

Stereo. H C J D A 38.

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: W.P. No.31986/2013.

Arshad Mehmood Versus The Commissioner, etc.

JUDGMENT

Dates of hearing:	26.12.2013, 27.12.2013, 30.12.2013 and 31.12.2013.
Petitioners by:	Mr. Abid Saqi, Advocate for the petitioner. M/s Mohammad Azhar Siddique, Shahanshah Shamil Paracha, Mohammad Irfan and Munir Ahmad, Muhammad Safdar Abbas Khan, Mian Muzaffar Hussain, Amjad Ali, Mian Sohail Anwar, Waqas Bin Zaffar Sraw, Shaikh Taimour Ali Mustafa, Asghar Ali Gill, Lala Shakeel-ur-Rehman, Abdul Wahid Ayyoub Mayo, Rana Muhammad Aslam Nadeem, Abdul Hafeez Ansari, Rai Sarfraz Ali Khan, Muhammad Mehmood Ch., Amjad Iqbal Khan, Ch. Rizwan Hayat, Mian Javed Iqbal Arain, Sheikh Muhammad Siddique, Aftab Rahim, Mirza Mukhtar Baig, M. Mushtaq Ahmad Dhoon, Naila Riaz Chaudhry, Tahir Shehzad, Muhammad Tanveer Ahmad, Malik Muhammad Akbar Awan, Ch. Zulfiqar Ali, Ch. Aftab Rashid, Sardar Muhammad Nawaz Dogar, Hafiz Muhammad Farooq Khan, Muhammad Maqsood Buttar, Ch. Haider Bakhsh, Muhammad Ashraf Sagoo, Malik Ghulam Abbas Nissoana, Hafiz Ansar Shuaib Hunjra, Shafiq Ahmed Malik, Shahid Mahmood Ch., Muhammad Sajjad Naeem Mohal, Ch. Anwaar-ul-Haq Pannun and Abdul Wajid Khan, Ch. Ijaz Akbar, Aziz-ur-Rehman Sheikh, Ch. Muhammad Naeem, Rana Iqbal Ahmad Khan, Ch. Mehboob-ul-Hassan Bhullah, Muhammad Ramzan Chaudhry, Malik Mushtaq Ahmad Nonari, Haseeb Raza Ch., Ahmad Awais and Muhammad Hammad Munir, M. Baleegh-uz-Zaman Chaudhree, Muhammad Azhar Solehria, Inzar Rasool, Faisal Maqsood Ahmed Khan and Safdar Ali Thakar, Sardar Kalim Ilyas, Fazal Abbas Kamyana,

	<p>Muhammad Mozzam Sher Kallue, Rana Ijaz Ahmad Khan, Malik Saleem Iqbal Awan, Mureed Ali S. M. Bhutta, Mian Muhammad Ismail Thaheem, Ch. Muhammad Siddique Virk, Nasrullah Sattar Pasha, Muhammad Ishaq, Farrukh Gulzar Awan and Zubair Afzal Rana, Mudassar Abbass Maghiana, Ch. Tariq Mahmood Raan, Khalid Ishaq, Abdul Karim Khan, Khalid Ishaq and Ch. Tariq Mahmood Rawn, Hafiz Khalil Ahmad, Sardar Muhammad Ramzan, Syed Shahab Qutab, Irfan Mahmood Ranjha, Raja Zulqarnain, Mujahid Din Malik, Dost Muhammad Kahoot, Rao Muhammad Mudassar Azam, Shahid Rafique Meo, Mian Muhammad Saeed, Waqar Saeed Khan, Ch. Latif Khan Saraa, Muhammad Bashir Malik, Rana M. Arshad Khan, Pir Muhammad Asad Shah, Faisal Iqbal Awan and Iqbal Dhengal, Malik Amjad Pervaiz, Ch. Muhammad Saleem, Zahid Farani Sheikh, Khalid Nawaz Ghumman, Nasrullah Khan Baber, Ch. Iqbal Ahmad Khan, Ch. Arshad Hussain, Malik Muhammad Imtiaz Mahil, Iftikhar Ahmad Mian, Azhar Iqbal, Mian Arshad Ali Mahar, Mubeen-ud-Din Qazi, Azhar Siddique Cheema, Waqar Mushtaq, Zulfiqar Ali Qureshi, Mirza M. Aziz-ur-Rehman, Amjad Ali, Tahir Ahmad Sandhu, Zubda-tul-Hussain, Muhammad Mumtaz Faridi, Mian Abdul Aziz, Abdul Wahid, Zubair Bulqan Rana, Muhammad Farooq Qureshi Chishti, Nazir Ahmad Ghazi and Abdul Khaliq Safrani, Dr. A. Basit, Shahid Naseem Tahir Gondal, Mushtaq Ahmad Mohal, Abdul Latif Tariq, Maqbool Ahmad Naz, Ahsan Naveed Farooqi, Imdad Ali Nekokara and Ch. Abdul Ghaffar, Zahid Aslam Malaik and Sami-ul-Hassan Rana, Ch. Muhammad Idrees, Muhammad Akhtar, Umair Khan Niazi, Major (Retd.) Aftab Ahmad, Ch. Tanveer Ahmad Hanjra and Rana Muhammad Arif, Waseem Mumtaz Malik, Malik Ejaz Hussain Gorchha, Sh. Irfan Akram, Ch. Muhammad Tariq-ur-Rehman, Muhammad Rizwan Ullah Gondal and Bakhtiyar Kasuri, Ch. Muhammad Naseer, Ch. Muhammad Arshad Bajwa, Ch. Muhammad Rafique Jathool, Asif Bashir Mirza and Rabeel Raza Bhatti, Advocates for the petitioners in connected writ petitions.</p>
--	--

	<p>Syeda Faiza Shah, Advocate/petitioner in person in W.P. 33577/2013.</p> <p>Imran Javed Qureshi, Advocate/petitioner in person in W.P. 33738/2013.</p>
Respondents by:	<p>Mr. Naseer Ahmad Bhutta, Additional Attorney General for Pakistan.</p> <p>Mr. Mohammad Mahmood Khan, Deputy Attorney General for Pakistan.</p> <p>Mr. Mustafa Ramday, Acting Advocate General Punjab.</p> <p>Mr. Muhammad Hanif Khatana, Additional Advocate General, Punjab.</p> <p>M/s Khawaja Salman Mahmood, Shan Gull and Waqas Qadeer Dar, Assistant Advocates General, Punjab.</p> <p>M/s Saqib Akram Gondal and Rana Iftikhar Ahmad, Advocates for respondent No.3.</p> <p>M/s Ch. Mohammad Anwar Bhindar, Mian Subah Sadiq Kalasson, Muhammad Anwar Ghumman, Moeez Tariq, Ch. Akbar Ali Shad, Muhammad Azam Warraich, Malik Rab Nawaz, Ch. Abdul Rashid, Ch. Muhammad Hussain, Mirza Shahid Baig, Khawar Mehmood Khatana, Ch. Abdul Malik, Tariq Manzoor Chaudhry, Muhammad Anwar Chaudhry, Naveed Ahmad Khawaja, Ch. M. Lehrasib Khan Gondal, Muhammad Harooq Javed, Shahid Maqsood Khan, Ibadat Ali, Asad Jamal Akbar, Ch. Anwaar-ul-Haq Pannun and Abdul Wajid Khan, M. Asad Manzoor Butt, Asif Afzal Bhatti, Barrister Syed Nauman Shah and Abdul Waheed Khan Baluch, Advocates for the private respondents in connected writ petitions.</p> <p>Rana Muhammad Aslam, Deputy Director, Local Government Elections Punjab, Election Commission of Pakistan, Lahore.</p> <p>Ali Akhtar Khan, Law Officer, Election Commission of Pakistan, Lahore.</p> <p>Anwar Aziz, Joint Census Commissioner, Pakistan Bureau of Statistics.</p> <p>Ch. Abrar Ahmad, Director Legal, Local Government.</p> <p>M. Naeem Akhtar, Assistant Director Legal, Local Government.</p>
Amici Curiae:	<p>M/s Muhammad Shahzad Shaukat, Salman Akram Raja, Nasar Ahmed, Babar Sattar and Saroop Ijaz, Advocates.</p>

Assisted by:	Mr. Sohail Shafiq (AD&SJ/Senior Research Officer) and M/s. Muhammad Amir Munir, Rai Muhammad Khan and Sher Hassan Parvez (Civil Judges/Research Officers) at the Lahore High Court Research Centre (LHCRC)
--------------	--

Syed Mansoor Ali Shah, J:-

“Liberty of the ancients consisted of sharing of a nation’s sovereign authority among that nation’s citizens. This sharing of sovereign authority enlarged the citizen’s minds, ennobled their intellectual thoughts and established among them a kind of intellectual equality which forms the glory and the power of a people.”¹

Protesting against delimitation of constituencies and alleging gerrymandering, residents of the newly drawn Union Councils and Wards have invoked the constitutional jurisdiction of this Court to seek “political justice.”

2. The petitioners have assailed the constitutionality and legality of the law and process of ‘delimitation’ of Union Councils and Municipal Committees into Wards, in the Province of Punjab by the Provincial Government, at the exclusion of the Election Commission of Pakistan (“ECP”), under the Punjab Local Government Act, 2013 (“Act”) for the purposes of Local Government Elections, 2014.² In addition, the vires of the *ouster clause* under Section 10A of the Act has also been challenged.

3. More specifically, the *vires* of Sections 8 to 9 and Section 10A of the Act, Order of Delimitation Authority, Gujranwala Division dated 21-11-2013 and the consequent final Notification of Delimitation issued by Delimitation Officer, Gujrat dated 5-12-2013 under the Act read with Punjab Local Governments (Delimitation) Rules, 2013 (“Rules”) have been challenged before us.³

¹ Benjamin Constant – *The Liberty of the Ancients compared with that of the Moderns* (1819) (see Stephen Breyer – *Active Liberty* p.4)

² Scheduled for 30th January, 2014.

³ The constitutionality of sections 8 and 9 of the Act has been specifically agitated in W.P. No.33581/2013. While vires of Section 10A of the Act has been challenged in W.P. No. 33581/2013, W.P. No. 33573/2013 and W.P.No.33574/2013.

4. The instant petition came up for hearing before a learned single Judge of this Court, who on the question of jurisdiction to entertain the instant matter, expressed disagreement with the view of another learned single Judge of this Court and directed that the case be placed before the Hon'ble Acting Chief Justice for constitution of a larger bench in the light of *Multiline Associates v. Ardeshir Cowasjee and 2 others* (PLD 1995 SC 423). The disagreement over the jurisdiction of this Court was regarding the scope and extent of the *ouster clause* under section 10A of the Act. Relevant extracts of earlier order dated 13.12.2013 (*first order*) passed in W.P. No. 15033/2013 and order dated 20.12.2013 (*second order*) expressing disagreement by the learned single judge hearing this petition are as under:

First Order.

5. Since the Election Commission of Pakistan has notified the election schedule... and the electors of each Union Council/Ward are called upon to elect their representatives of Local Government Institutions, as such after issuance of such notification the Delimitation Officers/Delimitation Authority have become *functus officio* in order to review or to correct any delimitation of any Union Council or Ward. **This Court in Constitutional jurisdiction, thus also would not be in a position to direct such Authority or Officer to review or correct any delimitation process which has already attained finality on issuance of election schedule.** No action thus is required to be taken in the writ petitions, the same are disposed of as such.

6. **The office is directed not to entertain and fix any writ petition filed requiring any direction to the Delimitation Authority/Officer or seeking any review or correction in any delimitation of a Union Council or Ward which already attained finality as noted herein above.**⁴

Second Order.

3. Respectfully this Bench does not subscribe to the view taken by my learned brother as the matters which are being heard by this Court are, inter-alia, in relation to some transgression of law, non-exercise of jurisdiction or colourful exercise of jurisdiction by the Delimitation Officers/Authorities, therefore, the jurisdiction vested in this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is being invoked to get the said illegalities rectified and a non obstante clause in a legislation will not come in the way of the High Court to entertain such a petition....

5. Finally, I find force in the argument of learned counsel for the petitioner that the use of word "Court" does not include the High Court. Therefore, while amendment made under Section 10A of the Act *ibid* can remain on the statute subject to challenge on its being ultra vires of Constitution or rights of the parties, this Court has the jurisdiction to deal with such issues which may be brought to its notice under Article 199 of the Constitution. Reliance is placed on the case of

⁴ Order dated 13.12.2013 passed in W. P. No.15033-2013 (emphasis supplied)

Federation of Pakistan through Secretary Defence and others v. Abdul Basit (2012 SCMR 1229).

6. While considering the dictum laid down in the case of Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423) the matter is referred to the Hon'ble Acting Chief Justice for constitution of a Larger Bench....⁵

5. When the matter was put up before the Hon'ble Chief Justice, it transpired that two Division Benches of this Court had also expressed their views on the question in their brief orders dated 16-12-2013 and 19-12-2013 passed in ICA No.346/2013 and ICA No.1029/2013, respectively. In one case the ICA was dismissed on the basis of the *ouster clause* while dismissal in the other appeal was on the ground that Election Schedule has been announced and any interference would "frustrate the election process." None of these orders explicitly dealt with the limitation on the exercise of the constitutional jurisdiction of this Court or directed the office of the Court not to entertain such like petitions for hearing. In this backdrop the Hon'ble Chief Justice vide administrative order dated 23.12.2013 thought it appropriate to refer all pending cases regarding delimitation of Union Councils and Wards to this Bench for adjudication.

Scope of the case.

6. After examining the *ouster clause* under Section 10A of the Act, the Order of Delimitation Authority, the Notification issued by the Delimitation Officer, the brief facts of the case and the facts and the prayer made in connected W.P. No.33581/2013⁶ we are of the view that constitutionality of the process of delimitation of constituencies conducted by the Government under Sections 8 to 10 of the Act read with Rules 3 to 8 of the Rules is thrown into sharp relief. Even otherwise, "...Judges of the Supreme Court and the High Courts are bound by their oath and duties to act so as to keep the provisions of the Constitution fully alive and operative, to preserve it in all respects, save from all defects or harm and to stand firm in defence of its provisions against attack of any kind."⁷ Therefore, without delving into the

⁵ Paras 3, 5 & 6 of Order dated 20.12.2013 passed in W.P. No.31986-2013.

⁶ The constitutionality of sections 8 and 9 of the Act has been specifically agitated in W.P. No.33581/2013. While vires of Section 10A of the Act has been challenged in W.P. No. 33581/2013, W.P. No. 33573/2013 and W.P.No.33574/2013.

⁷ as Per Ajmal Mian J in Sardar Farooq Ahmed Khan Leghari and others vs. Federation of Pakistan and others (PLD 1999 SC 57).

factual intricacies associated with delimitation of constituencies, we venture to address the following constitutional and legal questions that arise in this case:

(i) Ouster Clause.

- (a) Whether the constitutional jurisdiction of this Court to judicially review the orders of the Delimitation Officer and Delimitation Authority, after the Election Schedule has been announced, stands ousted by a sub-constitutional provision i.e., Section 10A of the Act?
- (b) Whether Section 10A of the Act also ousts the jurisdiction of the Election Commission of Pakistan from reviewing the correctness of the delimitation orders/notifications, when it enjoys the apex constitutional role and obligation to independently and neutrally *hold, organize, conduct and make necessary arrangements for* elections in the country in order to ensure that elections are conducted honestly, justly, fairly and corrupt practices are guarded against under Articles 140A(2), 218(3), 219(c) and 222 of the Constitution?
- (c) Whether the judicial branch (i.e., administration) of this Court can be directed, through a judicial order, “not to entertain and fix any writ petition requiring any direction to the Delimitation Authority/Officer” in the light of the above *ouster clause*?

(ii) Scope and meaning of “Election” under the Constitution.

Whether the scope and meaning of “Election” needs to be drawn from the constitutional electoral role and obligation of Election Commission of Pakistan under the Constitution? or in the limited sense of the word “election,” contextualized within the narrow collage of the term “conduct of elections” under Article 218(3), the word “election” under Article 225 of the Constitution and the peculiar scope and the remedial texture of an Election Petition under The Representation of the People Act, 1976 (“ROPA”) or the Act ?

- (iii) Whether “Delimitation” is part of “Election” under the Constitution?

Whether “delimitation” of a constituency is an integral and pivotal part of “election” (or the electoral process) and falls exclusively under the constitutional role and obligation of ECP to *organize and make necessary arrangements* (as opposed to conduct of elections) for *holding* elections?

- (iv) Whether Delimitation for Local Government Elections is the sole prerogative of Election Commission of Pakistan?

Whether “delimitation” for the purposes of Local Government elections, post 18th Constitutional Amendment⁸, is the sole prerogative of the Election Commission of Pakistan under the Constitution?

- (v) Provincial Legislature and the constitutional role of ECP.

Whether Provincial Legislature under Article 140A(1) of the Constitution read with its residuary legislative powers could oust the role of ECP from the Act (i.e., provincial law on Local Government System including the electoral law) after the insertion of Article 140A(2) of the Constitution? And whether harmonious reading of Article 140 A(1) and Article 222 binds the provincial legislature to make electoral laws within the scope of electoral laws mentioned in Article 222?

- (vi) Meaning of “to hold elections”.

Whether *to hold elections* by ECP under Articles 140A(2) and 219(d) of the Constitution encompass *organizing, conducting and making arrangements* for elections as provided under Article 218(3) of the Constitution?

⁸ Constitution (Eighteenth Amendment) Act, 2010 (10 of 2010) (w.e.f. 19.4.2010).

(vii) Constitutionality of the relevant provisions of the Act and the Rules.

Whether Sections 8, 9 & 10 of the Act and Rules 3 to 8 of the Rules, authorizing the Provincial Government to carry out delimitation of the Union Councils and Municipal Committees into Wards for the purposes of Local Government Elections, abridge and curtail the constitutional role of ECP under Articles 140A(2), 218(3), 219(d) and 222 of the Constitution besides offending the principle of 'political justice' and the concomitant constitutional rights under Articles 3, 4, 9, 14, 17, 19 and 25 of the Constitution?

(viii) Constitutional directives by Election Commission of Pakistan.

Whether after the 18th Constitutional amendment, Election Commission of Pakistan enjoys a constitutional mandate to proceed with the *holding of* the Local Government Elections (including delimitation of constituencies) by issuing constitutional directives/ instructions under Article 218(3) of the Constitution and need not await any provincial legislation in this regard?

7. As the constitutionality of the Act came into question, notices were issued to both the Attorney General for Pakistan and the Advocate General, Punjab under Order 27-A CPC.

Arguments.

