

An Act No. 11 of the Year 2064 (2007) enacted by the Legislative-Parliament

**An Act Made to Provide for the Formation, Jurisdiction and Procedures of
the Constituent Assembly Court**

Preamble:

Whereas, it is expedient to make legal provisions for the formation, jurisdiction and procedures of the Constituent Assembly Court to hear and settle petitions relating to the election of members of the Constituent Assembly;

The Legislative-Parliament has enacted this Act.

Chapter – 1

Preliminary

1. **Short title and commencement:** (1) This Act may be cited as “the Constituent Assembly Court Act, 2063 (2006)”.
- (2) This Act shall come into force at once.
2. **Definitions:** Unless the subject or the context requires otherwise, in this Act,-
 - (a) “Court” means the Constituent Assembly Court formed pursuant to Section 3.
 - (b) “Chairperson” means the Chairperson of the Constituent Assembly Court.
 - (c) “Member” means a member of the Constituent Assembly Court, and this expression also includes the Chairperson.
 - (d) “Registrar” means the Registrar designated pursuant to Section 16.

Chapter - 2

Formation of the Court, Jurisdiction and exercise thereof

3. **Formation of the Court:** (1) The Government of Nepal shall, in consultation with the Judicial Council, and by a notification in the Nepal Gazette, form a Constituent Assembly Court to hear and settle petitions relating to the election of members of the Constituent Assembly.
- (2) The Government of Nepal shall, on the recommendation of the Judicial Council, designate a Chairperson and two members of the Court from amongst the sitting Judges of the Supreme Court.

(3) A notice on the designation of the Chairperson and members pursuant to sub-section (2) shall be published in the Nepal Gazette.

4. **Jurisdiction of Court and exercise thereof:** (1) The Court shall hear and settle petitions relating to the election to members of the Constituent Assembly.

(2) Without prejudice to the generality of sub-section (1), the Court may, in the course of hearing and settling cases pursuant to this Act, also hear and settle the following matters:

- (a) Disqualification of a member of the Constituent Assembly;
- (b) Invalidation of the election of a member of the Constituent Assembly;
- (c) Offences relating to members of the Constituent Assembly.

(3) The jurisdiction of the Court shall be exercised collectively by the three members.

Provided that one member present bench may carry out proceedings in a case, and that a two-member present bench may hear and settle a case.

(4) If the three members of a three-member present bench hold a unanimous opinion, or if there is a majority of two members, such opinion shall be deemed to be the verdict of the Court.

(5) If a two-member present bench fails to reach a consensus, action shall be taken according to the opinion of the Chairperson, in the case of proceedings, if it is a bench including the Chairperson, and according to the opinion of the senior member, if it is a bench excluding the Chairperson. If, in the case of the judgment of a case or final order, there is no majority, the matter shall be referred to the member who was absent earlier and the opinion supported by him or her shall be deemed to be the verdict of the Court.

(6) The verdict given by the Constituent Assembly Court shall be final.

5. **No petition to lie in other court:** Notwithstanding anything contained in the laws in force, no question may be raised in any court in respect of any matter falling under the jurisdiction of this Act.

Chapter - 3

Powers and Procedures of Court

6. **Powers of Court:** The Court shall have the following powers:

- (a) To question such other persons or examine such other evidence related to the case as may be deemed necessary, in addition to the witnesses of the petitioner and the respondent;
- (b) To issue the summons in the name of respondent; and to arrest the respondent who does not appear before the Court within the time-limit of the summons, and take his or her deposition;
- (c) To issue the summons in the name of a witness and take his or her testimony;
- (d) To try a case by releasing a party on the condition that the party shall appear on the appointed date or to try a case by releasing the party without requiring him or her to appear on the appointed date on the condition that he or she can be summonsed as and when required or that he or she shall appear at a specified time.

7. **Power to issue interim and stay order:** (1) The Court may, if it deems necessary and appropriate, issue any necessary and appropriate order with regard to a petition filed under this Act pending the filing of the Statement of Defence by the respondent or pending the settlement of the petition.

(2) If the bench deems it appropriate to give verdict on a petition, the bench may give verdict on the petition even though it is filed for an interim order pursuant to sub-section (1).

