

Election Administration and Autonomy of Election Commission

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This paper has been divided into two parts. Firstly, election administration and secondly autonomy of election. Accordingly, I will like to discuss its first part.

Election is the backbone of democracy. It is the true touch-stone of the democratic set of the government. It is an institution which is responsible for electoral activities. This institution is called Election Commission, Department of Elections, Electoral Council, Election Unit or Electoral Board. It can also play a pivotal role of an electoral 'watchdog.' In emerging democracy like Nepal, the current trend is to develop a comprehensive legal framework that guarantees the independence and integrity of the electoral process, promotes consistency and equality in electoral administration and promotes full and informed participation in electoral events by political parties, civil societies and electors.

Many UN member countries incorporate into their domestic law (using a variety of constitutional means) key UN decisions and treaties, such as the 1948 Universal Declaration of Human Rights and the 1952 Convention on the Political Rights of Women. In such cases, domestic electoral laws, and the election administration policies and actions, need to consider the treaties' provisions relating to issues such as universal and non-discriminatory suffrage, secret and free-voting, the rights of women to be elected and hold public office, and the rights of minority language groups.

International documents, for example, Article 21 of the Universal Declaration of Human Rights, which states in clauses (1) and (3) that 'Every one has the right to take part in the government of his country, directly or through freely chosen representatives' and 'the will of the people shall be basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

In October 2005, the Global Declaration of Principles and Code of Conduct for International Electoral observation was adopted by the United Nations and by a wide range of global and regional organizations.

Many countries have incorporated fundamental electoral provisions in their constitution, often including the type, composition and responsibilities of election commission administration.

In emerging democracies, electoral legal frameworks are being designed to cover all electoral process matters relevant to the delivery of the free and fair elections. The main aims and objectives of election commission is to conduct free and fair election the country. These include:

- making national or regional electoral policies;
- planning electoral services;
- training electoral staff;
- conducting voter information/education and civic education;
- the delimitation of electoral district boundaries;
- the planning and implementation of electoral logistics;
- the identification and registration of voters;
- the development and maintenance of a national electoral register;
- the registration of political parties;

- the regulation of financing of political parties;
- political party pre-selection or primaries;
- regulating the conduct of political parties and candidates;
- regulating the conduct of the media during elections;
- regulating opinion polls;
- training political parties and candidates' poll watchers;
- accreditation and regulation of the conduct of election observers;
- the announcement and certification of election results;
- the adjudication of electoral disputes;
- the review and evaluation of the adequacy of the electoral framework;
- advising the government and legislature on electoral reform issues;
- participating in international electoral seminars and conferences; and
- providing party symbols and independent candidates' logos.

Election commission as upholders of democratic values have behavioural and access responsibilities to the community which it serves, even where these are not defined in the electoral legal framework. Some of these responsibilities relate to the probity and integrity of electoral administration, others to issues such as transparency, gender balance, sensitivity to customs and traditions, the treatment of ethnicity, providing electoral access to marginalized groups, and creating conditions that are conducive to fair electoral competition. Important responsibilities, such as accountability for performance and finances, relationship with stakeholders and developing sustainable electoral process, and dealt with in this context.

All eligible electors should have easy access to the electoral process. For example, the 2002 International Bill of Electoral Rights for people with Disabilities promotes equal rights of access to all electoral process for people with disabilities. Voters may have right of mobile registration and voting facilities for those in hospital, confined to the home or in prison; external voting; the provision of voter registration and voting facilities for internally displaced persons, and in locations outside the country for significant refugee populations, providing facilities for voting by post or before election day; ensuring that registration, polling stations and equipment are accessible to voters with disabilities; providing electoral information materials suitable for those which visual or aural disabilities and providing registration or voting assistance to them where needed; and providing voting equipments such as ballot paper templates for the visually impaired. Special attention should be given to pregnant women nursing mothers, the elderly and people living with disability, especially during voter registration and polling marginalized groups should also be given preference.

Thus, it is crystal clear that election is the inevitable element for any democratic set of government, but it is also clear that elections are associated with ill-actions. Here, I would like to quote to support this statement.

