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BEFOR THE HON'BLE ELECTION COMMISSION OF PAKISTAN, ISLAMABAD

Representation No. _____ / 2018

Dr Abdul Qadir Khan s/o Mir Akbar Jan, village & P.O Manduri,

Tehsil Alizai, Kurram Agency.....Petitioner

Representation in respect of the delimitation in the light of census 2017 for making alteration, amendments and modifications in the preliminary report published under section 21 (1) of Election Act, 2017.

The petitioner respectfully submits as under:

- 1- The petitioner is a registered voter in area Mandori, Kurram Agency with block code 084030803 and serial No. 226, has right to make representation to this commission in respect of the delimitation of constituencies proposed in the preliminary report published and appears to have serious and significant reservations about improper delimitation process. *(Extract Certificate may be produced if needed).*
- 2- The instant representation mainly relates to the existing two constituencies of Kurram Agency namely NA- 37 (Tribal Area- II) and NA- 38 (Tribal Area-III). It is pertinent to mention here that NA-37 is Shia Muslims majority constituency where 83% population is Shia Muslim while in NA-38 approximately hundred percent people are Sunni Muslims. As result of sectarian population distribution, in all the adult franchised based general elections of NA-37 a Shia Muslim candidate returned to the parliament, similarly from NA-38 always a Sunni-Muslim won the elections, thus communal power remained balanced.
- 3- Both these constituencies of Kurram Agency are now going to be substituted by a single constituency NA- 46 (Tribal Area- VII) as proposed in the preliminary report published by Election Commission of Pakistan. The Kurram Agency is comprised of a total area of 3380 square kilometers. Kurram Agency is the only tribal region in the country which has a large number of Shiites. According to 2017 census, total population of Kurram Agency is 619553 with 58 percent Sunni Muslims and 42 percent Shia Muslims. The majority of Shias lives in Upper Kurram, while Sunnis in Lower and Central Kurram.
- 4- Electoral dynamics in Kurram Agency are different from other administrative units of Federal Administered Tribal Areas (FATA) due to sectarian division. Sectarianism is an old phenomenon in this valley, unfortunately though, badly affecting its demographic structure, social fabric and economy.

- 5- The first episode of sectarian violence in Kurram Agency is traced back to 1938 which started in the reaction to Shia-Sunni riot happened in Lucknow (India). It recurs like cancer every six-seven years. As a result of 2007 sectarian clashes thousands of families started migration from Kurram Agency to other districts, such as Hangu, Kohat, and Peshawar etc.
- 6- Sectarianism is a ground reality and cannot be ignored. There is still no harmony in population and even people cannot go in the area of other sects, as such, the government has established separate set of offices (as a special case exclusively to cater this issue) in Kurram Agency for both the groups at different places of Kurram Agency. Noteworthy amongst these offices are District Education Office (DEO), District Health Office (DHO), District Account Office (DAO), NADRA office and C&W office at Parachinar Upper Kurram for Shia and at Sadda Lower Kurram for Sunni community. Besides this, both the civil and military heads in Kurram Agency hold their offices separately for these two sects of population in different days of week.
- 7- The population of Kurram is said to be 619,553 as per provisional results of 2017 census, which is far less than the actual population, the reason is two sets of terrorism, the 'War on terror' and 'Sectarianism'. Both have caused mass exodus of inhabitants in the form of Temporary Displaced Persons (TDPs) from Kurram to the safer districts of Khyber Pakhtunkhwa and other provinces. The government has notified the entire Kurram Agency as a conflict zone and requested the humanitarian agencies for registration and assistance. These Temporary Displaced Persons (TDPs) have not yet returned to their local areas. The TDPs either have been counted in other provinces or no census has been taken place at the TDPS camps.
- 8- In the light of above circumstances and facts, the applicant seeks the kind consideration of this august commission to review, modify, alter its preliminary report of delimitation of constituencies to the extent of Kurram Agency inter-alia on the following:

GROUNDS

- A. In the creation of constituencies, there are broader principles summarized in section 20 of The Elections Act, 2017 that as far as practicable, be delimited having regard to the, (i) Distribution of population in geographically compact areas, (ii) Physical features, (iii) Existing boundaries of administrative units (iv) facility of communication and public convenience and (v) **OTHER COGNATE FACTORS** to ensure homogeneity in the creation of constituencies. Here the two most important factors- the issues of sectarianism in Kurram Agency and significant number of migrated population to KP and other provinces have not been considered and taken into account as provided.
- B. The government of Pakistan acceded and ratified a number of universal instruments and it is under obligation to implement them. The most relevant to delimitation process is the Universal Declaration of Human Rights (UDHR) which inhibits the practice of 'Gerrymandering' – a practice to manipulate the boundaries of electoral constituencies so as to favor one party or class or group. If the entire area of Kurram Agency is proposed as one constituency (NA-46), this would almost exclude one group from this area. The proposed constituency list is the typical example of gerrymandering.

- C. The "totality of circumstance, is one of the international standards for delimitation of constituency, has also not been taken into account. Besides sectarianism and significant numbers of displaced people, Kurram Agency is the largest constituency of FATA with single constituency having population of 619553 while the adjacent Orakzai Agency has also got one seat with smallest population of 254356. As it is also one of the principles of delimitation that, as far as possible, variation in population of constituencies of an assembly or a local government shall not ordinarily exceed ten percent.
- D. The people of Kurram Agency has suffered a lot in the military operations being carried out in their area, they have been displaced from their homes and their businesses and houses are eliminated, as such, played a vital role in the anti terrorism campaign, but they have been gifted by reducing a seat of National Assembly, which is highly uncalled for.
- E. Another factor which would definitely persuade this Hon'ble commission towards the review of instant preliminary report is that out of two constituencies of Kurram Agency, NA-38 lack its representative in the National Assembly since the general election had held in 2013. The Election Commission has not been succeeded so far to conduct elections in the constituency due to so-called law and order situation but the ground reality is completely different from the government's stance pertains to law and order situation. The petitioner craves that if elections in North Waziristan, South Waziristan and in area like Awaran of Balochistan could be held than how could not in Kurram Agency? The lack of representation in the National Assembly of the vicinity for almost five years has created political instability and insecurity in the area and elimination of a constituency permamanently would more salt the wounds of the people inhabiting there, please note.
- F. It is needed to bring in kind notice of this commission that before general election of 1997, the right of general suffrage was not extend to FATA. Only Maliks (Nominated Village Heads) had the right to vote. There were only 1458 Maliks in Kurram Agency. Sunni Maliks were more in numbers than Shia Maliks. Due to severe hostility and differences with Shia, the candidates of Sunni Community used to the method of "draws" to nominate single candidate among themselves against Shia. The winner of the draws was unanimously nominated as a candidate of Sunni Community and thus a suni was always elected as a returned candidate, the Shia community always termed it **gerymamender** to the election results.
- G. After the extension of Universal Suffrage to FATA, first adult franchise based elections were held in 1997. Due to restricted movement of Political Agents of the candidates to each other areas, massive bogus votes were casted in favor of both the contesting candidates of Shia and Sunni community which intensified the situation to the extent that Political Administration and Returning Officer couldn't dare to announce the election results for a period of twenty days and finally they had to impose curfew in the whole Kurram Agency on the day of results announcement.
- H. There are two approaches of census enumeration: (a) De-jure Census Methodology in which persons are counted at their usual place of residence and (b) De-facto; in which persons are counted where they are found on the census dates. In 1998 census the data was tabulated and published on De-jure basis for comparability of data over time. But in census of 2017, "those who are living in an area for six months or more shall be enumerated in that "area". This

alarmed the people because lot of TDPs were/are still living out of FATA region and waiting for their turns to be returned. Thus, it is apparent that due to these TDPs, the population of FATA would have not been counted in FATA. This discriminatory and biased approach of the Bureau of Statistics has been assailed at the very inception before august Islam Abad high court but the case has not been decided so far.

It is, therefore, respectfully submitted that this Hon'ble Commission may kindly be pleased to consider and allow the titled representation and re-proposed NA-46 for two modification to the other proposed constituencies of FATA, if so necessary for the subject constituencies of Kurram Agency.

Dated: 30.03.2018

 03/04/2018
Dr Abdul Qadir Khan

Through


Faheem Marwat Advocate