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29/03/2018
1-21

The Secretary
Election Commission of Pakistan
Election Commission Secretariat
Election House, Constitution Avenue,
G-5/2, Islamabad

Re: REPRESENTATION UNDER SECTION 21 (3) OF THE ELECTIONS ACT, 2017, & RULE 12 OF THE ELECTION RULES, 2017 AGAINST DELIMITATION OF NA- 197 KASHMORE

The undersigned Applicant submits as under:

1. That the Applicant is a law abiding and respectable citizen of Islamic Republic of Pakistan and is respectable and notable among the inhabitants of District Kashmore and Jacobabad, Sindh. The Applicant is politically well aware and is concerned for the wellbeing of his local area. The Applicant is the registered voter of the National Assembly constituency NA- 197.

[COPY OF THE VOTER LIST IS ATTACHED AS ANNEXURE -
"A"]

2. That the Applicant is interested to ensure that the pre-poll management and all other matters relating to the conduct of general elections to be conducted in fair manner and as per the spirit of the Constitution, settled laws, rules and principles to ensure that the true spirit of democracy remains intact and well-guarded.

BACKGROUND FACTS

3. That, before the promulgation of the Elections Act 2017, the constituencies for National Assembly comprising of districts Jacobabad & Kashmore were constituted as per Sections 8 and 9 of the Delimitation of Constituencies Act, 1974 ("repealed Act") and were carved and drawn as NA-208 Jacobabad-I, NA-209 Jacobabad-II and NA-210 Jacobabad-III as published in official Gazette dated 28.06.2002 and the said arrangement of constituencies remained same in the elections subsequent thereto. That, the geographical limits of District Jacobabad were reconstituted on purely administrative grounds in year 2004 and, a new district Kashmore was created on 14th December, 2004. That, despite the fact, the National Assembly constituencies for the said districts remained same as carved

9/28/07/28

3

under Notification dated 26.03.2002 and only the nomenclature of the constituencies was changed vide Notification dated 08.03.2013.

4. That it is pertinent to mention that the said constituencies overlapped the administrative boundaries of both the said districts i.e. Jacobabad & Kashmore to equally and justly conform with the ratio of population of the province and the seats for National Assembly allocated to the province of Sindh. Even otherwise, there has never been a bar of overlapping of administrative districts during the carving of National Assembly constituencies and thus all constituencies of NA throughout the Pakistan were carved with overlapping of administrative boundaries to fairly distribute the population as per the ratio. That considering the population ratio of both the concerned districts, the same were collectively allocated three (03) National Assembly seats.
5. That, subsequent to the promulgation of the Elections Act, 2017, all the laws relating to the elections were consolidated into the Elections Act, 2017 and the laws relating to Delimitation (previous S. 8 & 9 of the repealed Act) are now incorporated in Section 19 and 20 of the Elections Act, 2017. The principles of delimitation as mentioned in S. 9 of the repealed Act have remained same, furthermore, in the new Act, under sub-section 20(3) a mandatory condition has been added which provides that the variation in population in the constituencies should not exceed 10% (Plus-Minus).
6. That, thereafter under Section 239 of the Elections Act, 2017 and other enabling provisions of the law and Constitution, the ECP framed and notified the Election Rules, 2017 vide Notification Dated 09.11.2017, wherein, for the first time, under Rule 8 of the Rules *ibid.* the determination of quota of NA seats for the districts, on the basis of provisional census results, was provided. Rule 8 of the Election Rules, 2017, provides that:

8. Determination of quota.— (1) *The Commission shall, after allocation of seats referred to in rule 7, determine the average population (hereinafter referred to as —quota per seat) of a constituency for each Province, the Tribal Areas and the Federal Capital by dividing total population thereof by general seats in the National Assembly allocated to a Province, the Tribal Areas or, as the case may be, the Federal Capital.*

(2) *The Commission shall determine and notify the share of a district or districts, an agency or agencies or, as the case may be, the Federal*

29/07/2018

Capital by dividing total population thereof with the quota per seat of the National Assembly as determined under this rule:

Provided that a fraction of more than 0.5 may be counted as one seat and a fraction of less than 0.5 may be ignored:

Provided further that the Commission may deviate from the principle laid down in the first proviso in exceptional cases for reasons to be recorded.