"Elections are one of the integral parts of popular legitimacy in addition to many other issues of political development. Yet a paradoxical situation develops when elections turnout to be handy mechanism for perpetuating power and status without internalizing the characteristics of democracy. The manner in which the entire electoral process are used for petty party and individual interests, to capture power and unaccounted resources as have been witnessed in many South Asian countries, makes the people lose their faith in parties, leaders in the system."

Indian scholar Arun Shourie in his latest book, "The Parliamentary System" has also expressed the same and similar opinion. I quote, "In some cases those who would otherwise have forfeited the security deposits have been declared elected as they obtained the highest number of votes amongst the candidates. Added to this is the entry of criminal into parliament. All political parties, while in the opposition denounce this trenchantly but when in power, defend it with the dubious argument that every one must be presumed to be innocent until proved to be guilty." He further elaborates that today the legislatures have become the 'root of the problems that we face in governance and therefore the time has come tilt the balance away from legislatures towards the executive, to seek and secure.'

Whether we support Arun Shourie or not but one thing is clear that ill actions are integral parts of elections Bogus voting. Rigging and capturing of booths have become common phenomenon. Gun, goondas (hooligans) and gold play an important role to win the elections. If these tactics are not used, it is not possible to win polls. This trend has become curse for democracy. It is our own experience. I would like to quote here:

"Elections in Nepal are also fought with a variety of negative trends and dangers. They are increasingly becoming violent, criminalized due to the nexus established between politicians and underground mafias. Money, muscle and manipulation of three Ms loom large in determining the outcome of elections. The presence of three Ms is now a necessary conditions for winning elections across the country."

The Election Commission is responsible for holding free, fair, fearless and independent and impartial election, but many times it becomes helpless. No party, candidate and returning officer complies with code of conduct. I would like to recite one example which I saw in the general election of 1994. Wife of a candidate was an R.P. (Resource Person) government employee but she was engaged in canvassing in favour of her husband. She used to canvass in mass meeting by giving speech. The election commission wrote an explanation letter to take action against her but she did not receive the explanation letter. The election commission could not do anything. There are many examples like this across the country during the elections. Some of them come to the notice of election commission; while others are settled by the returning officers in the districts. Sometimes returning officers also express their helplessness. I would like to quote further to support my statement:

"The EC, which is the overall in-charge for conducting elections, is helpless because of a tendency to defy the code of conduct recommended for parties and candidates. The code of conduct of 1996 aims at making elections 'fair, free, riggingless, less expensive, free from undue competition and misuse of power and ostentation, understanding the objective of the commission, it lays down some norms to be observed by everyone involved in elections."

Generally the Election Commission has the following mandates:

- provide for the procedures of conducting election in a free, fair and impartial manner;
- restrict, discourage and control unfair practices in the elections;
- define the offences relating to election and to provide for the punishments for violation and to designate legal authority for hearing such complains;

- guarantee the opportunity to exercise the rights of voters, candidates and political parties in respect of election:
- ensure and maintain law and order during elections;
- counting the polled votes;
- totaling the votes; and
- EC has a framework within which to monitor the media during an election campaign;

Since the return of democracy in April 1990, three elections have been conducted: in May 1991; in November, 1994 and in May 1999. The constitution provides for an Election Commission as a constitutional body, which is mainly responsible for parliamentary and local elections. The Chief Election Commissioner and other commissioners were appointed on the recommendation of the constitutional council by the king for a fixed term of six years. The commission has the overall responsibility of conducting, supervising, directing and controlling the election to the parliament and other local elections at the village, town and district levels. It prepares electoral rolls of the eligible voters, and deals with registration and recognition of political parties for the purpose of elections. It has the power to refuse registration of any political party formed on the basis of religion, community, caste, or tribe or of a nature tending to disintegrate the country.

But now after the Jan Andolan II, Chief Election Commissioner and other commissioners have been appointed on the basis of parliamentary hearing but was not a satisfactory process because it had provided only three days for the public opinion. It was very short time given to the nation for public opinion. At least one week time should have been given but it was not done. So people criticized the government for this appointment.

