

**BEFORE THE ELECTION COMMISSION OF PAKISTAN**

Rep. No. \_\_\_\_\_ / 2018

1. **Mr Muhammad Sohail Khan** S/o Imdad Khan  
R/o Village Dag, Warsak Road, Peshawar  
Voter NA-27      Mobile No. 0334-9236744
2. **Mr Munawar Khan** S/o Gul Rahim  
R/o Tukhtabad, Peshawar  
Voter Proposed PK-67
3. **Mr Qari Bilal** S/o Taj Muhammad  
R/o Ghalji Kandar Khel, Warsak Road, Peshawar  
Voter NA-27 and Proposed PK-66
4. **Mr Muhammad Tahir Khan** S/o Zahid Khan  
R/o Village Dag, Warsak Road, Peshawar  
Voter NA-27 and Proposed PK-75
5. **Mr Umair Khan** S/o Sardar Alam  
R/o Babozai Nahaqi, Peshawar  
Voter Proposed PK-68
6. **Mr Mohib ur Rehman** S/o Abdur Rehman  
R/o Kandi Hayat, Tarnab Farm, Peshawar  
Voter NA-28 and Proposed PK-69
7. **Mr Zulfqar Ali Awan** S/o Zaman Khan Awan  
R/o Mohalla Sadiqabad, Tarnab Farm, Peshawar  
Voter Proposed PK-69
8. **Mr Sajjad Khan** S/o Zareen Khan  
R/o Urmar Mera, Peshawar  
Voter Proposed PK-70
9. **Mr Asif Khan** S/o Ahmad Khan  
R/o Sheikhan, Peshawar  
Voter Proposed PK-71
10. **Mr Inam Khan** S/o Doctor Khan  
R/o Hazar Khani, Peshawar  
Voter Proposed PK-72
11. **Mr Ahmad Mustafa** S/o Fazal Elahi  
R/o Hayatabad, Peshawar  
Voter Proposed PK-73
12. **Mr Fazal Raziq** S/o Haneefullah  
R/o Sufaid Dheri, Peshawar  
Voter Proposed PK-74
13. **Mr Musa Khan** S/o Haji Dost Muhammad Khan  
R/o Din Bahar Colony, Peshawar  
Voter Proposed PK-76

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14. **Mr Tila Muhammad** S/o Gul Muhammad  
R/o GulBahar No.1, Peshawar  
Voter Proposed PK-77
15. **Mr Rizwan Sadat** S/o Haji Ali Raza  
R/o Zargarabad Yakkatot, Peshawar  
Voter Proposed PK-78
16. **Mr Arbab Farooq Jan** S/o Arbab Muhammad Jan  
R/o Landi Arbab, Peshawar  
Voter Proposed PK-79
17. **Mr Waheed Khan** S/O Raza Khan  
R/o Pawaka Peshawar  
Voter NA-29
18. **Mr Habib Shah Khali** S/O Jamal Khan  
R/o Tahkal Payan, Peshawar  
Voter NA-30
19. **Mr Umer Wahid** S/O Muhamber  
R/o Eid Ghah Charsada Road Peshawar  
Voter NA-31

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.....Representors

**REPRESENTATION UNDER SECTION 21(2) OF THE ELECTIONS ACT 2017 FOR**  
**AND ON BEHALF THE REPRESENTORS FALLING IN DIFFERENT CONSTITUENCIES**  
**OF DISTRICT PESHAWAR – NATIONAL AND PROVINCIAL**

*Respectfully Sheweth;*

- 1- **That** the representors are law-abiding citizens of Pakistan, hail from respectable families of Peshawar with their votes being duly registered in different constituencies of District Peshawar.

(True copy of the Representors CNICs are annexed herewith marked 'A')

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- 2- **That** after the population census of 2017 and the formulae given therein and also mandated under **Article 51(5)** of the Constitution of Islamic Republic of Pakistan, 1973, the Election Commission of Pakistan (hereinafter referred to as '**the Commission**') started to conduct delimitation of the constituencies of National & Provincial Assemblies in accordance with the provisions of newly enacted Election Act, 2017 (hereinafter referred to as '**the Act**') and the Election Rules 2017 (hereinafter referred to as '**the Rules**') made thereunder.
- 3- **That** the Commission, U/s 17 of the Act, vide its Notification ('**Impugned Notification**') in official gazette dated 05.03.2018, *inter-alia*, proposed the delimitation of the constituencies of District Peshawar, whereby 5 National Assembly constituencies ranging from NA-27 to NA-31 and 14 Provincial Assembly constituencies, ranging from PK-66 to PK-79 have been created.

