

IN THE HIGH COURT OF SINDH, AT KARACHI

**Const. Petition No.D-5098, 4559, 4463, 4521, 4803,
5023, 5080, 5091 5104, 5172, 5294, 5329, 5369,
4724, 4763, 5325 & 5404/2013**

**Present : Mr. Justice Muhammad Ali Mazhar
Mr. Justice Sadiq Hussain Bhatti**

(Sindh Local Government Delimitation Cases)

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| 1.C.P.No.D-5098/2013 | M.Q.M & another vs. Province of Sindh & others |
| 2.C.P.No.D-4559/2013 | Syed Zafar Ali Shah vs. Province of Sindh & others |
| 3.C.P.No.D-4463/2013 | Munawar Baig vs. Province of Sindh & others |
| 4.C.P.No.D-4521/2013 | Syed Mureed Ali Shah vs. Province of Sindh & others |
| 5.C.P.No.D-4803/2013 | Abdul Jabbar Khan vs. Federation of Pakistan & others |
| 6.C.P.No.D-5023/2013 | Muhammad Hanif Qureshi & ors. vs. Province of Sindh & others |
| 7.C.P.No.D-5080/2013 | Sheeraz Javaid & others vs. Province of Sindh & others |
| 8.C.P.No.D-5091/2013 | Syed Nasir Abbas and others vs. Province of Sindh & others |
| 9.C.P.No.D-5104/2013 | Basharat Mehboob vs. DC Dist. Benazirabad Sindh & others |
| 10.C.P.No.D-5172/2013 | Asif Iqbal vs. Province of Sindh & others |
| 11.C.P.No.D-5294/2013 | Syed Ashfaq Ali & Ors. vs. Province of Sindh & others |
| 12.C.P.No.D-5329/2013 | Pir Syed Bashir Ahmed Shah Jilani vs. Province of Sindh & Ors. |
| 13.C.P.No.D-5369/2013 | Moula Bux vs. Province of Sindh & others |
| 14.C.P.No.D-4724/2013 | Shah Hussain Shah Sherazi vs. Province of Sindh & others |
| 15.C.P.No.D-4763/2013 | Muhammad Shareef Mirbahar vs. Province of Sindh & others |
| 16.C.P.No.D-5325/2013 | Irfanul Haq Magsi vs. Province of Sindh & others |
| 17.C.P.No.D-5404/2013 | Irfanullah Khan Marwat vs. Province of Sindh & others |

[C.P.NO.D-5098/2013 & other connected petitions]**Advocates for the Petitioners:-**

- 1.Dr.Muhammad Farogh Naseem in C.P.No.D-5098/13
- 2.S.Zafar Ali Shah petitioner in person in C.P.No.D-4559/13
- 3.Mr.Muhammad Mansoor Mir in C.P.No.D-4463/13
- 4.S.Mureed Ali Shah in C.P.No.D-4521/13
- 5.Mr.Narain Das Motiani in C.P.No.D-4803/13
- 6.Mr.Abdur Rehman in C.P.No.D-5023/13
- 7.Mr.Iqbal Qadri in C.P.No.D-5080/13
- 8.Mr.Khizar A. Zaidi in C.P.No.D-5091/13
- 9.Mr.Muhammad Aslam Bhutta in C.P.No.D-5104/13
- 10.Mr.Inayatullah G.Morio in C.P.No.D-5172/13
- 11.Mr.Abdur Rehman, in C.P.No.D-5294/13
- 12.Mr.Abrar Hassan in C.P.No.D-5329/13
- 13.Mr.M.Waseem Sammo in C.P.No.D-5369/13
- 14.Mr.M.Mehboob Awan in C.P.No.D-4724/13
- 15.Mr.Muhammad Mehboob Awan in C.P.No.D-4763/13
- 16.Mr.Moharram G.Balouch in C.P.No.D-5325/13
- 17.Syed Yasir Ahmed Shah in C.P.No.D-5404/13

Advocates for the Respondents:

Mr.Khalid Javed Khan, Advocate General, Sindh, Mr.Sibtain Mehmood, AAG and Mr.Abdul Jalil Zubedi, AAG. along with Mr.Mustafa Sohag, Deputy Secretary & Mr.Akhlaq Ahmed Section Officer, Local Govt. Deptt. Mr.Asadullah Abro, Dy.Commissioner, Kamber/Shahdad Kot. Mr.Agha Shahnawaz, Dy. Commissioner Thatta, Mr.Gul Muhammad Kurijo, Asstt. Commissioner Garabari. Mr.Abdul Aleem Lashari, Dy. Commissioner, Shaheed Benazirabad, Mr.Ghulam Farooq Leghari, Asstt.Commissioner, District Central and Mr.Ghaffar Ali Abbasi, Asstt.Mukhtiarkar, Karachi Central.

Mr.Muhammad Zahid Khan, Deputy Attorney General, along with Mr.Muhammad Najeeb, Joint Provincial Election Commissioner, Sindh, S.Rashid Hussain, Election Officer and Mr.Asadullah Hanjrah, Law Officer, Election Commission.

Advocates for the Interveners:

- Mr.Ahmed Ali Ghumro in C.P.No.D-4803/2013.
 Mr.Shahnawaz Dahri, in CP.NO.D-4763/2013.
 Mirza Sarfraz Ahmed in CP.NO.D-5369/2013.

Date of hearing : 19, 20, 23 & 24 December 2013.