8. It has been argued by the learned counsel for the petitioners that Section 10A of the Act cannot control or regulate the constitutional jurisdiction of this Court under Article 199, and therefore, the *ouster clause*, does not, in any manner abridge the constitutional jurisdiction of this Court to judicially review the order passed by the Delimitation Authority or the

Delimitation Officer. Even otherwise, it is opposed to the constitutional guarantee of *access to justice*, which is jurisprudentially well grounded in Articles 4, 9 & 10A of the Constitution. They also argued that “*delimitation*” is a pivotal part of elections, as envisaged under the Constitution, and can only be carried out by the Election Commission of Pakistan, especially after Local Government Elections have morphed into constitutional elections from statutory elections, after 18th constitutional amendment. As a consequence, provisions of the Act, abridging the constitutional role of the Election Commission of Pakistan from carrying out delimitation of constituencies is unconstitutional, rendering the delimitation announced through the impugned Notification to be without lawful authority and of no legal effect.

9. Learned Additional Attorney General for Pakistan tendered appearance and at the outset frankly conceded that the constitutional jurisdiction of this Court under Article 199 of the Constitution cannot be ousted under Section 10A of the Act. He, however, added that as the Election Schedule has been announced, any interference by this Court at this stage would frustrate the elections. He submitted without any supporting jurisprudence or material that Election Commission of Pakistan, under the Constitution, has no role to play in the delimitation of the Union Councils or Municipal Committees into Wards for the purposes of elections to Local Government.

10. The learned Acting Advocate General, Punjab also conceded that the constitutional jurisdiction of this Court to judicially review governmental orders and actions is not curtailed by a sub-constitutional provision i.e., Section 10A of the Act. He, however, beseeched the Court not to interfere at this stage when the Election Schedule has been announced and the electorate is ready to go to polls. On the constitutionality of the Act regarding “delimitation” he submitted that it does not form part of the “elections” but is actually a step anterior to the elections. In response to a question from the Court, he admitted, that other than the unreported Short Order of the Division Bench in *Pakistan People’s Party Case*⁹, there is no clear authority from our jurisprudence that holds that “delimitation” falls outside the scope

⁹ Short Order dated 07.11.2013 passed in W.P.No. 23040/2013 .

of the elections or the electoral system, when seen in the context of an all-embracing electoral role of Election Commission of Pakistan under the Constitution. He also put forth another argument that it is not within the competence of the Provincial Legislature to impose obligations (of carrying out delimitation) on a constitutional entity like the Election Commission of Pakistan. He referred to the following judgments: Evacuee Trust Property Board and others v. Ahmed and others (2004 SCMR 440), Evacuee Trust Property Board v. Mst. Zakia Begum and others (1992 SCMR 1313), Intesar Hussain Bhatti v. Vice-Chancellor, University of Punjab, Lahore and others (PLD 2008 SC 313), Rana Aftab Ahmad Khan v. Muhammad Ajmal and another (PLD 2010 SC 1066), Mrs. Benazir Bhutto and another v. Federation of Pakistan and another (PLD 1989 SC 66), Nawabzada Ghazanfar Ali Gul v. Government of the Punjab through Secretary, Revenue Department, Board of Revenue, Lahore and 3 others (1999 CLC 430), Khursheed Ahmed Junejo and other v. Government of Sindh and other (2005 MLD 1724), Surendrasinhaji Jorawarasinghji Jhala v. U. M. Bhatta, Chief Electoral Officer, Ahmedabad and others (AIR 1969 GUJRAT 292) and State of U. P. and others etc., v. Pradhan Sangh Kshettra Samiti and others (AIR 1995 SC 1512).

11. Realizing that our electoral jurisprudence is not fully contextualized in the post 18th constitutional amendment landscape, we invited the following *amici curiae* to assist the Court: M/s. Muhammad Shahzad Shaukat, Salman Akram Raja, Babar Sattar, Nasar Ahmad and Saroop Ijaz, Advocates. Except M/s. Babar Sattar and Saroop Ejaz, Advocates, who filed their submissions in writing, the others appeared before the Court and made their submissions.

12. The view expressed by the *amici curiae* unanimously leaned in favour of the all-embracing electoral role of the Election Commission of Pakistan bringing under its constitutional ambit all stages of ‘election’ broadly referenced in Article 222 of the Constitution. They submitted that the scope of the word “elections” can best be drawn from the constitutional role and obligation entrusted to the Election Commission of Pakistan (“ECP”) under the Constitution. The constitutional electoral jurisdiction of ECP determines the length and breath of the term “election.” They put in a qualification that

the meaning of the word “election” as popularly acknowledged in our jurisprudence refers to a part of “*election*” which relates to polls and commences with the announcement of the Election Schedule and has been interpreted in the limited context of ROPA and Article 225 of the Constitution. They submitted that “delimitation” is the “groundswell” of elections and fell within the exclusive constitutional domain of ECP. After Local Government elections have been recognized as constitutional elections, the role of ECP fully extends to all the stages of the electoral system envisaged under the Act including preparation of electoral rolls and delimitation of constituencies as is the case with the other constitutional elections. The constitutional obligation of ECP to organize, conduct and make necessary arrangements for holding elections subsumes different stages of election as laid down under Article 222 of the Constitution. They submitted, with utmost respect, that the declaration given in *Pakistan People’s Party Case*, regarding delimitation being anterior to election is not the correct view and does not find support from the case law relied upon in the cited case. The word “election” has to be defined in the context of Part VIII of the Constitution and went ahead to submit that preparation of electoral rolls, delimitation of constituencies down to filing of the nomination papers, polling and announcement of the election results form part of “election” for the purpose of defining the constitutional role of Election Commission of Pakistan. They also made submissions on the issue of delimitation in the context of democracy, political justice and constitutionalism, relying on international electoral jurisprudence.¹⁰ In addition, they placed reliance on: *Muhammad Nazir Hakim v. Bukhtiar Said Muhammad and the Controlling Authority, Montgomery* (PLD 1962 (W. P.) Lahore 421), *Imran Khan and others v. Election Commission of Pakistan and others* (2012 SCMR 448), *Workers’ Party Pakistan through Akhtar Hussain, Advocate, General Secretary and others v. Federation of Pakistan and 2 others* (PLD 2012 S.C. 681), *Imran Khan and others v. Election Commission of Pakistan and others* (PLD 2013 S.C. 120) and *Workers’ Party Pakistan through General Secretary and 6 others v. Federation of Pakistan and 2 others* (PLD 2013 S.C. 406).

¹⁰ The briefs of the amici curiae have been placed on the record as AC/1 to 5.

DECISION OF THE COURT.

Ouster Clause & the Constitutional Court.

13. Section 10A of the Act states:

10A. Finality of delimitation. A court, officer or authority, shall not review or correct any delimitation of a Union Council or ward after the notification of the election schedule.

It is axiomatic and by now a judicial cliché, that sub-constitutional legislation cannot curtail or abridge the constitutional jurisdiction of this Court. Legislature, being the creature of the Constitution cannot take away the jurisdiction of a constitutional Court conferred by the Constitution. “Shortly stated, an ordinary statute or a sub-constitutional legislation is incapable of ousting, curtailing or limiting the constitutional jurisdiction of the Supreme Court or the High Courts and the words ‘no court’ in an ouster clause in a statute do not, therefore, include the High Courts or the Supreme Court so far as their constitutional jurisdiction (e.g. under Article 199 and Article 184 of the Constitution) is concerned.”¹¹ This well settled constitutional principle loudly resonates through our jurisprudence: Khan Asfandyar Wali and others v. Federation of Pakistan through Cabinet Division, Islamabad and others (PLD 2001 SC 607), Mrs. Shahida Zahir Abbasi and 4 others v. President of Pakistan and others (PLD 1996 SC 632), Malik Muhammed Mukhtar, through Legal Heirs v. Province of Punjab through Deputy Commissioner (Collector) Bhawalpur & others (PLD 2005 LAH 251), Miss Asma Jilani v. The Government of the Punjab and another (PLD 1972 SC 139), Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri (PLD 1969 SC 14) and Federation of Pakistan and another v. Malik Ghulam Mustafa Khar (PLD 1989 SC 26).

14. In a more common law context, it is a judicial norm, that courts jealously guard their jurisdiction. They start with a strong presumption against ouster of jurisdiction and construe the same strictly, which means

¹¹ Judicial Review of Public Actions, *Justice (R) Fazal Karim*, volume 2 p.946.

“that if such a provision is reasonably capable of having two meanings, that meaning ... which preserves the ordinary jurisdiction of the court”¹² is preferred. “An *ouster clause*, however widely worded and whether it occurs in a Constitution or in an ordinary statute, does not save an act or order without jurisdiction (which expression compendiously describes and includes acts and orders *coram non judice* and *mala fide*) from scrutiny of the courts because the purported act or order is no act or order at all.”¹³

15. Even sub-constitutional courts do not, with ease, abdicate or surrender their jurisdiction to exercise judicial power if the court is of the view that the order under challenge is illegal and outside the four corners of the law and no other alternate or special remedy has been prescribed by law. In this context it is useful to refer to the speech of Lord Reid in *Anisminic*:¹⁴

“The next argument was that, by reason of the provisions of s. 4 (4) of the Act of 1950, the courts are precluded from considering whether the commission’s determination was a nullity, and, therefore, it must be treated as valid whether or not enquiry would disclose that it was a nullity. Section 4 (4) is in these terms:

“The determination by the Commission of any application made to them under this Act shall not be called in question in any court of law.”

But that would be calling the determination in question, and that is expressly prohibited by the statute. The appellants maintain that that is not the meaning of the words of this provision. They say that “determination” means a real determination and does not include an apparent or purported determination which in the eyes of the law has no existence because it is a nullity. Or, putting it in another way, if one seeks to show that a determination is a nullity, one is not questioning the purported determination—one is maintaining that it does not exist as a determination. It is one thing to question a determination which does exist; it is quite another thing to say that there is nothing to be questioned. Let me illustrate the matter by supposing a single case. A statute provides that a certain order may be made by a person who holds a specified qualification or appointment, and it contains a provision, similar to s. 4 (4), that such an order made by such a person shall not be called in question in any court of law. A person aggrieved by an order alleges that it is a forgery or that the person who made the order did not hold that qualification or appointment. Does such a provision require the court to treat that order as a valid order? It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly—meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the court.

Statutory provisions which seek to limit the ordinary jurisdiction of the court have a long history. No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or Parliament had intended to introduce a new kind of ouster clause so as to prevent

¹² *ibid* p.494.

¹³ *ibid* p.494.

¹⁴ *Anisminic, Ltd. V. The Foreign Compensation Commission and another* [1969] 1 All E.R. 208 at 212-213.

any enquiry even whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word “determination” as including everything which purports to be a determination but which is in fact no determination at all.”

Lord Diplock said in A-G. v. Ryan:¹⁵

“It is by now well-established law that to come within the prohibition of appeal or review by an ouster clause of this type, the decision must be one which the decision-making authority, under this Act the Minister, had jurisdiction to make. If in purporting to make it he has gone outside his jurisdiction, it is ultra vires and is not a “decision” under the Act. The Supreme Court, in the exercise of its supervisory jurisdiction over inferior tribunals, which include executive authorities exercising quasi-judicial powers, may, in appropriate proceedings, either set it aside or declare it to be a nullity: Anismic Ltd. v. Foreign Compensation Commission ([1969] 1 ALL ER 208, [1969] 2 AC 147). It has long been settled law that a decision affecting legal rights of an individual which is arrived at by a procedure which offends against the principles of natural justice is outside the jurisdiction of the decision making authority...”

Lord Selborne, as long back as 1885 wrote in Spackman v. Plumstead District Board of Works (10 App Cas 229 at 240): “There would be no decision within the meaning of the statute if there were anything...done contrary to the essence of justice.”¹⁶ This also echoes in our jurisprudence. Reliance, with advantage is placed on Begum Syeda Azra Masood v. Begum Noshaba Moeen and others (2007 SCMR 914), Yousaf Ali v. Muhammad Aslam Zia and 2 others (PLD 1958 SC 104) and Sawan and others v. Abdullah and 2 others (PLD 1998 KAR 111).

16. For the sake of completion, even in cases of *constitutional ouster clauses*, the superior courts have assumed jurisdiction if the order impugned is without jurisdiction, *coram non judice* or *malafide*. A chain of judicial pronouncements reiterate this view: The State v. Zia-ur-Rehman and others (PLD 1973 SC 49), Mr. Fazlul Quader Chowdhry and others v. Mr. Muhammad Abdul Haque (PLD 1963 SC 486), The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi v. Saeed Ahmad Khan and others (PLD 1974 SC 151), Federation of Pakistan and another v. Malik Ghulam Mustafa Khar (PLD

¹⁵ Attorney General v. Thomas D’aarcy Ryan [1980] A.C.718 at 730 (also see R v. Secretary of State for the Home Department ex parte Fayed & another [1997] 1 ALL ER 228).

¹⁶ R v. Secretary of State for the Home Department, ex parte Fayed and another [1997] 1 All ER 228).

1989 SC 26), *Pir Sabir Shah v. Federation of Pakistan and others* (PLD 1994 SC 738), *Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another* (PLD 2011 SC 407) and *Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others* (PLD 2010 SC 61),). *Sardar Farooq Ahmed Khan Leghari & others vs. Federation of Pakistan & others* (PLD 1999 SC 57), *Intesar Hussain Bhatti vs. Vice-Chancellor, University of Punjab, Lahore and others* (PLD 2008 SC 313), *Federation of Pakistan through Secretary Defence and others v. Abdul Basit* (2012 SCMR 1229) and *Rao Naeem Sarfraz v. Election Commission of Pakistan and others* (PLD 2013 Lahore 675).

17. **As a conclusion**, the *ouster clause* under Section 10A of the Act does not, in the slightest, abridge or curtail the constitutional jurisdiction of this Court to judicially review the orders, notifications and the acts of the executive i.e., the Delimitation Authority and Delimitation Officer in this case. It also matters little if the *ouster clause* is considered to be a *time specific clause*, as argued by some of the respondents. Courts usually give due weightage to any administrative urgency of the Executive but this does not mean that the doors leading to courts can be shut down as this would result in curtailing and abridging the judicial power. This is opposed to independence of judiciary and the constitutional framework of separation of powers.

Ouster clause and the Election Commission of Pakistan.

18. Section 10A of the Act also does not permit any “authority” to review or correct delimitation after the announcement of the election schedule. This purportedly ousts the constitutional jurisdiction of the Election Commission of Pakistan from performing its constitutional role under Articles 140A(2), 218(3) and 219(d) of the Constitution, which is neither conceivable nor permissible. Election Commission of Pakistan, under the Constitution, can *hold elections* i.e., *to organize, to conduct and make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly*

and in accordance with law. Article 222¹⁷ provides that no electoral law shall have the effect of taking away or abridging any of the powers of the Election Commission provided in Part VIII of the Constitution.

19. Section 10A of the Act not only attempts to completely curtail judicial power of the Constitutional Court, it also puts fetters on the exercise of the constitutional authority of the Election Commission of Pakistan. Instead of touching the constitutionality of section 10A of the Act, the said provision can be *read down*. “The theory of reading down is a rule of interpretation resorted to by the Courts where a provision, read literally, seems to offend a fundamental right, or falls outside the competence of the particular legislature. In interpreting the provision of a statute the courts will presume that the legislation was intended to be *inter vires* and also reasonable. The rule followed is that the enactment is interpreted consistent with the presumption which imputes to the legislature an intention of limiting the direct operation of its enactment to the extent that is permissible. Legislature is presumed to be aware of its limitations and is also attributed an intention not to over-step its limits. To keep the act within the limit of its scope and not to disturb the existing law beyond what the object requires, it is construed as operative between certain persons, or in certain circumstances, or for certain purposes only, even though the language expresses no such circumstances of the field of operation. To sustain law by interpretation is the rule. The reading down of a provision of a statute puts into operation the principle that so far as is reasonably possible to do so, the legislation should be construed as being within its power. It has the principal effect that where an Act is expressed in language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the court will construe it in a more limited sense so as to keep it within power. If certain provision of law construed in one way would make them consistent with the constitution and another interpretation would render them unconstitutional the court would lean in favour of the former construction.”¹⁸

Reliance is placed on: Messrs Chenone Stores Ltd. through Executive Director (Finance Accounts) v. Federal Board of Revenue through Chairman and 2 others (2012 PTD 1815) & Messrs Elahi Cotton Mills Ltd

¹⁷ which is subject to Article 140A of the Constitution.

¹⁸ Mittal - *Interpretation of Taxing Statutes*.

and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 SC 582). We, therefore, read down Section 10A of the Act and declare that the *ouster clause* does not in any manner curtail or abridge the jurisdiction of the Constitutional Court or the Election Commission of Pakistan.

20. We were, however, minded to examine the constitutionality of the complete *ouster clause* in relation to the exercise of judicial power by the sub-constitutional courts in the light of Article 10A of the Constitution and the constitutional principle of Separation of Powers, but thought it fit to leave it to an appropriate case, as this question is not central to the case in hand.

Direction to the office of the Court “not to entertain petitions...” and access to justice.

21. Learned single judge vide order dated 13-12-2013 in W.P. No. 15033/2013 directed the office not to entertain or fix writ petitions which fell within the ambit of the *ouster clause*. Other than the legal position that an *ouster clause* in a sub-constitutional legislation and does not abridge or curtail the jurisdiction of a Constitutional Court, any direction to the administrative office of the Court not to entertain a case and to shut the doors of justice without granting the petitioner an opportunity to place his grievance before a judicial forum, offends the well-enshrined principle of *access to justice* and is a harsh denial of the constitutional and fundamental rights of due process and fair trial (see Articles 4, 9 and 10A of the Constitution). “The right to access to the courts means that no one must be hindered either by law, administrative procedures or material resources from addressing himself or herself to a Court or Tribunal for the purpose of vindicating his or her rights.”¹⁹ Reliance is placed on Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others (PLD 1993 SC 341), Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs,

¹⁹ Clause 3.2.1 - Chapter 7 *Human Rights in the Administration of Justice- A Manual of Human Rights for Judges, Prosecutors and Lawyers*. United Nations, 2003 p.258.

Islamabad and others (PLD 1999 SC 504), Miss Benazir Bhutto v. Federation of Pakistan and another (PLD 1988 SC 416) and “Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 SC 1445).

22. Judiciary cannot efface itself by divesting its judicial power to an administrative branch or entity. This is constitutionally grotesque and strikes at the constitutional structure of the State. A *lis* no matter how weak or frivolous, cannot be denied access to courts. Everyone has a right to have one's day in court. Unimpaired access to justice forms the foundational pillar of rule of law and is a loud reminder that we live and breathe in a constitutional democracy where justice, even though blind, never sleeps. The learned single judge, it appears was not properly assisted in this regard. We hold that the said order (first order) shall not be cited as a precedent.

Delimitation, Election and Election Commission of Pakistan.

