

# Commission for the Investigation of Abuse of Authority Act, 2048 (1991)

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## Act Number 34 of the Year 2063

1. Commission for the Investigation of Abuse of Authority (First Amendment) Act,2048 (1991) – 2049/2/2/6
2. Commission for the Investigation of Abuse of Authority (Second Amendment) Act, 2059 (2002) –2059/4/30/5
3. The Act Amending Some Nepal laws, 2063 –2063/6/28

**Preamble:** Whereas it is desirable to make provision relating to the functions, duties, powers and working procedures of the Commission for the Investigation of Abuse of Authority,

Now therefore, Parliament has enacted this Act in the 20<sup>th</sup> year of the reign of His Majesty King, Birendra Bir Bikram Shah Dev.

### Chapter 1

#### Preliminary

1. **Short title, Extent and Commencement** (1) This Act may be called the Commission for the investigation of abuse of authority Act,2048 (1991),
  - (2) This Act shall be extend throughout Nepal, and shall also be applicable to all Nepali citizens, where ver they may have been residing outside Nepal.
  - (3) It shall come into force immediately.
- (2) **Definitions:** In this Act, the subject or context otherwise requires: -
  - (a) "Constitution" means the Interim Constitution of Nepal, 2063\*.
  - (b) "Commission" means the Commission for the Investigation of Abuse of Authority.
  - (c) "Commissioner" includes the Chief Commissioner of the Commission,
  - ∇(d) "Person holding a public post" means any person who is holding a post of

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\* At present the prevails Interim Constitution of Nepal, 2063

responsibility or is entitled to exercise any right in pursuance of the Constitution, other prevailing laws or decisions or orders of the concerned body or authority and the term shall also mean an official or employee holding any post in a public institution.

<sup>∇</sup>(e) "Public Institution" means the following institutions:

- (1) A company, bank or committee fully or partly owned or controlled by Government of Nepal or commissions, organizations, authority, corporations, academy, boards, centers, councils or any other organized institution of such nature established by His Majesty's Government,
- (2) Universities, campuses, schools, research centers and any other academic or educational institutions run by Government of Nepal or receiving full or partial grants from Government of Nepal,
- (3) Local bodies constituted under the Local Self-Governance Act, 2055 (1999),
- (4) Institutions run with loans, grants or guarantee of the Government of Nepal.
- (5) Institutions with full or partial ownership or control of the institutions stated in Sub-Clauses (1), (2), (3) or (4),
- (6) Any other institution designated as public institution by the Government of Nepal by publishing a notification in the Nepal Gazette.

(f) "Investigation Officer" means a person designated under this Act for conducting inquiries and investigations on abuse of authority.

(g) "Improper Conduct" means any act as mentioned in Section 3, committed

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<sup>∇</sup> Amended by the second Amendment.

<sup>∇</sup> Amended by the second Amendment.

by a person holding a public post.

<sup>∇</sup> (h) "Corruption" means an offence punishable under the prevailing laws relating to the prevention of corruption.

(i) "Abuse of Authority" means an improper act or corruption as mentioned in Clauses (g) or (h),

<sup>‡</sup> (j) "Court" means the court pursuant to Sub-section (1) of Section 34 ,

<sup>‡</sup> (k) "Authority" means the authority provided for in prevailing laws or agreements or any other written documents relating to terms and conditions of service of a person who is holding a public post, and the term shall also apply to a person authorized to appoint, dismiss from service or supervise the works of such persons.

3 **Improper conduct:** Any of the following acts taken willfully or negligently by a person holding a public post shall be regarded as an improper Conduct:

(a) to refuse to do anything within the jurisdiction to do anything beyond the jurisdiction .

(b) to comply with the mandatory procedures while taking a decision or issuing an order.

(c) to exercise powers vested in him/her for any objective or purpose in contravention of the appropriate law, decision or order.

(d) to exercise discretionary powers in a *mala fide* or arbitrary manner.

(e) to create unauthorized obstruction in the work of any other office, authority or employee, or compelled them to perform any unauthorized action by exerting pressure on such office, authority or employee.

(f) to fail to do anything which one should have done, or send to another office or authority, evading responsibility, or

(g) to fail to discharge any duty pertaining to the post; which is required to

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<sup>∇</sup> Amended by second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

discharge according to the nature of the post .

‡ (h) to cause to work in one's own interest to a person subordinate or person under the influence through undue pressure or lure .

‡ (i) to abuse the immunity, facilities or privileges acquired in the capacity of a post.