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JUDGMENT

Muhammad Ali Mazhar, J: This common judgment will dispose of all the aforesaid constitutional petitions filed by the petitioners under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. The petitions have been brought to challenge the delimitation process carried out and completed by the Government of Sindh for various Union Committees, Union Councils, Town Committees, Municipal Committees, Municipal Corporation and Metropolitan Corporation(s) in the Province of Sindh. The petitioners have also questioned and assailed the Notifications whereby the Deputy Commissioners of the respective districts were appointed Delimitation Officers in respect of local councils established under the Sindh Local Government Act, 2013. Some of the petitioners have also challenged the vires of amendments made in the Sindh Local Government Act, 2013 through Sindh Local Government (Third Amendment) Ordinance, 2013 which was promulgated on 13.12.2013. Keeping in view the exigency and urgency in the matter, all learned counsel appearing for the parties, the petitioners present in person and the learned Advocate General Sindh agreed that let all the aforesaid petitions be heard and disposed of at katcha peshi stage and they argued their cases extensively and comprehensively.

2. Dr.Farogh Naseem, learned counsel for the petitioner in C.P.No.D-5098/13 argued that the petitioner is one of the leading political parties and in the last general elections it had secured third highest votes and presently it has 25 numbers of seats in National Assembly and 7 members in

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Senate and 51 seats in the Provincial Assembly of Sindh. He referred to the definition of word “population” provided under Section 3 of the Sindh Local Government Act, 2013 (hereinafter referred to as Act, 2013) according to which the population means the population in accordance with the last census officially published, which was held in the year, 1998. He referred to paragraph 5 of the petition in which he has shown us a table highlighting five districts of Karachi which includes the urban and rural population both. After promulgation of the Act, 2013 the same was amended on 2.11.2013 through Sindh Local Government (Amendment) Act, 2013 whereby the Schedule-I part “C”, the population in Union Council was amended within the range of 10,000 to 15,000 and population of Wards in Town Committee population was figured between 2000 to 3000 while the population in the Union Committee in Metropolitan Corporation fixed between 40,000 to 50,000. Through the same amendment the proviso attached to Section 15 in the original Act of 2013 was omitted. Meanwhile, the 2nd Amendment Ordinance, 2013 came into effect and sub-section (1) of Section 15 whereby after the word “district” the words “except Karachi Division” was added.

3. He further argued that on 12.11.2013, a notification was issued by the Secretary to Government of Sindh, Local Government Department whereby it was notified that consequent upon the amendment in Sindh Local Government Act, 2013, the District Council Karachi has ceased to exist. It was further stated in the notification that Union Councils finalized during delimitation process in the erstwhile District Council Karachi shall be treated as Union Committee in the respective District Municipal Corporation. Learned counsel argued that this notification was issued

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illegally as there was no lawful justification to treat the delimitation of Union Councils as delimitation of Union Committees. He further argued that in the original Act, 2013 there was no limit of population attached in part "C" of Schedule-I but it was provided that population of Union Council and the Union Committee would be as may be determined by the Government. He further argued that due to wrong process, a notification was issued on 21.11.2013 in exercise of powers conferred by the Section 8 of the Act, 2013 whereby the Government delimited the rural areas of the Union Councils in Karachi Division as per Schedule appended to the notification, through which 20 Union Committees and 21 Union Councils in District Malir have been created. He further argued that two more Union Councils Shah Mureed and Mai Garhi, which were otherwise falling in District East Karachi were also inducted in District Malir in order to manipulate the electoral college. He further argued that one more Union Council Gabopat was in district Karachi West has now been inducted into District South unlawfully.

4. The learned counsel also referred to the delimitation proposal 2013 submitted by the Deputy Commissioner Karachi, South to the Commissioner Karachi on 25.10.2013. Learned counsel argued that in the proposal population of 17 Union Committees has been submitted on the basis of estimation, as according to him the delimitation was required to be made according to census carried out in the year 1998. He further argued that 05 more Union Committees have been shifted from District East to District Malir vide notification dated 21.11.2013 in order to manipulate the electoral college. It was further averred that during the pendency of this petition through

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which several unlawful Acts were under challenge, the Government of Sindh promulgated the Sindh Local Government (Third Amendment) Ordinance, 2013 on 13.12.2013, but it was made effective from 16.9.2013. During the course of hearing, an application under Order 6 Rule 17 CPC was filed by learned counsel for the petitioner along with copy of amended petition challenging the Third Amendment Ordinance. Copy of the application was supplied to learned Advocate General and he put to notice under Order 27-A C.P.C. The application was allowed and amended petition was taken on record.

5. Through the amended petition, the petitioner has also challenged Section 3 and 8 of the Third Amendment Ordinance, 2013. According to the last amendment made through Section 8 in Schedule-I part "C" in clause (b) under the heading "Union Committee in Metropolitan Corporation" for the figures 40,000 to 50,000, the figures 10,000 to 50,000 have been substituted. He argued that this huge fluctuation and inflation in the figures have been made in order to commit gerrymandering and ruling party wants to win over through gerrymandering and unlawful means. Vast discretion has been conferred upon through this amendment and it is left at the leisure and pleasure of the Government to delimit any Union Committee to satisfy their own whims within the fluctuated figure of population limit ranging from 10,000 to 50,000, while through the earlier amendment it was only 40,000 to 50,000 which could be treated the marginal and reasonable fluctuation to some extent, but at present huge fluctuation and inflation has been created without any lawful justification and to discriminate amongst the population of various Union Committees so the mala fide and nefarious aims and

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objectives of the gerrymandering may be achieved. Learned counsel also assailed another amendment made in Section 13 of the original Act of 2013, a proviso has been added through which unbridled powers have been given in the hands of delimitation officer that if he reaches to the conclusion that an area which is rural, has acquired the status of urban area at the time of delimitation, he may declare such rural area to be urban area and such area shall be deemed to be an urban area.