(True copies of the Proposed Maps of constituencies of NA and PK along-with details of PC & CH are annexed herewith marked 'B & C')

- 4- **That** the proposed delimitation of the afore-mentioned constituencies, by the Commission, though was made in good faith and for the ease and accessibility of the populous, however, the same being *ultra vires* the Act and the Rules will instead be a cause of tremendous inconvenience for the candidates, contesting from, and the voters, of the proposed constituencies.
- 5- **That** being aggrieved of the proposed delimitation by the Commission, vide the Impugned Notification, the representors seek to amend, alter, modify and propose details of how the constituencies, in District Peshawar, be delimited, *inter-alia*, on the following;

**G R O U N D S:**

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*[Handwritten date: 30/03/2017]*

a) **Because** the proposed delimitation of the constituencies of District Peshawar by the Commission are against the law, arbitrary, capricious, malafide and without jurisdiction, hence are blatantly violative of;

- **Articles 2-A, 4 and 218** read with the principles of policy of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as '**the Constitution**');
- **Sections 17 and 20** of the Act;
- **Rules 9 and 10** of the Rules; and
- *norms and principles of natural justice.*

b) **Because Section 17** of the Act, *inter-alia*, provides;

"17. Commission to delimit constituencies.— (1) The Commission shall delimit territorial constituencies for elections to the National Assembly, each Provincial Assembly and to the local governments in accordance with the provisions of the Constitution, this Act, the Rules and the applicable local government law."

Similarly **Section 20** of the Act, *inter-alia*, provides;

"20. Principles of 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, physical features, existing boundaries of administrative units, facilities of communication and public convenience and other cognate factors to ensure homogeneity in the creation of constituencies."

It is pertinent to mention that the Commission, *inter-alia*, has failed to give any regard to the distribution of the population in geographically compact areas, the

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physical features, facilities of communication and public convenience while delimiting the constituencies of District Peshawar. It is apt and imperative to mention that by way of the proposed delimitation by the Commission, each constituency has been marked in a radius of circa 20kms to 25kms by road, which is a cause of major inconvenience to the voters of each constituency. Moreover, by way of the proposed delimitation by the Commission, areas with different sub-cultural backgrounds have now been brought together in a single constituency, thus, defeating the idea and concept of 'homogeneity in the creation of the constituencies', as provided for by the Act and the Rules made thereunder. Therefore, on this score alone the proposed delimitation by the Commission is liable to be altered, modified and/or reviewed or declared *ab initio* void.

c) **Because Rule 9 of the Rules, *inter-alia*, provides;**

"9(3)---The Commission shall convey the share of seats for each district or districts or agency or agencies in the National Assembly or, as the case may be, the share of seats for each district or districts in the Provincial Assembly, to the concerned Delimitation Committees constituted under sub-rule (1) and sub-rule (2) and shall also provide guidelines and timeframe for functioning of the Committee."

It is apposite to state that the Commission was also mandated to issue 'guidelines' to conduct the delimitation in order to guard the same from any external influence so that the upcoming elections could be conducted in a free, fair and just manner. However, the Commission failed to issue any such guidelines until the entire process was near its end, therefore, the proposed delimitation, by the Commission, have been issued on the entire whims and desires of the officials of the committee and without giving heed to the voters/locals of District Peshawar, therefore, the

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same is liable to be revisited, amended and modified in order to attain homogeneity, as required by the Act and the Rules made thereunder.

d) **Because Rule 10** of the Rules, *inter-alia*, provides;

“10(3)---In preparing draft proposals for delimitation of constituencies, the Delimitation Committee shall follow the principles of delimitation as laid down in section 20, procedure given in this Chapter and the guidelines provided by the Commission from time to time.

(5) As far as possible, the delimitation of constituencies of an Assembly shall start from the Northern end of the district, or, as the case may be, the agency and then proceed clock-wise in zigzag manner keeping in view that population among the constituencies of an Assembly shall remain as close as may be practicable to the quota...”

