

ELECTION COMMISSION OF BHUTAN



ELECTION DISPUTE SETTLEMENT MANUAL, 2013

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Election Dispute Settlement Manual, 2013

1. Introduction

The Election Commission of Bhutan, in fulfilling its mandate of free and fair Parliamentary and Local Government Elections, is also entrusted by law to act as a quasi-judicial body during the Election Period and required to adjudicate and resolve disputes and complaints related to elections after proper investigations are carried out and the facts established.

The election complaints and disputes from the Political Parties, Candidates, party workers and other stake-holders would need to be addressed at various levels of the Election Administration.

An election complaint may be filed due to the commission or omission of an act by any individual or entity in relation to any Electoral Law thereto. Such complaints have to be addressed through a legal process that requires legal skills and understanding of the Electoral Laws enacted by Parliament as well as the Rules, Circulars, Office Orders and Notifications issued by the Election Commission or other competent authorities from time to time. As a first step towards resolving election disputes, it is important for an election official to have a good understanding of the Electoral Laws in particular and other relevant laws in general.

This Manual provides basic guidelines and pointers on how to manage and tackle election complaints and disputes during the election period, supplementing the

procedures set out in the Election Dispute Settlement Rules and Regulations issued under the Election Act of the Kingdom of Bhutan, 2008.

As election disputes and complaints are required to be disposed within the shortest possible time period at every level within the Election Administration, this Manual is issued to facilitate officials in discharging their responsibilities efficiently as desired.

2. Election Complaints

2.1. The means of receiving election complaints are laid down under the Election Dispute Settlement Rules and Regulations (EDSRR).

2.2. The Rule 9.3 of the EDSRR stipulates that a complaint lodged with the relevant authority should:

- (a) Indicate a clear case of controversy related to election that is in breach of the Electoral Laws and the ground for complaint;
- (b) Contain material facts;
- (c) State the names of the Parties/Candidates/individuals against whom the complaint is filed;
- (d) Be signed by the petitioner with proper address and contact details; and
- (e) Be in writing and cover all points as in the **Election Dispute Settlement Form 1**.

2.3. The Rule 9.4 of the EDSRR states that, an election complaint shall be accepted only if it is presented with the adequate basis for it to be pursued under the laws. Therefore, if an election complaint does not

contain the requisites under Rule 9.3 and Rule 9.4, the complaint shall not be accepted and no further action taken. The main objective of such condition is to filter those complaints with no basis or substance.

2.4. After having determined whether an election complaint includes all the above requisites, the next step would be to determine if there has been any violation of any provision of an Electoral Law. Unless, there is clear indication that such specific provision of law is violated, it serves little purpose in conducting further investigation.

2.5. An exception to the above requirements may be made if an election official has reasonable ground to believe that an offence has been committed or is going to be committed in contravention of the Electoral Laws. In such a case an investigation can be initiated by the official without a complaint being lodged, but with the approval of the Chief Election Coordinator and/or the Chief Election Commissioner. Such an Investigation Report shall be submitted to the DEDSB or the CEDSB for hearing and decision as per the procedure for an election dispute.

3. Complaint Receiving Authority

3.1. According to Rule 9.1 of the EDSRR, the complaint may be lodged to and received by the:

- (a) Chief Election Commissioner;
- (b) Chief Election Coordinator;
- (c) National/Micro Observer; or
- (d) Returning/Assistant Returning Officer.

4. Complaint Registration

- 4.1. The Rule 9.2 of the EDSRR requires a Returning Officer and Observer to immediately, or at the earliest possible, forward the election complaint to the Chief Election Commissioner or Chief Election Coordinator who shall decide, upon acceptance of a complaint based on fulfillment of the requirements as outlined in 2.1 and 2.2 above, to dismiss, issue a Show Cause Notice, hold a summary hearing, or require the CEDSB/DEDSB to direct an investigation and decide subsequently as per procedure.
- 4.2. The Legal Officer, for the Centre and the respective Dzongkhag Electoral Officer for the DEDSB must maintain the Central/Dzongkhag Election Case Register, as in **Election Dispute Settlement Form No. 3**, and immediately enter into it the details of the cases received, including the records of dismissed complaints.
- 4.3. The CEDSB/DEDSB must, upon receipt and registration of a complaint, determine whether a case is necessary to be investigated, issue a Show Cause Notice or have a summary hearing.
- 4.4. All the DEDSBs must, by the end of the day on every Monday, submit an updated weekly election complaint report to the CEDSB, as in the