23. The organic nexus between 'election', 'delimitation' and the 'role of ECP in Local Government Elections' as laid down in our Constitution, needs to be considered in the larger context of representative democracy, political rights, right to participate in the establishment of government, right to vote, political justice, electoral equality and free & fair elections.

24. “Democracy is a rich and complex normative concept. It rests on two bases. The first is the sovereignty of the people. This sovereignty is exercised in free elections, held on a regular basis, in which the people choose their representatives, who in turn represent their views. This aspect of democracy is manifested in majority rule and in the centrality of the legislative body through which the people's representatives act. This is a formal aspect of democracy. It is of central importance, since without it the regime is not democratic.... The second aspect of democracy is reflected in the rule of values (other than the value of majority rule) that characterize democracy. The most important of these values are separation of powers, the rule of law, judicial independence, human rights, and basic principles that reflect yet other values (such as morality and justice), social objectives (such as the public peace and security), and appropriate ways of behavior

(reasonableness, good faith). This aspect of democracy is the rule of democratic values. This is a substantive aspect of democracy. It too is of central importance. Without it, a regime is not democratic.”²⁰

25. “Democracy of course can be defined in two ways. One way envisions it as a set of substantive commitments to core value such as liberty, equality, and human dignity. The more conventional view defines it as a set of formal institutions within and through which the people govern themselves. These institutions include voting mechanisms of various kinds, ballot access requirements, territorial-based legislative districting, campaign finance laws, rules governing participation in political party activities, and other regulations that structure the ...political process. Yet the substantive and formal aspects of democracy are interdependent. Liberty and equality can hardly be realized if cumbersome registration procedures or other electoral barriers make it difficult to vote. The same is true if representative institutions are unresponsive to public opinion or fail to represent significant segments of the community. Constitutionalism enters the picture when it seeks to organize these institutions and procedures in the interest of liberty, equality, and dignity.”²¹

26. The constitutional fabric of political rights under our Constitution is a fine intermix of formal and substantive democracy and finds its fulcrum in the constitutional principle of ‘political justice.’ This undoubtedly rests on the fundamental assumption that there is no safe depository of ultimate power than the people themselves. The constitutional vision of “Political Justice,” under the Objectives Resolution is now a substantial part of our Constitution.²² Ajmal Mian J in Nawaz Sharif case²³ held:

“In my view, the political rights and the political justice are interlinked with each other. The former encompasses the right to participate directly or indirectly in the establishment or management of the Government. These rights are delineated and demarcated in the Constitution of every country; whereas the latter caters for providing in the Constitution equal rights to engage and participate in the public affairs. It envisages that the Constitution should guarantee equal liberty and provide an efficient and honest machinery/mechanism through which people can elect their representatives in a manner which should ensure that---

²⁰ Aharon Barak - *The Judge in a Democracy*. Princeton. p.23 (*emphasis supplied*)

²¹ Donald P.Kommers, et al - *American Constitutional Law* -3rd Ed. p.385 (*emphasis supplied*)

²² See Article 2A.

²³ Mian Muhammad Nawaz Sharif v. President of Pakistan and others (PLD 1993 SC 473 at 666). (*emphasis supplied*)

- (i) **each vote has approximately the same weight in determining the outcome of the election;**
- (ii) people similarly endowed and motivated should have roughly the same chance of attaining political authority irrespective of their economic and social class;
- (iii) the majority should get into power.

The Fundamental Rights contained in our Constitution referred to hereinabove provided to some extent for the Political Rights and the Political Justice. However, there is a lot of scope for improving upon and expanding the same through legislation and the judicial creativity.”

27. The principle of “Political Justice” flowers and reverberates as the Constitution unfolds. The right to be governed by representatives chosen by the free will of the people is ineffaceable constitutional reality. All forms of exploitation under Article 3 including electoral exploitation resulting in diluting or impairing the right to representation of a citizen in elections is abhorred by the Constitution. Right to due process under Article 4 fully covers the electoral process. Right to life and liberty under Article 9 in the political context have a range of meanings. Life of a citizen in a representative democracy cannot be envisaged without its political dimension; the ability to participate in the political life of the nation, the freedom to exercise political choice, the right to choose a political leader and elect the government of his or her choice. “Liberty means not only freedom from government coercion but also the freedom to participate in the government itself.”²⁴ Benjamin Constant emphasized that the “liberty of the ancients” consisted of a sharing of a nation’s sovereign authority among that nation’s citizens. From the citizen’s perspective it meant “an active or constant participation in collective power”.²⁵ Justice Stephen Breyer explaining his theory of “active liberty” writes: “The concept of active liberty refers to a sharing of a nation’s sovereign authority among its people. Sovereignty involves the legitimacy of a governmental action. And sharing of sovereign authority suggests several kinds of connection between that legitimacy and the people.”²⁶ Right to liberty under our Constitution includes political liberty which carries political rights like right to

²⁴ Stephen Breyer- *Active Liberty- Interpreting Our Democratic Constitution*. p.3.

²⁵ Benjamin Constant – *The Liberty of the Ancients compared with that of the Moderns* (1819) (also see in Stephen Brayer – *Active Liberty* p.4).

²⁶ Stephen Breyer- *Active Liberty* – p.15.

participation in political life of a nation, right to self determination, autonomy, civil rights, sovereignty and self government.

28. Right to dignity under Article 14 carries perhaps the most vital of fundamental rights. “Human dignity is the capacity for and the right to respect as a human being, and arises from all those aspects of the human personality that flow from human intellectual and moral capacity; which in turn separates humans from the impersonality of nature, enables them to exercise their own judgment, to have self-awareness and a sense of self-worth, to exercise self-determination, to shape themselves and nature, to develop their personalities and to strive for self-fulfillment in their lives.”²⁷

Human dignity includes the right to demand a political democratic structure of governance where rule of law is supreme and no one is above the law. A political system, which is not chosen by the people is repressive, autocratic and tyrannical besides being antithetical to self respect, freedom and human dignity. “An essential feature of South African constitutional politics that flows from the place of dignity in our basic law is the recognition of the ability of all human beings – through their capacity to reason - to legislate for themselves...it is our capacity for self-governance, and the fact that we are not simply slaves to our passions, that distinguishes man from beast. Our capacity for self-governance – the capacity of all human beings to reason their way to the ends that give their lives meaning – is larger what makes democracy the only acceptable secular form of political organization. For if we are capable of shaping our own ends as individuals, equal political treatment demands that we be able to shape them as citizens in a democracy. At a minimum, it means we must be able to participate in the collective decision-making process that determine the ends of our community²⁸.” Right to form and be a member of a political party (Article 17(2)) includes a broad sweep of political rights like the right to participate in the political life of the nation, right to contest elections, right to vote, right to one man one vote, right to have a vote that is equal in weight as that of another citizen, right to fair representation, right to electoral equality, right to freely elect a leader, right to go to polls, etc. Freedom of expression under Article 19 includes the

²⁷ Lourens W. H. Ackermann- *Equality and Non Discrimination-Some Analytical Thoughts – The Dignity Jurisprudence of the Constitutional Court of South Africa* (volume-1) p.24.

²⁸ The Dignity Jurisprudence of the Constitutional Court of South Africa- vol-1, p.79.

freedom to express a political choice through a vote and through a free, neutral and transparent electoral system. Going to the ballot is the collective expression of freedom of a nation. Right to equality under Article 25 guards against electoral discrimination and ensures electoral equality. The principle of ‘one man one vote’ gets its security and strength from the constitutional right to equality. Quaid-e-Azam in his Presidential address to the Constituent Assembly²⁹ said: “If you change your past and work together in a spirit that every one of you, no matter to what community he belongs, no matter what relations he has had with you in the past, no matter what is his colour, caste or creed, is first, second, and last a citizen of this State with equal rights, privileges and obligations, there will be no end to the progress you will make³⁰.” ‘Political Justice’ blossoms under the shade of these fundamental freedoms.

29. Under Articles 32, 37(i) and 38 the Constitution provides that the local government is the third tier of political structure with the objective to decentralize the Government administration so as to facilitate expeditious disposal of the business to meet the convenience and requirement of the public. The political vision is to provide basic necessities of life, such as food, clothing, housing, education and medical relief to all citizens. To reduce disparity in the income and earning of individuals, to provide citizens facilities for work and adequate livelihood, to secure the well being of people by raising their standards of living by preventing concentration of wealth and means of production in the hands of the few, to the detriment of general interest are the political aspirations under our Constitution.

30. All these political rights stand subsumed in the most rudimentary yet foundational right - *the right to vote*. From this constitutional enfranchisement flows the right to express political choice in free and fair elections, right to elect a representative of one’s choice, the right to an undiluted vote, the right to electoral equality, the right to have a vote equal in weight, value and strength as of another citizen, the right to have fair and equitable representation. The principle of “one man one vote³¹” is therefore weaved deep into the political fabric of our Constitution and has to be

²⁹ 11th August, 1947.

³⁰ A.K.Brohi- *Fundamental Law of Pakistan*. p.938.

³¹ discussed later in the judgment.

guarded at every stage of the electoral process and more importantly at the time of delimitation.

The importance of the right to vote.

31. In a constitutional democracy, a vote is a symbol of political dignity and freedom of a citizen. It embodies freedom of choice, expression, equality and the license to participate in the political life of a nation and the right to establish self-government. Life of a citizen in a representative democracy demands a life of equal participation in the establishment of a democratic state. Words of Saad Saood Jan J in *Nawaz Sharif Case*³² are instructive: “There seems little doubt that the paramount consideration before the Constitution-makers was that no section of the citizenry no matter how small it might be, should be deprived of equal participation in the national life and no one should feel that he has not had a fair deal.” This freedom of expression and participation is actualized through a vote. The sanctity, weight and status of a vote, therefore, become central to any electoral process. Justice Sachs notes in *August v. Electoral Commission case*³³ : “The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and personhood. Quite literally, it says that everybody counts. In a country of great disparities of wealth and power it declares that whosoever we are, whether rich or poor, exalted or disgraced, we all belong to the same...nation; that our destinies are intertwined in a single interactive polity.” “Voting rights lie at the root of parliamentary democracy. Indeed many would regard them as a basic human right.”³⁴

32. Right to vote is recognized in international covenants and is a constitutional right in many countries. Under Article 21 of the *Universal Declaration of Human Rights, 1948* everyone has the right to take part in the government of his country, directly or through freely chosen representatives and the will of the people is the basis of the authority of government. This will is expressed in periodic and genuine elections which shall be by

³² Ibid.

³³ Sachs J in *August vs Electoral Commission* [1999 (3) SA 1 (CC)] (also in *The Strange Alchemy of Life and Law* by Albie Sachs p/122).

³⁴ Law and the Electoral Process by H. F. Rawlings page 73.

universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. Article 25 of the *International Covenant on Civil and Political Rights, 1966* provides that every citizen shall have the right and the opportunity...to take part in the conduct of public affairs, directly or through freely chosen representatives and to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. Under *Declaration on Criteria for Free and Fair Elections*³⁵ in any State, the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage. Every adult citizen has the right to vote in elections, on a non-discriminatory basis. No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law. Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively. Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others. The right to vote in secret is absolute and shall not be restricted in any manner whatsoever. Under Article 5 (c) of the *International Convention on the Elimination of all forms of Racial Discrimination, 1966*, political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

33. Right to vote has been recognized by various constitutions of the World. *Constitution of the Republic of South Africa, 1996* provides under Chapter 1 (Section 1) that the Republic of South Africa is one, sovereign, democratic state founded on values including universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and

³⁵Unanimously adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994) <http://www.ipu.org/cnl-e/154-free.htm>

openness. Chapter 2³⁶ provides that every adult citizen has the right to vote in elections for any legislative body established in terms of the Constitution, and to do so in secret and to stand for public office and, if elected, to hold office. Section 41 of *The Commonwealth of Australia Constitution Act, 1990*, provides that no adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth. Under the Canadian Charter of Rights and Freedoms (Section 3) of the *Constitution of Canada (Constitution Act, 1982)*, states that every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein. Likewise Article 15 of the *Constitution of Japan (1946)* provides that the people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. Universal adult suffrage is guaranteed with regard to the election of public officials. In all elections, secrecy of the ballot shall not be violated. A voter shall not be answerable, publicly or privately, for the choice he has made.

34. “Parties are charged with the primary responsibility of organizing citizens into political groups for electoral purposes. In the field of elections and voting, formal equality includes the principle of formal equal opportunity, namely, the opportunity of political parties and voter organizations to compete for electoral support. This right of equal opportunity derives from the constitutional status of political parties, the freedom to form political parties, and the principle of a multiparty system which is associated with the concept of a free democracy. The principle of equal opportunity governs the election proper as well as the campaign. Democracy cannot function—as a matter of principle - if the parties are unable to enter an election campaign under the same legal circumstances. In regulating the process of forming the political will of the people, the legislature operates under strict limits. It may not undermine the equal opportunity of parties or voter associations. Differential treatment of parties

³⁶ Section 19(3).

and voter associations is constitutionally prohibited...The very purpose of proportional representation is to have government realistically reflect the political will of the electorate.”³⁷ As Professor Dworkin wrote in the Bill of Rights for Britain: “True democracy is not just statistical democracy, in which anything a majority or plurality wants is legitimate for that reason, but communal democracy, in which majority decision is legitimate only if it is a majority within a community of equals. That means not only that everyone must be allowed to participate in politics as an equal, through the vote and through freedom of speech and protest, but that political decisions must treat everyone with equal concern and respect, that each individual person must be guaranteed fundamental civil and political rights no combination of other citizens can take away, no matter how numerous they are or how much they despise his or her race or morals or way of life.”³⁸

35. Professor Tribe writes: “Voting rights subsume such distinct concerns as the citizen’s opportunity to cast a vote, the community’s chance to be represented within a larger polity in proportion to its population, the racial group’s ability to prevent the purposeful dilution of its voting power, the candidate’s capacity to gain a place on the ballot, and the constituent’s chance to contribute to a chosen candidate. These distinct interests, however, spring from a common root. They share a concern with the election process that is both a source and a product... of representative government. At their core, all voting-related rights are rights to participate in this process... Given their essential character as parts of the election process, rights relating to the franchise stand poised between procedural due process, with its guarantee that an individual may participate in the application of general rules to that individual’s particular situation, and the first amendment, with its guarantee that an individual be allowed to participate in the most general communicative processes that determine the contours of our social and political thought. At the same time, election-related rights display the special feature that the *equality* with which they are made available, rather than the *fact* of their availability or absence, ordinarily proves decisive.”³⁹ The US

³⁷ National Unity Election Case (Germany 1990), 82 BverfGE 322 (ref: American Constitutional Law, Donald P. Kommers et al, (third edition. p.420).

³⁸ Ronald Dworkin, *A Bill of Rights for Britain* 35-36 (1990) [see Barak – *Judge in a Democracy* p.25]

³⁹ American Constitutional Law, Second Edition, Laurence H. Tribe. p.1062.

Supreme Court in Wesberry v. Sanders⁴⁰ testified to the fundamental character of the right to vote... no right is more precious in a free country than that of having a choice in the election of those who make the laws under which, as good citizens, they must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” According to Laurence E. Tribe⁴¹ the opinion of Justice Douglas, who authored the majority opinion, “implied that there existed a personal right to cast a vote that was a mathematical equivalent of the vote cast by any other member of the same constituency.” In the same case US Supreme Court reiterated that “one man’s vote...is to be worth as much as another’s,” and thus in a sense also created a collective right to have legislative representatives apportioned according to population. Stewart J. in Gary v. Sanders⁴² put the proposition succinctly in a concurring opinion: “Within a given constituency, there can be room for but a single constitutional rule—one voter, one vote.” In Reynolds v. Simms⁴³ the court insisted that equal numbers of voters should elect equal numbers of representatives. It further held that: “an individual’s right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in another part of the State.”. In Davis v. Bandemer⁴⁴, US Supreme Court held: “Unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter’s or a group of voters’ influence on the political process as a whole.”

36. “The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restriction on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise... and, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the

⁴⁰ James P. Wesberry, Jr., et. Al. v. Carl E. Sanders, etc., at al. [376 US 1, 17 (1964)] (see American Constitutional Law, second Edition, Laurence H. Tribe. p.1062).

⁴¹ American Constitution Law: 2nd Edition; p. 1064.

⁴² James H. Gray et al., v. James O’Hear Sanders [372 US 376 (1963)] (see: Tribe, American Constitution Law: (second edition. p.1064).

⁴³ B.A. Reynolds, etc., et al., v. M.O. Sims et al. [377 US 533 (1964)].

⁴⁴ 106 S.Ct. 2797 (1986) as per Justice White. [See Tribe-American Constitutional Law. p. 1081)

right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable.”⁴⁵ In Wesberry et al v. Sanders, Governor of Georgia, et al⁴⁶ Supreme Court of United States held:

“We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected "by the People," a principle tenaciously fought for and established at the Constitutional Convention. The history of the Constitution, particularly that part of it relating to the adoption of Art. I, § 2, reveals that those who framed the Constitution meant that, no matter what the mechanics of an election, whether statewide or by districts, it was population which was to be the basis of the House of Representatives.”

In State Of Madhya Pradesh & others v. Devlal,⁴⁷ Supreme Court of India held:

The whole purpose of delimitation of a block into constituencies under sub-s.(1) of s. 106 of the Act is to ensure that every citizen should get a fair representation to the Gram Panchayat and in turn to the Janapada Panchayat and the Zila Panchayat. The result of any election under a majority system depends in fact not only on the way people vote but on the way their votes are distributed among the constituencies...

In Association of Resident of Mhow (ROM) v. Delimitation Commission of India⁴⁸ the Supreme Court of India observed:

“The periodic readjustment of the Lok Sabha and Assembly Constituencies is mandatory in representative systems where single member constituencies are used for electing political representatives. The electoral districts are done on the basis of the last published census figure that they are relatively equal in population. Electoral districts that vary significantly in population - a condition called malapportionment - violate a central tenet of democracy that all the votes cast must be of equal weight.”

⁴⁵ B.A. Reynolds, etc., et al., v. M.O. Sims et al. [377 US 533 (1964)]

⁴⁶ James P. Wesberry, Jr., et. Al. v. Carl E. Sanders, etc., at al. [376 US 1, 17 (1964)] (see American Constitutional Law, second Edition, Laurence H. Tribe. p.1062).

⁴⁷ AIR 1986 SC 434.

⁴⁸ AIR 2009 SC 3278.