Electoral Constituency Delimitation Commission

It is common in many countries, especially those which follow the Common Wealth traditions, for the electoral legal framework to create a separate body or commission to assume responsibility for boundary delimitation. Such countries include Australia, Botswana, Canada and India. In Nepal, the Electoral Constituency Delimitation Commission in 1991 divided the country into electoral constituencies and allocation of seats to different districts. Its two main tasks were: (a) distribution of 205 seats of the House of Representatives according to the existing 75 administrative districts; and (b) delimitation of each electoral constituency according to the seats so distributed. The commission considered such key factors as: (a) boundary of the districts, (b) geographical factors, (c) density of population, (d) transportation facilities, and (e) communal homogeneity, or heterogeneity of the local residents. The number of seats allocated to each of that district. Each district irrespective of its size of population was given at least one member represented in the House of Representatives. The population size of 15 million (1981 census) was divided by 205 and the population size was 73,282. Seven districts – Manang, Mustang, Humla, Dolpa, Rasuwa, Mugu and Jumla – had population sizes of less than this specified size.

As soon as Election Delimitation Commission completed its work, the Election Commission (a) updated the electoral roll in the light of the government's decision to lower the voting age from 21 to 18 years, and (b) prepared the electoral role on the basis of each electoral constituency. The updated electoral roll consisted of 11,191,777

eligible voters. It also began to register political parties for the purposes of election. It was reconstituted in 2002. It did not accomplish any new task. It was reconstituted in 2007. Retired Justice Ram Nagina Singh was appointed as the chairman of the commission but he refused. Then another retired Justice Arjun Prasad Singh was appointed chairman of the commission. Three other members were Surya Lal Amatya, Sunity Shrestha and Dumbar Chemjung and one member secretary.

The Election Constituency Delimitation Commission (ECDC) has recommended additional 35 constituencies from the existing 205 for Constituent Assembly (CA) polls. Of the 35, the commission has added 28 constituencies in the terai and seven in the hill regions. But it did not change the number of constituencies in the 16 Himalayan districts for the upcoming C.A. polls. For every 96,000 population, the terai and hilly districts will get one constituency.

The commission submitted the report to the Prime Minister Girija Prasad Koirala, which recommended 116 constituencies for terai and 124 for hilly and Himalayan districts. In the last parliamentary polls, there were 88 constituencies in the terai, 95 in the hilly region and 22 constituencies in the Himalayan regions.

According to the last census, 48.43 per cent of the population reside in the 20 terai districts and 51.57 per cent in the 55 hilly and Himalayan districts. With 28 constituencies added to the terai region, each district in the region will get at least one more constituency in the C.A. polls. But 8 terai districts, Morang, Dhanusha, Rautahat, Bara, Nawalparasi, Rupandehi, Kailali and Mahottari will have two more constituencies in the C.A. polls compared to the last polls. Among the hilly districts Kathmandu will get 2 more constituencies, taking the total number to 9, whereas Udaypur, Makwanpur, Kavre and Kaski will get one more constituency each for the C.A. polls.

The Commission has recommended election of 240 more lawmakers based on the proportional system of election and nomination of 17 more by the Prime Minister on the recommendation of the cabinet taking the total size of the C.A. to 497.

The Commission increased the number of election constituencies in the terai and hilly regions according to growth in the population. But not a single Madheshi is satisfied with the commission report. So they opposed the commission. They even disrupted the proceedings of the House of Representatives for one-and-half months. There is a conspiracy in the classification of constituency. It has been done under pressure by higher authority. They have been constituted as if some of the constituencies of terai are reserved for hilly people. They have been divided keeping in view that Madheshi candidates should not win. This conspiracy has been done from the commission and it is clear that the commission has obliged its boss. The Madheshi lawmakers are determined that re-drafting of constituencies in the Terai as proposed in the report was biased.