## Chapter II

### Provisions Regarding Jurisdiction of the Commission

∇4. **Jurisdiction of the Commission:** The Commission, in accordance with this Act or other prevailing laws, may conduct investigations, file a case or take any action against any person holding a public post for an abuse of authority.

Provided that,

(a) In the matters contained in the proviso of Article 98 (1) of the Constitution, actions shall be taken accordingly.

(b) The Commission, pursuant to the Act, shall not take any action in matters relating to any business or decisions taken at meetings of any House of Parliament or of any committee or anything said or done by any member at such meetings, or any policy decisions taken by the Council of Ministers or any committee thereof or judicial actions of a court of law.

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6 Regarding Actions to be taken by the Commission on improper conduct in the public Institutions : .....<sup>∞</sup> The Commission may refer any complaint filed with it regarding any improper conduct in any institution to the concerned institution, or

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‡ Inserted by Second Amendment.

‡ Inserted by Second Amendment.

∇ Amended by the second Amendment.

∞ Repealed by the Second Amendment.

∞ Repealed by the Second Amendment.

to the concerned superior body for action, according to circumstances, on the condition that a report shall be submitted to it, and such body shall inform both the Commission and the complainant about the action and decision taken in respect thereto.

Provided that, in case the Commission so deems necessary, it may conduct a fresh scrutiny or initiate action it in respect to such complaint

- 7 **Commission not allowed to raise question on discretionary powers:** The commission shall not initiate any action under this Act with regard to any action or decision taken by any officer in any .....<sup>∞</sup> exercise of his/her discretionary powers.

Provided that, if it appears that such discretionary powers have been exercised in a *mala fide* or arbitrary manner, nothing mentioned in this Section shall prevented the Commission from initiating action in respect thereto.

### **Chapter III**

#### **Provisions Regarding Improper Actions**

8. <sup>∇</sup>**Complaints with regard to improper conduct:** (1) In case anyone commits improper conduct having an adverse effect on matters of public interests or concern, anyone may file a complaint with the Commission and in case of matters other than this, a person who is adversely affected by the improper conduct may lodge a complaint.

Provided that, in case the person adversely affected by improper conduct has already died or unable to file a complaint due to physical or mental incapacity, a complaint may be filed by his/her heir or guardian as well.

(2) The commission may pursuant to this Act conduct an inquiry or investigation and take necessary action with regard to an improper conduct being

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<sup>∞</sup> Repealed by the Second Amendment.

<sup>∇</sup> Amended by the second Amendment.

committed adversary affecting the matters of public interest or concern upon receiving any information from any other source even a complaint has not been filed pursuant to Sub-Section (1),

(3) While filing a complaint pursuant Sub-Section (1) on matters having an adverse impact on public interest or concern, the complaint may be filed any time and with regard to matters other than this, complaints shall be filed within 35 days after the complainant comes to know of it.

(4) While submitting a complaint, the complainant shall submit evidence in support of the complaint which are in his/her possession or which he/she can obtain.

9. **Verification of complaints:** Except when <sup>∇</sup>the person adversely affected by improper actions personally files a complaint with the Commission, in case the complaint is forwarded to the Commission by post or by any other means, the Commission shall summon <sup>∇</sup>such complainant to appear before it within seven days after receiving such complaint for its verification.

Provided that, in case the contents of the complaint are found baseless or unclear or confusing, the Commission may decide not to take any action in respect thereto. The Commission shall inform the <sup>∇</sup>person adversely affected by improper conduct of such decision as early as possible.

10. **Procuring the relevant files and documents of evidence :** In case the contents of the complaints, and any evidence if any submitted by the complainant in respect thereto, provide reasonable grounds to believe that any person holding, a public post has committed any improper conduct as mentioned in the complaint, the Commission may procure the relevant files or documents of evidence from the

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<sup>∇</sup> Amended by the second Amendment.

<sup>∇</sup> Amended by the second Amendment.

<sup>∇</sup> Amended by the second Amendment.

appropriate office office-holder, or person, and in case if a person can provide important information in respect thereto, the Commission may also inquire such person.

- ∇11. **Procedure for departmental action:** (1) In case any person holding a public post is deemed to have committed an improper conduct or there is reasonable ground to believe so from an investigation undertaken by the Commission, the Commission shall send a notification to such person by enclosing all the details obtained from the investigation into the complaint filed against him/her requiring him/her to submit a clarification within a prescribed period.

(2) While sending a notification pursuant to Sub-Section (1), the complaint filed against the person holding a public post, all the details acquired from the investigation, the ground on which the allegations against him/her are based or what kind of departmental action or punishment or action he/she should face in case he/she is convicted of the charge must be clearly mentioned in the notification.