37. The principle of ‘one man one vote’ flows from the concept of “political justice.”⁴⁹ In our jurisprudence the constitutional right to vote has been recognized in *Imran Khan and others v. Election Commission of Pakistan and others* (PLD 2013 S.C. 120), *Workers’ Party Pakistan through Akhtar Hussain, Advocate, General Secretary and others v. Federation of Pakistan and 2 others* (PLD 2012 S.C. 681), *M.D. Tahir, Advocate v. Federal Government through Cabinet Division, Islamabad and another* (2003 CLC 389) and *Ghulam Abbas v. The Additional Commissioner and Election Tribunal Khairpur Mirs and 3 others* (PLD 1965 (W.P.) KAR 625). The protection to right to vote has been expanded recently by the august Supreme Court of Pakistan by holding that “an accurate Electoral Roll is a sine qua non for the holding of a free, fair and transparent elections, which is not only the command of the Constitution but also a Fundamental Right of the citizens...”⁵⁰

38. The growing electoral jurisprudence shows that the right to vote actually translates into a more potent and substantial right to equal voting power. The electoral process other than ensuring fair and free polls, is to ensure that the weight of the vote of a citizen is not diluted or discriminated prior to the polls during delimitation of constituencies. Delimitation is a vital and indispensable milestone in the electoral process as it defines and fashions the strength and weight of a vote. Fair and transparent delimitation of constituencies is pivotal for holding honest, fair and just elections. The central focus of any fair and just electoral system is to ensure that the right to vote is properly guarded against the scourge of vote dilution or discrimination during the process of delimitation. Any electoral system must, therefore, be designed to protect the *right to vote*. Any step or stage in the process which has a bearing on the *right to vote* is an indispensable part of ‘election’ or electoral process.

Meaning of Delimitation.

39. The symbiotic relationship between right to vote and delimitation requires us to examine the meaning and process of delimitation and the

⁴⁹ echoed in *Nawaz Sharif case (ibid)* p.666.

⁵⁰ per Sh Azmat Saeed J. in *Imran Khan and others v. Election Commission of Pakistan and others* (PLD 2013 SC 120) (para 24).

nature and character of the authority which is to carry out delimitation. Delimitation, means the demarcation of the boundaries of an electoral constituency in order to ensure fair, just and proportional representation of the people in the elections. The basic object of delimitation is to secure, so far as practicable, equal representation for equal segments of the population in legislative bodies. “Apportionment” or delimitation or “redistricting” has the “aim of equalizing the population (or electorate) per seat, in accordance with the principle of ‘one person, one vote, one value.’⁵¹ This is usually done with regard to stated constraints of administrative convenience, contiguity, geographical, and communication factors; and unstated influences of party-political advantage. In other words, the delimitation aims at ensuring the observance of the basic tenet of democracy; ‘one man, one vote’. The Principles of delimitation under the Delimitation of Constituencies Act, 1974⁵² include having regard to distribution of population in geographically compact areas, existing boundaries of administrative units, facilities of communication and public convenience and other cogent factors to ensure homogeneity in the creation of constituencies. The other equally important aim of delimitation is to divide the geographic areas into territorial constituencies so fairly that no party or candidate may legitimately have a grievance that there has been ‘gerrymandering’⁵³ of constituencies in favour of or against the interests of any particular party or candidate. Suggesting that the right to cast a ballot is meaningless if that ballot is undervalued relative to a ballot cast by a voter in a less populated district. Gerrymandering is “drawing of district boundaries so as to favour one’s own chances in future elections....strategies for gerrymandering have

⁵¹ Oxford - *Concise Dictionary of Politics*. p.23.

⁵² section 9.

⁵³ ‘Gerrymandering’, in US politics, means the drawing of the boundaries of electoral districts in a way that gives one party an unfair advantage over its rivals. The term is derived from the name of Governor Elbridge Gerry of Massachusetts, whose state administration enacted a law in 1812, dividing the state into new senatorial districts. The law consolidated the Federalist Party vote in a few districts and thus gave disproportionate representation to Democratic Republicans. The outline of one of the districts, which was thought to resemble a salamander, gave rise, through a popular application of the Governor’s name, to the term ‘gerrymander’. Gerrymandering has been condemned because it violates two basic tenets of electoral appointment – compactness and equality of size of constituencies. A US Supreme Court ruling of 1964 stated that districts should be drawn to reflect substantial equality of population. However, using studies of regional voting behaviour, the majority parties in certain state legislatures continue to set district boundaries along partisan lines without regard for local boundaries or even contiguity. For example, in some states representatives from rural and small town districts seek to limit the representation of more densely populated urban centres. Sometimes gerrymandering is defended as the only means of securing any representation for minority groups. It is argued that violating local boundaries in drawing districts is preferable to denying a politically cohesive group any voice in state government, *Encyclopedia Britannica*, vol 5 (*Micropaedia*), *fifteenth Edition*, 1997, p 222. (see VS Rana and S K Mediratta – *How India votes, Election Laws, Practical, Procedure*, (second Edition. p.238-240).

been characterized as ‘stacking’, ‘packing’, and ‘cracking’, each of which seeks to minimize the influence of those likely to vote for opponents.” ‘Stacking’ occurs when boundaries are drawn so opponents are grouped in constituencies where they are a minority; ‘packing’ when opponents are concentrated in a small number of constituencies; and ‘cracking’ when opponents are divided between a large number of constituencies.”⁵⁴

40. The process of delimitation has to ensure that the voting equality is not disturbed and the vote of one citizen must in no manner be less than the vote of another citizen. Other than population parity, geographical compactness, the homogeneity of interest of the community need to be factored in. Setting the parameters of delimitation Chief Justice Warren held in *Reynolds v. Sims*:⁵⁵

“Legislatures represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interest. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is the backbone of our political system.”

41. Delimitation is not a mere drawing of boundaries with a stroke of pen. It is a judicious exercise of delineating electoral areas, vigilantly guarding against any possible fear of vote dilution, disenfranchisement or corrupt practices. Unfair or partisan delineation can lead to skewed results, tarnishing electoral integrity, making a mockery of the election and turning the constitutional principle of “political justice” on its head. The foundations or the rules of the game for a fair and just election are laid down at the time of delimitation of the constituencies. It is here that the weight and value of the vote is recognized and firmly established. The event that follows is merely the *conduct of elections* i.e., when electorate goes to polls, to actualize the principle of “one man one vote” firmly established during the process of delimitation of the constituencies.

42. It is commonsensical that “Delimitation” must be a neutral exercise, conducted by a neutral body. Any partisan political intervention and drawing up of political constituencies under the dictates of the political party in power is bound to lead to gerrymandering and unjust political windfall,

⁵⁴ Oxford - *Concise Dictionary of Politics*, p.221.

⁵⁵ Donald P.Kommers et al. *American Constitutional law* - p.390.

tarnishing the sanctity of elections and crippling the faith of an ordinary man in the system of democracy. This is precisely the reason that petitioners before us have complained of partisan delimitation under the fiat of the political government in power. The government in power according to the allegations leveled before us have tried to exploit the electoral independence and the right to vote of the people by gerrymandering and re-mapping of the Union Councils and Municipal Committees into Wards, in a manner that best suited their political interests. The veracity of these allegations need not detain us. Our role is to ensure that the constitutional mandate is obeyed and the electoral system envisaged by the Constitution is enforced. Professor Tribe puts in a word of caution: “Democracy,” he writes, “envisions rule by successive temporary majorities. The capacity to displace incumbents in favour of the representatives of a recently coalesced majority is, therefore, an essential attribute of the election system in a democratic republic. Consequently, both citizens and courts should be chary of efforts by government officials to control the very electoral system which is the primary check on their power. Few prospects are so antithetical to the notion of rule by the people as that of a temporary majority entrenching itself by cleverly manipulating the system through which the voters, in theory, can register their dissatisfaction by choosing new leadership.”⁵⁶

43. Having established the link between delimitation, election and right to vote. The neutrality of election or delimitation or boundary commission is reinforced by global electoral literature. Independence and neutrality of the election authority for the purposes of delimitation is firmly established in New Zealand, Australia, U.K, USA, Bhutan and India as given below. This reinforces the importance of neutral and independent delimitation in the electoral process.

TABLE-A

Country	National / Federal or Provincial Boundary / Delimitation Commissions			Local Bodies Delimitation Commissions		
	Name of National Body/ Status	Membership	Governing Law	Name of Local Government Body	Membership	Local Government Law
New Zealand	Representation Commission ⁵⁷	The Chairperson,	Electoral Act 1993	Local Government	The Commission	Local Government

⁵⁶ American Constitutional Law, Second Edition, Laurence H. Tribe. p.1097.

⁵⁷ <http://www.elections.org.nz/voting-system/electorates/electorate-boundaries-and-review/representation-commission>. Last visited on 02.01.2014.

Country	National / Federal or Provincial Boundary / Delimitation Commissions			Local Bodies Delimitation Commissions		
	Name of National Body/ Status	Membership	Governing Law	Name of Local Government Body	Membership	Local Government Law
	(Independent Statutory Body)	appointed by the Governor-General following nomination by the members of the Commission; Four ex officio members (the Surveyor-General, Government Statistician, Chief Electoral Officer, and Chairperson of the Local Government Commission); and Two members representing the Government and the Opposition, appointed by the Governor-General following nomination by the House of Representatives.		Commission ⁵⁸ (An independent statutory body)	has three members who are appointed by the Minister of Local Government	Act 2002.
Canada	Electoral Boundaries Commissions ⁵⁹ (Independent Statutory Body)	Judge of Provincial Court to be nominated by the Chief Justice of Province Concerned Two other members appointed by the Speaker of the House of Commons	Electoral Boundaries Readjustment Act R.S.C., 1985, c.E-3	The restructuring of a local body may be done by a vote of Council or by appointment of a Commission by the Minister. It may be a one man Commission. ⁶⁰	Sections 171 to 179 of the Municipal Act, 2001. ⁶¹	Provincial Laws: For example, Ontario province has the Municipal Act 2001

⁵⁸ <http://www.lgc.govt.nz/>. Last visited on 02.01.2014.

⁵⁹ <http://laws-lois.justice.gc.ca/eng/acts/E-3/index.html>. Last visited on 02.01.2014.

⁶⁰ Part V, sections 171 to 179 of the Municipal Act, 2001. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK181. Last visited on 13.01.2014.

Country	National / Federal or Provincial Boundary / Delimitation Commissions			Local Bodies Delimitation Commissions		
	Name of National Body/ Status	Membership	Governing Law	Name of Local Government Body	Membership	Local Government Law
				(Independent process, though appointment is by the Minister)		
Australia	Australian Electoral Commission ⁶² (Independent Statutory Body)	The Electoral Commissioner; The Australian Electoral Officer for the particular State or the Northern Territory (the Senior Divisional Returning Officer in the case of the ACT); The State Surveyor-General for the State or the person holding an equivalent office; and The Auditor-General for the State or if unavailable a substitute. (Independent Body)	Commonwealth Electoral Act 1918 ⁶³	Each Province has its own Local Boundary Commissions. For New South Wales (NSW), the Local Government Boundaries Commission is an independent statutory authority. ⁶⁴ (Independent statutory body) ⁶⁵	A Judge of the Supreme Court (past or current), The Electoral Commissioner, The Surveyor-General.	Constituted under section 260 of the Local Government Act 1993 ⁶⁶
United Kingdom				Local Government Boundary Commission	(a) the chair of the Commission, and	s. 55 of the Local Democracy, Economic

⁶¹ http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_01m25_e.htm#BK181. Last visited on 13.01.2014.

⁶² <http://www.aec.gov.au/FAQs/Redistributions.htm>. Last visited on 02.01.2014.

⁶³ http://www.austlii.edu.au/au/legis/cth/consol_act/cea1918233/. Last visited on 02.01.2014.

⁶⁴ http://www.austlii.edu.au/au/legis/nsw/num_act/lga1993n30209.pdf. Last visited on 02.01.2014.

⁶⁵ <http://www.dlg.nsw.gov.au/dlg/boundariescommission/saindex.asp>. Last visited on 02.01.2014.

⁶⁶ http://www.austlii.edu.au/au/legis/nsw/num_act/lga1993n30209.pdf. Note: As per section 263(7) of the Act *ibid*, the Supreme Court of NSW cannot interfere into the orders of the LGBC (ouster clause). In Australia, SC of NSW means the highest court of the province. However, the NSW Land and Environmental Court has issued a restraint order keeping in view section 676(1) of the Act (*ibid*) on the grounds that the act of the LGBC, if not restrained, will cause breach of the Act. See *South Sydney Council v Local Government Boundaries Commission and Anor.* [2001] NSWLEC 280. Last visited on 02.01.2014.

Country	National / Federal or Provincial Boundary / Delimitation Commissions			Local Bodies Delimitation Commissions		
	Name of National Body/ Status	Membership	Governing Law	Name of Local Government Body	Membership	Local Government Law
				for England (Independent Statutory Body set up by Parliament) ⁶⁷	(b) at least four and no more than eleven other members ("ordinary members"). ⁶⁸	Development and Construction Act 2009 ⁶⁹
United States of America	States Redistricting and Apportionment Commissions ⁷⁰ (Independent Statutory Bodies)	1. (a) After each federal census taken in a year ending in zero, the Congressional districts shall be established by the New Jersey Redistricting Commission . The commission shall consist of 13 members, none of whom shall be a member or employee of the Congress of the United States. The members of the commission shall be appointed with due consideration to geographic, ethnic and racial diversity and in the manner provided herein. (b) There shall first be	New Jersey State Constitution 1947 (Updated Through Amendments adopted in November, 2010) ⁷²	Independent Redistricting Commission 2011 ⁷³ Tompkins County	NINE Member independent Commission to redistrict the county for local bodies elections	Tompkin County Legislature Resolution No. 2011-49 ⁷⁴
				Temporary Districting Advisory Commission ⁷⁵	11 Member body (Independent body)	Nassau County Legislative website
				King county Districting Committee	5 Member independent Body	The 2011 Districting Committee was responsible for redrawing King County Council Districts using 2010 Census data. By law, district boundaries must be realigned every 10 years to reflect changes in population distribution. The Committee held seven public hearings at locations across the County and released a

⁶⁷ http://www.lgbce.org.uk/_documents/lgbce/guidance-policy-and-publications/guidance/introduction-to-the-commission-and-electoral-reviews.pdf. Last visited on 03.01.2014.

⁶⁸ See Schedule 1 of the Local Democracy, Economic Development and Construction Act 2009.

⁶⁹ http://www.legislation.gov.uk/ukpga/2009/20/pdfs/ukpga_20090020_en.pdf. Last visited on 03.01.2014.

⁷⁰ <http://www.njredistrictingcommission.org/aboutredistricting.asp>. Last visited on 03.01.2014.

⁷¹ Ibid.

⁷² <http://www.tompkinscountyny.gov/files/redistricting/RESOLUTION%20No.%2049%20-%20Creation%20of%20an%20Independent%20Redistricting%20Commission.pdf>. Last visited on 13.01.2014.

⁷³ <http://www.tompkinscountyny.gov/redistricting/commission>. Last visited on 13.01.2014.

⁷⁴ <http://www.nassaucountyny.gov/TDAC/index.php>. Last visited on 13.01.2014.

Country	National / Federal or Provincial Boundary / Delimitation Commissions			Local Bodies Delimitation Commissions		
	Name of National Body/ Status	Membership	Governing Law	Name of Local Government Body	Membership	Local Government Law
		appointed 12 members as follows: (1) two members to be appointed by the President of the Senate; (2) two members to be appointed by the Speaker of the General Assembly; (3) two members to be appointed by the minority leader of the Senate; (4) two members to be appointed by the minority leader of the General Assembly; and (5) four members, two to be appointed by the chairman of the State committee of the political party whose candidate for the office of Governor received the largest number of votes at the most recent gubernatorial election and two to be appointed by the chairman of the State committee of the political party whose candidate for the office				variety of public drafts. The final plan was adopted Nov. 15, 2011. ⁷⁶
				Hawai'i Redistricting Commission	Nine Member independent body	Hawa'i'i Country Charter, section 3-11 ⁷⁷

⁷⁶ <http://www.kingcounty.gov/operations/districting.aspx>. Last visited on 13.01.2014.

⁷⁷ <http://records.co.hawaii.hi.us/Weblink8/DocView.aspx?dbid=1&id=14020>. Last visited on 13.01.2014.

Country	National / Federal or Provincial Boundary / Delimitation Commissions			Local Bodies Delimitation Commissions		
	Name of National Body/ Status	Membership	Governing Law	Name of Local Government Body	Membership	Local Government Law
		of Governor received the next largest number of votes in that election. ⁷¹				
Bhutan	Delimitation Commission Appointed by the Election Commission ⁷⁸ (An independent Body)	(a) Chief Election Commissioner; (b) Two Election Commissioners; (c) Secretary, Ministry responsible for Urban and Municipal Administration; (d) Secretary, Ministry responsible for Civil Registration and Census; and (e) Surveyor-General	Election Act of the Kingdom of Bhutan, 2008 ⁷⁹	Delimitation Commission Appointed by the Election Commission ⁸⁰ (An independent Body)	(a) Chief Election Commissioner; (b) Two Election Commissioners; (c) Secretary, Ministry responsible for Urban and Municipal Administration ; (d) Secretary, Ministry responsible for Civil Registration and Census; and (e) Surveyor-General	ELECTION ACT OF THE KINGDOM OF BHUTAN, 2008 ⁸¹
India	Election Commission of India (Independent	An independent body consisting of the	Article 324 of the Constitution of India 1950.	State Election Commission (an independent	To be appointed by the Governor. The	Article 243K and 243ZA of the Constitution

⁷¹ <http://www.njredistrictingcommission.org/constitutionbylaws.asp>. Last visited on 03.01.2014.

⁷⁸ Chapter 5 of the Election Act of the Kingdom of Bhutan, 2008. <http://www.election-bhutan.org.bt/wp-content/uploads/2013/04/ElectionActEnglish.pdf>. Last visited on 13.01.2014.

⁷⁹ <http://www.election-bhutan.org.bt/wp-content/uploads/2013/04/ElectionActEnglish.pdf>. Last visited on 13.01.2014.

⁸⁰ Chapter 5 of the Election Act of the Kingdom of Bhutan, 2008. <http://www.election-bhutan.org.bt/wp-content/uploads/2013/04/ElectionActEnglish.pdf>. Last visited on 13.01.2014.

⁸¹ <http://www.election-bhutan.org.bt/wp-content/uploads/2013/04/ElectionActEnglish.pdf>. Last visited on 13.01.2014.

Country	National / Federal or Provincial Boundary / Delimitation Commissions			Local Bodies Delimitation Commissions		
	Name of National Body/ Status	Membership	Governing Law	Name of Local Government Body	Membership	Local Government Law
	Body)	following : (2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President. ⁸²		body)	Commissioner is an independent body cannot be removed by the executive. (See Articles 243K and 243ZA of the Indian Constitution.	of India, 1950 Panchayats and Local Governments ⁸³

Meaning of “Election” under the Constitution.

