
**Illegal and Corrupt Practices, Connivance, Standard of Proof in Election matters,
Biometric Verification of Thumb Impression, Order of Recounting.**



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN

COURT: MR. JUSTICE HON’BLE MUHAMMAD AAMIR NAWAZ RANA.

SUBJECT: ELECTION LAWS.

DATE: 03RD AUGUST, 2024

SUBMITTED BY: - RESEARCH OFFICERS

(INDEX)

S.No	Section	Page(s)
1.	Illegal and Corrupt Practices	1-4
2.	Biometric Verification	5-7
3	Recounting	8-10
4	Non-Verification of Election Petitions	10
4.	References	10



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN

COURT: MR. JUSTICE HON'BLE MUHAMMAD AAMIR NAWAZ RANA.

SUBJECT: ELECTION LAWS.

DATE: 2ND AUGUST 2024

BY: RESEARCH OFFICERS.

(Section-I)

(Illegal and Corrupt Practices)

Query: - What is the standard of proof to establish connivance, illegal and corrupt practice in an Election Petition?

KEYWORDS:

Polling Staff, Contesting Candidates, Connivance, Specification of allegation, Standard of

In order to answer the above quoted query, it is stated that the words "illegal practice" has been defined in Section 175 of the Act. Similarly, the words 'corrupt practices' have been defined under Section 167 of the Act. The word, 'connivance' has not been defined in the Act. However, the word has been mentioned five times in the Act. The important provision wherein, the connivance of a returned candidate with a presiding officer or returning officer for sheer noncompliance any provision of the Act or Rules framed thereunder, has been made a ground for nullifying the election process under Section 158 (1) (a) of the Act. In order to prove an allegation of illegal and corrupt practices the first and foremost condition precedent is specification of such allegation in the contents of the election petition. Section 144 (1) b of the Election Act, 2017 (The Act) deals with the specification of allegations as to illegal and corrupt practices. Describing full particulars of any corrupt and illegal practice, connivance; description of persons doing such acts with name and date, time and manner of commission of such illegal acts are *sine qua non* to establish an allegation. However, any election petition lacking such specification is liable to be dismissed being not maintainable. Section 145 of the Act stipulates rejection of such deficient petition. It is pertinent to mention here that the Sindh High Court in the case of Shahzada Shahbaz reported as LEX/SKPK/0088/2023 (Shahzada Shahbaz vs. Election Commission of Pakistan and Ors. (14.01.2023 – SKPK) held as below:

"6. Indeed, the requirement of specificity stands well settled in terms of the Judgment of the Honourable Supreme Court of Pakistan in Civil Petition No. 13-O of 2019, the operative part of which reads as follows:-

*"Having heard the learned Counsel for the appellant and going through the record, we find that the very election petition through which the appellant had challenged the election notification of Respondent No. 1 was defective in its content. We have gone through the election petition and find that **the mandatory requirements of Section 144 (1) (b) of the Election Act, 2017 were not met. Further, the petition was deficient insofar as it lacked particulars of any corrupt or illegal practices or other illegal act that was alleged to have been committed. Further, neither the petition nor the affidavit in evidence submitted by or on behalf of the appellant contained names and other particulars of the persons who were alleged to have committed the corrupt or illegal practices or illegal acts. The date, time and place of the commission of such practices was not mentioned either. Therefore, the petition was liable to be dismissed on that short ground alone in terms of powers available to the Election Tribunal under Section 145 of the Election Act, 2017.**"*

It is worth mentioning that mere lapse on the part of polling officers or staff in non-compliance of the Act and rules cannot be equated with the act of maneuvering or favoring the opposite candidate to constitute the fact of connivance coupled illegal and corrupt practices unless such non-compliance is committed with the connivance of the returned candidate. Reliance is made upon Saad Rafiqye (LEX/SCPK/0164/2018). The Relevant paras thereof are quoted as below:

"43. In instant case as well appellant failed to demonstrate illegal or corrupt practice or negligence or inefficiency on the part of election staff of the magnitude that materially affected the result of the election....."