- ∇12. **Written request for departmental action:** (1) In case, any person holding a public post does not submit a clarification within the time as prescribed in Sub-section (1) Section 11, or in case, in the opinion of the Commission, the clarification so submitted is not deemed satisfactory, the Commission may write to the appropriate authority to caution or to take departmental action against him/her upon stating the reasons and grounds based on the degree of offence.

(2) In case, the request in writing has been received pursuant to Sub-Section (1), the concerned authority shall propose an appropriate penalty and shall inform the Commission within three months of taking departmental action as per

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∇ Amended by the second Amendment.

∇ Amended by the second Amendment.

the prevailing laws. In case the action has been initiated in response to a complaint filed by somebody else, the complainant must also be informed of this.

(3) In case the appropriate authority fails to take departmental action within the time prescribed in Sub-Section (2) except as otherwise having a reasonable ground, the Commission may take an action against the authority considering it as an improper conduct under this Act.

‡ 12a. **To write for other necessary action**: In case any person holding a public post commits an improper conduct and causes harm or loss to Government of Nepal or public institutions, the Commission shall write to the concerned body or authority to make up for the losses incurred or to take any other necessary action deemed appropriate by the Commission.

‡ 12b. **To issue an order for rectifying bad results**: The Commission may write to the concerned authority or department in order to rectify the bad results arising out of the improper conduct committed by a person holding a public post.

Provided that, in case the decision taken by the person holding a public post may be appealed under the prevailing laws, the Commission shall not write in such a way that it would have an influence on such a decision.

‡ 12c. **To inform the Commission**: Upon receiving a response pursuant to Section 12a or 12b, the concerned authority or body shall take action within three months and inform the commission accordingly.

## Chapter IV

### Provisions regarding Corruption

13 **Complaints regarding corruption**: (1) The Commission may conduct inquiries and investigations, or initiate other action, in respect to corruption under

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‡ Inserted by Second Amendment.

‡ Inserted by Second Amendment.

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this Act, on the basis of the complaint filed by any person, or of information obtained by the Commission from any source.

(2) Except provided in Section 29, in Case the Commission does not initiate action within a period of 5 years, no action shall be initiated in respect of corruption under this Act after the expiry of that period.

Provided that, there shall be no limitation to file a case if corruption is committed by misappropriation of government or public property or the property an institution owned by Government of Nepal.

14. **Preliminary Probe Regarding Corruption:** (1) In case there exist reasonable grounds to believe on the basis of any complaint or report, or from information received by the Commission from any other source, that a person holding a public post has committed an offence involving corruption, the Commission may conduct a preliminary probe thereof secretly,

(2) While conducting a preliminary probe of the offence of corruption under Sub-section (1), the Commission may exercise the power, vested in it under this Act in respect to inquiries and investigations.

15. **Clarification to be sought from the concerned person in case information seems to be correct:** If, in the course of a preliminary probe into any offence involving corruption under Sub-section (1) of Section 14, the complaint, report or information received by the Commission seems to be correct, the Commission may demand clarifications from the person who has committed offence, as well as from other person implicated therein, mentioning brief particulars of the charges.

<sup>∇</sup>16. **Detention of the accused:** (1) In case there is adequate ground to believe that any person against whom the Commission has initiated actions on charges of corruption may conceal or destroy any evidence, or hamper or obstruct, or

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<sup>∇</sup> Amended by the second Amendment.

adversely affect the action being undertaken by the Commission, the Commission may keep him/her in detention by providing with him/her a detention order in his/her name under the prevailing law.

(2) In case, as regards to the person in detention, it is deemed necessary to continue investigation by keeping him/her in detention for a longer period, than twenty four hours to complete the process, commission shall seek the permission by producing him/her before the court. While seeking permission from the court, allegations against him/her, and reasons for continuing probe by keeping him/her in detention and contents of his/her statement, if at all, shall be clearly mentioned.

(3) The person produced before the court for the purpose of seeking permission to keep in detention under Sub-Section (2) may apply at the court requesting for his/her physical check-up.

(4) In case, permission is requested under Sub-Section (2) to keep in detention, the court, upon scrutinizing the relevant documents, shall decide whether the investigation is going satisfactorily or not, and if it is deemed satisfactory, it may grant permission to keep in detention for a maximum period of six months, not exceeding one month at a time.