(3) *The Commission shall divide total population of a Province by the number of general seats in the Provincial Assembly to determine quota per seat in that Assembly.*

(4) *The Commission shall determine and notify the share of a district or districts by dividing total population thereof with the quota per seat of the Provincial Assembly concerned as determined under this rule:*

Provided that a fraction of more than 0.5 shall be counted as one seat and a fraction of less than 0.5 may be ignored:

Provided further that the Commission may deviate from the principle laid down in the first proviso in exceptional cases for reasons to be recorded.

7. That, the *first* Proviso to Rule 8 sub-Rule (2) of the Election Rules, 2017 (hereinafter referred to as the "Proviso") providing that a fraction of more than 0.5 shall be counted as one seat and a fraction of less than 0.5 may be ignored, is inconsistent and in contradiction to Sections 19(1) and 20(3) of the Elections Act, 2017 and Articles 9, 17, 25 and 218 (3) of the Constitution and is *ex facie* discriminatory, thus is *ultra vires* and unconstitutional. That the said Proviso is *ultra vires* since the Sections 19 (1) and 20 (3) of the Act provide for drawing of National Assembly Constituencies on equal population with legally permissible variation of 10% plus-minus, whereas the said Proviso allows for variation up to 49%.
8. That it is pertinent to mention that subsequent to the Census 2017 and approval of the delimitation on the basis of provisional census the total population of the province of Sindh is 47893244 and as per Article 51 of the Constitution the share of seats for the National Assembly for the province of Sindh is 61. Thus the average population ratio for each constituency forms to 785135 with 10% plus-minus variation as permissible under S. 20 (3) of the Act. That the fair, just and equitable distribution of the population for the formation of the NA constituencies in the province of Sindh would be as per the below mentioned table:

A/28/07/218
7

TABLE - A

Total Population of Province of Sindh	47893244	
Total Population ÷ Number of Seats for the Province of Sindh	47893244 ÷ 61 = 785135	
Average Population for each NA Constituency	785135	
10% Plus-Minus variation as per S. 20(3) of the Election Act, 2017	Lower Limit	Upper Limit
	706622	863648
Permissible lower/upper limits with 10% plus-minus variation for formation of NA Constituencies:	Between 706622 – to -- 863648	

Thus in principle and as per the Sections 19 and 20 of the Elections Act, 2017, the constituency (National Assembly Electoral Unit) should be formed between the population ratio of 706622 to 863648. That, any constituency formed below the population of 706622 or in excess of 863648 would amount to disparity, malapportionment, inequality, discrimination, dilution/debasement of votes and would disturb the uniformity of the population in province.

9. That, on the basis of said Proviso a Notification bearing No. F.8(1)/2018-Elec-I dated 15.01.2018 was issued by the ECP, wherein determined and notified the share of Districts/Agencies, FATA and Islamabad Capital Territory regarding National Assembly and Provincial Assemblies seats in pursuance of Section 19 (1) of the Election Act, 2017, read with Rule 8 of the Election Rules, 2017, (hereinafter referred to as “the Notification”) in the light of provisional results of Population Census, 2017 officially published vide Notification Number. 1(2)2004-PBS(C) dated 03.02.018.

[TRUE COPY OF RELEVANT PAGES OF THE NOTIFICATION DATED 15.01.2018 IS ATTACHED AS ANNEXURE – “B”]

10. That, in the Notification dated 15.01.2018, the seats for the National Assembly have been allocated totally on the basis of said Proviso, in utter disregard and ignorance to the Articles 9, 17, 25 and 218 (3) of the Constitution and Sections 19 and 20 of the Elections Act, 2017. It is reiterated that the allocation of the seats/quota on the basis of said Proviso, neglecting the fraction of population below 0.5, perpetuates disparity, malapportionment, inequality, vote dilution/debasement and discrimination. That the Notification dated 15.01.2018 is *ex facie* discriminatory since some seats are allocated at population ratio of 615740 (Shikarpur) and some are allocated at population ratio of 1089169

H/29/2/12/18

(Kashmore), thus creating a huge disparity between two neighboring districts. That the below mentioned table clearly shows how two districts i.e. Jacobabad & Kashmore have been discriminated and malapportioned in the allocation of seats and their votes have been debased/diluted by the Impugned Notification.