updated **Election Dispute Settlement Form No. 3.**

- 4.5. The CEDSB shall, pertaining to an election, prepare news/press release on the election disputes filed and decided by any dispute settlement body for public information from time to time.

5. Election Dispute Settlement Bodies

- 5.1. The EDSRR provides for the establishment of two different levels of Election Dispute Settlement Bodies for the purpose of adjudication of election disputes during an Election Period. The Body at the national level shall be designated as the Central Election Dispute Settlement Body (CEDSB) whereas the body at the Dzongkhag shall be designated as the Dzongkhag Election Dispute Settlement Body (DEDSB).
- 5.2. The Election Commission shall be the highest appellate authority of the Election Dispute Settlement System.
- 5.3. A DEDSB can take action on those cases which relate to the violation of Prohibitory Orders, Notifications, and Circulars. However, if the DEDSB views that the issue is of grave nature requiring penalty beyond its authority, it must forward the complaint to the CEDSB with written explanation of the basis for doing so.

6. Investigation

- 6.1. Once it is decided that an investigation is necessary, it is very important that the Investigation Committee appointed by the Election Dispute Settlement Bodies is able to establish the truth in a lawful manner. The investigator must have a fair knowledge on all aspects, such as, the cause of action, place of occurrence of the event, the identity and location of the witnesses, the date and time of the event as these are crucial to determine the course of the investigation etc.
- 6.2. It may not always be necessary to visit or take photographs of the place and site of occurrence of electoral disputes, however, the place of occurrence assumes importance for determining the course of investigation as it is usually where the witnesses reside. It shall be mandatory for the investigators to visit the place if the key witnesses are residing in that particular place.
- 6.3. An investigator may, at times, be able to find more evidence at the place where the act was committed.

For example, during the election period a Political Party or Candidate or Party Worker are required to refrain from performing rituals and religious events. If a Political Party/Candidate/Party Worker is suspected to have performed ritual and rites, the *Tormas*, *Lui*, *Doey* etc. can be used as evidence and the *Chops* who were invited to perform the ritual can be the witnesses.

- 6.4. One of the key tools of investigation is the interrogation of the relevant witnesses. It may not be necessary to question the complainant as a witness if the facts of the case are clearly mentioned in the complaint letter.
- 6.5. On the other hand, the complainant may be questioned in case there are some issues and facts which need to be verified and corroborated further.
- 6.6. During the interrogation of the complainant, he/she must be asked to reconfirm the details of his/her complaint and the names and addresses of witnesses who were present during the commission of the crime. It is essential for the investigator to ask the complainant the date and time of the commission of offence.

The time factor is an important element because there will be defense of alibi on the part of the alleged, in other words, the alleged person may claim that he/she was in a different place at the time when the offence was committed. Thus, the case will become baseless if in the first place the alleged offender was not at the place on the day the alleged offence was committed, unless he/she is proven guilty of abetment.

- 6.7. When more than one witness is involved, all the witnesses must be questioned or interrogated till the investigator is convinced that the case is proven or disproved beyond reasonable doubt.

- 6.8. The witnesses should not be cross examined in the presence of another witness as it is possible that certain facts or issue may not be revealed due to fear of other witnesses or a witness may not want his/her identity to be revealed to others as his/her kind of testimony given to the investigator may have a direct bearing on his/her life in the locality.
- 6.9. The investigator must ensure that the witnesses are questioned one after the other without giving them any opportunity to discuss amongst themselves. It is also important to question all the persons whose names are being mentioned by a witness.

