

ELECTION  
COMMISSION  
OF  
PAKISTAN



# **Election Dispute Resolution Pamphlet**

**March 2008**

## **Introductory Message**

Dear Friends,

All stakeholders have a collective responsibility to conduct Pakistan's elections in a free, fair, and transparent manner. An important part of any election is the opportunity for candidates and citizens to seek resolution of complaints and disputes related to this process. The adjudication of these complaints are, in turn, vital to the peaceful transition of government.

The public is informed about the elections process by the different forms of media available throughout the country. As members of the media, you are therefore uniquely positioned to ensure that all stakeholders clearly understand these important election dispute processes.

The purpose of this pamphlet is to provide a quick reference guide to members of the media in order to clarify the different dispute resolution mechanisms that exist under the Constitution and laws of Pakistan for resolving election disputes and complaints. This pamphlet focuses on the post-election period with special attention paid to the Election Tribunal process. For a more detailed explanation of the pre-poll election dispute processes please refer to the Election Commission of Pakistan's Complaints Handbook (Feb. 2008).

I would like to extend my appreciation to the members of the media for their on-going coverage of the elections process, which plays a vital role in informing and educating the public. I hope that you will find the information contained in this pamphlet of value to your profession.

I would also like to extend my thanks to IFES for their support in making this pamphlet possible.

Kanwar Mohammad Dilshad  
Secretary  
Election Commission of Pakistan  
March 2008

## **Election Dispute Resolution Mechanisms: Pakistan's Complaint Processes**

In Pakistan the term “election complaint” is often used to describe the various election dispute resolution processes and procedures, which are a critical part of the entire electoral process. The Constitution and laws of Pakistan have been drawn-up to provide effective redress to complainants' grievances during the different stages of the electoral process. The formal dispute resolution stages have important features including:

1. Pakistan's election law creates different complaints processes for each stage;
2. Each stage has its own rules for resolving disputes and complaints;
3. Each stage has its specific terms to describe the procedures;
4. Each stage has particular eligibilities and pre-requisites for filing disputes;
5. All stages provide an opportunity to appeal a decision and eventually the possibility of resolving the dispute before Pakistan's Supreme Court.

Finally, one often confusing feature to the electoral process is the use of legal procedures that seek provincial High Courts to intervene in election disputes during all election periods. This legal procedure, known as a “writ petition,” will be described in greater detail in its own section of this pamphlet.

## **Stages of the Electoral Process: Different Complaints Procedures for Each Stage**

There are five distinct stages to the electoral process, which have their own distinct dispute resolution process. These stages are:

- a. Nomination Stage
- b. Pre-Poll Stage
- c. Polling Day
- d. Post-Poll/Pre-Gazette Stage
- e. Post-Gazette Stage

This pamphlet will highlight the Post-Poll/Pre-Gazette and Post Gazette Stages, and briefly summarize the other three stages. For a full description of the dispute processes for the Nomination, Pre-Poll and Polling Day stages please refer to the Election Commission of Pakistan's Complaints Handbook, which is available for download at [www.ecp.gov.pk](http://www.ecp.gov.pk). As you review the complaint or dispute resolution process within each stage of the electoral process, please note that the formal procedures, as set out in the laws and regulations, often use different terminology to describe similar procedures. For example, while all grievances might be called “complaints” the law formally refers

to a “Complaint” as a grievance filed during the Pre-Poll Stage of the election cycle. These formal terms help to distinguish which stage of the election cycle a given dispute is taking place. A glossary of key terms has been provided at the end of this pamphlet for your easy reference. Please note that all formal procedures are spelled-out in the applicable election law, e.g. the Representation of the People Act of 1976.

## **Election Dispute Resolution Process: The Pre-Poll Stages**

As noted at the introductory section the purpose of this pamphlet is to provide clarity to the post-election dispute process. In order to provide a context to the other three stages of the electoral cycle the following section provides a short overview of those applicable dispute resolution processes. For a more detailed description of the relevant processes within these specific electoral stages please refer to the Election Commission of Pakistan's, Complaints Handbook (Feb. 2008).

### **1. Complaints against Nomination Papers:**

Returning Officers receive and scrutinize the Nomination Papers of all prospective candidates, and are required to either reject or accept Nomination Papers. As part of the scrutiny process Returning Officers may receive “objections” to any candidate's nomination papers. A Returning Officer's decision to accept or reject a candidate's nomination papers may be challenged by the filing of an appeal before an Appellate Tribunal. An Appellate Tribunal's decisions may be appealed to the Supreme Court. See Appendix A for a flowchart outlining the process.