(5) While requesting for an extended period of time to keep the accused in detention under Sub-Section (4), the person in detention may file an application at the concerned court by detailing all the grounds and reasons proving that his/her detention is not necessary, if he/she so desires.

<sup>∇</sup>17. **Ipsa Facto suspension**: In case, any person holding a public post being is detained by the commission under Section 16 or Sub-section (4) of Section 19, such person shall be deemed to have been *ipso facto* suspended from his/her post for a period of such detention, and in if, the case has been filed against him/her in

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<sup>∇</sup> Amended by the second Amendment.

the Court under Section 18, he/she shall be deemed to have been so suspended until the case is disposed off. The person so suspended shall be deemed unfit for any post in the government offices or public institution or any other post which may cause financial burden to the loan or grant received by the Government of Nepal.

18. **Filing of cases**: In case, there exist reasonable grounds to believe, on the basis of action initiated under this Act, and inquiries and investigations conducted in respect thereto, regarding a charge of corruption against any person holding a public post, that he/she has committed such offence, the Commission may <sup>∇</sup>order the investigation officer or any office of the Government of Nepal to file a case pursuant to the prevailing law.

## **Chapter V**

### **Inquiries and Investigations**

19. **Powers of the Commission Relating to inquiries and Investigations** :(1)  
While conducting inquiries and investigations into abuse of authority under this Act, the Commission may exercise the following powers:
- (a) Issue orders to submit to the Commission, or present to the Commission within a specific time limit, relevant files or documents of evidence, or other materials, in the possession of any office or individual, or
  - (b) Summon a person against whom charges of abuse of authority have been made or any person who, in the opinion of the Commission, possesses knowledge of the relevant facts, inquire such persons, and record their statements and issue questionnaires (*Band sawal*) in their name as requires.
  - (c) Issue an order to the police to arrest a person who does not appear

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<sup>∇</sup> Amended by the second Amendment.

before the commission within the prescribed period even receiving the notice so issued by the commission.

(2) Upon receiving clarification, or recording statements of the person against whom charges of abuse of authority have been made, commission may release him/her after making him/her sign a bond stipulating that he/she will appear before the Commission as required, or keep him/her on date.

(3) In case there exists a reasonable ground to believe that the person against whom action has been initiated on charges of corruption may conceal or destroy evidence against him/her, or hamper or obstruct inquiry and investigations if he/she is allowed to continue in his/her post, the Commission may write to the Government of Nepal or concerned institution, as the case may be to suspend him/her from the post.

(4) In case there exist reasonable ground to believe that the person against whom action has been initiated on charges of corruption may abscond and disappear, or in case any property appears to have been damaged, the Commission may demand security in cash or collateral from him/her pursuant to the prevailing law and in case such security in cash or collateral is not provided, keep him/her in detention.

(5) In case the Commission has written to any office or individual to submit any document or other material, or furnish information about any matter, or in case the Commission has summoned any person to appear before it:-

(a) In case such office does furnish such document or material within a reasonable time limit accordingly or does not furnish information relating thereto, the Commission may direct the concerned Minister or institution to initiate departmental action against the chief office-holder of the concerned office.

(b) In case such person does not furnish the document or materials within a reasonable time limit accordingly, or does not furnish information relating thereto, or in case such person does not appear

before the Commission, the Commission may fine him/her with an amount not exceeding one thousand Rupees .

(6) In case any office or individual does not comply with the orders of the Commission even after the departmental action is taken, or a fine imposed, pursuant to Sub-section (5), the Commission may issue a warrant of arrest for arresting and producing the chief office holder or person, and have such office or person furnish such document or material, or provide necessary information. In case the office holder or person who is arrested in this manner does not furnish such document or material, or does not provide information relating thereto, the Commission may issue an order to keep him/her in detention for a period not exceeding seven days.

(7) In case the Commission has directed that departmental action be taken or decided to impose a fine under Sub-section (5), and in case the chief office-holder or the concerned person submits a petition mentioning reasonable grounds why he/she has not been able to comply with the order of the Commission, so that such action should not be initiated or such fine should not be imposed, and in case the reasons appear to be satisfactory, the commission may cancel the order relating to such directive or fine.

(8) The Commission, if think necessary, shall have authority to search or cause to search of any place or to seize any object, document or file as so required or to copy the document or file pursuant to the prevailing law .

(9) Except in circumstances when the Commission has no power under this Act to initiate an action, no person holding a public post shall be granted immunity from disclosing any information on the basis of confidentiality in the course of proceedings before the Commission.

(10) Every agency or office holder conducting investigations into abuse of authority shall conduct proceedings in camera, instead of taking open action leading to publicity; unless there is *Prima Facie* evidence against whom charges of abuse of authority has been made.