(3) The Court may, in the course of settling a question that any member of the Constituent Assembly is disqualified or is no longer qualified to be a member of the Constituent Assembly by the reason that he or she has not any qualification as referred to in Article 65 of the Interim Constitution of Nepal, 2063 (2007), issue a stay order thereby restraining such member of the Constituent Assembly from participating in the meetings of the Constituent Assembly or performing any activity in the capacity of a member of the Constituent Assembly or being involved in any activity on behalf of the Constituent Assembly, if there is sufficient ground to hold him or her to be disqualified on the basis of the immediately available evidence.

8. **Procedures relating to service of summons:** (1) While issuing the summons in the name of a respondent named in a petition filed with the Court, the summons shall be issued by specifying a time limit not exceeding seven days, excluding the time required for travel.

(2) If the summons issued in the name of a respondent pursuant to sub-section (1) could not be served, such summons may be issued through telex or telefax number being used by the respondent or any other means of electronic media that can be recorded or by registered mail; and the summons so issued shall be deemed to be duly served.

- (3) While issuing the summons in the name of a witness in a case filed with the Court, the Court may issue the summons by specifying a time limit not exceeding seven days, excluding the time required for travel.
- (4) The summons to be issued pursuant to this Section can be issued by any employee of the Court or through a district court or any other government office situated nearby. It shall be the duty of the registrar (*Shrestedar*) of the concerned district court or the chief of the government office to cause the summons of the Court to be issued with priority.
- (5) Any employee who goes to serve the summons issued by the Court shall complete the service of summons no later than two days, excluding the time required for journey. If such an employee is found to have delayed the service of summons without any reasonable ground, the Court may punish him or her with a fine not exceeding five hundred rupees.
- (6) Notwithstanding anything contained in sub-section (5), the Court may order to take departmental action against an employee who has not served the summons intentionally with *mala fide* intention or recklessly.
- (7) If a person, knowing that the Court has issued the summons in his or her name, makes an application to the Court or any court or office to which the summons has been sent for its service to receive the summons, such summons may be served on him or her. No fees shall be charged for such application.
- (8) If a report is submitted indicating that the summons issued in the name of any person could not be served by the reason that the address of such person could not be traced or for any other reason, while serving the summons in accordance with the procedures referred to in this Section, the Court may publish a public notice in a newspaper of national circulation, setting out a short description of the case filed in the Court, ordering such person to be present before the Court within a time limit not exceeding 7 days; and if a notice is so published, the summons shall be deemed to have been duly served on such person.
- (9) Notwithstanding anything contained elsewhere in this Section, if any summons has to be issued in the name of a member of the Constituent Assembly, the Court shall ask the secretary-general or secretary of the Constituent Assembly to serve the summons; and when so asked, the secretary-general or secretary of the Constituent Assembly shall serve the summons in the name of concerned member of the Constituent Assembly, and send information thereof to the Court. Where the summons is so served, the summons shall be deemed to have been duly served.

- (10) Other provisions relating to the service of summons, other than those mentioned in this Section shall be as per the laws in force.
9. **Provision relating to extension of time limit, appointed date for presence:** If a party named in a case filed in the Court makes an application for an extension of the time limit appointed date for presence, setting out the reasons and grounds beyond his or her control, and if such statement appears to be reasonable, the Court may, for one time, extend the time limit, appointed date for presence, for up to seven days.
10. **Other powers and procedures:** (1) While hearing and settling a petition filed under this Act, the Court shall exercise and apply the powers and procedures referred to in this Act, to the extent so referred in this Act; and the Court shall, in respect of other matters, apply the procedures as referred to in Summery Trial Act, 2028 (1971).
- (2) The Court may exercise and apply the same powers and the same procedures as the district court may have in accordance with the laws in force on the matters other than those as referred to in Sub-section (1).

Chapter - 4

Miscellaneous

11. **Oath:** The Chairperson and member shall have to take oath of office with the Chief Justice in the format as referred to in Schedule prior to assuming his or her office.
12. **Contempt of court:** (1) The Court may institute action against a person in contempt of the Court; and if the Court holds that the contempt of court has been committed, it may punish such person with imprisonment for a term not exceeding one year or with a fine not exceeding ten thousand rupees or with both.
- (2) Notwithstanding anything contained in sub-section (1), if the accused or offender submits an apology to the satisfaction of the Court, it may either pardon him or her, or remit or commute the sentence imposed on him or her, in cases where the sentence has already been specified, or postpone the sentence on such conditions as specified by the Court, and order not to carry out the sentence if such conditions are complied with.
13. **Obligation to produce such deed, evidence, document or reply as required by Court in relation to case:** (1) If the Court orders any office to produce any deed, evidence, document or any other matter required for evidence in a case or if the Court asks for clarification or reply in respect of any other matters, the concerned office shall comply with such an order within the time as specified by the Court.