### **2. Complaints regarding the Violation of Laws during the Pre-Poll Stage:**

The Election Commission of Pakistan receives complaints at all levels of the organization regarding alleged violations of the law during the pre-poll period. Any person may file a complaint in the pre-poll stage, if they believe that an electoral offense has been committed. Generally, there are no time limits on the filing of complaints during the pre-poll period and complaints may be filed in many different formats including letters, faxes, phone calls and emails. For the 2008 elections the ECP produced a generic complaint form to assist people wishing to file a complaint, and these were available from ECP, available at [www.ecp.gov.pk](http://www.ecp.gov.pk).

Upon receipt by the ECP, all pre-poll complaints are recorded, assessed as to severity and a determination is made as to what subsequent course of action is required. Pre-poll complaints requiring immediate attention are transmitted to the concerned authority (i.e. law enforcement agency). Most complaints are assessed then investigated with a

recommendation made as to its disposition. Once the recommendation has been agreed to by the ECP, the complaint is typically forwarded to the responsible government agency for appropriate action. See Appendix B for a flowchart outlining the pre-poll complaint process

3. Complaints for Violations of the Law on Election Day

Election Day complaints may be filed with Presiding Officers, District Returning Officers or Returning Officers. Complaints may also be filed with Provincial Election Commissions and the Election Commission of Pakistan in Islamabad on Election Day. These officials are vested with specific statutory authority to take immediate action in the event that an irregularity or other specified offense takes place inside or outside a polling station on Election Day. See Appendix C for a flowchart of the Election Day complaint process.

## **Election Dispute Resolution Process: Post-Poll/Pre-Gazette Stage**

The time between Election Day and the announcement of official election results may last up to two weeks, and it is during this period that the election law provides aggrieved candidates with the opportunity to seek redress for disputes that are alleged to be urgent and cannot wait for the formal procedures as set out in the Election Petition procedures.

Candidates who believe the results of elections were grievously compromised during the electoral process may file a Section 103AA complaint during this short period of time. A Section 103AA complaint is referred to as an “Application” for declaring the poll void on account of “grave illegalities” or “violation of the provisions” of the Representation of the People Act of 1976.

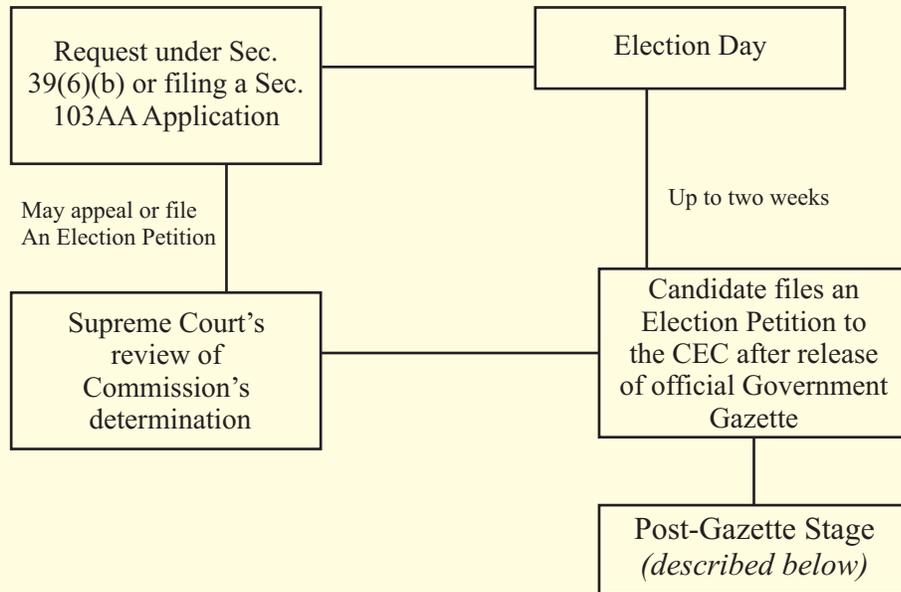
Once an Application is filed, the ECP reviews the Application and makes a determination at a summary hearing as to whether there have been “grave illegalities” and/or “violation(s) of the provisions” of the Act. It is important to note that any determination made under a Section 103AA-Application process is a measure only of whether the Application showed that grave illegalities and/or violation(s) of the Act occurred sufficient enough to require the Election Commission of Pakistan to declare a poll void.