"45. Only for the reasons, that certain lapse on the part of DRO, RO polling personnel came to light is not sufficient to discredit entire exercise of franchise, unless such lapse or violation of law could be, so rampant and of a nature that may materially affect the result of the election within the Contemplation of section 70 of the RoPA, 1976 or rules framed there under or not only shown but also established on record through cogent and tangible evidence. Change of some of polling personnel at the behest of the Election Petitioner (Ex-PG page 19 CMA 2507/15) as admitted and produced by Shamimur Rehman P.W. 3, is not shown how it materially affected the result.

46. Prevalence of extensive corrupt or illegal practice per clause (b) of section 70 RoPA, within the contemplation of section 78 (corrupt practice) and section 83 (illegal practice) as assumed

by the Tribunal while deciding issues Nos. 5 and 6 in para 110 thus drawing, conclusion "that the petitioner failed to discharge onus of either of these issues, which are hereby decided in negative". Likewise, no evidence worthy of credence was led to draw conclusion that extensive illegal practice prevailed throughout the constituency, more particularly when only six (6) out of 265 Polling Agents were examined. No evidence in respect of rest 259 Polling Stations were led before the Tribunal to arrive at such a generic and sweeping conclusion. Accordingly, conclusion drawn by learned tribunal that the election has been materially affected is not substantiated from record, is accordingly set aside. Consequently, finding on issue No. 8 in para 150 is uncalled for is set aside, resultantly, appeal is allowed and Election Petition No. 194 of 2013 is dismissed."

It would not be out of place to state the standard of proof in election matters as stringent as that of a criminal indictment. It is well-established an election petitioner has to establish corrupt and illegal practices beyond the shadow any reasonable doubt. Reliance is placed upon the ratio held in the case of NAWAB ALI WASSAN---Appellant Versus Syed GHOU ALI SHAH and others Respondents 2018 S C M R 87 [Supreme Court of Pakistan]. The relevant excerpt is quoted as under:

"10. It may be noted here that in order to successfully challenge an election on the ground that the same was induced through corrupt practices, the petitioner should be conscious of the fact that the charge of corrupt practices is in the nature of a criminal charge and has to be proved beyond any shadow of doubt. The standard of proof required for establishing such charge is the same as is applicable to a criminal charge. The evidence should be absolutely credible by the standards of the appreciation applicable to criminal cases and should be able to stand the test of strict and scrupulous scrutiny. It is also now well settled that the party seeking to challenge the validity of an election should essentially specify in the election petition the incident(s) of corrupt practice with as much precision as is possible and with all necessary details and particulars. The petitioner should keep in mind that no fresh charge or incident can be introduced during the trial. The other well pronounced principle is that the evidence in proof of the alleged corrupt practices is to be restricted to the instances as set out in the petition, and in order to succeed, the petitioner has to prove such ingredient of the corrupt practice alleged, affirmatively. Statement of allegation contained in the petition should therefore be precise and should clearly contain all the necessary details as required in terms of section 55 of the ROPA."

It is pertinent to mention here that mere stereotyped affidavits or oral evidence of a party worker or supporter of a candidate is not sufficient to prove the allegation of illegal and corrupt practices in election matters, rather, the petitioner must bring on record some cogent, concrete and unimpeachable and confidence inspiring evidence on record to establish the allegations provided such allegations are specifically pleaded in the election petitions in purview of Section 144 (1) b of the Act. I fortify my view from the ratio held the case titled as "Mir Mujeeb-ur-Rehman Muhammad Hassani v. Returning Officer, PB-41 Washuk and others PLD 2020 SC 718". The pertinent extract is replicated as beneath:

"23. The record shows that the allegations and insinuations made by the Appellant in his election petition were deficient in many respects. Section 144 of the Act provides for the contents of an election petition, the documents that must be attached with it, and the relief that can be claimed by the Appellant. In this respect, it is clear that the Appellant is required to provide the full particulars of any corrupt or illegal practices alleged by him to have taken place, the names and other details of the individuals he believes to be responsible for such practices, and the date and place of the commission of such practices or acts together with documentary evidence in support of such allegations. The Appellant has abysmally failed to provide these details. While the record shows that the Appellant did annex sixteen affidavits-in-evidence in support of his application, perusal of these affidavits ex facie shows that they are all identical and a duplicate of allegations made and details provided by the Appellant in every one of them. As a result, the Appellant's election petition is rendered entirely deficient by virtue of section 144 of the Act."