In the meantime, the eight-party coalition government on June 23, 2007 decided to give 21 days to ECDC to review its report submitted to the government on April 12. As per the report, constituencies in 25 districts, mostly in the Terai, are to be increased. The number of constituencies are to be increased by 35 to make it 240 in total under the existing first-past-the-post system. Another 240 are to be elected on the basis of proportional representation system and 17 to be nominated by the cabinet. That report drew flak from Madheshi members in the Interim Parliament who claimed the

restructuring was biased and not in favour of Madheshi community. Parliament business was stalled for weeks because of protests by Madheshi lawmakers. The eight parties, ultimately, decided to review the report and amended the Interim constituencies to facilitate the process as the constitution did not have any provisions for questioning the report in courts or anywhere else. According to several political scientists, it was a blunder. New commission should have been reconstituted for reviewing the report submitted by the commission. This may prove new wine in old bottle. This is a very technical commission. There should be geographer, demographer and technical experts but the present commission has done desk work only.

Now the parliamentary state affairs committee (SAC) taskforce finalized allocation of seats among five identified groups of the populace for the purpose of the C.A. polls. The task force has suggested the bill ensure at least 37.6 per cent seats for ethnic Janajatis, 31.2 per cent for Madheshis, 3.6 per cent for backward regions, 13 per cent for Dalits and 28.6 per cent for other communities. Women will get half of the seats reserved for all these groups.

Before the C.A. polls all problems should be settled peacefully. All the agitating armed groups should be invited and involved in the negotiation table otherwise there is no use of declaring new date for C.A. Even Carter Center (CC), a U.S. based non-governmental organization promoting democracy and human rights world wide, has urged the government and political parties to promptly address outstanding issues in order to hold elections of the C.A. in winter.

The outstanding issues identified by the CC include sustained focus on electoral preparations and enactment of election laws, and addressing the demands of the Madheshi, Janajatis, women, Dalits and other marginalized groups.

The centre encourages the government of Nepal to focus on the common purpose of creating a conducive environment for C.A. election, including action on all outstanding electoral legislation and decisions together with the new election date following widespread consultation and buy-in from marginalized groups.

Darren Nance, field director of International Election Observation Mission, released the assessment report based on the observations of CC observers in 70 districts. Besides, the center, the only international organization invited by the government and the Maoists for observation of the C.A. polls, has urged government to develop and implement a comprehensive and effective public security plan for holding polls in November. It has also urged the government and political parties to launch political and electoral activity at local level. I would like to quote here, "Similarly, a conducive environment for the election equally holds vital for its success. A peaceful environment is undeniably important to the people to cast their votes fearlessly, for which not only security but assurance of security to the voters is crucial. Before the election, it is vital for the government to sort out the legitimate demands raised by many ethnic, tribal, and Madheshi communities agitating in nooks and corners of the country, thus creating daily havoc and disturbance, including the unfortunate killings in some instances"(Amit Pyakurel: Are we prepared for C.A. Polls. The Kathmandu Post. July 4, 2007).

Code of Conduct

Basic norms of code of conduct are to regulate political parties, candidates, the government and media during election period. EC introduced a realistic code of conduct focusing on:

- commitment to maintaining the integrity of all electoral processes;
- support for the principle of political non-partinship;
- avoidance of conflicts interests; and
- provision of quality service to voters and other stakeholders; and adherence to regulations and management directions.

The code of conduct for the political parties and the candidates play a pivotal role in ensuring that the elections are free and fair. The code, prepared by the EC in consultation with political parties taking part in the elections, lays down rules to be observed by all participating contestants. The code also contains strictures on the official media during the electoral campaigning. The 20-point code of conduct adopted for the 1991 parliamentary elections had cryptic statement on the role of the state-owned and managed media. The media, with the intention of election purposes, shall not be used for political gains. Such arrangement shall be made in an impartial and free way during the period of elections and shall concentrate only on providing information to the people.

The media was generally encouraged by the EC to create awareness among people motivating them to exercise their right to vote in the election. It also encouraged dissemination fo information to voters about election system, procedures, ballot boxes, ballot papers and voters list. It also made requests to various media organizations to arrange for the expression of views by various political parties over their respective medium without any bias or partiality.

Based on the experience of the 1991 elections, it was suggested that the Election Commission Act 1991 be amended to include the following provisions relating to the media of mass communications, including print and electronic media, under the government.