TABLE - B

District	Population	ECP Formula	Ratio	Excess population from Average i.e. 785135
Jacobabad	1006297	$1006297 \div 785135$	1.28	221162
Kashmore	1089169	$1089169 \div 785135$	1.39	304034
Total Excess Population in Two Districts				525196

[TRUE COPIES OF THE PROVISIONAL CENSUS RESULTS OF THE DISTRICT JACOBABAD, KASHMORE & SHIKARPUR ARE ATTACHED AS ANNEXURES- "C-1", "C-2", "C-3" & "C-4"]

11. That pursuant to the afore drawn table excess variation of 28% of population in district Jacobabad and 39% excess variation in District Kashmore has been permitted, which is far higher than the permissible limit of 10% as provided section 20 (3) of the Elections Act, 2017. The flawed and illegal formula based on said Proviso is causing debasement/dilution of a total population of 525196 of both the districts which has been excessively included in said two districts. That the allocation of seat has been done purely on geographical administrative limits of the Districts, whereas the law requires the formation of constituencies for National Assembly on equal distribution of population, irrespective of the administrative boundaries of a district. In light of the population of the above referred districts and the law as envisaged under Sections 19 and 20 of the Election Act, 2017, the two districts qualify for 3 seats, whereas on the basis of said Proviso and flawed formula created by the ECP, the said districts have been allocated only two seats with excess population of 525196. It is submitted that to accommodate the said excess voters 525196 with due representation, the Election Commission of Pakistan ("ECP") can conduct the exercise of overlapping with the neighboring Districts i.e. Shikarpur where a seat has been created at a lower ratio of population i.e. 61570, as permissible under the law, to do the just, fair and equitable distribution of population.
12. That it is a settled principle of law that Rules cannot be made beyond the scope of the Act and no Rule can be made which is inconsistent with the parent statute. It is submitted that the framing of the said Proviso is *mala fide* and is aimed at reducing the work/exercise of delimitation by the

28/07/18

Delimitation Committee and is *ultra vires* for being inconsistent to the provisions of parent statute and the Constitution, hence *void ab initio*.

13. That through press release dated 05.03.2018 issued by the ECP the delimitation/draft list of constituencies for the National Assembly has been published, wherein the constituency of NA- 197 Kashmore has been carved over the population of 1,089,169, which is patently illegal and unconstitutional.

[TRUE COPY OF THE PRESS RELEASE DATED 05.03.2018 AND DRAFT LIST OF CONSTITUENCIES FOR THE RELEVANT DISTRICTS ARE ATTACHED AS ANNEXURES –“D” & “E”]

14. That in the instant delimitation of the NA-197 the disparity has been created so that constituents of 588185 (Shikarpur) and constituents of 1089169 (Kashmore) shall have the same voting rights which is also a sequel of gerrymandering and hence against Article 25 of the Constitution. As per the instant delimitation the district of kashmore which is spread over an area of 2592 sq. km is given only one National Assembly seat whereas the neighboring district spread over almost similar area i.e. 2640 sq. km is given two seats of the National Assembly, which shows the level of inequality perpetuated by the flawed formula of delimitation devised under the Rules.

[CERTIFIED COPIES OF DELIMITATION MAPS OF DISTRICTS KASHMORE, JACOBABAD & SHIKARPUR ARE ATTACHED AS ANNEXURES – “F”, “G” & “H” RESPECTIVELY]

15. That the formula devised under the said Proviso is inherently flawed since the collective population ratio of both the districts i.e. Jacobabad & Kashmore is 2.67, which means that the said districts collectively, as per the said Proviso are entitled for three National Assembly seats. However, by restricting the quotas to individual administrative districts the delimitation committee have reduced one seat on the said districts, which otherwise they are entitled as per their population ratio.
16. That the formula devised under the said Proviso is inherently flawed since in Baluchistan 90% of the districts have less than 0.5 fraction of population, and if the formula is applied then they will have no right of NA seat. The formula has totally failed in Baluchistan and thus ECP has chosen to overlap the administrative boundaries to carve the National Assembly Constituencies to the discrimination to other provinces. . .
17. That the allocation and quota for administrative districts on the basis of said Proviso is also novel and has been introduced for the first time, which

AA/28/03/2018

13

runs in contravention to will and intention of legislature as incorporated in Section 19 of the Elections Act, 2017.