(Section-II)

“Biometric Verification”

Query: -What are the key considerations for Biometric verification of thumb impression of voters in Electoral Disputes?

Keywords:

Biometric, Verification, Thumb Impression, NADRA, Prima facie evidence, Impersonation, Massive rigging , bogus votes.

To answer the above query, it is stated that election disputes are a crucial aspect of the democratic process, ensuring the integrity and fairness of elections. One of the key mechanisms for resolving disputes over voter identity is biometric verification, specifically the verification of thumb marks. However, the jurisprudence developed by the Courts hold that the Election Tribunals must carefully consider a range of parameters, including the *presence of prima facie evidence, specific allegations of massive rigging and impersonation, feasibility, and the overall impact on election integrity*. By adhering to these parameters, election tribunals and courts can make informed and balanced decisions that uphold the principles of fairness and transparency in elections. The relevant excerpt from the said judgments are reproduced below for ready reference:

Excerpts from Relevant Judgments

1. Mir Tariq Mehmood Khetran vs. Returning Officer, NA-259 and Others [2019 MLD 1335]. In this case Hon’ble Justice Muhammad Hashim Khan Kakar emphasizes the necessity for substantial evidence in proving allegations of irregularities and justifying biometric verification. The petitioner had alleged that 624 votes from polling station No. 211 were not included in the Consolidated Statement by the Returning Officer. The court found this fact alone sufficient to establish that irregularities and illegalities occurred during the vote count. Additionally, a letter from the Commissioner of Balochistan to the Chief Secretary supported the petitioner's claims. The Court ruled that serious allegations supported by material evidence justified the biometric verification of thumb impressions to ensure election integrity. **[2019 MLD 1335] book is annexed.**

2. Khawaja Saad Rafique and Others vs. Hamid Khan and Others [PLD 2018 Supreme Court 749] In this case Hon’ble Justice Mushir Alam's judgment underscores that allegations must be substantiated with evidence before biometric verification can be ordered. In this case, the petitioner's initial request for verification of the entire electoral record was declined due to insufficient evidence. The court emphasized that the mere contents of an election petition do not equate to legal evidence. It ruled that only upon concluding the petitioner's evidence and finding instances of impersonation should biometric verification be considered. **[PLD 2018 Supreme Court 749] book is annexed.**

3. Aijaz Hussain Jakhrani vs. Illahi Bux Soomro and Others [PLD 2014 Sindh 90] In this case Hon’ble Justice Faisal Arab highlights the procedural sequence for biometric verification, advocating for documentary evidence to precede oral testimonies. He argued that NADRA's biometric verification report should be

obtained before witnesses are examined, as it constitutes more reliable and accurate evidence compared to oral accounts. The Court stressed the importance of expediting election dispute resolutions to ensure true representatives are sent to legislative bodies promptly. This judgment promotes the efficient use of documentary evidence to establish the veracity of election-related allegations. **[PLD 2014 Sindh 90] book is annexed.**

4. Mir Lashkari Raisani vs. Qasim Khan Suri and Others [2020 YLR 2031]. In this case Hon'ble Justice Abdullah Baloch's decision illustrates the necessity of adhering to statutory provisions during polling and the critical role of biometric verification in validating election integrity. The petitioner alleged massive rigging and voter impersonation, which the NADRA report confirmed through discrepancies and illegalities in the election materials. The judgment highlighted violations of the Elections Act, 2017, particularly Section 84, which mandates strict adherence to procedures for issuing ballot papers. The ruled that the evidence of rigging and violations justified the biometric verification of thumb impressions to ensure a fair election outcome. **[2020 YLR 2031] Book is annexed.**

5. Liaquat Ali vs. Akhtar Hussain and Others [2019 YLR 1594]. This judgment reiterates the prerequisite of prima facie evidence in justifying recount or biometric verification, particularly when significant vote discrepancies are alleged. Hon'ble Justice Abdullah Baloch observed that a large vote margin between the petitioner and the respondent does not inherently suggest irregularities. However, in cases where there is prima facie evidence of rigging and invalid ballots, such as discrepancies in the vote count or missing votes, biometric verification becomes essential to ascertain the legitimacy of the election results. **[2019 YLR 1594] book is annexed.**

