

# “Election Dispute Resolution: Faults and Remedies”

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Pakistan is a country where allegations of rigging are common place. From local Olympic body elections to the presidential election itself, the sirens of unfairness and dishonesty can be heard loudly. Thus, it comes as no surprise that the election dispute resolution system, devised to resolve the contentions arising from the general elections as well as the by-elections, is rendered inefficient and incapable of executing its function by all concerned corners, not the least because of a lack of capacity.



What is the election dispute resolution system in place in Pakistan? The polling day rigging allegations are dealt with under Sections 35 the Representation of Peoples Act 1976 which provides for a challenge by electors i.e. voters and their polling agents on the grounds that someone has already polled a vote on their behalf and in their stead. Section 52-56 provide for dispute resolution regarding the election and requires the filing of an Election Petition. The Election Tribunals constituted under Section 57 of the Representation of the

individuals who are or have been district and sessions judges. The ECP is free to devise the procedure, but an Election Tribunal is vested with the authority and powers of a civil court under the Code of Civil Procedure 1908. Laws of evidence, namely the Qanoon e Shahadat Order, apply. The Advocate General of the province, on the requirement of the tribunal, is to assist the Election Tribunal. Any person aggrieved by a decision of the Tribunal may, within thirty days of the announcement of the decision, appeal to the Supreme Court and the decision of the Supreme Court on such appeal shall be final.<sup>1</sup>

The election dispute resolution system has to address inter alia pre-poll and polling day complaints. There exists no clearly defined mechanism through which concerns can be addressed in a fair and impartial manner. Several international organizations, including the International Foundation for Electoral Systems (IFES) and the European Union Election Observation Mission (EUEOM), have raised alarms regarding the problems associated with the Pakistani election dispute resolution apparatus.<sup>2</sup> The main remedies can be pierced out as delays in verdicts (which includes superfluous appeals by an aggrieved party), limitations imposed with regard to the

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[http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Pakistan\\_Representation%20of%20the%20People%20Act\\_1976\\_en.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Pakistan_Representation%20of%20the%20People%20Act_1976_en.pdf) accessed on 20 June 2013

<sup>2</sup> Democracy Reporting International, Status of Pakistan's Election Dispute mechanism, Briefing Paper 35. January 2013

criteria of the petitioner and informal practices running amok in the ECP.

The delays caused in judgments are the single most important issue that needs to be addressed promptly. These delays are caused due to a lack of administrative framework within which ECP operates. This causes ambiguity as to which cases deem a recount and a re-poll necessary. It also leads to increased discretion of the verdict with those in charge of the EDR bodies. This further leads to appeals and re-appeals by the party which ends up on the wrong side of the judgment. The other way is to file a writ petition with a higher court. This process is not only expensive but also time consuming, as the courts themselves are stretched thin due to pending cases and their judgments may take months (in some cases, even years). Furthermore the ECP restricts only the candidates or their polling agents to file complaints with the commission. This causes many segments of the society to be marginalized from the formal complaint recording process. However, there exist numerous other ways in the ECP handbook through which anybody can lodge a complaint with the ECP. This includes fax, letter, phone call, e-mail, etc. The ECP states that each complaint lodged through this manner is addressed and dealt with as necessary. However, the procedure as to how this is executed is outdated and needs to be readdressed.

The ECP sought to rectify the faults in the EDR through its working group meeting in 2009. The meeting resulted in the proposal of DCCs and monitoring groups. However they rejected the suggestion that bans be imposed on parties or candidates found guilty of misconduct as this would prove to be an unfair advantage to the other parties in the field. The monitoring groups were put to work in by-elections of 2008. They were to report to the provincial election commissioner on a daily basis. Nonetheless the work done by these groups was unknown as the remedies provided to the issues and complaints were little to none.



In light of these many shortcomings of the current EDR, there needs to be a comprehensive remapping of this mechanism to make it more efficient and bring it at par with international standards such as those listed under the UNHCR resolution. The section dealing with EDR states “fair and public hearing by a competent, independent and impartial tribunal.” Also “ Actual or potential conflicts between electoral dispute resolution procedures and those applicable under general law, while very technical subject, are extremely important to address...”<sup>3</sup> U.N implemented its EDR framework to conduct elections in Liberia and successfully managed emerging disputes due to a comprehensive outline of EDR. The main points that can be adopted to improve Pakistan’s EDR system include: clearly defined entry points, realization and definition of deadlines, protocol and coordination between different agencies and clearly defined administrative and legal frameworks through which the complaints are scrutinized.

The ECP needs to convey to the public as to what will be the right forum to initiate proceedings if an entity has grievances with regards to the conduct of a particular election. This either has to be the DCC, an election tribunal or a higher court of law.

Furthermore, it needs to come up with a clear set of guidelines as to how each complaint will be handled and what steps a petitioner should take if he/she is not satisfied with the verdict. To draw up these guidelines, it should seek help from all concerned institutions including the Parliament and the Supreme Court. New legislation should be enacted if need be to make the process more comprehensible and fair. Also, most importantly, the commission needs to come up with a set of deadlines with regards to different types of complaints and ascertain that these deadlines are met. Otherwise, it should impose fines and penalties on those in charge of disposing justice. Lastly, there needs to be all-inclusive strategy drawn up to bring all agencies responsible in the conduct of free and fair elections on board and make sure there is effective communication between them and a standard protocol that is followed to avoid any gaps through which the deceitful can take advantage. This involves removing all informal mechanisms for complaints and dispute resolutions as these will continue to lure people in as long as they are not drilled out.

this is something which can be corrected, albeit with some pins and needles.

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The independent judiciary coupled with a neutral ECP has contributed to the emergence of sense of impartiality in the Pakistani election process. However there is a long way to go before this dream can be truly actualized. This includes rectifying the EDR and bringing it to a respectable level. Conclusively, although the EDR contains many faults and loopholes, if the political will is there then