18. That the Applicant through the instant Representation is challenging the Delimitation of NA-197 Kashmore published through Draft List of Constituencies vide Press Release dated 05.03.2018 on the following grounds:

GROUND

- A. That the delimitation on the basis of the said Proviso of the Rule 8 Sub-Rule (2) of the Election Rules, 2017, introduced a new mechanism allowing the variation up to 49% of the population whereas the Section 20(3) of the Elections Act, 2017 only allows variation up to 10% plus-minus, thus inconsistent, contradictory, beyond the scope and mandate of the parent statute i.e. Elections Act, 2017 and is illegal and unconstitutional.
- B. That the instant delimitation has radically disturbed the concept of uniformity of population by creating such irrational disparity through said Proviso and has made it difficult to conduct elections in honest, just and fair manner in accordance with the law. If any election is conducted on the basis of the instant delimitation causing malapportionment, debasement and disparity, would be a serious violation of Articles 9, 17, 25 and 218 (3) of the Constitution of Pakistan and would be against the spirit of democracy and contrary to the provisions of Elections Act, 2017.
- C. That the delimitation committee's act of restricting the population within the administrative boundaries of a district on the basis of said Proviso and restraint from overlapping, even where the population is in excess from average is *mala fide* and devoid of merits.
- D. That the Applicant and the population of the districts of Kashmore and Jacobabad should not be allowed to suffer for the wrongs perpetuated by the delimitation on the basis of said Proviso to Rule 8 (2) of the Elections Rules, 2017, since the same perpetuates grave illegalities and injustice.
- E. That, the delimitation for NA-197 Kashmore on the basis of *ultra vires* Proviso and on flawed and erroneous ground of restraint from overlapping would be in severe violation to Section 20 (3) & (4) of the Elections Act, 2017, which provides for the formation of constituencies within the variation of 10% plus-minus. However, in the instant case the delimitation

23/03/2018

15

amounts to more than 40% variation in each district, which is groundless, unconscionable and would amount to malapportionment, debasement and disenfranchisement of the large population of the area and clearly falls within the ambit of "gerrymandering", thus unconstitutional and illegal.

- F. That, in the neighboring district of Shikarpur and in several other districts of the province of Sindh, the National Assembly seats are carved at much lower ratio of population than the districts of Kashmore & Jacobabad, which amounts to discrimination and violation of the Article 25 of the Constitution and would result in vote dilution/wastage/debasement of almost 40% population in district Kashmore and around 30% population of the district Jacobabad, thus collectively would result in 70% wastage of votes in both the districts.
- G. That the disparity has been created so that constituents of 615740 (Shikarpur) and constituents of 1089169 (Kashmore) shall have the same voting rights which is also a sequel of gerrymandering and hence against Article 25 of the Constitution.
- H. That the malapportionment caused in the instant delimitation in NA-197 Kashmore would cause disparity and discrimination in equal funding for the constituencies since as per the existing allocation one district would get funding at 588185 population (Shikarpur) and another (Kashmore) would get same funding at population of 1089169.
- I. That, the instant delimitation ignores the established principle that the important aim of the 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" of constituencies in favor or against the interests of any particular party or candidate. The instant delimitation is clearly being done to accommodate the population of other districts to the sheer ignorance and disenfranchisement and debasement of the population of the District Kashmore.
- J. That, the delimitation for NA-197 Kashmore would ignore the established principle that the delimitation is not a mere drawing of boundaries with a stroke of pen. It is judicious exercise of delineating electoral areas, vigilantly guarding against any possible fear of vote dilution, disenfranchisement or corrupt practices. Whereas, in the instant matter all the established principles have been trampled upon and none of the considerations required for fair delimitation has been heeded to.