6. Muhammad Nawaz Chandio vs. Muhammad Ismail Rahu and Others [2016 SCMR 875]. This judgment underscore the importance of cogent evidence for allowing biometric verification. They emphasized that applications for recounting and re-examining election materials, including biometric verification, should be entertained only when supported by substantial material evidence. In this case, the court criticized the NADRA verification process for being conducted without the appellant's involvement, highlighting the need for transparency and adherence to legal standards in the verification process. **[2016 SCMR 875] Book is annexed.**

7. Muhammad Akram Baloch vs. Akbar Askani and Others [2014 CLC 878]. In this case Hon'ble Justice Muhammad Hashim Khan Kakar advocates for the use of NADRA's forensic examination to resolve serious allegations of rigging. The petitioner alleged that no polling occurred at specific stations and that bogus votes were cast. The court found reasonable justification for referring the matter to NADRA for biometric verification, considering the nature of allegations and the evidence presented. Justice Kakar highlighted the admissibility of electronic records as documentary evidence, reinforcing the reliability of biometric verification in resolving election disputes. **[2014 CLC 878] Book is annexed.**

8. Raja Ameer Zaman vs. Omer Ayub Khan [2015 SCMR 890]. In this case Hon'ble Justice Sh. Azmat Saeed underscores the importance of voters' lists and counterfoils in preventing bogus voting. He emphasized that proper identification and verification processes are crucial for issuing ballot papers to bona fide electors.

Any discrepancies in vote counts and counterfoils make election results questionable. The Court advocated for the preservation and proper utilization of voters' lists and counterfoils to safeguard election integrity, supporting the use of biometric verification as an effective measure against electoral fraud. **[2015 SCMR 890]** Book is annexed.

Conclusion:

In conclusion, the jurisprudence developed by the Courts, as referred in the above judgments, demonstrates that biometric verification of thumb impressions in electoral disputes underscores the necessity for a careful and evidence-based approach. The courts have consistently held that prima facie evidence of irregularities, specific allegations of massive rigging and impersonation, and the feasibility of conducting such verification are critical considerations.

(Section-III)

“Recounting”

Query: When recounting can be ordered in summary election disputes?

Keywords:

Recounting, Reasonable grounds, vague allegations, exceptional circumstances, matter of right, secrecy of ballot, will of people.

In order to answer the query captioned above it is stated that it is well-settled that recounting of ballot shall not be ordered as a matter of routine and course, rather, an election tribunal may order for recounting in exceptional cases on reasonable grounds. Vague allegations would never be made as a ground for ordering recounting. The ratio is twofold. First, such order disturbs the secrecy of the franchise/ballot which under the law is not to be lightly disturbed. Second, the Law and Rules provide an elaborate mechanism for counting of ballot papers. This procedure contains so many statutory checks and effective safeguards against trickery, mistakes, and fraud in counting, that it can be called almost foolproof. An election tribunal would be justified in ordering a recount of the ballot papers only where:

- (a) The election petition encompasses a satisfactory statement of all the materials facts on which the accusations of irregularity or illegality in counting are founded;
- (b) On the basis of evidence presented such assertions are, *prima-facie*, established, affording a solid base for believing that there has been a mistake in counting; and
- (c) The tribunal trying petition is, *prima-facie*, satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.