6. He further argued that the proviso added in Section 13 with retrospective effect cannot be read in isolation but through this amendment an attempt has been made again for the purposes of gerrymandering to isolate the sub-section (1) of Section 13 so the basic requirement for inviting objections from the residents of an area may be dispensed with and in the haphazard way or manner any rural area may be inducted within the urban area without fulfilling the basic requirements of law. He further argued that all the amendments made in the Third Amendment and the process adopted for the delimitation is in utter violation of Article 25 of the Constitution. The Government radically disturbed the concept of uniformity of population by creating such irrational disparity in which it is difficult for the election commission to conduct the Local Government Elections in Sindh honestly, justly, fairly and in accordance with law and if any election is conducted in a non-transparent manner it will be a serious violation of Articles 218 & 219 and 9, 17 and 25 of the Constitution of Pakistan. He argued another aspect as well that each Union Committee will get equal funding, which will be a grave disparity and discrimination that Union Committee of 50,000 and the Union Committee of 10,000 population will

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get the same finance and funding. This disparity has been created so that a Union Committee with 10,000 population and Union Committee with 50,000 population shall have same voting rights in indirect elections which is also sequel of gerrymandering and also against the Article 25 of the Constitution.

7. He further referred to Section 34 of the Sindh Local Government Act, 2013 in which it is clearly provided that the Election Commission of Pakistan shall organize and conduct the elections and to make necessary arrangement as are necessary to ensure that the election is conducted honestly, justly, fairly and the corrupt practice are guarded against. In the end learned counsel prayed that the Notifications dated 12.11.2013, 21.11.2013 and 25.10.2013 (annexures F, G, H and J) relating to delimitation and final proposal for the District Malir and South be declared as ab initio void and illegal. He also prayed that direction be issued to the respondents to conduct delimitation strictly as per census of 1998 and the population standard given in the Act 2013 for Union Committees. He further prayed that Section 3 and 8 of the Sindh Local Government (Third Amendment), 2013 so also Section 10(2)(b) of Sindh Local Government Act, 2013 be declared unconstitutional and void ab initio. In support of his arguments he relied upon the following case law and material.

(1). PLD 1958 S.C. 41 (M/s. East and West Steamship Co., v. Pakistan and others). Equality is not violated by the mere conference of unguided power, but only by its arbitrary exercise by those upon whom it is conferred. If this is the correct position, the only question that would then arise would be the delegation of legislative power. If a statute declares a definite policy, there is a sufficiently

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definite standard for the rule against the delegation of legislative power, and also for equality if the standard is reasonable. If no standard is set up to avoid the violation of equality, those exercising the power must act as though they were administering a valid standard. For this reason there is a need for a judicial review to see whether or not power delegated has been exercised arbitrarily. Willi's Constitutional Law, 586.

(2). PLD 1999 S.C. 1026 (Federation of Pakistan and others v. Shaukat Ali Mian and others)“Article 25. Equality of citizens. Discriminatory provision. Concept. Marked distinction exists between a provision of a statute which may be ex facie, discriminatory and a provision thereof which may be capable of being pressed into service in discriminatory manner. Former provision would be liable to be struck down on the ground of violation of Article 25 of the Constitution but the latter provision cannot be struck down on the ground that same was capable of being used in discriminatory manner. Any discriminatory action which may be taken pursuant to such provision can be struck down.

(3). 2004 SCMR 1903 (Ghulam Mustafa Insari and others vs. Government of the Punjab and others). Courts, generally lean towards upholding the constitutionality of a statute rather than destroy it unless such a statute is, ex facie discriminatory or capable of discriminatory application and otherwise clearly violative of any provision of the Constitution.

(4). PLD 2010 S.C. 265 (Dr.Mobashir Hassan and others v. Federation of Pakistan and others). Articles 184, 185 & 186. Duty is cast upon the Supreme Court that it should normally lean in favour of constitutionality of a statute and efforts should be made to save the same instead of destroying it. Principle is that law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation, keeping in view that the rule of constitutional interpretation is that there is a presumption in favour of the constitutionality of the legislative enactments, unless ex facie, it is violative of a constitutional provision. Where a statute is ex facie discriminatory but is also capable of being administered in a discriminatory manner and it appears that it is actually being administered to the detriments of a particular class in particular, unjust and oppressive manner then it has been void ab initio since its inception.

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(5). PLD 2010 Federal Shariat Court 1 (Dr.Muhammad Aslam Khakhi vs. State and others). Fundamental rights guaranteed by the Constitution are firmly based upon various Injunctions of Islam. Presumption of constitutionality is attached to every legislative instrument and courts generally lean towards upholding the constitutionality of a statute rather than destroy it unless such a statute is, ex facie discriminatory or capable of discriminatory application and otherwise clearly violative of any provision of the Constitution.

(6). 1991 SCMR 1041 (I.A. Sharwani & others v. Govt. of Pakistan). Article 25(1). All citizens are equal before law and entitled to equal protection of law. State, however, is not prohibited to treat its citizens on the basis of a reasonable classification. Reasonable classification. Basis or criterion for classification as to avert violation of Article 25(1). Clause (1) of Article 25 of the Constitution of Pakistan (1973) enshrines the basic concept of religion of Islam. However, this is now known as the golden principle of modern jurisprudence, which enjoins that all citizens are equal before law and are entitled to equal protection of law. However, the above clause does not prohibit treatment of citizen by a State on the basis of a reasonable classification.