Once the ECP makes a determination the Applicant may approach a High Court or the Supreme Court. If the Applicant remains aggrieved, under some circumstances, a candidate may still have an opportunity to file an Election Petition.

In addition to the Section 103AA procedures, aggrieved candidates may request the Election Commission for recount under section 39(6) (b).

Finally, it is worth noting that aggrieved candidates sometimes attempt to seek intervention by a provincial High Court in order to resolve election disputes during the Post-Poll/Pre-Gazette Stage of the electoral process. As will be discussed below, the use of a “writ petition” is nuanced procedural law and its use is limited to rare occasions. The Constitution and the relevant electoral laws foresee the vast majority of election disputes being resolved under the prescribed mechanisms such as Election Tribunals.

### Post-Poll/Pre-Gazette Stage



## **Election Dispute Resolution Process: Post-Gazette Stage (Election Tribunals)**

Once the official election results are published in the Government Gazette, aggrieved candidates may seek to resolve election disputes at Election Tribunals. Candidates who believe that the election results do not reflect the outcome or believe election fraud was committed may file an Election Petition with the Chief Election Commissioner (CEC) using procedures spelled-out in the Representation of the People Act of 1976, Chap. VII and Notification F.1(7) 85-Cord. (1985).

Only aggrieved candidates are permitted to file an Election Petition and they must do so within 45-days from the date of the publication of the results in the official Government Gazette. The CEC reviews each Election Petition and determines whether an Election Petition complies with the requirements of the election law. If the requirements of the election law are met the CEC then refers the Election Petition to an Election Tribunal that is established within the province where the candidate stood for office. Under the Notification of 1985 if the CEC determines that an Election Petition is deficient it is then sent back to the petitioner with a notification of the deficiency(ies). A petitioner may re-file once the deficiencies have been addressed within the stipulated period.

Election Tribunals are administered through Pakistan's provincial court systems. In recent elections the practice has been for judges presiding over Election Tribunals to be drawn from the ranks of sitting provincial High Court judges, whose names have been formally submitted by the Chief Justices of the four provincial High Courts upon request by the CEC. Once an Election Petition is transferred to an Election Tribunal the election law dictates that an Election Tribunal is required to proceed to trial of the Election Petition and issue a decision within 120-days after an Election Petition's receipt. Election Tribunals are formal trials conducted under the Code of Civil Procedure of 1908, except where the Representation of the People Act of 1976 and the Notification of 1985 streamlines the rules.

Those candidates remaining aggrieved following the final decision of an Election Tribunal have 30-days to appeal to the Supreme Court, whose decision is final. See Appendix D for a flowchart outlining the Post-Gazette Stage.

## Use of “Writ Petitions” to Resolve Election Disputes

A “writ petition” is a constitutional procedure that an aggrieved candidate may use to seek a High Court's judicial authority to instruct the appropriate authority to take a particular course of action. The Constitution and the election law foresee the vast majority of disputes resolved under the prescribed electoral dispute resolution mechanisms; however, a writ petition may provide additional legal protections in exceptionally unusual circumstances.

While a writ petition is an important constitutional procedure designed to protect citizens' rights, the filing of a writ petition is legally nuanced and invokes a High Court's jurisdiction on a legal issue that only a High Court can resolve. This means that if an aggrieved party, such as a candidate, seeks the High Court's intervention the party must show that a High Court has authority to hear such a matter in the first place and that remedy for that dispute may not be found somewhere else. Writ petitions may be filed at any stage during the electoral process but most often have been used during the post-election period.

### Dispute Stages run with the Time to File a Writ Petition

Complaint Process under Election Law	Other Legal Procedure
<p style="text-align: center;">Nominations Stage (Appeals to Appellate Tribunals)</p> <p style="text-align: center;"> </p> <p style="text-align: center;">Pre-Poll Stage (Complaints Filed with ECP)</p> <p style="text-align: center;"> </p> <p style="text-align: center;">Polling Day (Complaints Filed with PrO, ROs,DROs and ECP)</p> <p style="text-align: center;"> </p> <p style="text-align: center;">Post-Poll/Pre-Gazette Stage (Applications Filed for ECP Review)</p> <p style="text-align: center;"> </p> <p style="text-align: center;">Post-Gazette Stage (Election Petitions and Election Tribunals)</p>	<p style="text-align: center;"><b>Writ Petition</b> <b>(if allowed by High Court or the Supreme Court )</b></p> <p style="text-align: center;"> </p>

## **Key Terms: Election Dispute Resolution Procedures**

**Application**—refers to the request to the Election Commission to review the poll results under Section 103AA of the Representation of the People Act, 1976 during the Post-Poll/Pre-Gazette Stage.