It can be a cumbersome and tiresome process, especially if the persons/witnesses reside in far-flung scattered places. However, the investigator must question all the witnesses or else it may result in burial of the facts.

- 6.10. While interrogating the witnesses, it is important for the investigator to question the context under which the dispute or issue arose as it is probable that the complaints may be lodged maliciously due to personal vendetta.

At times the cause of action may also occur when the doer is not capable of controlling or being controlled due to various external factors such as being intoxicated, or is mentally unsound etc.

It was also learnt from the past experiences that during the election period people are more inclined to intentionally or unintentionally

indulge in careless talks and gossips in the societal gatherings.

Therefore, it is important for the investigator to probe the complex relationship, both past and present between the complainant, suspect, witnesses, and the state of being of the suspect at the time of the alleged commission of offence.

6.11. During the interrogation of the witnesses, the investigator should not pass any judgment or remark which is prejudicial in nature. For example, investigator saying ‘he/she seems to be a nice person and it appears to me that he/she is not likely to commit such an act’ or ‘if you confess this you will be punished under so and so offence’.

6.12. The examination of a document, if any, during an investigation is an important element in order to corroborate the statement of the witnesses. The document remains as credible evidence to prove or disprove the issue in dispute. The document must, therefore, be thoroughly cross-checked to confirm its authenticity. Once the credibility and authenticity of the document is confirmed then the witnesses or suspects who gave false information may be cross-examined.

The investigator must be aware of the limitation and tread with caution when dealing with confidential documents. The investigator should not vehemently demand for the document unless it becomes absolutely necessary.

- 6.13. There are two types of evidence, direct evidence and indirect or circumstantial evidence.

Direct Evidence is the testimony of a witness as to the existence or non existence of a fact in issue, for example, commission of an offence in the presence of the witness.

Circumstantial or indirect evidence is a collection of evidence which infers that an act has been committed. An example of indirect evidence is, a witness testifying that he/she only saw the alleged person at the same time and place when the offence was committed.

7. Questioning and Taking Statements

- 7.1. The main function of the investigator is to uncover the truth which must be sought within the permissible bounds of the laws. Therefore, an investigator should not use any unlawful tactics of intimidation, coercion, threat etc. At the commencement of the investigation, the investigator must inform the person who is being interrogated that he/she is to tell the truth and any lying tactic on the part of anyone will entail subsequent accountability and cumbersome processes.
- 7.2. An investigator should create an atmosphere wherein the witness can talk freely. If a witness is literate, she/he should be allowed to write the Statement herself/himself. In case the witness is illiterate the Statement can be written by a person of his or her choice or as a last resort a

member of the Investigation Committee can write the Statement but it must be read out to the witness in front of a witness of his/her choice. Only after affirmation by the witness, should the witness be allowed to affix his/her signature on the Statement and the witness of choice should be required to sign at the bottom of the Statement that the document was read out and affirmed before being signed.

A Statement written by the witness himself/herself should be examined before his/her signature is affixed, as it is possible the witness may verbally state many facts when questioned by the investigator but may not put down all the relevant facts in the written Statement.

- 7.3. The best option for an investigator is to ask relevant questions and then simultaneously note it down. When all the facts are noted on a paper, the investigator has to make it amply clear to the witnesses on the contents before appending the necessary signatures.
- 7.4. It is mandatory to affix legal stamp on the written Statement as it gives certain sanctity, authenticity and legality to a Statement. Therefore the investigation teams must make sure to take with them the legal stamps when they undertake investigations.
- 7.5. According to Rule 13.3 of the EDSRR, the Investigation Committee can obtain assistance from the local *Midhey Gothrips* during the investigation, as some witnesses in the rural areas will only talk to the investigators in their presence. It is possible that in some villages, villagers may be apprehensive while talking to strangers in which case

it may be necessary to have a local *Midhey Gothrip* during an investigation. However, it is not an absolute necessity and the investigator must ensure this only if it is the wish of the witness and no conflict of interest is entailed.

- 7.6. As a matter of courtesy, the relevant authority in the locality should be informed about the investigation. However, it is not necessary to share the details of the case with them.