(11) In case a complaint is filed against a person holding politically appointed post or a member of the parliament, regarding abuse of authority, the Commission shall conduct secret inquiries into such complaints. If, in the course of such inquiries, it is found that there is ground to prove the matters mentioned in the complaint, then,<sup>∇</sup>an action shall be initiated under this Act in respect to such complaint, and the Commission shall inform the Prime Minister of detailed inquiries in the case of a person holding any politically appointed post and the Speaker or the Chairperson of the appropriate House in the case of a member of Parliament.

(12) In course of the investigations or inquiries carried out under this Act, in case, the charges are not proved on the ground of the collected evidence, the Commission may issue a terminate order with supporting reasons for the same.

Provided that, this Section shall not be deemed to have obstructed the proceedings if fresh evidence on are found regarding the complaint.

<sup>‡</sup>(13) In case a complaint is terminated pursuant to Sub-Section (12), the concerned person holding a public post and the complainant shall be so informed.

<sup>‡</sup>(14) Notwithstanding anything contained in this Act, in case improper conduct is found to have been committed in course of the investigation into corruption or in case corruption is found to have been committed in course of inquiries into improper conduct, actions shall be taken accordingly.

<sup>‡</sup>(15) If an accused helps to the process of investigation and inquiry to be conducted pursuant to this Act, the Commission may produce him/her to the cause as a witness and may request for commutation in penalty, fully or partially.

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<sup>∇</sup> Amended by the second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

Provided that, in case the assistance fails to corroborate through other proof or evidence or the statement given in the concerned court is against the assistance rendered in the Commission, lawsuit may be filed against such person, notwithstanding anything contained in this Act or any other prevailing law.

20. **Appointment of Investigation Officer** : (1) The commission may appoint <sup>‡</sup>or designate any Commissioner or any employee of the Commission or any employee of Government of Nepal or any institution, as an Investigation Officer, as so requiring in order to conduct Preliminary inquiries and investigations into improper conduct or offense involving corruption under this Act.

Provided that, while appointing <sup>‡</sup>or designating the employee of the government or any institution as an Investigation Officer, the Commission shall consult with Government of Nepal or the Chief of the concerned institution as the case may be.

(2) The Investigation Officer appointed <sup>‡</sup>or designated by the Commission under Sub-section (1) may exercise the powers vested in the Commission under this Act in respect to inquiry and investigation.

## Chapter VI

### Miscellaneous

- <sup>∇</sup>21. **Services may be availed** : (1) While conducting investigations and inquires or initiating other actions thereto pursuant to this Act and other prevailing law, the Commission, may avail the services of any expert or the specialized agency as so requires .

(2) In order to avail of service under Sub-Section (1), the Commission shall appoint the concerned expert or specialized agency and shall conclude an

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<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>∇</sup> Amended by the second Amendment.

agreement detailing the functions, to be performed by such expert or specialized agency, powers may be exercised the terms and conditions to be followed, procedures, and the remunerations and other facilities they are entitled to enjoy.

(3) In case, the Commission requires the service of employee an Government of Nepal or of a specialized agency, notwithstanding anything contained in the prevailing laws, such employee shall be assigned on deputation for a period of time as requested by the Commission.

‡21a. **Arrangement of the Employees** : Government of Nepal shall make arrangements, as *per* the approved posts, for the functional operation of the Commission.

22. **Allotment of Functions By Chief Commissioner**: In case other Commissioners also have been appointed in addition to the Chief Commissioner in the Commission, the Chief Commissioner shall have power to allot work and prescribe the functions of individual each Commissioner.

23. **Secrecy of Information** : (1) Any notice or information obtained in the course of inquiries and investigations into abuse of authority under this Act, and evidence received or collected by the Commission, shall not be disclosed to the public, or the communication media.

Provided that, this provision shall not prejudice the power of the Commission to conduct inquiries and investigations into abuse of authority, or submit report related thereto, or publish notices or particulars necessary for initiating action,

(2) Notwithstanding anything contained in Sub-section (1), the Commission may conduct an open probe, inquiry and investigation into any matter considered by it to be of public importance.

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‡ Inserted by Second Amendment.



‡23a. **To acquire statement or to freeze transaction:** (1) Notwithstanding anything contained in the prevailing laws, in case, in course of the investigation into charges of corruption, any person is learnt, from any source, to have been involved in transactions or have operated an account in banks or financial institutions within the country or abroad, the Commission may order freezing of such transaction or account. As ordered by the Commission, the concerned bank or financial institution must freeze such transactions or account.