(7). 1992 SCMR 563 (Inamur Rehman v. Federation of Pakistan). Article 25. Equal protection to all is the principle on which rests justice under the law. Law should be saved rather than destroyed and Court must lean in favour of upholding the Constitutionality of a legislation. Rule of Constitutional interpretation was that there was a presumption in favour of the Constitutionality of legislative enactment. Where, however, there was on the face of a statute no classification at all and no visible differentia, with reference to the object of the enactment as regards the person or persons subject to its provision, then the presumption was displaced. Court could not be asked to presume that there must be some undisclosed or unknown reasons for subjecting certain individuals to discriminatory treatment, for in that case Court would be making a travesty of the Fundamental Right of equality before law enshrined in Article 25.

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(8). 1996 SCMR 700 (Central Board of Revenue v. Seven-up Bottling Company Pvt. Ltd.). Article 25, Constitution of Pakistan (1973), guarantees for equality of all citizens before law and their entitlement to get equal protection of law. Article 25 also casts a duty on the Government to ensure enactment of laws which should provide equal protection to all citizens. Such rights of citizens cannot be defeated on the ground of waiver.

(9). 2002 SCMR 312 (Zaman Cement Company Pvt. Ltd. v. Central Board of Revenue & others). Article 25. Legislature and other Taxing Authorities have power to classify persons or properties into categories and subject them to different rates of taxes, but there exists no power to target incidence of tax in such a way that similarly placed persons be dealt with not only dissimilarly, but discriminatingly. Function of judiciary is not to legislate or question the wisdom of Legislature in making a particular law nor it can refuse to enforce law even if the result of it be to nullify its own decision, provided the law is competently made. Vires of law can only be challenged being violative of any provision of the constitution, but not on the ground that it nullifies the judgment of superior court.

(10) Zaibtun Textile Mills Ltd. v. Central Board of Revenue). Delegation of legislative powers. Legislature can delegate authority to subordinate or outside authorities for carrying laws into effect and operation. Such power of delegation, inherent and ancillary to legislation. Legislature retains legislative powers intact to do away with agency. Constitutional theory underlying doctrine of impossible delegation of legislative power, held, not applicable. Constitution does not lay down and prescribe limits within which such delegation permissible. Competency of Legislature to delegate its power to be determined by Courts in exercise of their inherent judicial power under Constitution. No uniform test to determine competency of legislature to delegate such power. Constitution of Pakistan.

(11). PLD 2012 SC 923 (Baz Muhammad Kakar and others v. Federation of Pakistan and others). Unconstitutional part of a statute. Severance from the remaining (valid) part of statute. Scope. Doctrine of severability permitted a court to sever the unconstitutional portion of a partially unconstitutional statute in order to preserve the operation of any uncontested or valid remainder, but if the valid portion was so closely mixed up

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with the invalid portion that it could not be separated without leaving an incomplete or more or less mixed remainder, the court would declare the entire Act void.

(12). 2013 SCMR 1752 (Contempt proceedings against Chief Secretary, Sindh and others). Neither a non-civil servant nor a civil servant from non-cadre post could be transferred to a cadre post in Government by way of deputation as same would affect rights of civil servants serving in Government and create sense of insecurity in them. Impugned legislations meant for specific class of persons was violative of Article 25 of the Constitution and were violative of Articles 143 & 240 of the Constitution and would encourage nepotism and discourage transparent process of appointment of civil servants in prescribed manner. Provincial Assembly could not change structure of service laws in conflict with provisions of Article 240(b) or Article 242(1B) of the Constitution. Benefits extended to different employees or civil servants through impugned legislations would not attract principle of locus poenitentiae. Supreme Court struck down impugned legislations. Principles. Mala fide cannot be attributed to the legislature, but if a legislature deliberately and repeatedly embarks upon a venture to nullify considered judicial verdict in an unlawful manner, trample the constitutional mandate and violate the law, then it is difficult to attribute bona fide to it either.

(13). PLD 2012 SC 681 (Workers' Party Pakistan and others v. Federation of Pakistan and others) Article 218(3) Election Commission. Duties and powers. Words "justly", "fairly" and "honestly" used in Article 218(3) of the Constitution. Implications. Said words implied that the Election Commission was under a direct constitutional obligation to exercise all powers vested in it in a bona fide manner, meeting the highest of standards and norms, therefore, as a natural corollary all discretionary powers were also to be exercised and tested against such standards. Election Commission was charged with the duty to 'organize' and 'conduct the election'. Article 218(3) implied that the Election Commission was responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. Constitution conferred such responsibility on the Election Commission and ensured that all activities both prior, on and subsequent to Election Day, that were carried out in anticipation thereof, adhered to standards of justness and fairness, were honest, in

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accordance with law and were free from corrupt and/or illegal practices.

(14). PLD 1993 S.C. 473 (Mian Muhammad Nawaz Sharif v. President of Pakistan). Right conferred by Article 17 includes not merely the right to form a political party but comprises also other consequential rights. Guarantee “to form a political party” must be deemed to comprise also the right by that political party to form the Government wherever the said political party possesses the requisite majority in the Assembly. Any unlawful order which results in frustrating such activity, by removing such party from office before the completion of its normal tenure would, therefore, constitute an infringement of Fundamental Right guaranteed in Article 17(2) of the Constitution.

(15) PLD 2009 Lahore 268 (Muhammad Umer Rathore v. Federation of Pakistan). Theory of “Reading Down”. Applicability. Scope. “Reading Down” theory is a rule of interpretation, resorted to by the courts, when provision of law is found to be such that it offends fundamental rights or it falls outside the ambit of competence of a particular legislature.

