his control, he may immediately suspend the polling and shall publish therein a notice to that effect.

(2) Where the polling is suspended pursuant to Sub-section (1), the Returning Officer shall immediately inform the Commission in respect thereof.

(3) Where the polling has been suspended pursuant to Sub-section (2), the Returning Officer shall re-schedule the polling date and time and publish a notice to this effect and conduct the re-polling.

23. Entry to Polling Station :

The Returning Officer shall prohibit entry to the polling station of all persons except the following --

- (a) Voters,
- (b) Candidates,
- (c) Persons authorised by the Commission or Returning Officer.

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

24. Inspection by the Returning Officer :

If the Returning Officer suspects of any mischief being committed within the place secluded for marking votes, he may enter such place and inspect therein.

25. Incapacitated Voter :

(1) If any voter being unable to cast his vote by himself for the reason of his physical infirmity requests for the permission of accompanying a person of his confidence with him, the Returning Officer may permit the entry of such person to accompany the voter upto the place of marking the votes.

(2) If any voter cannot himself mark his vote and requests the Returning Officer to mark in the ballot paper at the blank space provided for indicating the preference against the name of the candidate to whom he intends to give his first preference, the Returning Officer may assist him in marking his vote according to the wish of such voter.

CHAPTER - V

Counting of Votes and Election Result

26. Notice on Vote Counting :

After the completion of polling, the Returning Officer shall publish a notice at his Office informing the candidates about the place, date and time fixed for the counting of votes.

27. Counting of Votes :

(1) The Returning Officer shall commence counting of votes in the place and on the date and time fixed in the notice published pursuant to Section 26.

(2) The candidates and other persons permitted by the Returning Officer may attend at the place of counting of votes.

(3) 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 the order of the Returning Officer, expel the concerned person from such place with the use of force, if necessary.

28. Vote Counting to be Continuous :

(1) Once the counting of votes is commenced, the process thereof shall be kept 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 prepare a list of the counted ballot papers, records relating to the counting and the remaining ballot papers to be counted and shall keep them in separate envelopes and seal such envelopes with sealing wax. The candidates, if they wish, may also have their seal with the sealing wax.

(3) The counting of votes, so adjourned according to Sub-section (2) above, shall be resumed as early as possible.

29. Invalidity of Ballot Papers :

The following ballot papers shall be deemed invalid --

- (a) If it does not bear the signature of the Returning Officer;
- (b) If it is marked in any other manner in stead of marking in the manner prescribed by this Act;
- (c) If the ballot paper is mutilated or blurred or defaced beyond identification of the vote;
- (d) If anything is written or any sign made so as to identify the voter;
- (e) If the mark is unclear as to which candidate the vote is intended;
- (f) If it is a fake ballot paper;
- (g) If no first preference is indicated;
- (h) If the first preference is indicated to more than one candidate;
- (i) If more than one preference is indicated to a candidate;
- (j) If no identification is possible as to whom the first preference is indicated.

30. Separation of Invalid Ballot Papers :

The Returning Officer shall scrutinize all ballot papers and separate all ballot papers deemed invalid pursuant to Section 29. He shall denote the reasons of invalidity on the reverse side of each of such ballot paper and shall place all such invalid ballot papers within an envelope and seal it.

31. Minimum Number of Votes required to be Elected :

While determining the minimum numbers of votes required to be elected, the following process should be adopted --

- (a) To multiply the number of valid ballot papers by 100,
- (b) To add by 1 number to the total number of Members to be elected,
- (c) To divide the multiplied figure arrived under Clause (a) by the number arrived under Clause (b),
- (d) To add again by 1 number to the dividend resulting from the division made according to Clause (c).

32. Other Procedures Relating to the Counting of Votes :

Other procedures relating to the counting of votes shall be as laid down by the Commission. Such procedures shall be published in the Nepal Gazette.

33. Publication of Election Result :

(1) Upon completion of the counting of votes, the Returning Officer shall prepare a result sheet of counting of votes and shall publish the election result. He shall forward a copy of such result sheet to the Commission.

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

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

CHAPTER - VI Miscellaneous

34. Termination of Membership :

(1) If the election of any Member is annulled pursuant to the decision of the Election Tribunal constituted under the Election (Offences and Punishment) Act, 2047, the Membership of such Member shall terminate with effect from the date of such decision.

(2) If any Member is elected as a Member of the House of Representatives, his Membership shall terminate ipso facto with effect from the date of being so elected.

35. Maintenance of Secrecy :

(1) Unless authorised by law, no employee deputed in election duty or candidate or any other person shall disclose orally or in writing or in any other manner, the vote as indicated by the voter in the ballot paper or any other information relating thereto known to him or within his knowledge.

(2) Notwithstanding anything contained in this Act or in any other existing law, no witness or any 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.

36. 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 re-sealed after the counting is

completed. All such documents shall be kept in custody of the officer designated by the Commission.

(2) Among the documents sealed and preserved pursuant to Sub-section (1), such envelopes containing the 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 re-seal 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 limitation period specified for filing of election petition.

37. Orders and Directives :

(1) The Commission may issue necessary Orders to carry out the objectives of this Act.

(2) The Commission may issue necessary Directives to the Returning Officer for the conduction of election works.

38. Manual :

The Commission may frame Manual on election procedures and implement it.

39. Assistance :

The Returning Officer may avail the assistance of other employees in addition to the employees of the Parliament Secretariat.

40. Jurisdiction Relating to Disputes:

The Election Tribunal constituted under the Election (Offences and Punishment) Act, 2047, shall have the jurisdiction to try and decide cases under this Act.

41. Saving :

No question shall be raised in any court of law, excepting the Election Tribunal constituted under the Election (Offences and Punishment) Act, 2047, in respect of any act relating to election performed in pursuance of the provisions of this Act or the Orders issued hereunder.

ROYAL SEAL OF ENACTMENT AFFIXED ON - 2048/2/23/5