Provided that, as regards freezing of transactions or bank accounts in foreign countries, such transaction or bank account shall be caused to be frozen through diplomatic channels.

(2) The Commission may impose a maximum fine of fifty thousand Rupees to the Chief of the concerned bank or financial institution based in Nepal for its failure to freeze transaction or account pursuant to Sub-Section (1).

(3) The Commission, if deemed necessary in course of the investigation, may demand a property statement of a person holding a public post or may freeze such property.

‡23b. **Order to ban issuance of passport or to put it on hold:** Notwithstanding anything contained in the prevailing laws, the Commission may order the concerned body not to issue a passport to any accused or to put it on hold in case it has already been issued in view of the gravity of the offence, the circumstances in which the offence was committed, situation and the degree of offence and the punishment to be meted if proved guilty.

‡23c. **Restriction to leave place:** In case an action has already been initiated under this Act, the Commission may issue an order prohibiting him/her to leave any place or

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‡ Inserted by Second Amendment.

‡ Inserted by Second Amendment.

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to go to any places without the permission of the Commission considering the seriousness of the offence, the circumstances in which the offence was committed and the punishment to be meted out if proved guilty.

<sup>∇</sup>24. **Punishment for obstruction** : In case any person willfully obstructs any action or process relating to inquiries and investigations under this Act, the appropriate Court may punish him/her with a fine of not more than five thousand Rupees or with imprisonment for a term not exceeding six months, or with both, on the basis of a report of the Commission.

<sup>‡</sup>24a. **Provision with regard to service of notice** : (1) Notwithstanding anything contained in the prevailing laws, while issuing a notice in the name of a foreign national on charges under this Act, such notice shall be issued in the name of the office or the representative in Nepal, if at all, and this shall be deemed to have been duly served.

(2) In case the office or representative pursuant to Sub-Section (1) is not found, notice shall be served to place of main transactions or to the permanent address or to the address for correspondence of such person in which he/she is doing transactions through telex, telefax or other means of telecommunication or through postal registry and the notice thus served shall be deemed to have been duly served.

(3) Notwithstanding anything contained in Sub-Section (1) or (2), this Section shall not be deemed to become an obstruction in serving notice in the name of any person residing in a foreign country as per a separate provision of any treaty to which Government of Nepal or Nepal is a party.

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<sup>∇</sup> Amended by the second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

‡24b. **Publication of notification**: While issuing a notification or serving a notice to a person pursuant to this Act or any other prevailing law, in case, a report has been received mentioning that the notification could not be delivered or a notice could not be served due to not finding. The address of such person or any other reason, notwithstanding anything in the prevailing laws, the commission shall publish a public notice twice in the National level news paper (In case of foreign in the English language daily newspaper) to appear before within 30 days upon mentioning the briefs of the investigation by the commission or change sheet filed at the court as the case may be, and such notification or notice shall be deemed to have been duly delivered or served notwithstanding anything in the other prevailing law .

‡24c. **Punishment for making false complaints**: In case any person without any reasonable ground lodges a false complaint against any public servant or a person holding public post or a person with a *mala fide* intention of causing injury, the Commission may fine up to five thousand Rupees to such person if so proved.

25. **No Suit To be Entertained Against The Commission, Commissioners Or Employees of commission** :No suit shall be instituted in any court in respect to any action taken with *bona fide* intention under this Act by the Commission or any Commissioner or employee of the Commission, or any employee or office deputed by the Commission, or to whom the Commission has delegated authority.

26. **Cooperation may be obtained by the commission from other offices or employees**: (1) For the purpose of inquiries and investigations into abuse of authority, the Commission may obtain the cooperation of any Department or office of the Government of Nepal, including the Police Headquarters, the National Investigations Department and their subordinate office, or any institution, or the services of any employee of such department, office or institution.

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‡ Inserted by Second Amendment.

‡ Inserted by Second Amendment.

(2) In case the nature of the abuse of authority into which the Commission is conducting inquiries and investigations, makes it necessary to hold consultations with any expert working in any department, office, or institution, or to involve such expert in inquiries and investigations, the Commission may request the concerned department, office or institution to send him/her in deputation for a specified period.

(3) In case the Commission has sought the cooperation of any department, office or institution, or any employee working therein, pursuant to Sub-section ( 1) or Sub-section (2), it shall be the duty of such department, office or institution or employee to provide such cooperation to the Commission.