- A. The EC should be empowered to issue instructions dissuading any official media if it is found publicizing in favour of the ruling party or any political party from such acts or inflicting punishment on person involved in such acts.
- B. Provision should be made to authorize the EC to issue promptly suspension orders, impose fines or take departmental action against officials of government offices, government-owned corporations, companies or projects (including media organizations are found used for the benefit of any political party).
- C. The EC should have the authority to order suspension, impose fine or take departmental action against any official of government organizations, corporations, companies or projects if he is found engaged in publicity in favour of a political party or assisting it in any manner. The EC published a code of conduct for the 1999 parliamentary elections. The main elements of the statement relating to the official media, print as well as electronic, included the following:

- Fully impartial and restrained coverage without any kind of prejudice against any political party or candidate. The opportunity to candidates representing various political parties to explain the party's policy, program and ideas should be provided on the basis of a clear and fair criterion.
- Greater publicity should be given to print and electronic materials encouraging voters to cast their ballots without any fear.
- No publicity should be given to materials that are likely to influence voters on the basis of religion, community, region, ethnic or language or materials that provoke violence, sentiments, terrorism, hatred or confusion.
- Care should be exercised to ensure that the collection and editing of news, choice of headlines, publication of pictures and cartoons or dissemination of information through editorial, reaction report, commentary, discussion, analysis, articles, questionnaire or any other materials should in no way influence any particular candidate in the election. The program coordinator should have an 'impartial role.'

The EC in exercise of the powers conferred by Section 24 A of the Election Commission Act, 2047, has promulgated this code of conduct.

Conduct of Public Media

The public media (audio, video and printing) under the government shall, while operating their programmes, conduct in the following manner:

It shall operate the programme with full impartiality and temperance without prejudice of any kind towards any political party or candidate. While assigning opportunity to the political parties who have raised their candidates, in order to present policy, programmes and views of their party to the voters, they shall do so on the basis of order and judicious criterion. They shall disseminate as much as possible such audio, video and written materials which would encourage the voters to cast their votes without any apprehension. They shall not disseminate such materials which may arouse the voters with the bias of religion, sect, region, caste, creed or language, nor which may generate in the people's mind acts of violence, sensation, terrorism, hostility and confusion.

While reporting, editing or captioning any news, or publishing any picture or cartoon, or while publishing through editorial, comment, report, description, discussion, analysis, feature articles, questions and answers, and other similar audio, video or written materials, they shall not act in a manner which may incite the voters to vote in favour of any political party or candidate.

The concerned entity shall prepare the recorded cassettes or the copy of materials as mentioned in paragraph 4 above and shall provide EC, when demanded, with such cassettes or copies of materials. Thus, making the code of conduct also comes under the jurisdiction of EC administration.

There is provision for the post of one secretary to administer administration of the EC. S/he is responsible for administration but he must be in the good book of Chief Election Commissioner. S/he manages and even manipulates all things in their favour and benefit. The post of joint secretary is in between. S/he is a pendulum. I was the joint

secretary at EC, but an under secretary was more powerful than me because he was in good book of the secretary as well as Chief Election Commissioner. There is a vicious circle in the Commission. Its main duty is to make money out of the way. EC is an open custom office.

There is no restriction on the spending money in the name of election. Even the Commission for Investigation of Abuse of Authority (CIAA) can't take any actions against the EC. One more joint secretary was hired from the government office on duty in the name of election. My background was teaching. I could not be abusive, rude and rough like him. He was smart in everything. He could manage, manipulate and move things happen in the favour of net work. He was authorized to take responsibility of money matters. He dealt with sealed tender and quotations. Extra money comes from it. So he was not benefited himself but he used to give benefit to his bosses. So he proved very popular and perfect administration manager. He was given five lakhs of rupees in cash and his name was recommended for *Gorkha Dakshin Bahu* and he got it. Thus runs the administration of EC. On top of that there were two officials on duty for collecting commission from different agencies. One was authorized on national level and another on international level. Thus ran the administration of EC when I was there.