- (2) If the hearing and settlement of a case is impeded or any party is unduly harassed or affected by the reason of the failure of any office to comply with an order of the Court referred to in sub-section (1), the Court may punish the chief of the concerned office or its employee with a fine not exceeding five hundred rupees for every instance of such failure.
- (3) Notwithstanding anything contained in sub-section (2), if the chief or the concerned office or its employee submits an application, accompanied by the reason for such failure to comply with the order of the Court, stating that such fine should not be imposed, and the reason seems to be satisfactory, the Court may cancel the order of such a fine.

- 14. Period for completion of hearing and settlement of cases:** (1) The Court shall complete the final hearing and settlement of a case within three months from the date on which the statement of defence, if any, is filed or from the date on which the time limit specified for the submission of the statement of defence expires in cases where the statement of defence is not submitted.

Provided that no case shall be finally heard and settled prior to the lapse of the time limit allowed for the extension of the expired time limit pursuant to Section 9.

- (2) Notwithstanding anything contained in sub-section (1), a case which has become matured for settlement after procuring and examining the required evidence from and on behalf of the petitioner and the respondent shall be settled by the Court no later than seven days from the date on which the case gets such maturity.
- (3) The verdict given by the court in accordance with this Act shall be final.

- 15. Execution of judgement:** If the Court indicates in its judgement or final order that it has to be executed by any body, such body shall, and, if no such body is indicated, the concerned district court shall, execute the judgement or final order.

- 16. Registrar:** (1) The Government of Nepal may, by a notification in the Nepal Gazette, designate a gazetted first class officer of the Nepal Judicial Service as the Registrar.

- (2) The functions, duties and powers of the Registrar shall be as follows:
 - (a) To verify and examine petitions, statements of defence and other deeds, as well, intended to be filed in the Court and register the same if they meet the requirements or refuse to

register them setting out the reason for such refusal, if they cannot be registered;

- (b) To verify the duplicates produced in a case with the originals and attest the same if they verify;
 - (c) To issue and serve, or cause to be issued and served, the summons to be served on a person or witness who is ordered to appear, and examine whether the summons served has been duly served or not, and if it does not appear that such summons has been duly served, to cancel the summons and get the summons served again in a due manner;
 - (d) To issue order in accordance with law if an application is made an extension of the time limit or, date appointed for presence as allowed under the law;
 - (e) To implement, or cause to be implemented, all the activities as indicated in the orders issued by the bench.
17. **Provision of employees:** The Government of Nepal shall provide all other employees as required for the Court.
18. **Dissolution of Court:** (1) The Government of Nepal may, by a notification in the Nepal Gazette, dissolve the Court after the completion of the purpose for which this Court has been formed pursuant to this Act.
- (2) After the dissolution of the Court pursuant to sub-section (1), the Government of Nepal shall so transfer all case-files, documents and movable and immovable properties in custody of the Court that the custody thereof devolves on the Supreme Court.
19. **Liaison with Government of Nepal:** While making contact with the Government of Nepal, the Court shall make such contact through the Ministry of Law, Justice and Parliamentary Affairs.
20. **Power to frame rules:** The Government of Nepal may, in consultation with the court, frame necessary rules to carry out the objectives of this Act.

Schedule

Relating with Section 11

Taking of oath of Office of Chairperson/member of the Constituent Assembly Court

I,, being fully loyal to the country and the people, do hereby honestly and faithfully promise/ take an oath in the name of god that I, by being fully loyal to the Interim-Constitution of Nepal, 2063 (2007) promulgated upon paying high honour to the spirit expressed by the people through the popular movement that the state power and sovereignty of Nepal must be inherent only in Nepali people , shall honestly perform the duties of the Office of Chairperson/member of the Constituent Assembly Court subject to the prevailing laws neither fearing from any one nor taking the side of any one nor being biased against anyone , or having bad faith in, any one and I shall not disclose or hint any matter which I come to know in the performance of my duties in any manner at any time when I hold or cease to hold the Office except in compliance with the prevailing laws.

Date of Certification: 2064/5/2 (August 19, 2007)