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28 **Commission May Offer Suggestions** : (1) On the basis of facts which come into its knowledge in the course of action taken by it, the Commission may offer any of the following suggestions to the appropriate office, office holder or institution:

- (a) In case the Commission feels that any law, decision, order or action is impractical, undesirable, or inconsistent, and so must be amended, it may offer suggestions for amendment therein along with the reasons.
- (b) In case the Commission feels that Government of Nepal or any institution, or any office or office holder of Government of Nepal or any institution, must remain vigilant on any issue, or must take any action, it may offer suggestions about what type of vigilance should be adopted or action taken.
- (c) In case the Commission feels that any practice or procedure of Government of Nepal or any institution if defective, it may offer

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<sup>∞</sup> Deleted by first Amendment.

suggestions along with the reasons and bases to rectify such defects and solve problems arising therefrom.

(2) *Particulars of suggestions offered under Sub-section (1) shall be included in the annual report to be submitted by the Commission to the majesty under Clause (6) of Article 98 of the Constitution.*<sup>1</sup>

<sup>∇</sup>29. **Cases may be initiated against retired persons also:** (1) nothing contained in this Act shall be deemed to have prevented the Commission from instituting cases against any person in respect to corruption committed by him during the period when he was holding a public post, even after he has retired from such post.

(2) Notwithstanding anything contained in this Act, in case any person holding a public post is found to have abused powers when he/she was holding the public post and it was not possible to initiate action pursuant to this Act immediately, nothing in this Act shall be deemed to have prevented to take action against him/her even after retirement from the post for whatever reasons.

<sup>‡</sup>29a. **No obstruction in the proceeding and finalization of the case:** Notwithstanding anything contained in the prevailing law, there shall be no constraints in initiating proceedings or finalizing the case even if the accused or defendant has died before or after filing of the case under this Act.

<sup>‡</sup>29b. **Confiscation of property:** In case, any property earned by a person holding a public post or the property increased from it kept in his/her own name or in the name of any other person is proved to have been earned through corruption under this Act or other prevailing laws, such property shall be confiscated.

Provided that, in case the ownership of such property has been transferred to any other person and while transferring the ownership if the amount of such

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<sup>1</sup> This provision is not mentioned in the article of 119, 120 & 121 of Interim Constitution of Nepal, 2063

<sup>∇</sup> Amended by the second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

property has been mentioned, such amount shall be considered as a loan without any collateral (as good as *kapali*) .

<sup>‡</sup>29c. **To order freezing of the property of a foreigner:** (1) In case any foreigner, summoned as per the notice issued by the Commission or pursuant to Section 24a who fails to appear before the Commission within the stipulated time, possesses any property or enjoys any right or has any concern in the Nepal, the Commission may put on hold such property or rights or concern or may issue an order requiring the foreign national not to take such things outside the country and it shall be the duty of all to observe such order.

(2) The Commission may impose a fine of up to One Hundred Thousand Rupees to a person who fails to observe the order issued pursuant Sub-Section (1), and in case the non-observance of such order has caused any harm, loss to the Government of Nepal or any public institution, such harm or loss shall also be recovered from him/her.

<sup>∇</sup>30. **Cases may also be initiated against other persons:** (1) In case any person considered as public servant under the existing law or any other person commits corruption, the Commission may, under this Act or the prevailing laws, initiate investigations and inquiries or may file case and may initiate other actions thereto.

(2) While undertaking investigations and inquiries into cases of corruption under this Act or under any other prevailing laws committed by a person holding a public post or by any other civil servant under the prevailing law, the Commission may initiate investigations and inquiries, may file cases and take any other action against any person in case such person is found to have been involved in such offence.

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<sup>‡</sup> Inserted by Second Amendment.

<sup>∇</sup> Amended by the second Amendment.

31. **Action to be initiated by only one Agency on charges corruption** : In case action has been initiated against any person on charges of corruption in the same case in the Commission as well as against other person in other agencies in the same case, the Commission may make arrangements to provide that such action may be conducted through a single agency in respect to such charge.

‡31a. **Provision relating to property details**: (1) A person holding a public post from the date of holding of such post, and a person who is in the public post from the date of commencement of this Section shall submit an updated statement of their property which is in their own or in their relatives name with source of it and proof there of within sixty days and each year within sixty days of the expiry of every fiscal year before the body or authority prescribed by the Government of Nepal by a notification in the Nepal Gazettee.