44. The expanse of the term ‘election’ can be easily gauged by the constitutional role entrusted to the ECP under Part VIII of the Constitution and, in particular, Articles 140A(2), 218(3), 219(d), 220 and 222 of the Constitution. Article 140A(2) provides that the ECP shall hold elections to the local governments. Article 218(3) provides that it shall be the duty of

⁸² <http://www.constitution.org/cons/india/p15324.html>. Last visited on 13.01.2014.

⁸³ It reads:

243ZA. Elections to the Municipalities.-

(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in Article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

ECP to organize, conduct and make such necessary arrangements for holding honest, just and fair elections. Without prejudice to the constitutional powers of ECP, Article 222 provides the components of the election process which include: delimitation of constituencies, preparation of electoral rolls, conduct of elections and election petitions, matters relating to corrupt practices and other offences. Electoral laws for National and Provincial Assemblies deal with these components separately under the Electoral Rolls Act, 1974, Delimitation of Constituencies Act, 1974 and Representation of People Act, 1974. These electoral laws cover different stages of “election” as mandated by Article 222.

45. The duty of ECP to hold election means: to organize, to conduct and to make arrangements for election. These words fashion the scope and extent of the term “Election” or “Electoral System”. It is, therefore, important to see the import of these words. Organize means: “to form into a whole consisting of interdependent or coordinated parts, especially for united action or to give an organic structure”⁸⁴ “to systematize”⁸⁵ “give orderly structure; bring into working order.”⁸⁶ Conduct means: “execution, direction or management.”⁸⁷ “management, guidance and overall supervision.”⁸⁸ Arrangements means: “preparatory measures or preparations.”⁸⁹ Hence, to organize read with necessary arrangements means to systematize or give an organic structure to election. The preparation of the electoral rolls and the delimitation of constituencies fall within the organizing stage of the election. To conduct election is more to do with the execution or the management part of the elections. Hence, this part begins with the announcement of the election schedule, leading to, filing of the nomination papers, dealing with objections, electorate going to polls and the final announcement of results. Hold or Holding means: “to have the ownership of”⁹⁰ “to keep or maintain a grasp on something”⁹¹. In State of Gujrat v Jamnadas⁹² Supreme Court of India defined the term hold

⁸⁴ Dictionary.com

⁸⁵ Words & Phrases – Permanent Edition- West. vol-30 p.484.

⁸⁶ The Major Law Lexicon – 4th edition. p.4825.

⁸⁷ Dictionary.com.

⁸⁸ The Major Law Lexicon – 4th edition. p.1377.

⁸⁹ Dictionary .com

⁹⁰ The Major Law Lexicon – 4th edition. p.3092.

⁹¹ dictionary .com.

⁹² State of Gujrat v. Jamnadas G. Pabri and others etc. (AIR 1974 SC 2233).

elections' to mean: "Its wide connotation will include delimitation of constituencies, the compilation of electoral rolls, etc which are a necessary preliminary to the actual conduct of elections. In the restricted sense, this phrase would cover only the actual holding of the elections."⁹³ The process of elections, therefore, has two fundamental parts or components. The substantive organizational part including the preparation of the electoral list and the process of delimitation of constituencies and the managerial or supervisory part of conducting the elections, where candidates come out to contest and the electorate goes to polls. When both the parts are executed in tandem⁹⁴ it is said that the elections are *held* in a country. *Holding* elections, in an umbrella-like manner subsumes all the components of the electoral process especially the acts of organizing and conducting elections. Constitutional role and obligation of the ECP clearly defines the scope and meaning of the word 'election' - which is an amalgam of all the steps starting from preparation of the electoral rolls, leading to delimitation followed by the filing of the nomination papers, electoral public participation, polling of votes and finally concluded with the announcement of the results. Like a continuous assembly line, one component follows the other providing a complete electoral system.

46. Another distinction between the two parts of the elections is that the organizational part of the elections is a party neutral systemic exercise as it provides for preparation of electoral rolls and demarcation of the constituencies, while the second part of the elections supervises and conducts the elections. The latter takes an adversarial political colour as candidates of opposing political parties jump into the electoral ring. The distinction between the two parts comes into sharp focus when we see that the remedy of an election petition before the Election Tribunal is provided at the end of the second part (i.e., conduct of elections) under ROPA and the Act, reinforced and protected under Article 225 of the Constitution. This post election dispute resolution mechanism is restricted to disputes arising from the managerial and supervisory part of the elections i.e., the conduct of elections. No such judicial forum is provided for attending to the disputes

⁹³ emphasis supplied.

⁹⁴This does not discount the time provided between the two stages of election to redress the grievance, if any, arising out of incorrect electoral rolls or wrong delimitation of constituencies.

pertaining to electoral rolls or delimitation of constituencies in the first part of the elections or electoral process. Historically, in the past, such like disputes have been resolved by an independent election authority (mostly ECP) with the option to the aggrieved party to invoke the constitutional jurisdiction of this Court but no independent judicial forum is provided for the redressal of grievance arising out of delimitation of constituencies except of course within the administrative tiers of the Election Commission of Pakistan.

47. As a conclusion, to organize, conduct and make arrangements for holding elections covers the entire electoral process and is synonymously referred to as “Election” for the purposes of ECP and the Constitution. H. F. Rawlings writes: that “any code of electoral law includes a number of essential sections of almost equal importance; these deal with the qualifications and disqualifications of voters, the division of the electorate into constituencies, the prevention of corruption and intimidation during the campaign, the judicial and administrative provisions for seeing that the law is observed. Each of these sections is meaningless in isolation from the others. A very wide and equal suffrage loses its value if political bosses are able to gerrymander constituencies so as to suit their own interests; there is no point in having an elaborate system of proportional representation if the electors are all driven in one direction by a preponderance of bribes and threats; legal provisions mean nothing if enforcement of the law is left wholly in the hands of those who profit by breaking it. This is why it is right to speak of ‘the electoral system’. Procedure for elections is systematic in that its parts are inter-dependent; it is impossible to advance on one ‘front’ without regard to others.”⁹⁵

Role of Election Commission of Pakistan in Local Government System.

48. We now revert to the constitutional provisions dealing with local government elections. An important constitutional milestone is the 18th constitutional amendment, whereafter, elections to the local government have transformed into constitutional elections from statutory elections.

⁹⁵ Law and the Electoral Process by H. F. Rawlings page 2. (*emphasis supplied*)

“Elections” by the ECP under the Constitution now cater to all the three political structures: National, Provincial and Local Governments. The neutral constitutional body called the Election Commission of Pakistan regulates the entire constitutional electoral space. According to Oxford Dictionary of Politics an election commission is “a non-partisan body which determines election procedures and district boundaries and oversees the conduct of elections.”⁹⁶

49. ECP is neutral and independent as it consists of the Commissioner, who is or has been a judge of the Supreme Court of Pakistan or has been a Judge of High Court⁹⁷ and four members each of whom has been a judge of the High Court from each Province.⁹⁸ Collective reading of Articles 140A, 218, 219, 220, 221 and 222 of the Constitution brings out the importance of the constitutional role of ECP. Article 140A(2) provides that elections to the local government shall be “*held*” by the Election Commission of Pakistan. Article 219(d) provides that ECP shall be charged with the duty of “*holding*” elections to the local governments. Article 220 provides that it shall be the duty of all executive authorities in the Federation and in the Province to assist the Commissioner and the Election Commission in the discharge of his or their functions. Hence, issue of capacity of ECP to conduct delimitation of constituencies as argued by the respondents is a non-issue. Article 222 provides for nature and scope of electoral laws. *Holding* of elections under Article 140A(2) mandates ECP to perform its constitutional obligation under Article 218(3) of the Constitution. *Holding*, therefore, means *organizing, conducting and making arrangements* for elections and spans over the entire electoral process.

50. The constitutional nexus between the powers of the Provincial Legislature, ECP, the Local Government System and elections to the local governments, requires elaboration. This also addresses the argument made by the Acting Advocate General, Punjab that the Provincial Legislature cannot impose any obligation (addressed in the context of delimitation) on a constitutional entity like the ECP. Constitution under Article 140A has empowered the Provincial Legislature to provide for a Local Government

⁹⁶ p.165.

⁹⁷ Article 213(2).

⁹⁸ Article 218(2)(b).

System whereby political, financial and administrative responsibility and authority is devolved to the elected representative of the local governments. This power is, of course, supplemental to the residuary power enjoyed by the Provincial Legislature under the Constitution. Central to the Local Government System and intrinsic to any political devolution is the process of free and fair elections. Article 140A(2) further provides that elections to the local governments shall be held by the ECP. This sub-Article imposes a constitutional obligation on the Provincial Legislature to carve out a role for ECP in the matter of election to the local governments. Article 140A, when read compositely, provides that provincial legislature while providing for Local Government System shall entrust the elections to the local governments in the hands of the ECP i.e., leaving ECP to organize, conduct and make necessary arrangements to hold honest, just and fair elections in accordance with law and to guard against corrupt practices. This obligation has been imposed on the Provincial Legislature by the Constitution and the Province cannot shy away from this constitutional fiat while making the law for the Local Government System. The constitutional adjustment of the role and obligation of ECP, as provided under Part VIII of the Constitution, has to be fully respected by the Provincial Legislature under Article 140A. Therefore, the argument of the Acting Advocate General Punjab carries no force.

51. Harmonious reading of Article 140A and Article 222 (which reads “subject to the Constitution”) empowers the Provincial Legislature to legislate under Article 222. This further limits the Provincial Legislature in providing the stages of the electoral process, in particular, that of *delimitation*, which under Article 222(b) has to be conducted by the ECP. Even otherwise, the role and obligations of ECP under the electoral laws cannot be altered, abridged or taken away by the Provincial Legislature. Punjab Local Government Act, 2013 is an outcome of these constitutional powers vested in the Provincial Legislature alongwith its residuary powers. However, the delimitation of constituencies which is also a part of the electoral process, has been entrusted in the partisan hands of the ruling government, which to say the least, is frightfully unconstitutional.

52. The importance of electoral process is perhaps more critical in a Local

Government System than in the elections to the National or Provincial Assemblies. This is because local government structure is primarily geared to provide services to its immediate local community as opposed to legislation which is the primary function of the National and Provincial Assemblies.

53. “Local Government System” has not been defined. It is, therefore, useful to shed some light on the meaning of Local Government System. “The existence of local government has always been defended on the basis that it is a crucial aspect of the process of democratization and intensification of mass participation in the decision-making process. No political system is considered complete and democratic if it does not have a system of local government. Local government serves a two-fold purpose. The first purpose is the administrative purpose of supplying goods and services; the other purpose is to represent and involve citizens in determining specific local public needs and how these local needs can be met. Local representative government is a process that spans and connects representation and administration at local levels within local government structures...Local government is that part of the whole government of a nation or state which is administered by authorities subordinate to the state authority, but elected independently of control by the state authority, by qualified persons resident, or having property in certain localities, which localities have been formed by communities having common interests and common history. Local government is the third level of government deliberately created to bring government to the grass-roots population and gives the grass-roots population a sense of involvement in the political processes that control their daily lives. Democracy denotes a political system in which the eligible people participate actively not only in determining who governs them, but also in shaping the policy output of their government. A number of reasons have been advanced as to why a system of local government is essential. These reasons are that it is:

- (a) training ground for mass political education;
- (b) training ground for political leadership; and
- (c) that it facilitates government accountability.

The aforementioned forms a crucial part of the need for the existence of local government.⁹⁹

54. The Punjab Local Government Act, 2013 provides various components of local government system including “elections¹⁰⁰.” The preamble describes the Act to establish an elected Local Government System to devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments as envisaged under Article 140A of the Constitution. The preamble further states that the Act promotes good governance and effective delivery of services and transparent decision-making through institutionalized participation of the people at the local level. Section 2(v) defines “local government” to mean a Union Council, a Municipal Committee, a Municipal Corporation, the Metropolitan Corporation, a District Council or an Authority (which under section 2(a) means a District Education Authority and District Health Authority). Seats in a Union Council and the Municipal Committee are filled through direct election from the electoral area in the manner specified in sections 13 and 15 of the Act while the seats in the other local governments are filled indirectly through the directly elected Chairmen of the Union Councils. Union Council is one ward for the direct election of the Chairman and Vice-Chairman as joint candidates and also for one reserved seat each for a peasant, a youth member and one non-Muslim member. Union Council is divided into two wards (consisting adjoining three wards) for the two reserved seats for women, while the Union Council is divided into six wards for the election to six general seats. Similarly, Municipal Committee is divided into Wards for direct election of general members determined on the basis of population of a Municipal Committee but which shall not be less than eleven members or more than fifty members.¹⁰¹ The delimitation for the purposes of direct elections under the local government system is the delimitation of the Union Council into one, two and six wards and the delimitation of the Municipal Committee into as

⁹⁹ Belinda Havenga – The Restructuring of Local Government with Special Reference of Tshwane (Role and Purpose of Local Government Chapter-3) - University of Pretoria, October 2002.

¹⁰⁰ Chapter V – Local Government Elections (sections 18-63)

¹⁰¹ see Part-III of the First Schedule to the Act.

many wards as specified by the Government in terms of the First Schedule. The Act provides for Local Government Elections in Chapter V (sections 18 to 63) while “delimitation” for the purposes of elections is provided separately under sections 8 to 10 of the Act (reproduced in Table B for reference). ECP plays no role in delimiting the Union Councils or the Municipal Committees into Wards. Section 19 provides that the ECP shall conduct the local government elections and for this notify an election schedule. Once again the role of the ECP has been restricted to the conduct of elections, abridging the overarching and all-embracing role of ECP to organize, conduct and make arrangements for holding the elections in violation of Article 218(3) of the Constitution. Under section 21 of the Act, electoral rolls are to be prepared by the ECP and the Act further provides for the appointment of the election staff under the control of ECP. An overview of the Act shows that the constitutional role of ECP has been weaved into all the main electoral stages of the elections to the Local Government except “delimitation.” Further, section 19 of the Act describes the role of ECP to be limited to *conduct of elections* while section 21, itself allows ECP to prepare the electoral rolls covering the organizational part of the election, which precedes *conduct of elections*. There is, therefore, a disconnect between the Constitution and the provisions of the Act resulting in curtailing the constitutional role and obligations of ECP, which is not permissible.

55. A comparative historical analysis of the previous constitutions, electoral laws and the local government laws (see Table C) reveal the following:

- a. Earlier Local Government Elections have enjoyed a sub-constitutional status. The tipping point comes after 18th Constitutional Amendment (2010) when Local Government Elections attain the status of constitutional elections and are vertically aligned with the other two political structures of the State. This important constitutional development centre-stages the role of ECP in the local government elections.
- b. Election Commission of Pakistan is the apex, independent and neutral constitutional authority to hold, organize and conduct elections and no

sub-constitutional law, in particular, electoral law, can take away or abridge this constitutional power vested in the Election Commission of Pakistan.

- c. “Delimitation” of constituencies for the purposes of local government elections has by and large been conducted by a separate and neutral¹⁰² authority. Post 18th Constitutional Amendment, ECP has assumed this role as elections to the local government have moved up from the sub-constitutional to a constitutional platform.
- d. “Delimitation” is a pivotal and a substantive part of elections.
- e. No appeal or remedy is provided against the order of the delimitation authority and mostly such decisions are considered to be final.
- f. The constitutional bar on challenging an election dispute other than through an election petition is limited to the conduct of elections. The scope is restricted to that portion of election that commences after the announcement of the election schedule and ends with the announcement of results. The scope of election petitions does not permit to challenge any dispute arising out of the preparation of the electoral rolls or delimitation of the constituencies. In fact in the Constitution of 1956 [(Article 142(5))] there was a constitutional bar to challenge the order of the delimitation authority.

Revisiting our electoral jurisprudence.

56. The above discussion necessitates that we revisit our electoral jurisprudence to contextualize and qualify the extent of the popular judicial impression that “election” or “election process” commences when the “election schedule” is announced and ends with the announcement of the election results. Deeper examination of the popular case law, listed below, in the light of the above discussion, reveals that the word ‘election’ has come under discussion in these cases while considering the second part of the elections i.e., conduct of elections. These cases arise out of the interpretation

¹⁰² Degree of neutrality is debatable, as in the past the government has constituted Election Authorities comprising senior civil servants.

of the word ‘election’ under the bar contained in Article 225 of the Constitution read with the ROPA or similar constitutional bar in the previous constitutions read with a similar electoral law dealing with conduct of elections only. ROPA deals with conduct of elections and does not cover “delimitation” or the “preparation of the electoral rolls.” The part of the election process covered under ROPA is post delimitation and primarily begins after the announcement of the election schedule. It is important to reiterate that preparation of electoral rolls and delimitation are governed under separate laws i.e., The Electoral Rolls Act, 1974 and The Delimitation of Constituencies Act, 1974. Jurisprudence has thus evolved in a limited context. The cases deal with the *conduct of elections* as opposed to its *preparatory arrangements and organization*. It is axiomatic that once the election schedule has been announced it is best not to frustrate or derail the democratic process on the basis of an inter-party dispute between two opposing political candidates which can best be resolved after the elections through an election petition filed before the Election Tribunal.¹⁰³ This argument is further buttressed by another electoral principle that electorate should not be left unrepresented as courts don’t lean in favour of disenfranchisement. No such post-election remedy is available in cases of preparation of electoral rolls or delimitation. The scope of election petitions under ROPA and the Act is limited to the *conduct of elections*. The election petitions under both the laws clearly provide a remedy to a candidate (or to any person under section 76-A of ROPA) to agitate grounds before the Election Tribunal for the disenfranchisement of the returned candidate and at best election of the disputed constituency can be rendered void by the Tribunal. The allegations of corrupt or illegal practice, under both the laws, are also restricted to the election of the returned candidate. Election Petition, therefore, is not designed to address the question of electoral rolls or delimitation which are not candidate specific (as there is no candidate in the field at the time) but relate to entire electorate and any dispute in this regard has to be first decided before the election schedule is announced.

¹⁰³ There are exceptions to this also and superior Courts have interfered inspite of the bar contained in Article 225 of the Constitution - see *Rao Naeem Sarfraz v. Election Commission of Pakistan through Chief Election Commissioner and others* (PLD 2013 Lahore 675).

57. The wisdom is apparent because delimitation of constituencies pertains to the layout of the electoral landscape on which the political parties are to contest elections through their candidates. Delimitation, therefore, covers the general rules of the game, before the candidates representing political parties jump into the ring. Any dispute related to Delimitation, therefore, cannot be remedied through an election petition before the Election Tribunal.