**Complaint**—is a generic term for all grievances that a candidate or individual might file during the election dispute process. It also refers more specifically to the formal request to the Election Commission to investigate misconduct or illegality during the Pre-Poll Stage of the electoral process.

**Returning Officer or RO**—refers to an election official who formally receives then accepts or rejects candidates' Nomination papers.

**Appellate Tribunal**—refers to adjudicatory body that hears aggrieved candidate's appeals from nomination determinations by ROs during scrutiny of the nomination stage.

**Election Tribunal**—refers to the formal adjudicatory proceedings conducted by Pakistan's courts to resolve an aggrieved candidate's Election Petition in accordance with Chapter VII of the Representation of the People Act of 1976 and the Notification of 1985.

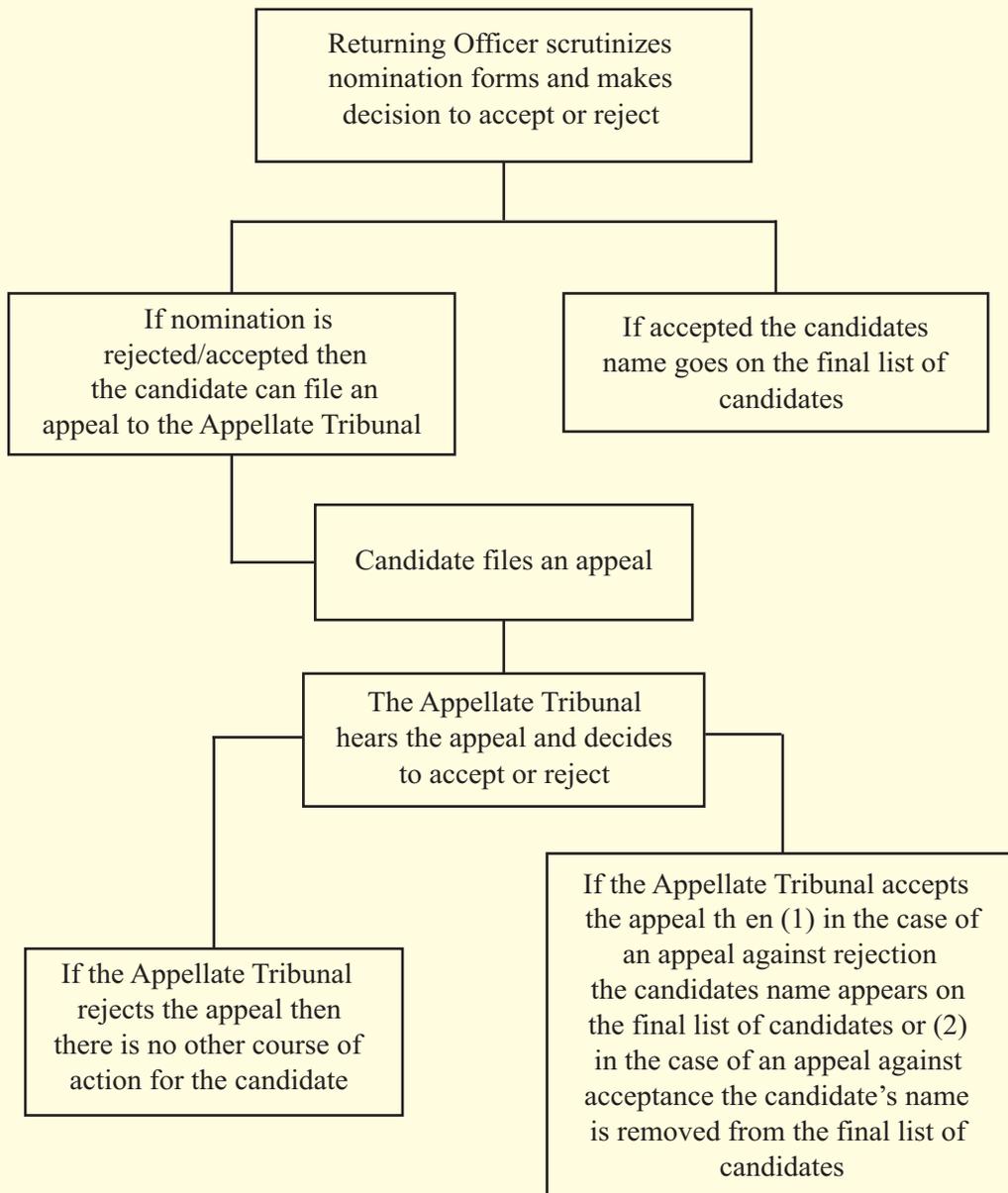
**Election Petition**—refers to a formal filing to the Election Commission to seek an Election Tribunal to review an aggrieved candidate's disputes with the election results under Chapter VII of the Representation of the People Act, 1976 and the Notification of 1985 during the Post-Gazette Stage of the electoral process.