8. Investigation Report

- 8.1. While an investigator may have a different technique of writing an investigation report, it is vital to include all the following aspects in the report:

- (a) Mention how the complaint was received stating when the complaint was made, to whom and the alleged violation of law;
- (b) Who investigated;
- (c) Issue or complaint to be proved and disproved;
- (d) Findings of the investigation;
- (e) How the findings are proving or disproving the complaint; and
- (f) Suggest what action should be taken or not.

9. Hearing

- 9.1. Once an investigation is complete, a hearing must be conducted to hear the findings on the complaints by the investigator. The parties to the dispute must be informed in advance about the hearing, according to

Rule 14 of the EDSRR and they can be present for the hearing. However, the hearing shall be conducted irrespective of whether the concerned party/parties fail/s to attend or nominate a representative.

- 9.2. The hearing must be conducted as per the procedure provided in the EDSRR and proper documentation maintained.
- 9.3. The Investigation Committee shall, during the hearing, make a presentation of the findings. The Candidate or his/her Representative shall be given an opportunity to submit additional evidence if he/she has any. He/she may also be allowed to view the evidence.
- 9.4. The Election Dispute Settlement Bodies shall conduct maximum of two hearings for a particular case.

10. Decision

- 10.1. The decision on a dispute should be rendered within two days of the conduct of hearing and as per Rule 19 of the EDSRR it should be a reasoned one.
- 10.2. A decision should constitute the following:
 - (a) Brief facts of the case;
 - (b) Analysis on the application of the laws;
 - (c) Analysis on the admissibility and approval of the evidence; and
 - (d) Final course of action on the case.

10.3. All members of the Election Dispute Settlement Body must initial all the pages and sign on the decision given by it.

11. Penalty

11.1. The decision should conclude either a person is guilty or not guilty.

If a person is found guilty, the penalty to be imposed must be determined and stated. As a generally accepted principle, if more than two laws or provisions of the law apply to the same fact in issue, the guilty is entitled to the punishment under the law which imposes lesser penalty.

11.2. Although a person may be found guilty when it comes to awarding of the punishment, mitigating circumstances may nullify the severity of punishment.

Examples of mitigating circumstances/factors are mentioned under Section 23 of Bhutan Penal Code 2004 as follows:

- (a) The defendant has no record of a prior criminal conviction;
- (b) The crime is committed while the defendant was under the affliction of extreme mental or emotional distress;
- (c) The crime is committed accidentally;
- (d) The victim is a participant in the defendant's criminal conduct or consented to the criminal act;
- (e) The crime is committed under circumstances that the defendant believed of having a reasonable justification or extenuation for the

conduct;

- (f) The defendant is an accomplice in a crime committed by another person and the defendant's participation in the crime is minor;
- (g) The defendant acted under duress or under the domination of another person; or
- (h) At the time of the crime, the capacity of the defendant to appreciate the wrongfulness of the conduct or to conform the conduct to the requirements of law was impaired on account of mental disability or intoxication.

11.3. Alternatively, aggravating circumstances may increase the severity of punishment. The aggravating circumstances mentioned under Section 24 of the Bhutan Penal Code 2004 are as follows:

- (a) The crime is committed by a defendant, who has previously been convicted of a crime that was punishable by imprisonment or a crime of the same or similar nature;
- (b) At the time of the commission of the crime, the defendant also committed another crime;
- (c) The defendant knowingly created a grave risk of death or serious bodily injury to another person;
- (d) The defendant negligently caused bodily injury to another person with a deadly weapon; or
- (e) The crime is especially heinous, atrocious, or cruel thus manifesting exceptional depravity on behalf of the defendant.

- 11.4. Although, the legal principle is that ‘ignorance of law’ cannot be an excuse for the commission of an offence, the Section 77 of the Bhutan Penal Code provides room for such defense. So the Election Dispute Settlement Bodies should consider these while imposing penalty.
- 11.5. A copy of the decision of the complaint must be provided to the Political Parties, Candidates or the individuals concerned with confirmation of delivery.
- 11.6. It has to be stated in the decision that if a party wishes to appeal against the decision, it has to route it through the body which decided the case within the appeal period.
- 11.7. The Body shall, while forwarding an appeal, send the original file on the case to the appellate authority through the quickest and reliable means.