(16) PLD 1997 S.C. 582 (M/s.Elahi Cotton Mills Ltd. v. Federation of Pakistan). Theory of reading down is a rule of interpretation which is resorted to by Courts when they find a provision read literally seems to offend a fundamental right or falls outside the competence of the particular legislature.

8. The learned counsel for the petitioner referred to the book “**Treatise on Constitutional Law, Substance and Procedure**” (Third Edition) by **Ronald D. Rotunda, Volume 3**, in which various dictums of U.S. Supreme Court have been referred which are as under:-

(a) In **Baker v. Carr**, two years after Gomillion, the Court found reapportionment cases to be justiciable based on the more general equal protection clause of the Fourteenth Amendment. *Colegrove* was distinguished and the Court held that debasement of a person’s vote by

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malapportionment is a violation of the equal protection guaranty of the Fourteenth Amendment. This claim was significantly different from those based on the nonjusticiable republican form of government clause. **Ref. 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962) on remand 206 F.Supp. 341 (M.D. Tenn. 1962).**

(b) The value of the right recognized in Baker was explained in Reynolds v. Sim which created the one person, one vote principle grounded in the equal protection clause. **Ref. 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), rehearing denied 379 U.S. 870, 85 S.Ct. 12, 13 L.Ed.2d 76 (1964).**

(c) In **Sailors v. Board of Education**, the Supreme Court approved the choosing of county school board members by a method whereby each local school board appointed only one delegate and was allowed only one vote at the caucus convened to elect the county school board, even though the districts represented by the local school boards were of disproportionate population. **Ref. 387 U.S. 105, 87 S.Ct. 1549, 18 L.Ed.2d 650 (1967).**

(d) In **Board of Estimate v. Morris**, the Justices unanimously ruled that New York City's Board of Estimate was subject to the one person, one vote principle. The Board of Estimate was composed of the elected presidents of each of the city's five boroughs, each of whom cast one vote on the Board, and three officials who were elected by city-wide ballot (the city's mayor, comptroller, and city council president). There was a wide disparity in the populations of each of the boroughs, so that the citizens living in the least populous boroughs had a greater impact on the election of the Board than did persons living in the most populous boroughs. The Board did not have general legislative authority over the city but it did perform a variety of functions similar to those performed by municipal governments, including the calculations of certain utility and property taxes, zoning authority, fixing the salaries of city officers, and a sharing of legislative function with the city council regarding capital and expense budgets. The Court found that the array of powers possessed by the Board were sufficient to bring it within the requirements of the equal protection clause one person, one vote principle.

(e) In **Federal Elections**. In **Wesberry v. Sanders** the Supreme Court required states to draw their congressional districts so that as nearly as is practicable one man's vote in a congressional election is to be worth as

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much as another's. **Ref. 276 U.S. 1,84 S.Ct.526, 11 L.Ed.2d 481 (1964).**

(f) In **White v. Weiser** the Court invalidated a reapportionment plan where the differences were even smaller than Kirkpatrick. In **White** the average deviation of all districts from the ideal was .745%, the largest district exceeded the ideal by 2.43% and the smallest district under the ideal by only 1.7%. The plan was rejected in favour of one where the largest district exceeded the ideal by .086% and the smallest was under the ideal by .063%. Again it should be remembered that the one person, one vote requirement in federal elections is based on Article I rather than the equal protection clause of the Fourteenth Amendment. Although the Supreme Court formally bases congressional redistricting principles on Article I, & 2 of the Constitution, the underlying principle that justifies judicial scrutiny of such state activity is one of guaranteeing equality in the power of voters within a state. The Court has not ruled out all deviations from mathematical equality between congressional districts within a state, even though it has found that no deviation in this area is so small that it may be considered de minimis and permissible under Article I, & 2 without any justification. The Court, in reviewing congressional district maps, first requires those attacking the districting plan to demonstrate that the population differences between congressional districts could have been reduced or eliminated by a good faith effort to draw districts of equal population. If a plaintiff can demonstrate that the population differences are not a product of a good faith effort to achieve equality, the state will be required to prove that each significant variance between districts was necessary to achieve some legitimate goal. **Ref. 412 U.S. 783, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973), 421 U.S. at 786, 796-97, 93 S.Ct.at 2350, 2355-56, See also, Karcher v. Daggett, 462 U.S. 725, 103 S.Ct. 2653 77 L.Ed.2d 133 (1983) disparity between largest district and smallest district of 0.6984% plan invalidated), on remand 580 F.Supp.1259 (D.N.J.1984) and Karcher v. Daggett, 462 U.S. 725, 731, 103 S.Ct. 2653, 2660, 77 L.Ed.2d 133, 143 (1983) on remand 580 F.Supp. 1259 (D.N.J.1984).**

(g) In **Mahan v. Howell** the Court formally recognized that while population alone is the primary criterion to judge a congressional districting scheme, "broader latitude has been afforded the States under the Equal Protection Clause in state legislative redistricting...." In **Mahan** the most overrepresented district exceeded the ideal by 6.8%, the most underrepresented exceeded the ideal by 9.6%. These

