

# ELECTION COMMISSION OF BHUTAN



## **Guidelines for Implementation of Section 179 (A) & (G) of the Election Act of Kingdom of Bhutan Relating to Disqualification of Nominations of Voters Convicted for Criminal Offence or Pending Criminal Charges, 2018.**

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**Introduction**

A democracy to be vibrant and dynamic, it is necessary that positions of authority and power are filled by persons of integrity and principles who are committed to uphold, abide and protect the Rule of Law.

In order that only such voters are elected to office as provided in Section (4) (c) of Article 23 of the Constitution of Bhutan, the Election Commission of Bhutan hereby issues these *Guidelines for Implementation of Section 179 (a) & (g) of the Election Act of Kingdom of Bhutan Relating to Disqualification of Nominations of Voters Convicted for Criminal Offence or Pending Criminal Charges, 2018*.

**1. Title and Extent of Application**

1.1. These Guidelines shall:

- 1.1.1 Be called the *Guidelines for Implementation of Section 179 (a) & (g) of the Election Act of Kingdom of Bhutan Relating to Disqualification of Nominations of Voters Convicted for Criminal Offence or Pending Criminal Charges, 2018*;
- 1.1.2 Be applicable for conduct of Parliamentary and Local Government Elections in the Kingdom; and
- 1.1.3 Come into force with effect from 15<sup>th</sup> of February 2018 corresponding to 30<sup>th</sup> Day of the 12<sup>th</sup> Month of the Fire Female Bird Year of the Bhutanese Calendar.

## 2. Legal Provisions

2.1. Section 4 (c) of Article 23 of the Constitution provides that:

“A person shall be disqualified as a candidate or a member holding an elective office under this Constitution, if the person:

(c) Is convicted for any criminal offence and sentenced to imprisonment;”

2.2. Section 6 (c) & (d) of Article 23 of the Constitution provides that:

“In order to provide for informed choice by the voter, a candidate for an elective office shall file, along with his/her nomination, an affidavit, declaring:

“(c) Records of criminal convictions, if any; and”

“(d) Whether the candidate is accused in a pending case for an offence punishable with imprisonment for more than one year and in which charges are framed or cognizance is taken by a court of law prior to the date of filing of such a nomination.”

2.3. Section 179 of the Election Act of the Kingdom of Bhutan, 2008 provides that:

“A person shall be disqualified as a candidate or a member holding an elective office under the Constitution, if he/she:

“(a) Has been convicted for any criminal offence and Sentenced to imprisonment; or

“(g) Has been accused of felony in a pending case and the competent Court has taken cognizance and charges have been framed against him/her;”

### **3. Purpose**

3.1. The purposes of these Guidelines are to:

3.1.1. Ensure members of the society who are qualified, of high moral standing, who have the best interest of the nation and uphold the highest traditions of probity and morality in public life, get the opportunity to contest an election; and

3.1.2. Prevent convicted criminals or any voter against whom criminal charges have been framed in a Court of Law from becoming or serving as Policy and Lawmakers.

### **4. Definition**

4.1. “An Affidavit” means a declaration required to be submitted by a candidate at the time of filing his/her nomination to contest an election, issued by a Court of Law of the Kingdom that shall declare:

4.1.1. The income and assets of the candidate, spouse and dependent children;

4.1.2. His/her bio-data and educational qualifications;

4.1.3. Records of criminal convictions, if any; and

4.1.4. Whether the candidate is accused in a pending case for an offence punishable with imprisonment for more than one year and in which charges are framed or cognizance is

taken by a court of law prior to the date of filing nomination.