We fortify our view from the ratio held by the Supreme Court of Pakistan in the case of JAM MADAD ALI Versus ASGHAR ALI JUNEJO and other [Supreme Court of Pakistan] 2016 S C M R 251 held that:

“9. The purpose of a recount in an election dispute is to verify and determine the authenticity and truthfulness of the allegations on the basis whereof the election result is challenged, however, in order to secure the sanctity of the election result and with a view not to encourage the losing candidates to attempt to frustrate the will of the people as expressed through the election and also in order to avoid creating an incentive for the losing candidates to in any way,

indulge in post poll tampering or manipulation of the election record, a conscious effort is to be made that it is only in the circumstances which clearly justify, rather demand a recount, that the recount is allowed. As to what should be the criteria or the essential pre-requisites for satisfying the conscience of the Court for permitting a recount, perusal of the case law laying down our jurisprudential principles in this regard, would show that the minimum criteria is that there should be specific allegation of tampering, manipulation and maneuvering in very clear terms along with the necessary details and prima facie material supporting such allegations. It should also be kept in mind that secrecy of the ballot should not be violated on the basis of frivolous, vague and totally unfounded allegations and that the primary object should be to do full justice in the matter. The learned Tribunal should also be mindful that the discretion to exercise power of recount may not be exploited for a roving inquiry to fish out material for reversing the election or for declaring it void and thus it should be seen that as to whether in view of the statement of material fact, and the material placed before the Tribunal the request is fair and reasonable or not.”

Further reliance is placed upon the view taken by the Supreme Court in the case of KHALIQ SHAH Versus ABDUL RAHEEM ZIARATWAL and others P L D 2017 Supreme Court 684. The relevant portion is given as below:

“13. Recounting of ballot papers can only be ordered if the conditions laid down in this behalf are fulfilled and the Returning Officer/Election Tribunal is satisfied on the basis of material produced before it that the request is reasonable. A recount cannot be granted as a matter of right on the basis of vague allegations. Further, as held in Sardar Abdul Hafeez Khan v. Sardar Muhammad Tahir Khan Loni (1999 SCMR 284) the power to order a recount is to be used sparingly and with circumspection the only object being to ensure a fair and lawful result of the electoral exercise. Reference may also usefully be made to Kanwar Ijaz Ali v. Irshad Ali (PLD 1986 SC 483), Jam Madad Ali v. Asghar Ali Junejo (2016 SCMR 251) and Muhammad Ashraf Warriach v. Muhammad Nasir Cheema (2016 SCMR 998). There is not an iota of evidence on the record to establish that the Presiding Officers had not counted the votes correctly, the result was not correctly tabulated or valid votes cast in favour of the appellant had been unlawfully rejected. The learned counsel for the appellant halfheartedly attempted to argue that the difference between the two candidates was 265 votes while about 1400 votes were rejected as invalid which itself furnishes justification to order recount. We find this argument to be without merit. The mere fact that the difference

in the number of votes cast for the winning and losing candidate is small is not by itself a justification for recount, especially so where a recount was not claimed at the appropriate stage before the competent forum and no ground to justify such recount was pleaded or established. Further, there was no allegation at any stage that the votes were wrongly counted or tabulated, the count was not undertaken in the presence of polling agents of the appellant or copies of the result were not provided to the election agents. In addition, it cannot be stated with any degree of certainty how many votes which were declared invalid were cast in favour of the appellant and how many were cast in favour of the respondent and other contesting candidates.”

(Section IV)

(Non-Verification of Election Petitions and its Annexures)

Non-verification of Election Petitions and its annexures as per section 144 (4) of the Election Act 2017 read with the Order VI Rules 14 & 15 of the CPC warrant rejection/dismissal of Petition under 145 of the Election Act. Reliance is made on the following case laws:

- a) PLD 2023 Lahore 458**
- b) 2015 SCMR 1585 (mother judgment)**
- c) 2019 MLD 1313**

Annexures:

1. Copy of order of Case Shahzada Shahbaz vs. Election Commission of Pakistan and Ors. (14.01.2023 - SKPK) : LEX/SKPK/0088/2023 downloaded from Manupatra lawsite.
2. Copy of (LEX/SCPK/0164/2018)
3. 2018 S C M R 87 (Book)
4. PLD 2020 SC 718. (Book).
5. [2019 MLD 1335] book is annexed.
6. . [PLD 2018 Supreme Court 749] book is annexed.
7. [PLD 2014 Sindh 90] book is annexed.
8. [2020 YLR 2031] Book is annexed.
9. [2019 YLR 1594] book is annexed.
- 10.[2016 SCMR 875] Book is annexed.
- 11.[2014 CLC 878] Book
- 12.[2015 SCMR 890] (Book)

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