(2) In case a person holding a public fails to submit a statement of his/her property within the stipulated sixty days pursuant to Sub-Section (1), the Commission shall impose a fine of five thousand Rupees and ask to submit the statement of the property within the next 30 days. If again the person holding the public post does not submit the statement of property within the extended timeframe, the body or authority under Sub-Section (1) may initiate an investigation against him/her by assuming that the property in his/her own name or his/her family member's name is illegal.

(3) The property statement so submitted under this Section shall be kept confidential.

Provided that, the statement may be given to the concerned authority on demand in course of initiating investigation and inquiry under this Act.

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‡ Inserted by Second Amendment.

‡31b. **Auction of goods**:(1) In case any goods or items seized in connection with offences punishable under this Act seem likely to develop rust if kept for long or suffer breakage or cause losses or decay or depreciate or have no owner or are not likely to be maintained for lack of space, such items or goods shall be auctioned off upon fulfilling procedures as mentioned in the prevailing law.

(2) The amount received from the auction shall be credited in a deposit bank account. In case such items are declared to be given to the concerned owner, only the amount received from auction of such items shall be refunded.

32. **Commission may regulate its Working Procedure**: The Commission may regulate its working procedure itself.

\*33. **Annual Reports**: The Commission shall submit to the President an annual report on the works it has performed in accordance with this Constitution; and the President shall arrange to submit such report to the Legislature-Parliament through the Prime Minister.

∇34. **Adjudicating authority**: (1) The power to hear a case filed under this Act shall be vested in the court as prescribed by the Government of Nepal upon publishing a notification in the Nepal Gazette.

(2) The court prescribed pursuant to of Sub-Section (1), while initiating and finalizing cases lodged under this Act, shall exercise the power and procedure as the special court under the prevailing law.

(3) The verdict handed down by the court pursuant to Sub-Section (1) shall be appealed at the Supreme Court.

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‡ Inserted by Second Amendment.

\* According to the Article 121 of Interim Constitution, 2063

∇ Amended by the second Amendment.



(4) Government of Nepal shall be the plaintiff in cases instituted under this Act on charges of corruption.

<sup>∇</sup>35. **To initiate cases:** (1) In case any person holding a public post or any public servant under prevailing laws or other person is found to have committed an offence of corruption, the Commission, itself under this Act or any other prevailing law, shall file a lawsuit, appeal or review petition in its own name or through the authority designated by it.

(2) The government attorney or an attorney appointed by the Commission in coordination with the Office of the Attorney General shall plead, advocate or defend on cases filed pursuant to Sub-Section (1).

<sup>‡</sup>35a. **Provision for reward:** The Commission may give a due reward to any person who helps the Commission in investigation, inquiries or in collecting evidence about an offence, which is punishable under this Act.

<sup>‡</sup>35b. **The Commission may carry out other functions:** (1) The Commission may maintain necessary coordination with the national or international institutions established with the objective of controlling or preventing corruption or enhance relation or mutual cooperation with such institutions.

(2) The Commission, if deemed necessary may carry out research and develop processes to prevent corruption or improper conduct through promotional activities with a view to promoting information on such matters.

<sup>‡</sup>35c. **Appeal:** One may appeal, against the order handed down by the Commission for any fine or realizing any amount of money or other order, before the concerned court.

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<sup>∇</sup> Amended by the second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

<sup>‡</sup> Inserted by Second Amendment.

- ‡35d. **As per prevailing laws**: Matters contained in this Act shall be taken as per this Act and in other matters action shall be taken as per other prevailing laws.
36. **Provisions regarding complaints or actions transferred from the Commission for the Prevention of Abuse of Authority** : (1) Petitions and complaints transferred to the Commission under Clause (5) of Article 130 of the Constitution shall be deemed to have been filed under this Act and the Commission subject to the provisions of this act thereto shall take action accordingly.
- (2) If inquiries and investigations have been completed, but no suit yet have been filed, the Commission may treat the action as terminated under this Act, or send it to the concerned office for further action, or issue an order under Section 18 to file a suit in the concerned Court.
37. **Power to frame Rules**: The Commission may frame Rules in order to implement this Act, Such Rules shall come into force after they are published in the Nepal Gazette.
38. **Repeal** : The Commission for the Prevention of Abuse of Authority Rule, 2034 (1977) has been repealed.

**Note** : (1) The words changed by The Act Amending Some Nepal laws, 2063 :-

"Government of Nepal" Instead of "His majesty's Government"

(2) The following words are changed by commission for the abuse of Authority (second Amendment) Act, 2059 (2003)

(a) "Public Institution" instead of "Institution"

(b) " Concerned Court" instead of "Appellate Court"

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‡ Inserted by Second Amendment.