Now I talk about the autonomy of the EC. There is a provision in 1991 constitution that there should be an autonomous EC. But in reality, it is an adhoc commission because it has no sufficient staff of its own. Most of the staff are hired from the government service. Government servants are loyal to the government. They cannot hold free, fair and fearless elections. Even teachers are also prejudiced and most of them are political activists. So they also can't hold impartial elections. The best way is to hire new staff for election purposes. Countless unemployed youths can play a significant impartial role if they are employed temporarily for the purposes of election. They are not biased to any particular party. They can be recruited time and again for the purpose. Eight ruling parties can also intervene in the appointment but it depends upon the EC to recruit them impartially. If it is autonomous in the true sense of the term, it can play its role as an autonomous in every field but in most of the cases it does not perform its role. Once in 1994 general elections it deleted the voters list of two VDC of Saptari District on the instruction fo the then ruling party Nepali Congress because these two VDCs were the vote banks of Nepal Sadbhavana Party (NSP). Some NSP leaders came to me and complained about it but I could not do anything because I was an employee there. There was no hue and cry outside not even in media. In this sense, it was not autonomous body because it deleted the voters list without any rhyme and reason. It also lacks basic infrastructures.

Very recently, one of the commissioners of EC accepted in public electronic media that he did not know about the mixed election system. Then how he can play an important competent role in the coming elections? Eight party alliance is in favour of mixed election system but the whole Madheshi is opposing it. Elections officials are also ignorant of this. In this situation, how can EC conduct elections?

All the commissioners including Chief have been appointed on the basis of their political background and convictions. EC has become a commission of political oriented officials. Every commissioner has been appointed as per the choice of the ruling parties. Even Maoist has its one commissioner. How people will believe that it is an autonomous body? They will play their roles as guided and directed by their respective parties. So

there is a partisan positioning of election commissioners. This type of thing never happens in any democratic country of the world.

Narayan Khadka has very recently analyzed the election scenario in his article "Elections: In Whose Interest?" and said, "Individually, each of the eight parties lacks confidence in their own abilities to contest the elections and while they publicly join the chorus in saying that the elections must be held, none is fully prepared to face the elections for their own individual reasons. There is doubt that the pressure to hold elections is orchestrated by and for the Maoists and it has been their major demand since the day they launched their insurgency. But they are in the midst of a serious dilemma and are not confident of winning (even a face saving number of seats) let alone a comfortable majority. They are hounded in terai and their basis is weakened considerably. Ironically, their most serious challenge comes from groups whose leaders are Maoist defectors." (The Kathmandu Post: 27 June 2007).

The EC is a technical body for conducting polls which is determined to holding the C.A. election on 22 November but there are many hurdles on its way. The law and order situation is deteriorating day by day. There is impunity rampant everywhere. The Madheshi movement is also posing a big threat for coming C.A. Different armed groups are working against C.A., though they are divided. They are saying openly that they will not let the polls go peaceful. Different marginalized ethnic groups are demanding for inclusion in CA through proportional representation in the polls.

Obviously, the ongoing political unrest, violence and intimidation and chaotic situation in the Mid-eastern districts of Madhesh are the major problems to the C.A. poll. Rivalry between the Maoists and Madheshi People's Rights Forum is posing new threat to the upcoming election.

After the spring uprising, the general people's common aspiration is to have free and fair poll on time because they can elect their representatives who will make the new constitution as per the people's wish. But this a daunting tasks for conducting free and fair elections in the present prevailing political situation. The interim government is not successful in maintaining law and order situation in the country. It has also failed to punish the criminals. The present government has failed on all fronts. So it is impossible to hold free, fair and fearless elections.

Political leaders also lack confidence in holding the election on declared date. They blame each other for their weaknesses. They are fighting and accusing each other because there is a lack of solidarity and unity among the eight parties in the coalition in conducting C.A. polls and each party knows it very well that it is not possible to hold the C.A. polls without complete unity among them.

Many people do not know what is C.A. What to talk about illiterate votes even several literate voters do not understand C.A. So there is urgent need of maximum interaction with the local people. Countless potential voters also do not know about C.A. in the true sense of the term. The interim government is also not taking interest. Even political parties re also engaged in the capital. They are not sending their cadres in the villages for canvassing the bonafide voters. Under the current political situation, many speculate that it is impossible to hold C.A. polls on given date again. So election government is essential. I am also in favour of C.A.

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