58. None of the judgments discuss the scope of ‘election’ in the context of electoral rolls or delimitation or in the constitutional context of *to organize and make necessary arrangements for holding* fair elections.¹⁰⁴ These cases are set in post delimitation electoral period and the disputes are restricted to “conduct of elections” arising after the announcement of the election schedule. *Amirzada Khan case*¹⁰⁵ is regarding Presidential Elections and is restricted to the issue of irregular filing of nomination papers, hence pertains to conduct of elections post announcement of the election schedule. In *Haji Muhammed Afzal case*¹⁰⁶ the order of the returning officer is under challenge and pertains to the issue of retirement of a candidate from elections. It is in this context that the bar contained in Article 171 of the Constitution of 1962 (Article 225 of the existing Constitution) read with section 52 of the National and Provincial Assemblies (Election) Act, 1964 came under discussion. Once again the case pertains to conduct of elections. In the seminal *Javaid Hashmi’s case*¹⁰⁷ the august Supreme Court of Pakistan sets out to examine the meaning of the word “election” in the limited context of Article 218(3), 225 and under the provisions of ROPA. Muhammed Haleem CJ speaking for Supreme Court of Pakistan observed: “This necessitates the consideration of the meaning of the word “election” in Article 225...While considering the meaning of the word “election” the expression “conduct the election” in sub-Article (3) of Article 218 should also be taken into consideration... In a nutshell it is a self-contained enactment [ROPA] and

¹⁰⁴ Reference has been made to these words in the following judgments but not fully in the context discussed here: *Workers’ Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others v. Federation of Pakistan and w others* (PLD 2012 SC 681), *Sheikh Rashid Ahmed v. Government of Punjab and others* (PLD 2010 SC 573), *Imran Khan and others v. Election Commission of Pakistan and others* (PLD 2013 SC 120) and *Workers’ Party Pakistan through General Secretary and 6 others v. Federation of Pakistan and 2 others* (PLD 2013 S.C 406).

¹⁰⁵ *Amirzada Khan, M.N.A. v. The Chief Election Commissioner and 2 others* (PLD 1974 Lahore 178).

¹⁰⁶ *Haji Muhammed Afzal & others vs Mian Meraj Din and others* (PLD 1967 Lahore 689).

¹⁰⁷ *Election Commission of Pakistan through its Secretary v. Javaid Hashmi and others* (PLD 1989 SC 396).

the various steps taken in the process of the completion of the election as provided by the enactment are comprehended within the meaning of the word “election” and if it be the case whether an action falls within its ambit or not it can be tested on this touchstone.” In Rana Aftab Ahmed Khan’s case¹⁰⁸ the august Court once again examined the word “election” in the context of Representation of People Act, 1976 and were not required to examine it in the broader context of the constitutional role of ECP under Article 218(3) or in the context of electoral laws under Article 222 of the Constitution.

59. A.K.Brohi, in the *Fundamental Law of Pakistan* while explaining Article 140 of the late 1956 Constitution (similar to Article 218(3) of the present Constitution) writes: “The expression “organizing and conducting elections” would seem to include the taking of all steps that might be deemed necessary for securing the return of the candidates from constituencies.”¹⁰⁹ This thought is echoed in a full bench judgment of this Court reported as Muhammad Nazir Hakim v. Bukhtiar Said Muhammad and the Controlling Authority, Montgomery (PLD 1962 Lahore 421)¹¹⁰. This case pertained to the elections to the Union Committee, Pakpattan under the Basic Democracies Order, 1959 wherein challenge was thrown to the election of the respondent through a writ of *quo warranto* on the ground that he did not possess the qualification of being 25 years old on the 1st of January preceding the elections. The only question before the court was to interpret the meaning of “election.” M.R. Kayani J speaking for the court held:

“7. But while we agree that the term “election” stands for the entire process which leads step by step to a certain result, we find it difficult to hold that the age of a candidate should be determined with reference to the final stage in the process. If election is a single process from the date of publication of the electoral roll to the date on which the result of the election is declared, like a chain with a number of links, then a date “preceding the election” will be a date preceding the first link in the chain and not a date preceding the last link; for a date preceding the last link would be a date preceding the declaration of the result, and all other links in the chain of election would “precede” such date. In that case we would be defining the term “election” as “the publication of the result of the election”.

¹⁰⁸ Rana Aftab Ahmad Khan v. Muhammad Ajmal and another (PLD 2010 SC 1066).

¹⁰⁹ A.K.Brohi- *Fundamental Law of Pakistan* -1958 p.122.

¹¹⁰ per M.R.Kayani, CJ

60. Much emphasis was placed on *Surendrasinhaji Jorawarasinghji Jhala v. U. M. Bhatta, Chief Electoral Officer, Ahmedabad and others* (AIR 1969 GUJRAT 292) by the learned Acting Advocate General to underline that delimitation is a step anterior to the elections. Reliance with equal emphasis was also placed on the order of the *Pakistan Peoples' Party case* recently decided by a Division Bench of this Court. In *Surendrasinhaji Jorawarasinghji Jhala case* the grievance was that the name of the petitioner did not appear in the electoral roll. The order of the Chief Electoral Commissioner was challenged in constitutional jurisdiction under Article 226 of the Indian Constitution (similar to our Article 199) and the question arose whether the petition was barred under Article 329(b) of the Constitution (somewhat similar to our Article 225). Discussing the scope of Article 329(b) it was held that the word "election" does not entail the entire electoral process but pertains to the conduct of elections and the issue of electoral rolls which precedes the conduct of elections cannot be barred under Article 329(b). The judgment separates the different stages of election and holds that *preparation of electoral rolls* is different from the component of *conduct of elections (and not 'elections')*. Bhagwati J while discussing the scope of Article 329(b) of the Indian Constitution observed: "This Article makes a distinction between the preparation of the electoral rolls and the conduct of elections and regards the two as separate matters. The preparation of the electoral roll is obviously a stage anterior to the conduct of the election and it does not form part of the process of election."¹¹¹ The process of election referred to in this case is limited to conduct of elections and should not be construed in the expansive electoral context under our Constitution. This case primarily supports the line of reasoning in this judgment that matters of organizational nature like preparation of electoral rolls and delimitation of constituencies do not form part of the *conduct of elections* which specifically deals with the events that unfold after the announcement of the election schedule. The term "election" cannot be restricted by partially reading Article 218(3) of the Constitution but must be

¹¹¹ p.295.

viewed in the light of the high constitutional role and obligation vested in ECP under the Constitution.

61. As far as *Pakistan Peoples' Party case* is concerned, we have noticed that it is a short Order because detailed reasons have yet to be released by the learned Division Bench as per paragraph 13 of the said Order. We, therefore, do not feel the necessity to further dilate upon it.

62. Analysis of the above electoral jurisprudence shows that the word "Election" or the term "Election Process" is considered to be the process after the election schedule has been announced. However, the full scope of the word "election," has not been considered in its true constitutional context i.e., to *organize, conduct and make necessary arrangements for holding elections* under Article 218(3) of the Constitution.¹¹² Secondly, due to separate and distinct legislation for delimitation and the limited scope of dispute resolution under an election petition under ROPA, the question of delimitation has not come up in these cases. The historical jurisprudence, therefore, stands on the side and does not come in the way of the view taken by this Court in answering the constitutional questions raised in this case.

63. For the above reasons we, *inter alia*, unanimously hold as under:

- i. **The Ouster Clause under Section 10A of the Punjab Local Government Act, 2013 cannot impose fetters on the constitutional jurisdiction of this Court or the constitutional role of Election Commission of Pakistan and is therefore, *read down*, to this extent.**
- ii. **The administrative branch of this Court cannot be directed through a judicial order not to entertain and fix cases of any particular nature without providing the**

¹¹² The words "organize, conduct and arrange" have been considered, in a slightly different sense, for the first time *Workers' Party Pakistan through Akhtar Hussain, Advocate, General Secretary and 6 others v. Federation of Pakistan and w others* (PLD 2012 SC 681), *Imran Khan and others v. Election Commission of Pakistan and others* (PLD 2013 SC 120) and *Workers' Party Pakistan through General Secretary and 6 others v. Federation of Pakistan and 2 others* (PLD 2013 S.C 406).

litigant the right to access to justice and the right to place the case before a forum exercising judicial power.

iii. The view taken by the learned Single Bench in W.P.no. 15033/2013 and by the learned Division Benches in ICA nos. 346/2103 and 1029/2103 of this Court on the *ouster clause* under Section 10A of the Act is against Articles 4, 9 and 10A of the Constitution and shall not be treated as a precedent.

iv. Sections 8 to 10 of the Punjab Local Government Act, 2013 and Rules 3 to 8 of the Punjab Local Governments (Delimitation) Rules, 2013 are inconsistent with Article 218(3) read with Article 222(b) of the Constitution as they abridge and take away the constitutional role and obligation of ECP besides offending Articles 3, 4, 9, 14, 17, 19 and 25 of the Constitution. As a consequence the aforesaid provisions of the Act are declared to be unconstitutional and, therefore, struck down.

v. For the reasons given in this judgment, all these petitions are allowed and the impugned orders of Delimitation Authority and the impugned final Notifications issued by the Delimitation Officers are set aside.

Direction to ECP.

64. It is now settled that ECP being a constitutional body has powers under the Constitution to issue directions in order to hold fair elections (see: *Sheikh Rashid Ahmed v. Government of Punjab and others* (PLD 2010 SC 573). This power is not dependent on a sub-constitutional legislation. The constitutional dictate is that Election Commission of Pakistan shall hold elections to the local governments.

We, therefore, direct ECP to perform its constitutional role without further ado and hold elections to the local governments in Punjab forthwith. ECP need not to await for the legislative amendments to the Act in the light of this judgment.

65. It is an admitted position that the existing National Census in the country was last held in the year 1998 and since then an inchoate exercise was held in the year 2008 but the Census was not completed. On the other hand electoral rolls for the local government elections, prepared in the year 2013 are based on the census blocks of the incomplete Census of the year 2008. Population is a fundamental parameter for carrying out fair and equitable delimitation of the constituencies. This is a serious challenge for ECP. We are confident that ECP, will steer through it with success, ensuring that the elections to the local governments are organized and conducted honestly, justly, fairly and in accordance with law.

66. *Direction to the Provincial Government.*

The Provincial Government under Article 140A of the Constitution shall take necessary steps for carrying out amendments in the Punjab Local Government Act, 2013 in the light of the constitutional role and obligations of ECP provided under Part VIII of the Constitution, as laid down in this judgment, as soon as possible, so that democracy in the country is further strengthened.

Same order in identical petitions listed in the Schedule.

67. This judgment also decides the petitions mentioned in the Schedule, hereunder, as they also raise same constitutional, legal and factual questions.

Urdu version of the judgment.

68. Considering that the judgment elaborates the principle of “political justice” we feel that it must be accessible to the general public. Office is directed to arrange for the *Urdu* translation of the judgment in terms of Articles 28 and 251 of the Constitution. Support is drawn from *Munir Hussain Bhatti, Advocate and others v. Federation of Pakistan and another (PLD 2011 SC 407)*. It is clarified that the *Urdu* version is only to enhance accessibility and readership but will not be quoted as a precedent.

69. Before leaving the judgment we acknowledge, with gratitude, the material assistance rendered by the *amici curiae* and the young research officers of this Court¹¹³.

70. This judgment furnishes our detailed reasons for the verbal order announced in Court on 31-12-2013.

(Syed Mansoor Ali Shah)
Judge

(Atir Mahmood)
Judge

(Muhammad Farrukh Irfan Khan)
Judge

Iqbal/*

Judgment released on 03.02.2014

APPROVED FOR REPORTING

¹¹³ Lahore High Court Research Centre (LHCRC).

TABLE-BThe Punjab Local Government Act, 2013Section 8 Delimitation of Union Councils:

- (1) A Union Council shall be an area consisting of one or more revenue estates or, in the case of an area where revision of settlement under the law has not taken place, one or more census villages or, in the case of an urban area, a census block or blocks as delimited for purposes of the last preceding census or a census block and a revenue estate, notified as such by the Government.
- (2) As far as possible:
 - (a) the area of a Union Council shall be a territorial unity;
 - (b) the boundaries of a Union Council shall not cross the limits of the Metropolitan Corporation, a Municipal Corporation.
 - (c) the population of Union Councils within a local government shall be uniform.
- (3) The Government shall, in the prescribed manner, delimit a 'Union Council into six wards for the election of members on general seats and into two wards, consisting of three adjoining wards of the Union Council, for the election of the two seats reserved for women.
- (4) A ward shall, as far as possible, consist of a part of a village, one or more adjoining villages and, in case of an urban area, a part of a census block, census block or adjoining census blocks and, as far as possible, the population of wards shall be uniform.

Section 9 Delimitation of wards in Municipal Committees:

- (1) The Government shall, in the prescribed manner, delimit a Municipal Committee into wards for election of members of the Municipal Committee on general seats.
- (2) For purposes of delimitation of a Municipal Committee, a ward shall, as far as possible, consist of a part of a census block, a census block or adjoining census blocks and the population of wards within a Municipal Committee shall be uniform.

Section 10 Waiver of conditions:

The Government may in a specific case and for reasons to be recorded in writing, waive the conditions of delimitation mentioned in section 8.

Section 10A Finality of delimitation:

A Court, officer or authority shall not review or correct any delimitation of a Union Council or ward after the notification of the election schedule.

Section 19 Election Commission to conduct elections:

- (1) The Election Commission shall conduct the local government elections and, for the purpose, shall, by notification in the official Gazette, declare the election schedule for election under this Act.
- (2) The Election Commission may, by order in the Official Gazette, make provisions for the conduct of local government elections if no provisions or no sufficient provisions have been made under this Act or the rules.

Section 21 Electoral rolls:

- (1) A person shall be entitled to be enrolled as a voter if he:
 - (a) is a citizen of Pakistan;
 - (b) is not less than eighteen years of age; and
 - (c) fulfils such other conditions as the Election Commission may specify.
- (2) The electoral rolls for the local government elections shall be prepared or adapted or adopted by the Election Commission in such manner as it may deem appropriate and the electoral rolls shall not be invalid by reason of any erroneous description in the electoral rolls of any person listed or of an omission of the name of any person entitled to be enrolled or of inclusion of the name of any person not so entitled.
- (3) Every person whose name is entered in the electoral roll shall be entitled to cast a vote at the direct elections of the local government.

(Syed Mansoor Ali Shah)
Judge

(Atir Mahmood)
Judge

(Muhammad Farrukh Irfan Khan)
Judge

TABLE-C

Constitutions	Related Electoral Laws	Related Local Government Laws
<p>Constitution of the Islamic Republic of Pakistan, 1956</p> <p>Part-VIII – Elections Articles 137 – 147</p> <p><u>Article 140</u></p> <p>The Election Commission shall be charged with the duty of—</p> <p>(a) preparing electoral rolls for elections to the National Assembly and the Provincial Assemblies, and revising such rolls annually ; and</p> <p>(b) organizing and conducting elections to the National Assembly and the Provincial Assemblies.</p> <p><u>Article 142 (5)</u></p> <p><u>The validity of any thing done by or under the authority of the Delimitation Commission shall not be called in question in any court.</u></p> <p><u>Article 144</u> Subject to the provisions of the Constitution, Parliament may by Act provide for—</p> <p>(a) the delimitation of constituencies, the preparation of electoral rolls, the determination of objections and the commencement of electoral rolls;</p> <p>(b) the conduct of elections and election petitions; the decision of doubts and disputes arising in connection with elections ;</p> <p>(c) matters relating to corrupt practices and other offences in connection with elections ; and</p> <p>(d) all other matters necessary for the due constitution of the National Assembly and Provincial Assemblies; but no such law shall have the effect of taking away or</p>		

Constitutions	Related Electoral Laws	Related Local Government Laws
<p>abridging any of the powers of the Election Commission under this Part.</p> <p><u>Article 146</u></p> <p>No election to the National Assembly or a Provincial Assembly shall be called in question except by an election petition presented to such authority and in such manner as may be provided by Act of Parliament.</p>		
		<p>The Basic Democracies Order, 1959¹¹⁴</p> <p><u>Section 3 (16)</u> “Election Commission” means the Election Commission appointed by the President.</p> <p><u>Section 17 Wards:</u> For the purpose of election to a Union Council or to a Town or Union Committee, the Union or Town shall be divided into as many wards as are necessary under the provisions of this Order and the rules.</p> <p>Basic Democracies (Amendment), Act 1965¹¹⁵</p> <p>West Pakistan Basic Democracies Election Rules, 1959</p> <p><u>Rule 2 (9)</u> “Election Authority” means an authority constituted under these rules to organize, conduct and supervise elections to Basic Democracies.</p> <p><u>Rule 3 (1)</u> Government may constitute an Election Authority which shall consist of such number of members as may be specified by Government. The Chairman and members of the Election Authority shall be appointed by Government. The Election Authority shall be responsible for the organization, conduct and supervision of elections to</p>

¹¹⁴ President’s Order No.18 of 1959 dated 27th October 1959.

¹¹⁵ Act XVI of 1965 dated 14.08.1965.