**Petition**—Under Pakistan's election law the term petition may be used to refer to several legal procedures. In Pakistan's Election Laws it refers to an “Election Petition.” See also, “writ petition.”

**Writ Petition**—is a constitutional procedure that invokes a High Court's authority to intervene when a party's rights have been or are threatened to be violated and only a High Court's intervention will provide remedy.

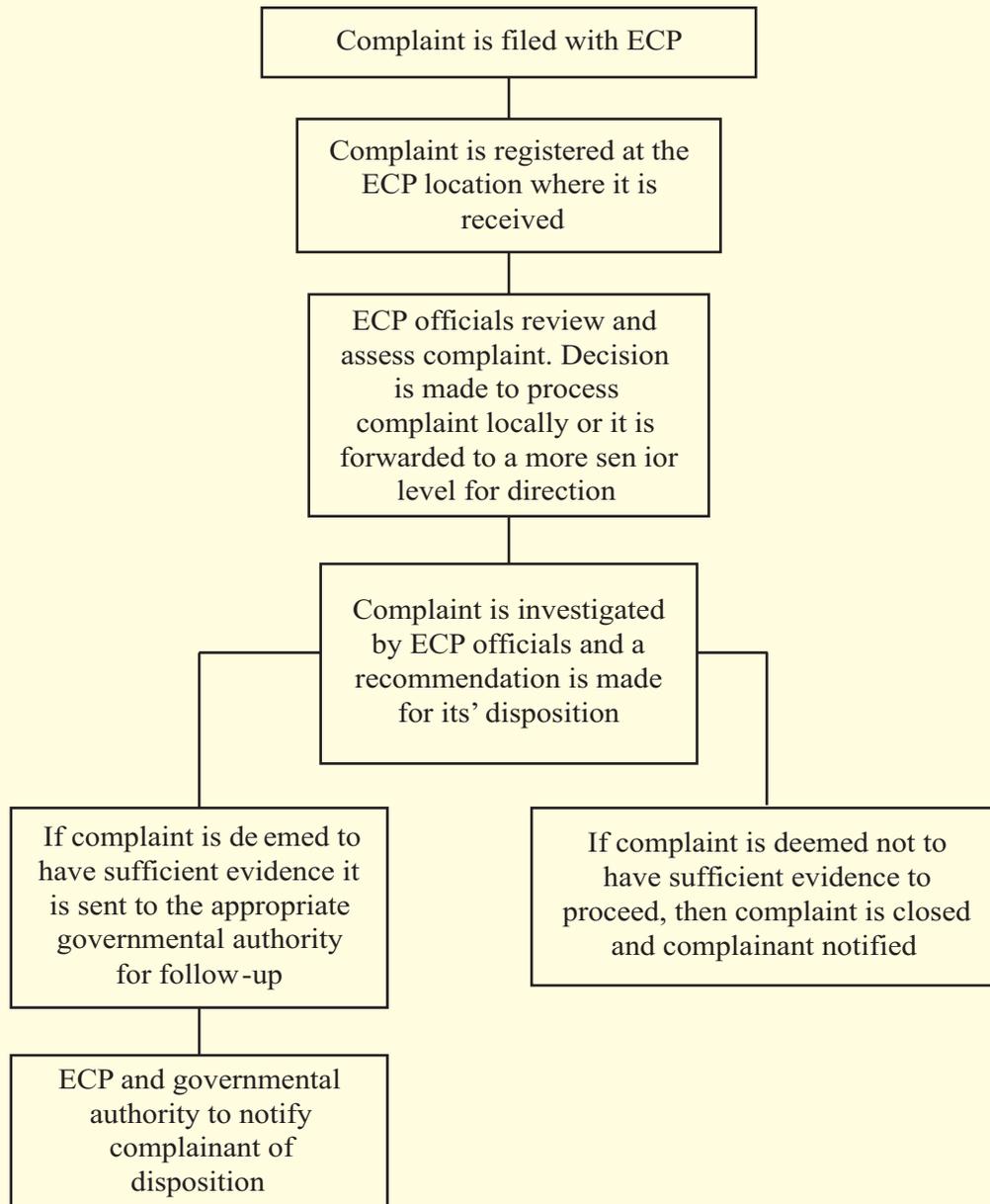