- 4.2. “Criminal Offence” means an act of commission or omission in violation of any law and for which, if convicted, a competent Court of Law within Bhutan or a Criminal Court outside Bhutan may issue a sentence term in prison.
- 4.3. “Criminal Conviction” means a judgment by a Court of Law which declares a voter to be guilty of an act in violation of a law and for which he/she is given a prison term.
- 4.4. “Commission” means the Election Commission of Bhutan formed in accordance with the Article 24 of the Constitution of the Kingdom of Bhutan;
- 4.5. “Electoral Laws” means the Election Act of the Kingdom of Bhutan, 2008, Public Election Fund Act of the Kingdom of Bhutan, 2008 and the National Referendum Act of the Kingdom of Bhutan, 2008;
- 4.6. “Felony” means a crime that is punishable with imprisonment for minimum of three years by any competent court of law under the Penal Code of the Kingdom of Bhutan or other laws of any nation.
- 4.7. “Sentence of Imprisonment” means an Order of a competent Court of Law within Bhutan or a Criminal Court outside Bhutan requiring a voter to serve a prison sentence for committing a criminal offence.

## **5. Holders of an Elective Office**

5.1. The holders of elective offices shall be Members of Parliament, *Dzongkhag Tshogdu, Dzongkhag Thromde Tshogde* or *Gewog Tshogde*.

## **6. Criminal Conviction**

6.1. A voter convicted for a criminal offence by a competent Court of Law within Bhutan or a Court outside Bhutan is prohibited from contesting elections.

6.2. A voter accused in a pending case for an offence punishable with imprisonment for minimum of three years and for which charges are framed or cognizance is taken by a Court of Law shall be prohibited from contesting elections.

However, such a voter shall be eligible to contest elections from the date of his/her acquittal as per Section 181 of the Election Act of the Kingdom of Bhutan, 2008.

## **7. Sentence of Imprisonment**

7.1. A voter found guilty of an offence under the Penal Code of the Kingdom of Bhutan by a competent Court of Law of the Kingdom of Bhutan, or for a similar offence by a Court outside Bhutan shall be, considered to have a criminal record irrespective of whether it is a compoundable or non-compoundable offence or whether he/she has or has not served a term in prison or paid fine in lieu of imprisonment and barred from contesting elections under Section 179 (a) of the Election Act.

## **8. Affidavit**

- 8.1. A candidate shall be required to provide at the time of filing his/her nomination the Affidavit issued by a Court of Law of the Kingdom of Bhutan as per Section 213 of the Election Act of the Kingdom of Bhutan, 2008.
- 8.2. A copy of the Affidavit issued by the Court of Law and the Asset Declaration Form duly filled by a candidate shall be subject to verification as per the procedure set out in *Guidelines for Evaluation of the Asset Declaration of the Candidates contesting Elections, 2018*.

## **9. Competent Authority**

- 9.1. The Respective Dzongkhag Court, the Dungkhag Court in case of Local Government Elections, shall be the competent authority designated to issue an Affidavit declaring whether a voter has a record of being convicted, imprisoned or is undergoing trial in a competent Court of Law within Bhutan.

## **10. Penal Provision**

- 10.1. Any fraudulent act by a voter in the process shall be dealt in accordance with the Electoral Laws and the Penal Code of the Kingdom of Bhutan.

## **11. Power of the Commission to Issue Instructions and Directions**

- 11.1. The Commission may issue instructions and directions:
  - 11.1.1. For the clarification of any of the provisions of these Guidelines;



11.1.2. For the removal of any difficulty which may arise in relation to the implementation of any such provisions; and

11.1.3. In relation to any matter with respect to the Disqualification of Nominations of Voters Convicted for Criminal Offence or Pending Criminal Charges, for which these Guidelines make insufficient provision and clarification is necessary in the opinion of the Commission.

## 12. Authority of Interpretation and Amendment

12.1. The Commission shall be the authority competent to interpret the clauses of these Guidelines.

12.2. The Commission shall have the power to amend by the way of addition, variation, or repeal the provisions of these Rules.

**Done under the seal of the Election Commission of the Kingdom Bhutan on this 15<sup>th</sup> of February 2018 corresponding to the 30<sup>th</sup> Day of the 12<sup>th</sup> Month of Fire Female Bird Year in the Bhutanese Calendar.**