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>Basic Democracies in the Province of West Pakistan. In the performance of its functions under these rules the Election Authority may be assisted by such number of Provincial Officers as may be appointed by Government from time to time.</p> <p><u>Rule 3 (2)</u> Subject to the general supervision of the Election Authority the Commissioner shall be responsible for the organization, conduct and supervision of elections to Basic Democracies within his Division. In the performance of his functions under these rules, the Commissioner may be assisted by a Divisional Election Officer.</p> <p><u>Rule 3 (3)</u> Subject to the general supervision of the Election Authority and the Commissioner, the Collector shall be responsible for the organization, conduct, and supervision of elections to Basic Democracies within his district. In the performance of his functions under these rules, the Collector may be assisted by a District Election Officer.</p> <p><u>Rule 5 (6)</u> The Commissioner may divide a Union for a rural or urban area or a Town into wards or declare the entire Union or Town a Ward for the purposes of election and in the demarcation of Wards the following principles shall be observed, namely -</p> <p>(a) that the area comprised in a ward shall be contiguous as far as possible;</p> <p>(b) that a ward shall return such number of members as may be fixed by the Commissioner;</p> <p>(c) that where a ward is a single-member ward its population shall not be less than 400 or more than 1,200; and</p> <p>(d) where the ward is a multiple-member ward, there</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>shall be one seat for every unit of 800 population and where the total population is not exactly divisible by 800 the remainder shall be disregarded if it is less than 400 and shall be counted as 800 if it is 400 or more:</p> <p>Provided that the Commissioner may by order and for reasons to be recorded vary the number of seats to be allotted to any ward in such manner as the local circumstances may require.</p> <p><u>Rule 55 Election Petition</u></p> <p>(1) No election shall be called in question except by an election petition presented in accordance with these rules.</p> <p>(3) Where a petitioner has been a contesting candidate, he shall join as respondents to his petition all the other contesting candidates, and a copy of the election petition shall be served upon each respondent.</p> <p>(4) An election petition shall –</p> <p>(a) contain a precise statement of the material facts on which the petitioner relies;</p> <p>(b) set forth full particulars of any corrupt practices; material irregularity; offence or other illegal act alleged by the petitioner, including as full a statement as possible of the names of the persons alleged to have committed such practices or acts and the date and place of the commission of every such corrupt practice, material irregularity, offence or other illegal act.</p> <p>(5) In the election petition, the petitioner may claim any of the following declaration -</p> <p>(a) that the election of the returned candidate is void, or</p> <p>(b) that the election of the returned candidate is void and</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>that the petitioner or some other person has been duly elected; or</p> <p>(c) that the election as a whole is void.</p> <p>(8) An election petition may be presented by any elector or candidate.</p> <p><u>Rule 56 Election Tribunal</u></p> <p>(1) The election petitions presented under these rules shall be enquired into and tried by the Election Tribunal.</p> <p><u>Rule 59 Grounds for declaring an election void.-</u></p> <p>The Election Tribunal shall declare an election to be void if it is satisfied that -</p> <p>(a) the nomination of the returned candidate was invalid;</p> <p>(b) on the nomination day the returned candidate was not qualified, for or was disqualified from, being elected for the ward;</p> <p>(c) the failure of any person to comply with the provisions of the Order or these rules has materially affected the results of the election; or</p> <p>(d) the result of the election has been materially affected by the improper acceptance or rejection of any nomination paper; or</p> <p>(e) the improper reception or refusal of any vote, or the reception of any vote which should not have been received, has materially affected result of the election; or</p> <p>(f) the election of the returned candidate has been procured or induced by any corrupt practice, or illegal act;</p> <p>(g) a corrupt practice or illegal act has been committed by the returned candidate or his authorized agent or by any</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>other person with the connivance of the candidate or his authorized agent; or</p> <p>(h) corrupt practices, material irregularities, illegal payments, employments, or hirings have so extensively prevailed at the election that they may be reasonably supposed to have affected the result.</p>
<p>Constitution of Islamic Republic of Pakistan, 1962</p> <p>Part-VII - Elections</p> <p>Articles 147 – 173-A</p> <p><u>Article 155</u></p> <p>(1) Each Province shall, in accordance with law, be divided into not less than Forty thousand territorial units, which shall be known as electoral units.</p> <p>(2) The number of electoral units in each Province shall be the same.</p> <p><u>Article 171</u></p> <p>(1) Subject to Clause (2) of this Article, provision may be made by law—</p> <p>(a) for disputes arising in connection with the counting of votes at an election or referendum required to be held under this Constitution to be finally determined by the Commissioner or an Election Commission ; and</p> <p>(b) for other disputes arising in connection with such an election or referendum to be finally determined by a tribunal established for that purpose, and no dispute arising in connection with such an election or referendum shall be decided otherwise than under such a law, and the validity of such an election or referendum shall not be called in question except in accordance with such a law.</p>	<p>National and Provincial Assemblies (Elections) Act, 1964¹¹⁶</p> <p><u>Section 2(6).</u> “Commissioner” means the Election Commissioner appointed under Article 147.</p> <p><u>Section 3. Delimitation of Constituencies.</u></p> <p>(1) As soon as may be after the delimitation of electoral units under the Electoral College Act, 1964 (IV of 1964), the Commissioner shall, after making such enquiries and examining such records as he may deem necessary and after considering such representations as he may have received, arrange the electoral units of each Province—</p> <p>(a) into one hundred and fifty groups for the purpose of delimiting the Provincial constituencies under clause (1) of Article 160 ; and</p> <p>(b) into seventy-five groups for the purpose of delimiting the Central constituencies under clause (1) of Article 161;</p> <p>having regard, so far as practicable, to distribution of population and administrative convenience, so that each such constituency is an undivided area, and shall publish, in the official Gazette, a preliminary list of constituencies, showing the electoral units proposed to be included in each such</p>	<p>Electoral College Act, 1964¹¹⁷</p> <p><u>Section 2 (3)</u></p> <p>“Commissioner” means the Chief Election Commissioner appointed under Article 147 ;</p> <p><u>Section 4. Division of a Province into electoral units. -</u></p> <p>For the purpose of Article 155, each Province shall be divided into forty thousand electoral units in accordance with the provisions of this Act.</p> <p><u>Section 5-Delimitation Officer. -</u></p> <p>The Commissioner may appoint from amongst the officers of the Central Government or a Provincial Government as many Delimitation Officers as he may deem necessary for the delimitation of electoral units under this Act.</p> <p><u>Section 6-Delimitation of electoral units.-</u></p> <p>(1) The electoral units shall be delimited by the Delimitation Officers under the superintendence, direction and control of the Commissioner.</p> <p>(2) The electoral units within an area shall be delimited having regard to territorial unity and, so far as practicable, to distribution of population and administrative convenience.</p> <p>(3) A Delimitation Officer</p>

¹¹⁶ Act VII of 1964 dated 26.08.1964.

¹¹⁷ Act IV of 1964 dated 18.04.1964.

Constitutions	Related Electoral Laws	Related Local Government Laws
<p>(2) When a person has been declared to have been elected as President, the validity of the election shall not be called in question in any manner before or by any Court or authority whatsoever.</p> <p>(3) The validity of anything done by the Commissioner under Article 160, 161 or 162 shall not be called in question in any manner before or by any Court or authority whatsoever.</p>	<p>constituency together with a notice inviting objections or suggestions within a period specified therein.</p> <p>(2) The Commissioner shall, after hearing and considering the objections or suggestions, if any, received by him, makes such amendments, alterations or modifications in the preliminary lists published under sub-section (1) as he may consider necessary and may also make such other amendments, alterations or modifications in the said lists as may be necessary for correcting any error or omission.</p> <p>(3) After making amendments, alterations or modifications, if any, under subsection (2), the Commissioner shall publish in the official Gazette the final list of constituencies showing the electoral units included in each such constituency.</p> <p><u>Section 52. Election not to be questioned except by election petition or appeal. -</u></p> <p>(1) Save as provided in Section 53, no election shall be called in question except by an election petition under section 57.</p> <p>(2) No question that can be raised in an appeal under section 53 shall be raised by an election petition or before any Court or authority whatsoever, nor shall any question that can be raised by an election petition be raised before any such Court or authority.</p> <p><u>Section 53. Appeal.</u></p> <p>(1) A contesting candidate who is aggrieved by any proceeding under section 38 relating to the count may prefer an appeal challenging the count to the Commissioner.</p> <p>(2) An appeal under subsection (1) shall be made in</p>	<p>may, for the purpose of delimiting the electoral units, make such enquiries and examine such records as he may deem necessary and consider such representations as may be received by him, and shall publish in the prescribed manner a preliminary list of electoral units specifying the areas proposed to be included in each such unit together with a notice inviting objections or suggestions, within a prescribed period.</p> <p>(4) The objections or suggestions, if any, received under subsection (3) shall be disposed of in such manner as may be prescribed.</p> <p>(5) The Delimitation Officer shall make such amendments, alterations or modifications in the preliminary list published under subsection (3) as may be required by any decision on any objection or suggestion and may also make such other amendments, alterations or modifications in the said list as may be necessary for correcting any error or omission.</p> <p>(6) After making amendments, alterations or modifications, if any, under subsection (5), the Delimitation Officer shall publish in the prescribed manner the final list of electoral units specifying the areas included in each such unit.</p> <p><u>Section 14 - Time for holding election. -</u></p> <p>(1) A general election shall be held—</p> <p>(a) for the purpose of constituting the first Electoral College under this Act, as soon as may be after the electoral rolls for the electoral units have been prepared under Chapter IV ; and</p> <p>(b) for re-constituting the Electoral College after the</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>such form and presented in such manner and within such time as may be prescribed.</p> <p>(3) No appeal shall be received unless a sum of two hundred rupees is deposited in the manner provided in section 13.</p> <p>(4) The Commissioner may, after giving the parties concerned an opportunity of being heard, --</p> <p>(a) dismiss the appeal ; or</p> <p>(b) if it is not so dismissed, determine the result of the election on the count of valid votes as corrected and make such consequential orders as may be necessary.</p> <p><u>Section 57. Election petition</u></p> <p>(1) Subject to the provisions of section 52, any candidate may make an election petition challenging an election for which he was a candidate on one or more of the grounds mentioned in section 72.</p> <p>(2) An election petition shall be presented to the Commissioner within such time as may be prescribed and shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury in favour of the Commissioner as security for the cost of the petition a sum of seven hundred and fifty rupees.</p> <p><u>Section 58. Parties to the petition.</u> The petitioner shall join as respondents to his election petition.</p> <p>(a) all contesting candidates ; and</p> <p>(b) any other candidate against whom allegations, if any, of any corrupt or illegal practice are made,</p>	<p>expiration of the term of the previous Electoral College, at least thirty days prior to such expiration.</p> <p>(2) A bye-election shall be held, as far as practicable, within ninety days of the occurrence of a vacancy:</p> <p>Provided that it shall not be necessary to hold a bye-election to fill a vacancy occurring within one hundred and eighty days immediately preceding the day on which the term of the Electoral College is due to expire.</p> <p><u>Section 15 - Notification for election.</u> - For the purpose of an election to constitute the Electoral College, the Commissioner shall call upon the electoral units, by notification in the official Gazette, to elect from each electoral unit, before such date as may be specified therein, a person as a member of the Electoral College.</p> <p><u>Section 58 - Election petitions.</u> -</p> <p>(1) No election shall be called in question except by an election petition under subsection (2).</p> <p>(2) Any candidate may make an election petition challenging the election at which he was a candidate.</p> <p>(3) An election petition in respect of an election from an electoral unit shall be presented, in such manner as may be prescribed, to the Election Tribunal appointed under Section 59.</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>and shall serve personally or by registered post on each such respondent a copy of his petition.</p> <p><u>Section 59. Contents of petition.</u></p> <p>(1) Every election petition shall contain—</p> <p>(a) a precise statement of the material facts on which the petitioner relies ;</p> <p>(b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice or illegal act and the date and place of the commission of such practice or act ; and</p> <p>(c) the relief claimed by the petitioner.</p> <p>(2) A petitioner may claim as relief any of the following declarations, namely:-</p> <p>(a) that the election of the returned candidate is void ;</p> <p>(b) that the election of the returned candidate is void and that the petitioner or some other person has been duly elected ; or</p> <p>(c) that the election as a whole is void.</p> <p>(3) Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Act V of 1908), for the verification of pleadings.</p> <p><u>Section 71. Decision of the Tribunal.</u> The Tribunal may, upon the conclusion of the trial of an election petition, make an order—</p> <p>(a) dismissing the petition</p>	

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>;</p> <p>(b) declaring the election of the returned candidate to be void;</p> <p>(c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected; or</p> <p>(d) declaring the election as a whole to be void.</p> <p><u>Section 72.</u></p> <p><u>(1) Grounds for decision.</u> The Tribunal shall declare the election of the returned candidate to be void if it is satisfied that—</p> <p>(a) the nomination of the returned candidate was invalid; or</p> <p>(b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected to the seat in question; or</p> <p>(c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or</p> <p>(d) a corrupt or illegal practice has been committed by the returned candidate or his agent or by any other person with the connivance of the candidate or his election agent:</p>	
	<p>National and Provincial Assemblies (Elections) Ordinance, 1970¹¹⁸</p> <p><u>Section 2.</u></p> <p>(iv) “Commission” means the Election Commission constituted under the Legal Framework Order, 1970;</p> <p>(v) “Commissioner” means the Chief Election Commissioner appointed or deemed to be appointed under the Electoral Rolls Order, 1969.</p> <p><u>Section 50. Election petition</u></p>	<p>The Punjab People’s Local Government Ordinance, 1972 (VIII of 1972).</p> <p><u>Section 18. Delimitation of electoral units. –</u></p> <p>The electoral units for all the People’s Local Councils shall be delimited in the prescribed manner.</p>

¹¹⁸ Ordinance XIII of 1970 dated 10.07.1970.

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>(1) No election shall be called in question except by an election petition made by a candidate for that election.</p> <p>(2) An election petition shall be presented to the Commissioner within such time as may be prescribed and shall be accompanied by a receipt showing that the petitioner has deposited at any branch of the National Bank of Pakistan or at a Government Treasury or sub-Treasury in favour of the Commissioner as security for the costs of the petition a sum of one thousand rupees.</p> <p><u>Section 51. Parties to the petition:</u></p> <p>The petitioner shall join as respondents to his election petition –</p> <p>(a) all contesting candidates; and</p> <p>(b) any other candidate against whom any allegation, if any, of any corrupt or illegal practice is made, and shall serve personally or by registered post on each such respondent a copy of his petition.</p> <p><u>Section 52. Contents of petition:</u></p> <p>(1) Every election petition shall contain -</p> <p>(a) a precise statement of the material facts on which the petitioner relies;</p> <p>(b) full particulars of any corrupt or illegal practice or other illegal act alleged to have been committed, including as full a statement as possible of the names of the parties alleged to have committed such corrupt or illegal practice or act and the date and place of the commission of such practice or act; and</p> <p>(c) the relief claimed by</p>	

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>the petitioner.</p> <p>(2) A petitioner may claim as relief any of the following declarations, namely –</p> <p>(a) that the election of the returned candidate is void;</p> <p>(b) that the election of the returned candidate is void and that the petitioner or some other person has been duly elected; or</p> <p>(c) that the election as a whole is void.</p> <p>(3) Every election petition and every schedule or annex to that petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908, for the verification of pleadings.</p> <p><u>Section 64. Decision of the Tribunal:</u></p> <p>(1) The Tribunal may, upon the conclusion of the trial of an election petition, make an order -</p> <p>(a) dismissing the petition;</p> <p>(b) declaring the election of the returned candidate to be void;</p> <p>(c) declaring the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected; or</p> <p>(d) declaring the election as a whole to be void.</p> <p>(2) Save as provided in subsection (3), the decision of a Tribunal on an election petition shall be final.</p> <p>(3) Any person aggrieved by a decision of the Tribunal, may within thirty days of the announcement of the decision, appeal to the High Court on any of the grounds enumerated in section 100 of the Code of</p>	

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>Civil Procedure, 1908 and the decision of the High Court on such appeal shall be final, and shall not be subject to appeal to the Supreme Court. Every such appeal shall be heard by a Division Bench of two Judges of the High Court.</p> <p><u>Section 65. Ground for declaring election of returned candidate void.</u></p> <p>(1) The Tribunal shall declare the election of the returned candidate to be void if it is satisfied that -</p> <p>(a) the nomination of the returned candidate was invalid; or</p> <p>(b) the returned candidate was not, on the nomination day, qualified for, or was disqualified from, being elected as a member; or</p> <p>(c) the election of the returned candidate has been procured or induced by any corrupt or illegal practice; or</p> <p>(d) a corrupt or illegal practice has been committed by the returned candidate or his election agent or by any other person with the connivance of the candidate or his election agent.</p> <p>(2) The election of a returned candidate shall not be declared void on the ground -</p> <p>(a) that any corrupt or illegal practice has been committed if the Tribunal is satisfied that it was not committed by, or with the consent or connivance of that candidate or his election agent and that the candidate and the election agent took all reasonable precaution to prevent its commission; or</p> <p>(b) that any of the other contesting candidates was, on the nomination day, not qualified for, or was disqualified from, being elected as a member.</p>	

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p><u>Section 66. Ground for declaring a person other than a returned candidate elected –</u> The Tribunal shall declare the election of the returned candidate to be void and the petitioner or any other contesting candidate to have been duly elected, if it is so claimed by the petitioner or any of the respondents and the Tribunal is satisfied that the petitioner or such other contesting candidate was entitled to be declared elected.</p> <p><u>Section 67. Ground for declaring election as a whole void -</u> The Tribunal shall declare the election as a whole to be void if it is satisfied that the result of the election has been materially affected by reason of –</p> <p>(a) the failure of any person to comply with the provisions of this Ordinance and the rules; or</p> <p>(b) the prevalence of extensive corrupt or illegal practice at the election.</p> <p>The Delimitation of Constituencies Order 1970¹¹⁹</p> <p><u>Article 2.</u></p> <p>(a) “Commission” means the Delimitation Commission constituted under Article 4;</p> <p><u>Article 4. Constitution of Delimitation Commission---</u></p> <p>(1) For the purpose of this Order, the President shall constitute a Delimitation Commission consisting of the following members, namely –</p> <p>(a) the Chief Election Commissioner appointed or deemed to be appointed under the Electoral Rolls Order, 1969 (P. O. No. 6 of 1969), who shall be the Chairman of the Commission;</p> <p>(b) two other members,</p>	

¹¹⁹ President’s Order 3 of 1970 dated 22.04.1970.

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>each being a Judge of a High Court, appointed by the President after consultation with the Chief Justice of that Court.</p> <p>(2) The Commission shall continue to function until it is, by order or the President dissolved.</p> <p>(3) The Chairman and other members of the Commission shall be entitled to such immunities and privileges as the President may determine.</p> <p><u>Article 9.</u> Validity of act of Commission not questionable.---The validity of the delimitation or formation of any constituency, or of any proceedings taken or anything done by or under the authority of the Commission, under this Order shall not be called in question in any Court.”¹²⁰</p>	
<p>The Constitution of the Islamic Republic of Pakistan, 1973</p>	<p>The Delimitation of Constituencies Act, 1974¹²¹</p> <p><u>Section 2.</u></p> <p>(b) “Commission” means the Election Commission constituted under Article 218.</p> <p>(c). “population” means the population in accordance with the last preceding census officially published;</p> <p><u>Section 3.</u></p> <p>Commission to delimit constituencies.--- The Commission shall delimit territorial constituencies for elections to the National Assembly and to each Provincial Assembly in accordance with the provisions of the Constitution and this Act.</p> <p><u>Section 9.</u> Principles of</p>	<p>The Punjab Local Government Act, 1975 (XXXIV of 1975)</p> <p><u>Section 23. Election Authority.</u></p> <p>(1) Government may appoint a Punjab Local Council Election Authority for conducting elections to the Local Councils.</p> <p>(2) Election Authority shall exercise such powers and perform such functions as may be prescribed.</p> <p>The Punjab Local Government Ordinance, 1979¹²³</p> <p><u>Section 3 (1) In the Ordinance, unless the context otherwise requires –</u></p> <p>(xi) ‘electoral unit’ means a portion of a local area from</p>

¹²⁰ Delimitation of Constituencies Order, 1970 (PLD 1970 Central and Provincial Statutes).

¹²¹ Act No.XXXIV of 1974 dated 08.05.1974.

¹²³ Punjab Ordinance No.VI of 1979 dated 31.07.1979.