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variations were found justified by the state policy of respecting political subdivision boundaries. Subsequently, de minimis variations were found to require no justifications at all; in a case where the most overrepresented district exceeded the ideal by 5.8% and the most underrepresented was under by 4.1% for a total variation of 9.9%, the Court held that 9.9% total variation does not make out a prima facie case and does not require any special justification. However, deviations of up to 16.5% for state senate districts and 19.3% for state house of representative districts have been held to violate the one person, one vote principle. While the Court has not created a special test for local governmental units, it seems clear that deviations in the one person, one vote principle will be held to, at most, no higher a standard than that imposed on state governments. The court has upheld a deviation of 11.9% for a local government unit at a time before it recognized the reasonableness test for state governments. **Ref. 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973) rehearing denied and opinion modified, 411 U.S. 922, 93 S.Ct. 1475 36, L.Ed.2d 316 (1973) and Connor v. Finch, 431 U.S. 407, 97 S.Ct. 1828 52 L.Ed.2d 465 (1977).**

(h) The one person, one vote principle is not the only criteria, for challenging or evaluating the district lines drawn for municipal, state, or federal elections. Even though a legislative districting map complies with the one person, one vote principle, it will be invalid if drawn upon the basis of constitutionally improper criteria. If the district lines were drawn for the purpose of diluting the voting strength of minority racial or ethnic groups, the law would violate the equal protection clause. **Ref. Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).**

9. He further referred to **ACE Electoral Knowledge Network, Guiding Principles of Boundary Delimitation.**

i. Representativeness

Electoral district boundaries should be drawn such that constituents have an opportunity to elect candidates they feel truly represent them. This usually means that district boundaries should coincide with communities of interest as

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much as possible. Communities of interest can be defined in a variety of ways. For example, they can be geographically-defined communities delineated by administrative boundaries or physical features such as mountains or islands, or they can be “communities” that share a common race, ethnic or tribal background, or the same religion or language. If districts are not composed of communities of interest, however defined, it may be difficult for representatives to serve the constituency well.

ii. Equality of Voting Strength

Electoral district boundaries should be drawn so that districts are relatively equal in population. Equally populous districts allow voters to have an equal weighted vote in the election of representatives. If, for example, a representative is elected from a district that has twice as many voters as another district, voters in the larger district will have half the influence of voters in the smaller district. Electoral districts that vary greatly in population a condition referred to as “malapportionment” violate a central tenet of democracy, namely, that all voters should be able to cast a vote of equal weight. The following are two standards developed to reflect this principle, one offered by the Organization for Security and Cooperation in Europe (OSCE) and one by the UN Committee on Human Rights (UNCHR):

- * The delineation of constituencies in which elections are conducted must preserve the equality of voting rights by providing approximately the same ratio of voters to elected representatives for each district. Existing administrative divisions or other relevant factors (including of a historical, demographic, or geographical nature) may be reflected in election districts, provided the design of the districts is consistent with the equality of voting and fair representation for different groups in society. (OSCE, “Inventory of OSCE Commitments and other Principles for Democratic Elections).
- * The principle of one person, one vote must apply, and within the framework of each State’s electoral system, the vote of one elector should be equal to the voter of another. The drawing of electoral boundaries and the method of allocating votes should not distort the

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distribution of voters or discriminate against any group and should not exclude or restrict unreasonably the right of citizens to choose their representative freely. (UN Committee on Human Rights, General Comment 25, “The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service”). Ref. [aceproject.org/ace-en/topics/bd/bd20].

10. He further referred to “**Constitutional Law**” (**Sixth Edition**) by **William B. Lockhart, Yale Kamisar, Jesse H. Choper and Steven H. Shiffrin.**

- (1) *Wesberry v. Sanders* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964), per Black J., struck down the Georgia congressional districting statute which accorded some districts more than twice the population of others: “The command of Art. I, & 2, that Representatives be chosen ‘by the People of the several States’ means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.
- (2) *Avery v. Midland County*, 39 U.S. 474, 88 S.Ct. 1114, 20 L.Ed.2d 45 (1968). The Midland County (Tex.) Commissioners Court was elected from single-member districts of unequal population—414; 828; 852; and 67,906 (the city of Midland, the country’s only urban center). The Court, per WHITE, J., finding that the Commissioners Court had “general responsibility and power for local affairs,” held that when a state “delegates lawmaking power to local government and provides for the election of local officials from districts [those] qualified to vote [must] have the right to an equally effective voice in the election process. Under the majority’s pronouncements, however, this rational comprise would be forbidden: the metropolitan government must be apportioned solely on the basis of population if it is a ‘general’ government.”

11. Mr.Iqbal Qadri, Advocate for the petitioner in C.P.No.D-5080/13 and Mr.Khizar A. Zaidi, Advocate for the petitioner in C.P.No.D-5091/13 have adopted the arguments of

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Dr.Farogh Naseem, Advocate for the petitioner in C.P.No.D-5098/13.

12. Mr.Abdur Rehman, Advocate for the petitioners in C.P.Nos.D-5023/13 and 5294/13 referred to sub-section 2(b) of Section 8 of the Sindh Local Government Act, 2013 and argued that no district council or union council can be inducted in the urban area. He further referred to Section 12 of the same Act which defines the characteristics of local area and further provides that an area declared as Union, Town, Municipality or Corporation shall, as far as possible be compact and contiguous with territorial unity. He then referred to the guidelines for delimitation issued by the Government in which though one of the criteria for delimitation is that the area should be as far as possible compact and contiguous with territorial unity and the boundaries of local council should be as far as possible not cross the revenue unit viz. Deh Tapa, Circle, Taluka or District. According to learned counsel through the earlier amendment in the population of town committee some fluctuation was made but in the Third amendment radical changes were made to upset and frustrate the delimitation guidelines. He further referred to another Notification dated 4.10.2013 whereby guidelines were issued for delimitation process to ensure that existing census blocks may not be disturbed and Provincial Election Commission be consulted during delimitation process in order to avoid any complication/duplication, the delimitation process should be based on 1998 population census and it will be completed as per schedule given in the advertisement of Local Government Department. He further referred to the Notification dated 10.10.2013 whereby revised population criteria was conveyed for delimitation process whereby the