Similarly, the Commission by failing to consider cognate factors of, including but not limited to, existing boundaries of administrative units, facilities of communication etc., have acted totally oblivious to the voters of each constituency while devising the proposed delimitation. It is apposite to state that Commission, by way of the proposed delimitation, has dis-integrated tribes, localities and voters of the previously delimited constituencies and have failed to acknowledge the fact that the customs, traditions, common interest, livelihood etc. of the voters in the previously delimited constituencies is patently very different, rather in clash with the interests of the inhabitants of the voters falling in the newly proposed delimitation of the constituencies by the Commission in as much that it would create great adversity and hardship, for the voters, in selecting their representative for the upcoming general elections. It is also pertinent to mention here that the same, being *ultra vires* the Act and the Rules made thereunder, will also result in a lack of interest on behalf of the candidates contesting from these proposed

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constituencies, which in turn will have an adverse effect on the people of and the work done in the constituencies.

- e) **Because** it has been settled by the Superior Courts that 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. 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.' This is usually done with regard to stated constraints of administrative convenience, contiguity, geographical and communication factors, and unstated influences of party-political advantage. It is pertinent to mention that the proposed delimitation by the Commission, not falling within the scope and meaning of delimitation as interpreted by the Superior Courts is liable to be amended, altered and/or modified before the upcoming general elections.
- f) **Because** it has also been held by the Superior Courts that 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 also has to be factored in during the process of delimitation of constituencies. Furthermore the Courts have also repeatedly held that 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' of constituencies in favour of or

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against the interests of any particular party or candidate. It is pertinent to mention that, *inter-alia*, the Commission while delimiting the constituencies has conveniently ignored that in the proposed delimitation of Hayatabad, for instance, has circa 40000 less populous than the rest of the constituencies, which is extremely unfair because if a small sector was to be made, it could have been any other downtrodden area of Peshawar but Hayatabad, which is fully developed and that the developmental expenditure in the area can only be made through Peshawar Development Authority.

- g) **Because** the main aim of the delimitation exercise is that the population among the constituencies of an Assembly shall remain as close as may be practicable to the quotoa. It is apposite to state that by way of the proposed delimitation, the Commission has severely disturbed the voting equality of the citizens of the District Peshawar, which will in turn lead to parts of the population being totally unrepresented after the elections. Therefore, the proposed delimitation by the Commission, *inter-alia*, being detrimental to the populus of Peshawar is liable to be amended and modified so that homogeneity can be ensured and the purpose of delimitation as per the Act and the Rules made thereunder be, in true sense, achieved.
- h) **Because** it is trite law that any partisan intervention and drawing up of political constituencies under the dictates of any external power is bound to lead to gerrymandering and unjust political windfall, tarnishing the sanctity of elections and crippling the faith of an ordinary man in the system of democracy.



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- i) **Because** the representors, by way of maps and tables of the population of District Peshawar, have been able to draw up and propose details of how the constituencies, in District Peshawar, be delimited. It is apposite to state that major political parties are in consensus and agreement with the proposed maps and charts of delimitation of District Peshawar prepared by the representors and have also sworn a collective affidavit to the same effect as well.

(True copies of the Affidavit, Proposed Maps & Charts by the representors are annexed herewith marked 'D, E & F')

- j) **Because** it is apposite to state that by way of the proposed delimitation by the Commission, the newly formed constituencies, within themselves, have either no or very poor connection of local transport, for instance in old NA-02 now NA-30, parts of Peshawar city are now connected and merged with Regi, which is the boundary of the Tribal Areas. Similarly in old NA-03, now NA-27, the constituency has been delimited in such a manner that it shares boundary with Mohmammand Agency, Central Peshawar and Charsadda, hence it has become severely impractical for any person wishing to travel from one end of his constituency to the other. Likewise, in old PK-07, now PK-66 in the proposed delimitation, an area has been added, which falls on the other side of river which separates PK-66 from PK-67, thus, being violative of the Act and the Rules made thereunder.
- k) **Because** the representors, through the proposed charts, plans and maps, have reverted to mainly the previous delimitation conducted by the Commission for District Peshawar and have applied the formulae given in Rule 10 of the Rules, i.e. starting from the Northern end of the District and then moving clockwise in a

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zigzag manner. It is pertinent to mention that at each constituency reaching its population limit, as provided for by the Act and the Rules, was marked there and the extra population was shifted to the next/adjacent constituency, clockwise in a zigzag manner, as provided for in the Rules. Thus, by keeping localities and people with similar characteristics in compact areas, easily accessible and connected to one and another, making it convenient for the voters and the candidates contesting from each constituency. It is reiterated that the proposal advanced by the representors, is forwarded with the consensus of all the major political parties in the District/region.