Constitutions	Related Electoral Laws	Related Local Government Laws
	<p>delimitation.---(1) All constituencies for general seats shall, as far as practicable, be delimited having regard to the distribution of population in geographically compact areas, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies:</p> <p>Provided, that for the purpose of delimiting constituencies for the general seats for the Federally Administered Tribal Areas two or more separate areas may be grouped into one constituency.</p> <p>(2) As far as may be the constituencies for election to the same Assembly shall be equal among themselves in population.</p> <p><u>Section 11.</u> Bar of jurisdiction.---The validity of the delimitation of any constituency, or of any proceedings taken or anything done by or under the authority of the Commission, under this Act shall not be called in question in any court.”</p> <p>The Representation of People Act, 1976</p> <p>Electoral Rolls Act, 1974¹²²</p> <p>Electoral Rolls Rules, 1974</p>	<p>which one or more than one member shall be elected.</p> <p><u>Section 14. Electoral units. -</u></p> <p>(1) Save as otherwise provided, a local area shall be divided in the prescribed manner into such number of electoral units as may be determined by the Election Authority for the purpose of election of members of a local council.</p> <p>(2) All electoral units for Muslim seats shall, as far as practicable, be delimited having regard to the distribution of population, including non-Muslims, geographical compactness, existing boundaries of administrative units, facility of communications and public convenience.</p> <p>(3) An electoral unit may be single member or multi-member, as may be determined by the Election Authority:</p> <p>Provided that, in the case of election of non-Muslim members, the entire local area of a local council shall form one electoral unit.</p> <p>(4) As far as may be, single-member electoral units for election to the same local council shall be equal among themselves in population.</p> <p><u>Section 15. Election Authority</u></p> <p>(1) Government shall appoint an Election Authority for conducting elections to local councils.</p> <p><u>Section 16. Assistance to Election Authority.</u> It shall be the duty of all executive authorities in the Province and all local authorities under the administrative control of Government to assist the Election Authority in the performance of its functions.</p>

¹²² Act No.XXI of 1974 dated 22.04.1974.

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p><u>Section 17. Election Authority to ensure fair elections, etc.</u> The Election Authority may issue such instructions and exercise such powers including the power to review an order passed by an officer under the Ordinance or the rules, and make such consequential order as may in its opinion be necessary for ensuring that an election is conducted honestly, justly and fairly and in accordance with the provisions of the Ordinance and the rules.</p> <p><u>Section 23. Conduct of Elections</u></p> <p>(1) Elections to local councils shall be conducted in such manner as may be prescribed.</p> <p>(2) Government may also provide for offences relating to elections to local councils, the penalties to be imposed for such offences and the procedure to be followed for the trial of such offences.</p> <p><u>Section 24.</u></p> <p>(3) the decision of the Tribunal on an election petition shall be final.</p> <p>The Punjab Local Councils (Election) Rules, 1979¹²⁴</p> <p><u>Rule 2 (1) (e)</u> 'Election Authority' means an Election Authority appointed under section 15;</p> <p><u>Rule 4 – Appointment of Delimitation Officers, etc. -</u></p> <p>(1) The Election Authority may appoint from amongst the persons in the service of Pakistan or a Local Authority, as many Delimitation Officers and Assist Delimitation Officers, as it may deem necessary for the delimitation of Local Areas into electoral units or for the revision of such delimitation.</p>

¹²⁴ Notified vide Notification dated 6th August 1979.

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>(2) An Assistant Delimitation Officer shall assist the Delimitation Officer in the performance of his functions under the Ordinance and the rules framed there-under and may, subject to such instructions as may be given in this behalf by the Election Authority, perform, under the control of the Delimitation Officer, the functions of the Delimitation Officer.</p> <p><u>Rule 5 – Delimitation of Electoral Units. -</u></p> <p>(1) The electoral units of a local area as may have been determined by the Election Authority shall be delimited by the Delimitation Officer under the superintendence, direction and control of the Election Authority.</p> <p>(2) A Delimitation Officer may, for the purpose of delimiting the electoral units make such inquiries and examine such record as he may deem necessary and consider such representations as may be received by him.</p> <p>Punjab Local Government Act 1996 (VII OF 1996):</p> <p><u>Section 13. Delimitation of electoral units. -</u></p> <p>(1) Electoral units as determined by the Election Authority under sections 8 and 9 shall be delimited in the prescribed manner for the purpose of election of Muslim and non-Muslim members of a local council:</p> <p>Provided that the Election Authority may in the process of delimitation allow such variations in the population of electoral units of a local council as it may consider necessary.</p> <p>(2) All electoral units for Muslim seats shall, as far as practicable, be delimited having regard to the distribution of population,</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>including non-Muslims, geographical compactness, existing boundaries of administrative units, facility of communications and public convenience.</p> <p>(3) All electoral unit for non Muslim seats shall be delimited as far as practicable in accordance with the provisions of subsection (2).</p> <p>(4) An electoral unit may be single member or multi-member, as may be determined by the Election Authority:</p> <p>Provided that village panchayats shall have multi member electoral units:</p> <p>Provided further that ward councils may have single or multiple member electoral units depending upon determination in this regard by Government.</p> <p>(5) As far as may be, single member electoral units for election to the same local council shall be equal among themselves in population.</p> <p><u>Section 14. Election Authority.</u></p> <p>(1) Government shall appoint an Election Authority for conducting elections to local councils.</p> <p>(2) The Election Authority shall consist of such number of members being not less than three as may be determined by Government.</p> <p>(3) The Election Authority shall exercise such powers and perform such functions as may be prescribed.</p> <p>(4) No person shall be appointed as Chairman unless he is, or has been, a judge of the High Court.</p> <p>(5) A member of the Election Authority shall be a person who is or has been in the Service of Pakistan in BS-19</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>or above.</p> <p>(6) Notwithstanding anything contained in subsections (2) and (4) Government may reconstitute the Election Authority after the elections to the local councils have been held and the reconstituted Election Authority may have such number of members and possess such qualifications and experience as the Government may consider necessary.</p> <p>(7) The Election Authority shall, subject to the provisions of this Act and the rules, regulate its own procedure.</p> <p>(8) The Election Authority may exercise its powers and perform its functions notwithstanding a vacancy in the office of any one of its members or the Chairman or the fact that any of its members or the Chairman is, for any reason, unable to attend its proceedings and the decision taken by the members present shall have the effect of the decision of the Election Authority.</p> <p>(9) The Election Authority may authorise its members jointly or individually to exercise and perform all or any of its power and functions under this Act and the rules and the decision taken by a member or members shall have the effect of the decision of the Election Authority.</p> <p>(10) The Election Authority may appoint officers and servants on such terms and conditions and possessing such qualifications as it may deem fit, for the purpose of performing its functions under the Act and the rules.</p> <p><u>Section 18. Contempt of Election Authority.</u> - Any proceeding before the Election Authority shall be deemed to be a judicial proceeding within the meaning of section 228 of the Pakistan Penal Code, 1860 (XLV of 1860) and the</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
		Election Authority shall be deemed to be a Court within the meaning of sections 476 and 480 of the Code of Criminal Procedure, 1898 (V of 1898).
<p>The Constitution of the Islamic Republic of Pakistan, 1973 Post Constitution 18th Amendment Act, 2010 w.e.f. 19.04.2010 Part VIII-Elections Articles 213 – 226</p>	<p>The Representation of People Act, 1976 Electoral Rolls Act, 1974 Electoral Rolls Rules, 1974</p>	<p>The Punjab Local Government Act, 2013¹²⁵</p> <p><u>Section 8. Delimitation of Union Councils. -</u></p> <p>(1) A Union Council shall be an area consisting of one or more revenue estates or, in the case of an area where revision of settlement under the law has not taken place, one or more census villages or, in the case of an urban area, a census block or blocks as delimited for purposes of the last preceding census or a census block and a revenue estate, notified as such by the Government.</p> <p>(2) As far as possible:</p> <p>(a) the area of a Union Council shall be a territorial unity;</p> <p>(b) the boundaries of a Union Council shall not cross the limits of the Metropolitan Corporation, a Municipal Corporation.</p> <p>(c) the population of Union Councils within a local government shall be uniform.</p> <p>(3) The Government shall, in the prescribed manner, delimit a Union Council into six wards for the election of members on general seats and into two wards, consisting of three adjoining wards of the Union Council, for the election of the two seats reserved for women.</p> <p>(4) A ward shall, as far as possible, consist of a part of a village, one or more adjoining villages and, in case of an urban area, a part of a census block, census block or adjoining census blocks and, as far as possible, the</p>

¹²⁵ Act No.XVIII of 2013 dated 23.08.2013.

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>population of wards shall be uniform.</p> <p><u>Section 9. Delimitation of wards in Municipal Committees. -</u></p> <p>(1) The Government shall, in the prescribed manner, delimit a Municipal Committee into wards for election of members of the Municipal Committee on general seats.</p> <p>(2) For purposes of delimitation of a Municipal Committee, a ward shall, as far as possible, consist of a part of a census block, a census block or adjoining census blocks and the population of wards within a Municipal Committee shall be uniform.</p> <p><u>Section 10. Waiver of conditions. -</u> The Government may in a specific case and for reasons to be recorded in writing, waive the conditions of delimitation mentioned in section 8.</p> <p><u>Section 10A. Finality of delimitation. -</u> A Court, officer or authority shall not review or correct any delimitation of a Union Council or ward after the notification of the election schedule.</p> <p><u>Section 21. Electoral rolls. -</u></p> <p>(1) A person shall be entitled to be enrolled as a voter if he:</p> <p>(a) is a citizen of Pakistan;</p> <p>(b) is not less than eighteen years of age; and</p> <p>(c) fulfils such other conditions as the Election Commission may specify.</p> <p>(2) The electoral rolls for the local government elections shall be prepared or adapted or adopted by the Election Commission in such manner as it may deem appropriate and the electoral rolls shall not be invalid by reason of any</p>

Constitutions	Related Electoral Laws	Related Local Government Laws
		<p>erroneous description in the electoral rolls of any person listed or of an omission of the name of any person entitled to be enrolled or of inclusion of the name of any person not so entitled.</p> <p>(3) Every person whose name is entered in the electoral roll shall be entitled to cast a vote at the direct elections of the local government.</p>

(Syed Mansoor Ali Shah)
Judge

(Atir Mahmood)
Judge

(Muhammad Farrukh Irfan Khan)
Judge

Iqbal/*

SCHEDULE

Sr. #	Case Number
1.	W.P. No.31705/2013
2.	W.P. No.31203/2013
3.	W.P. No.32493/2013
4.	W.P. No.32872/2013
5.	W.P. No.31204/2013
6.	W.P. No.31205/2013
7.	W.P. No.32724/2013
8.	W.P. No.32803/2013
9.	W.P. No.32887/2013
10.	W.P. No.32924/2013
11.	W.P. No.30227/2013
12.	W.P. No.31615/2013
13.	W.P. No.31595/2013
14.	W.P. No.31649/2013
15.	W.P. No.28784/2013
16.	W.P. No.30110/2013
17.	W.P. No.32168/2013
18.	W.P. No.31136/2013
19.	W.P. No.30020/2013
20.	W.P. No.31298/2013
21.	W.P. No.30149/2013
22.	W.P. No.30771/2013
23.	W.P. No.31059/2013

Sr. #	Case Number
24.	W.P. No.31795/2013
25.	W.P. No.30303/2013
26.	W.P. No.31095/2013
27.	W.P. No.31523/2013
28.	W.P. No.32243/2013
29.	W.P. No.32048/2013
30.	W.P. No.32005/2013
31.	W.P. No.31941/2013
32.	W.P. No.31810/2013
33.	W.P. No.30694/2013
34.	W.P. No.30368/2013
35.	W.P. No.32547/2013
36.	W.P. No.30612/2013
37.	W.P. No.31891/2013
38.	W.P. No.31151/2013
39.	W.P. No.32381/2013
40.	W.P. No.30023/2013
41.	W.P. No.32258/2013
42.	W.P. No.32290/2013
43.	W.P. No.32265/2013
44.	W.P. No.30807/2013
45.	W.P. No.30361/2013
46.	W.P. No.29108/2013
47.	W.P. No.32882/2013

Sr. #	Case Number
48.	W.P. No.31786/2013
49.	W.P. No.31720/2013
50.	W.P. No.31573/2013
51.	W.P. No.31447/2013
52.	W.P. No.32487/2013
53.	W.P. No.32012/2013
54.	W.P. No.31967/2013
55.	W.P. No.31966/2013
56.	W.P. No.31898/2013
57.	W.P. No.31848/2013
58.	W.P. No.30479/2013
59.	W.P.No.32880/2013
60.	W.P. No.30665/2013
61.	W.P. No.31317/2013
62.	W.P. No.30814/2013
63.	W.P. No.31395/2013
64.	W.P. No.30473/2013
65.	W.P. No.32375/2013
66.	W.P. No.32550/2013
67.	W.P. No.32226/2013
68.	W.P. No.32590/2013
69.	W.P. No.28892/2013
70.	W.P. No.32697/2013
71.	W.P. No.32529/2013

Sr. #	Case Number
72.	W.P. No.32703/2013
73.	W.P. No.32796/2013
74.	W.P. No.32357/2013
75.	W.P. No.32352/2013
76.	W.P. No.29447/2013
77.	W.P. No.33394/2013
78.	W.P. No.33474/2013
79.	W.P. No.33420/2013
80.	W.P. No.32958/2013
81.	W.P. No.33479/2013
82.	W.P. No.33499/2013
83.	W.P. No.33500/2013
84.	W.P. No.33492/2013
85.	W.P. No.33313/2013
86.	W.P. No.33409/2013
87.	W.P. No.33400/2013
88.	W.P. No.33105/2013
89.	W.P. No.33229/2013
90.	W.P. No.32949/2013
91.	W.P. No.33038/2013
92.	W.P. No.33063/2013
93.	W.P. No.33297/2013
94.	W.P. No.33037/2013
95.	W.P. No.32941/2013

Sr. #	Case Number
96.	W.P. No.33100/2013
97.	W.P. No.33156/2013
98.	W.P. No.33157/2013
99.	W.P. No.33159/2013
100.	W.P. No.33010/2013
101.	W.P. No.33306/2013
102.	W.P. No.33227/2013
103.	W.P. No.33250/2013
104.	W.P. No.33247/2013
105.	W.P. No.32955/2013
106.	W.P. No.33190/2013
107.	W.P. No.33189/2013
108.	W.P. No.33085/2013
109.	W.P. No.33071/2013
110.	W.P. No.32944/2013
111.	W.P. No.33182/2013
112.	W.P. No.33507/2013
113.	W.P. No.33505/2013
114.	W.P. No.33506/2013
115.	W.P. No.33501/2013
116.	W.P. No.33502/2013
117.	W.P. No.33503/2013
118.	W.P. No.33511/2013
119.	W.P. No.33510/2013

Sr. #	Case Number
120.	W.P. No.33374/2013
121.	W.P. No.33303/2013
122.	W.P. No.32935/2013
123.	W.P. No.32996/2013
124.	W.P. No.32973/2013
125.	W.P. No.33155/2013
126.	W.P. No.33081/2013
127.	W.P. No.29888/2013
128.	W.P. No.32213/2013
129.	W.P. No.31047/2013
130.	W.P. No.32630/2013
131.	W.P. No.31098/2013
132.	W.P. No.32596/2013
133.	W.P. No.33574/2013
134.	W.P. No.33573/2013
135.	W.P. No.33582/2013
136.	W.P. No.33581/2013
137.	W.P. No.33580/2013
138.	W.P. No.33579/2013
139.	W.P. No.33578/2013
140.	W.P. No.33577/2013
141.	W.P. No.33583/2013
142.	W.P. No.33592/2013
143.	W.P. No.32597/2013

Sr. #	Case Number
144.	W.P. No.32598/2013
145.	W.P. No.32599/2013
146.	W.P. No.32024/2013
147.	W.P. No.31525/2013
148.	W.P. No.30939/2013
149.	W.P. No.31265/2013
150.	W.P. No.31397/2013
151.	W.P. No.33590/2013
152.	W.P. No.33612/2013
153.	W.P. No.33620/2013
154.	W.P. No.33630/2013
155.	W.P. No.33655/2013
156.	W.P. No.33656/2013
157.	W.P. No.33693/2013
158.	W.P. No.33696/2013
159.	W.P. No.33695/2013
160.	W.P. No.29040/2013
161.	W.P. No.29119/2013
162.	W.P. No.29125/2013
163.	W.P. No.29118/2013
164.	W.P. No.29038/2013
165.	W.P. No.29124/2013
166.	W.P. No.29037/2013
167.	W.P. No.29036/2013

Sr. #	Case Number
168.	W.P. No.29035/2013
169.	W.P. No.29122/2013
170.	W.P. No.31661/2013
171.	W.P. No.33748/2013
172.	W.P. No.33749/2013
173.	W.P. No.33751/2013
174.	W.P. No.33757/2013
175.	W.P. No.33760/2013
176.	W.P. No.33768/2013
177.	W.P. No.33738/2013
178.	W.P. No.31449/2013
179.	W.P. No.32548/2013
180.	W.P. No.31698/2013
181.	W.P. No.32721/2013
182.	W.P. No.32916/2013
183.	W.P. No.29004/2013

(Syed Mansoor Ali Shah)
Judge

(Atir Mahmood)
Judge

(Muhammad Farrukh Irfan Khan)
Judge

Additional Note

Muhammad Farrukh Irfan Khan J. I have gone through the detailed and well-reasoned judgment authored by my learned brother Syed Mansoor Ali Shah J. While I fully concur with the judgment, I feel the necessity of supplying an additional note, in view of the peculiar circumstances, I find myself in.

2. I was part of the learned Division Bench in the *Pakistan Peoples' Party case*, wherein Short Order was announced on 07.11.2013 holding, *inter alia*, that the Government of Punjab was lawfully justified to carryout delimitation of Union Councils and Municipal Committees in Punjab. Subsequently, Orders and Notifications of the Delimitation Authority and Delimitation Officers, respectively, were challenged in a large number of writ petitions. These petitions highlighted gross irregularities and illegalities committed by the Punjab Government in exercise of its powers under the Punjab Local Government Act, 2013. As explained in the Judgment of my learned brother, these cases were referred to a larger Bench by the Hon'ble Chief Justice of which I also was a Member.

3. During the course of hearing of the Larger Bench, I realized that certain constitutional and legal aspects of the case had not been argued before the learned Division Bench besides proper assistance was also not rendered. I tried to guard the view taken by the learned Division Bench as reflected in the Short Order and explored every possible avenue to seek an endorsement of the earlier view reflected therein. However, I came to the conclusion that the earlier view taken by me while being a Member of the learned Division Bench could not be sustained in view of the compelling constitutional and legal position, which emerged before the Larger Bench and has now been elaborately discussed in the Judgment of my learned brother.

4. Needless to reiterate that I am bound to protect and preserve the Constitution and to endeavour to decide the *lis* before me justly, fairly and impartially. I, therefore, feel that the view expressed by the Larger Bench must be yielded to in the larger interest of the community and for upholding the mandate of the Constitution.

(Muhammad Farrukh Irfan Khan)
Judge

Iqbal/*