22/03/2022

- K. That, the instant delimitation for NA-197 Kashmore, if not intervened, would lead to unfair and skewed results, tarnishing electoral integrity, making a mockery of the election and turning the constitutional principle of "political justice" on its head.
- L. That, the instant delimitation for NA-197 Kashmore would seriously violate the right to life and liberty of the Applicant and voters of the district Kashmore as enshrined under Article 9 of the Constitution of the Islamic Republic of Pakistan. Life of a citizen in a representative democracy cannot be envisaged without its political dimensions, 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 to elect the government of his or her choice.
- M. That, the instant delimitation for NA-197 Kashmore violates right to dignity of the Applicant and voters of the said district as enshrined under Article 14 of the constitution of Islamic Republic of Pakistan. Since, human dignity includes the right to demand a political and democratic structure of governance based on electoral process conducted on the equality, fairness and transparency.
- N. That, the instant delimitation for NA-197 Kashmore is against the whole aim and purpose of the process of delimitation. The Delimitation is always conducted to ensure, fair, just and proportional representation of the people in the elections where in the instant case it is *vice versa*.
- O. That the foundations and the rules of the election for 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 the electorate goes to polls, to actualize the principle of "one man one vote" firmly established during the process of delimitation of the constituencies. The instant delimitation for NA-197 Kashmore amounts to serious violation of the above referred universally accepted principle.
- P. That, the instant delimitation for NA-197 Kashmore in deliberate neglect of the laws and rules and against the will and objections of general public is repressive, autocratic and tyrannical and in utter disregard to the law, precedents of the higher courts and the principles of natural justice.

JA/25/03/2015

19

- Q. That the Applicant begs leave to add, amend and/or plead additional grounds at the time of hearing of this Representation.

PROPOSALS

- I. That, in the given situation the overlapping of the administrative districts for the purposes of carving of National Assembly seats looks the only possible solution and whereas, seats in other provinces like Baluchistan are also carved through overlapping of several districts. Even otherwise, overlapping is nowhere barred under the law and in fact, in all past delimitation exercises, the National Assembly seats were carved through overlapping to ensure equality and fairness.
- II. Therefore it is submitted that the constituencies for the National Assembly for the of the District Kashmore and the neighboring districts of Jaçobabad and Shikarpur should be carried out by overlapping the administrative boundaries of the same to confirm each constituency with permitted population limits i.e. 706622 – 863648, in the manner described in the below mentioned Table:

NA	Areas Included	Population	Total Population
1	Taluka Kashmore (Dist. Kashmore)	434,975	801459
	Taluka Kandhkot (Dist. Kashmore)	366,484	
2	Taluka Tangwani (Dist. Kashmore)	287,710	822,067
	Taluka Thul (Dist. Jacobabad)	465,424	
	Pir Bux Shujrah TC (from Taluka Khanpur, Dist. Shikarpur)	30180	
	Noor Muhammad Shujrah TC (from Taluka Khanpur, Dist. Shikarpur)	24628	
	Ali Murad Kalhore TC (from Taluka Khanpur, Dist. Shikarpur)	14125	
3	Taluka Jacobabad (Dist. Jacobabad)	382,513	856,756
	Taluka Garhi Khairo (Dist. Jacobabad)	158,360	
	Taluka Garhi Yasin (District Shikarpur)	315,883	
4	Taluka Shikarpur (Dist. Shikarpur)	391,172	846,665
	Taluka Lakhi (Dist Shikarpur)	248,143	
	Taluka Khanpur excluding	207,350	
	(a) Pir Bux Shujrah TC (b) Noor Muhammad Shujrah TC (c) Ali Murad Kalhore TC		

21
28/07/2018

PRAYER

It is, therefore, prayed in the interest of justice that the Representation of the Applicant may be allowed and the delimitation of the districts Kashmore and the neighboring districts of Jacobabad and Shikarpur be carried out as per the proposals given hereinabove or carve the constituencies for the National Assembly for the said districts in strict compliance with the Sections 19 & 20 of the Elections Act, 2017 and fix the average population ratio in each constituency with legally permissible 10% plus-minus variation of population.



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Dated: _____