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population of the union committee in Metropolitan Corporation was raised from 40,000 to 50,000. He further referred to the Notification dated 21.10.2013 conveyed to the Commissioners and Deputy Commissioners in Sindh in which again the category and population with exact figures were communicated with the expectation that the local councils particularly union councils and union committees (wards) will increase up to 30% of the exiting number. Learned counsel argued that this inflation and the rider of 30% both on mere expectation has been retained with the sole aim and objectives of gerrymandering, which is violation of Section 12 of the Sindh Local Government Act, 2013, which provides that the area as far as possible be compact and contiguous with territorial unity and it amounts to not only disturbing the territorial unity but also redefining it.

13. The learned counsel further referred to Notification dated 12.11.2013 whereby it was notified that union councils finalized during delimitation process for District Councils Karachi shall be treated as union committees in respect of District Municipal Corporation, learned counsel made much emphasis that this too is in violation of Section 8 of the Act. Learned counsel further referred to proposed wards/union committees for D.M.C. Malir, which is available at page-265 of the court file, which shows that votes as per electoral roll 2012 in Khuldabad, Qaidabad and Cattle Colony are 25789, 18728 and 26922 while in the final delimitation proposal the population of these three wards shown as 42918, 40653 and 41640 respectively. No justification has been given in the final proposal for this fluctuation and inflation, which is evident to show the intention of gerrymandering at vast level.

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14. He concluded that the notification appointing delimitation officer as Election Tribunal (annexure E) is mala fide and illegal ab initio and unconstitutional. He further argued that the Notifications dated 10.10.2013 and dated 21.10.2013 (annexure G/2, G/3, G/4 & H-1) all are illegal in which criteria for delimitation was provided in violation of the various sections of Local Government Act, 2013. On the same ground he also challenged the delimitation carried out in the H.M.C. whereby Qasimabad was excluded from the limits of Hyderabad Municipal Corporation. The learned counsel argued that that Qasimabad is part of H.M.C. but it was unlawfully separated vide notification dated 10.7.2013. It was notified that Municipal Committee Qasimabad shall be separate entity for administrative and function purposes. He further pointed out that in the month of June, 2010 a similar notification was issued to delimit the local area of union council of Taluka Qasimabad District Hyderabad against which the petition was filed by some other petitioners bearing C.P.No.D-3537/2010. Learned counsel argued that the learned division bench of this court vide order dated 8.2.2011 suspended the impugned notification. Learned counsel stated at bar that the C.P. is still pending and interim orders are still in force and despite interim orders a fresh attempt has been made to separate the Qasimabad from H.M.C. which is unlawful.

15. Mr.Inayatullah Morio, Advocate for the petitioner in C.P.No.D-5172/13 argued that the guidelines issued for delimitation were not adhered to by the delimitation officer and objections were also not invited. He argued that new delimitation exercise and process should be ordered in the entire Larkana Division in view of Section 11 to 14 of the

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Sindh Local Government Act, 2013. He referred to page-21 of the court file which is population criteria which provides that the ward in a municipal committee and town committee excluding corporation shall consist of population of 2000 while through the first amendment the population of ward in town committee was amended from the figure 2000 to 3000 and ward in municipal committee between 4,000 to 5000 while he shown us page-25 of the court file which is related to delimitation of urban areas/municipal committee/town committee/ward of District Kambher Shahdadkot, which depicts that the ward appearing at Sr.No.4,9 and 12 are below the population of 2000. He further argued on oral motion that the Third Amendment Ordinance is also unconstitutional in which excessive powers and discretion has been given to the delimitation officers to complete the exercise of delimitation with sole view to favour the ruling party which is unconstitutional.

16. Mr. Narain Das Motiani, Advocate for the petitioner in C.P.No.D-4803/13 argued that the delimitation proposal dated 25.10.2013 was not published under Sub-section (3) of Section 8 and Section 13, which is against Section 153-A of the Sindh Local Government Act, 2013, which provides that the powers conferred on any person shall be exercised fairly, justly and in public interest. He referred to part "C" of Schedule-I of Local Government Act, 2013 and argued that the population of union council is between 10,000 to 15,000 while he shown us page-49 of the court file in which many entries of the union council for rural population and even in the town committees of the proposed delimitation plan of Taluka Daur is more than 15,000. Learned counsel argued that even the delimitation officers have violated the guidelines provided for the delimitation. Learned counsel

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also pointed out the appeal filed before the Commissioner Hyderabad Division which was disposed of by the appellate tribunal through vide order dated 8.11.2013 in a slipshod manner. The appellate tribunal simply referred to the objection in first paragraph and after reproducing the comments of delimitation officer he concluded that there was no flagrant violation or deliberate attempt on the part of delimitation officer and he dismissed the appeal.

17. What we have observed from the comments submitted by the delimitation officer that he himself admitted that the population of wards is slightly inconsistent. He further admitted that the areas adjoining Daur have begun to develop which shows that the rural area has been inducted into urban area in violation of Section 13 of the Local Government Act, 2013. He further admitted that the survey Nos.111 and 112 falling within ward No.8 have shown new ward No.10 erroneously due to typographic error. Despite admission of the delimitation officer, the appeal was dismissed even no order was passed for the correction of the alleged typographic error. Learned counsel concluded that the entire delimitation process was conducted in a nontransparent manner hence the notification issued on 26.9.2013 whereby the Chief Minister appointed D.Cs as delimitation officers should be declared void and unconstitutional and further directions be issued that the delimitation exercise should be made afresh.