- l) **Because** the total population of District Peshawar is 4275000, which when divided by 5 (National Assembly constituencies of District Peshawar), comes to 855000 persons per National Assembly constituency. Similarly, when 14 (Provincial Assembly constituencies of District Peshawar) is divided to the total population of District Peshawar, it comes to 306000 persons per Provincial Assembly constituency, meaning thereby that each NA constituency shall have a population of 855000 persons, whereas each PK constituency shall have a maximum population of 306000 persons. It is apposite to state that the proposed delimitation of District Peshawar, by the Commission, has a lot of variation in the population figures, thus, failing to fulfill the criteria provided for in the Act and the Rules made thereunder, thus, rendering the same liable to be modified, amended and reviewed in accordance with the law.
- m) **Because** the proposed NA-27, by the Commission, consists of 814000 voters, which is 36000 voters less than the required population ratio. It is pertinent to mention here that the Commission has failed to provide any explanation for the

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said variation, which is grossly against the Act and the Rules made thereunder. Moreover, the representors, by way of their proposed delimitation, have adjusted the population of NA-27 to 831251 persons, as required by the Act. It is also pertinent to mention that the representors have not disturbed any Patwar Circle/Census Circle or the Administrative Charge in any of the constituencies/areas. Furthermore, the Commission has removed the areas of Tehkal Payyan, Behari Colony, Irrigation Colony, Warsak Road, Babu Ghari and Irshadabad from NA-27 and shifted them to the proposed NA-30, which is unfair and illegal, as the said areas, falling in Charge 17, Patwar Circles 1 to 6, have been a part of NA-27 for the past 30 years. Similarly, the area of Kankola, with a population of 20000 persons is added to NA-27 by the Commission, which mainly falls in Khalsa. The same datum is also evident from the fact that the area of Kankola even falls in the Administrative Unit of Charge 02, thus, not belonging to NA-27. Further, one cannot ignore the major cultural and interpersonal diversity within the locals of Kankola and the rest of the NA-27.

- n) **Because** in the proposed NA-28, which the representors have proposed to be rural, while the Commission has stirred it up and made it a mix of different areas, cultures and backgrounds, as such, the Commission has included the areas of Azarkhani 1, 2 and 3 and Akhonabad, which areas are a part of the 'Corporation', which is classified as an urban area. Moreover, the areas/Patwar Circles of Ghari Baghbanan, Ghari Chandan, Surezi Bala, Badabaira Mariamzai, Badabaira Hurizai and Azakhel were removed from the proposed delimitation by the Commission but have been added by the representors in their proposed maps. Furthermore, the representors added the Alizai Patwar Circle to NA-28 while the

Commission, without giving any heed to the requirements of the Act and the Rules made thereunder, added this area to NA-29 constituency.

- o) **Because** the Commission, in NA-29 has included a total of 868205 persons, which is 13205 persons/voters more than what is required by the Act and the Rules. It is pertinent to mention here that the representors have added the Patwar Circles of Shaheen Town, Ghari Baghbanan, Ghari Chandan, Surezi Bala, Badabaira Mariamzai, Badabaira Hurizai and Azakhel to their proposed NA-29 and have removed the Patwar Circle of Alizai, which was added by the Commission, thus, bringing the total pupoulation of NA-29, to 850193 persons, in accordance with the Act and the Rules made thereunder.
- p) **Because** similarly in NA-30 the Commission has adjusted a total number of 869685 persons, which is 14685 population above the required limit of the Act, whereas the representors by removing the Patwar Circles of Tehkal Payyan, Behari Colony, Irrigation Colony, Warsak Road, Babu Ghari and Irshadabad from the said constituency has brought the population to the desired number of 851392. Moreover, the Commission had removed the Patwar Circles of Achini, Sarband, Sangu and Azarkhani from the said constituency, which have been added by the representors as Azarkhani is adjacent to Akhunabad and Rehman Baba Complex which belong to the municipal corporation and are thus urban areas, belonging to NA-30 and not NA-28. Likewise in NA-31, the Commission has accumulated a population of 865609 persons, which are 15609 persons over and above the required population ceiling provided for by the Act and the Rules made thereunder. Further, the Commission, without giving any thought to such a complex and important process, has added the area of Hasan Ghari, falling in

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Charge 17, Circle 1, to NA-31 without acknowledging that the said area is best suited and belongs to NA-27, whereas, the areas/ Patwar Circles of Azarkhowani, Rehman baba complex, Zagarabad, Dir Colony, Ghari atta Muhammad and Latifabad, which belong to NA-31, have been removed and added to NA-28 by the Commission, which being against the law is liable to be amended.