## Appendix A

### Election Dispute Resolution Process: Nomination Stage



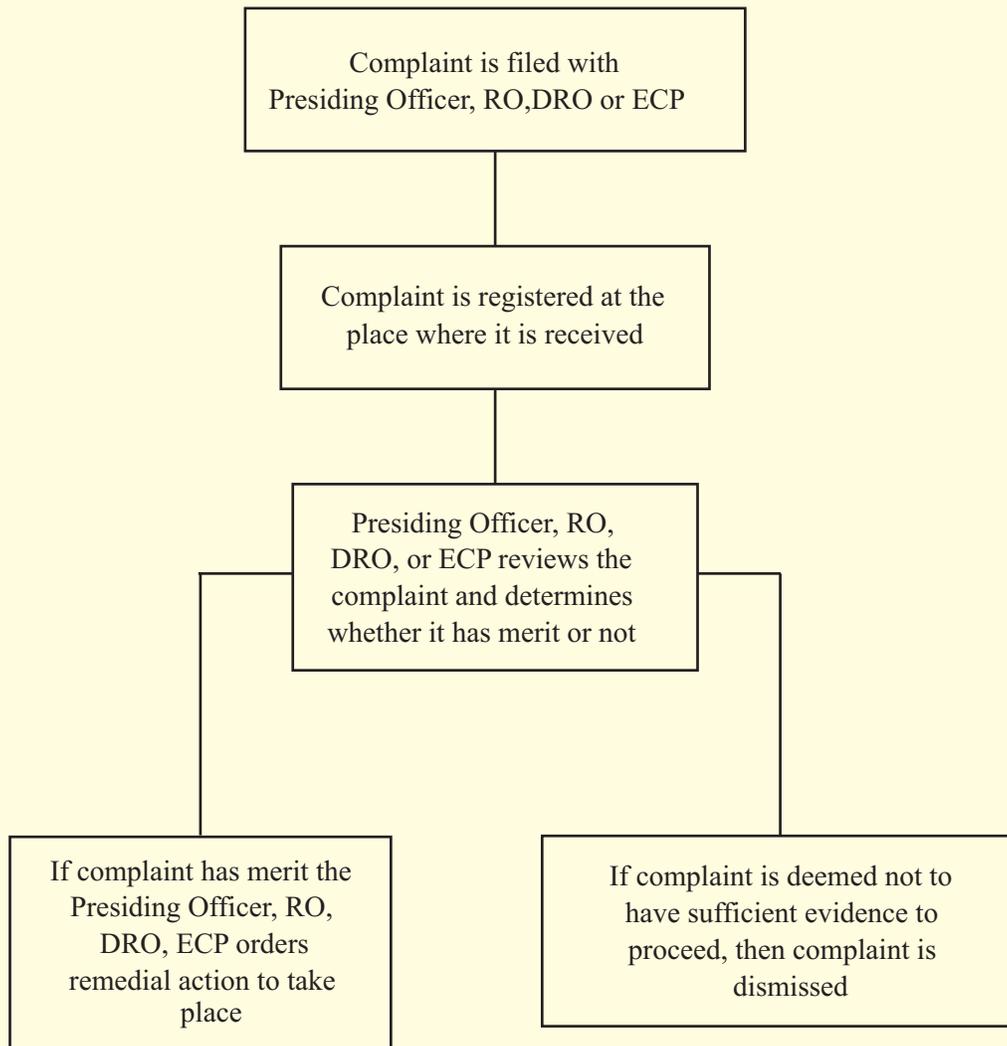
## Appendix B

### Election Dispute Resolution Process: Pre-Poll Stage



## Appendix C

### Election Dispute Resolution Process: Pre-Poll Stage



## Appendix D

### Election Dispute Resolution Process Post-Gazette Stage (Election Tribunals)