12. Appeal

- 12.1. The appeal on the decision of the DEEDSB shall lie to the CEDSB within five days from the date of the decision.

The CEDSB shall issue a decision on an appeal within five days of its receipt.

- 12.2. An appeal on the decision of the CEDSB shall lie to the *en banc* Commission and must be made within two days of the decision. The

appeal shall lie on the question of law and facts.

The Commission shall issue a decision on an appeal within five days of its receipt.

13. Execution

13.1. The decision of the CEDSB or the DEDSB shall be executed upon the lapse of the appeal period when there is no appeal but in the case of appeal, the decision of the appellate authority shall be executed.

13.2. The decision of the DEDSB shall be executed by the Chief Election Coordinator.

13.3. The decision on a case forwarded to the CEDSB by DEDSB shall be executed by the Chief Election Coordinator as per the instructions of the CEDSB.

13.4. The decision on a case appealed from the DEDSB to the CEDSB or cases decided by the CEDSB shall be executed by the Secretary of the Election Commission of Bhutan.

14. Non-compliance of Orders

14.1. Any individual, Political Party, Candidate who refuses to co-operate or fails to show up for questioning by the investigator without a valid

reason or refuses to abide by the order of the Election Dispute Settlement Bodies, shall be considered guilty of Contempt of Order. He/she shall be dealt with as per the Election Act of the Kingdom of Bhutan.

15. Relevant Laws

15.1. There can be an election complaint with regard to the irregularities and violations of any of the following Laws which are applicable to elections:

- (a) Election Act of the Kingdom of Bhutan;
- (b) Public Election Fund Act of the Kingdom of Bhutan;
- (c) Delimitation of Electoral Constituencies Rules and Regulations;
- (d) Election Advertising Rules and Regulations;
- (e) Election Dispute Settlement Rules and Regulations;
- (f) Election Security Rules and Regulations;
- (g) Election Symbols Rules;
- (h) Electronic Voting Machine (EVM) Rules and Regulations;
- (i) Media Coverage of Election Rules and Regulations;
- (j) Political Parties Rules;
- (k) Postal Ballot Rules and Regulations;
- (l) Election Observation Guidelines; and
- (m) Other Guidelines, Interpretations, Implementation Strategies, Handbooks, Code of Conduct, Prohibitory Orders, Notifications and Circulars issued by the Election Commission of Bhutan from time to time or during the Election Period.

15.2. It is mandatory for election officials at all levels to have all the above

Laws, Rules and Regulation and Guidelines for ready reference.

16. Other Authorities

16.1. There are other Electoral functionaries with differing enforcement authorities. For example, during an election period a Media Arbitrator will be appointed who will be responsible for monitoring the media coverage and political advertisement and settling disputes concerning the media related issues as specified in the Media Coverage of Elections Rules and Regulations and the Social Media Rules and Regulations. Such complaints received by the Complaint Receiving Authorities must be referred to the Media Arbitrator.

16.2. The complaints related to the Public Election Fund shall be dealt in accordance with the procedures laid down under Chapter 10 of the Public Election Fund Act. Such complaints should, unless otherwise delegated to the Election Dispute Settlement Bodies by the Election Commission, be addressed directly by the Election Commission.

17. Referral to Other Bodies

17.1. Offences that may fall under the jurisdiction of other law enforcement agencies such as Royal Bhutan Police, Anti-Corruption Commission etc, may be referred to the relevant agencies, notwithstanding any action taken against a Political Party, candidate or individuals, as the case may be, in terms of reprimand, fine or disqualification. For example, if the

complaint is concluded to be a clear case of corruption, the concerned receiving authority it should be forwarded the same to the Anti-Corruption Commission besides any action taken by the Election Dispute Settlement Bodies or Election Commission of Bhutan.