- q) **Because** for almost all of the Provincial Assembly constituencies, the Commission has failed to follow the rule of starting from the North of the Assembly clock-wise in a zigzag manner and has made a jumble of the same, rendering it against the Act and the Rules made thereunder, for being highly inconvenient for the populus and the candidates of the constituencies of Provincial Assembly. It is pertinent to mention that the constituency of PK-73 has a variation in population of 17000 persons. Similarly, the problem with the proposed PK-66 by the Commission is that the area of Charge 03, which includes Patwar Circles of Palusi Talarzai, Palusi Makdarzai and Palusi Atozai, belonging to PK-75 have been added to PK-66 and the Patwar Circle of Plausi is disconnected due to the River of Palusi (Khowar) from the rest of the PK-66, which as per the proposed delimitation of the Commission is a cause of major inconvenience to the voters of the said constituency. Moreover, the Kaniza PC has been removed from PK-66 and has been included in PK-67 and similarly, the Patwar Cricle Barbar, which has been the heart of PK-66 has been shifted to PK-67.
- r) **Because** likewise, the main problem with the Commission's proposed PK-67 is that PC of Dag was added to PK-67, which is more than 30kms from Mamokhatke, which is the other end of the said constituency, whereas, as per the proposal presented by the representors all the constituencies of the Provincial

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Assembly are within a radius of 5kms. Moreover, the Commission has also failed to acknowledge that the main problem with the proposed PK-68 and PK-69 is that even from bare citing of the map of the Commission, the constituencies have been jumbled up and mixed without following the formulae provided for in the law, i.e. starting from the north of the Assembly clock-wise in a zigzag manner. Further, the aspect of gerrymandering is also evident from the delimitation of the said constituencies, proposed by the Commission, as the areas/ Patwar Circles of Urmer Payyan and Mera Kachori have been added to Khalisa Qanongo Halqa (PK-69) while they belong to PK-70 and administratively fall under Charge 04. Furthermore, PK-68 has a variation of 12000 -13000 plus population, PK-69 has a variation of circa 12000 plus population, whereas PK-70 has a variation of 14000 - 15000 population, thus, rendering the proposed delimitation by the Commission liable to be set aside and declared against the Act and the Rules made thereunder.

- s) **Because** the issue with the proposed delimitation of PK-75 constituency, by the Commission, is that most of the area of PK-75 has been included to PK-67 i.e. Patwar Circles of Dag, Larama and Paggigi while the population of these areas comes up to circa 200,000 persons. It is apt to mention that the petitioner has adjusted these Patwar Circles in a reasonable manner, adjusting them in PK-73, PK-74 and PK-75 for the interest of voters and fulfilling the requirement of homogeneity as these areas are geographically connected and accessible to each other.
- t) **Because** it is imperative to mention that the delimitation proposed by the representors, *inter-alia*, will allow voters and people to have easy access to polling stations and all the areas falling within their respective constituency.

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Moreover, the proposed delimitation by the representors will save a huge amount of resources and finances for the State along side making it easy for the candidates to manage their election campaign and their respective constituencies, once elected. Therefore, on this ground alone the delimitation proposed by the representors may kindly be considered positively.

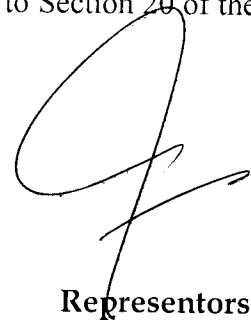
- v) **Because** it is an established law that where law has provided doing a thing in a particular manner it has to be done in that manner failing which any decision taken, notification issued or superstructure erected is illegal without lawful authority and jurisdiction.

**P R A Y E R:**

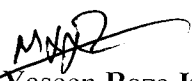
**It is, therefore,** respectfully prayed that in lieu of the facts narrated above, the instant representation be accepted and the proposed draft / description of the delimitation of the constituencies at District Peshawar by the Commission be either set-aside or amended, modified and reviewed in light of the proposal draft / descriptions along with PK 66 to PK 79 and NA 27 to NA 31 map forwarded by the representors in the best public interest.

**Furthermore,** the Notification dated 05.03.2018 to the extent of District Peshawar may graciously be set-aside and the same may be delimited strictly after adhering to Section 20 of the Act and Rule 10 of the Rules, made thereunder, in the interest of justice.

March 26, 2018

  
Representors

Through:

  
Barrister M Yaseen Raza Khan  
Advocate High Court(s)

Darmaan N Shafi  
Advocate High Court(s)