18. Four interveners Muhammad Yasin Brohi and others have filed Misc. Application No.3317/13 in this C.P. under Order 1 Rule 10 CPC through their counsel Mr.Ahmed Ali Ghumro. With the consent of the petitioner's counsel and learned A.G. they are impleaded as respondent

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Nos. 6 to 9. Counsel for the petitioner is directed to file amended title. Mr.Ahmed Ali Ghumro argued that the contents of para 9 and 10 of the petition are based on concealment of facts. He further argued that Deh Nassrat has been commercialized. The petitioner has filed this petition with mala fide intention to deprive the proposed interveners from their representation in the local Govt. election. He fully supported the order passed by appellate tribunal Hyderabad Division. He further argued that Sindh Government is competent to appoint delimitation officer and the delimitation was carried out in view of the guidelines provided by the Government of Sindh. He concluded that this petition is liable to be dismissed.

19. Mr.Muhammad Aslam Bhutta, Advocate for the petitioner in C.P.No.D-5104/13 at the very outset invited our attention to the page-61 of the court file which is an appellate order passed by appellate tribunal Hyderabad Division. This petition also relates to the town committee Daur district Shaheed Benazir Abad in which also the appeal was dismissed summarily. The objection of the appellant was noted in first paragraph then the comments of the Delimitation Officer quoted and finally the appeal was dismissed by observing that there was no flagrant violation. In this case also the delimitation officer admitted slight inconsistency in population of wards. The learned counsel argued that the ward No.1 to 10 are rural areas and these wards have been inducted in the town committee as done by the delimitation officer in other cases and he pleads discrimination in the process of delimitation. He further argued that ward No.3 was one ward but it was converted into two wards. Despite induction of two wards in ward No.3 even then the population is less than 2000.

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He prayed that respondent No.1 to 3 be directed to delimit town committee Daur district Shaheed Benazirabad. He prayed that the respondent No.1 to 3 be directed to increase the wards in the urban areas of town committee Daur with uniform population.

20. Mr.Mureed Ali Shah petitioner in person in C.P.NO.D-4521/2013 adopted the arguments of Dr.Farogh Naseem, on questions of law, however he referred to page-21 which is final delimitation proposal for town committees and union councils of District Naushahro Feroze, Taluka Kandiaro. He pointed out that in many wards the population is less than 2000 while it was to be remained between 2000-3000. He further argued that despite the population which is less than 2000, at least twelve wards were made unnecessarily. He then referred to page-23 and argued that union council Dabhro has been converted into town committee which delimitation officer could not do. He further argued that no survey of urban and rural area has been carried out in terms of Section 8, 13, 14 and 17 of the Local Government Act, 2013. He further referred to page-25 and argued that the Union Council Khanwahan has been changed to Union Council Shaheed Muhammad Nawaz Khushik, which is utter violation of Section 16 of the Local Government Act, 2013 in which names of U.Cs cannot be changed without due process. He further referred to page-27 to show that names of Union Council Mohabat Dero Jatoi has been changed to Union Council Shaikhani, which is again violation of law. He further pointed out page-29 to show that the population in Union Council Ghulam Shah is 8906 while allowable population in union council is 10,000 to 15,000. He also referred to page-31 and argued that Union Council Ghanghra has been converted into Union

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Council Kandiaro Rural which population is also 9814. He then referred to Union Council Jan Noor Allah where the total population is 18468 while cut off line is 10,000 to 15,000. He then referred to page-37 relating to Taluka Mehrabpur District Naushahro Feroze, in which the population of various wards is less than 2000. He further referred to page-39 to show that Ward No.2 and Ward No.17 both are two different wards with different population but their boundaries are shown to be same. Similar treatment was meted out with Ward No.3 and 18 and some rural areas have been merged into urban area. At page-43 Union Council Halani converted into Town Committee by adding rural area into urban and many wards mentioned in the delimitation proposal is less than 2000. He also pointed out page-47-B, the name of Union Council Bhority has been changed to Union Council Shaheed Sardar Muhammad Alam without complying the due process. He also referred to page-47-C which relates to the Town Committee Darya Khan Mari and argued that the population is required to be 10,000 to 15,000 while it is only 7556. The Taluka Naushahro Feroze, Town Committee Padidan has 12 wards but the population of each ward is less than 2000. He further referred page No. 47-F which is related to Union Council Mithani, which has been converted into town committee by means of adding rural area into urban area. He further pointed out similar anomalies in relation to different Union Councils and Town Committees. He referred to Section 10 of the Local Government Act, 2013 and argued that the population of the Union Councils in a district is required to be uniform and the boundaries of Union Councils shall not cross the limit of revenue of taluka in a district.

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21. The petitioner also referred to the election rules framed on 27.11.2013 and argued that under the same rules subject of delimitation has also been touched. He referred to Schedule-VII of the Local Government Act, 2013 and argued that the entry No.1 under which the election rules for delimitation has unlawfully been made only relates to the organization and conduct of the elections and nothing to do with the subject of delimitation. He further argued that all illegalities have been committed by the Government in the delimitation exercise to commit gerrymandering and to achieve favorable results in the local government elections in Sindh. He further argued that the way in which the delimitation exercise has been completed, there is no possibility that Election Commission would enable to conduct the elections in terms of Section 34 of the Local Government Act, 2013 and the constitutional mandate according to which it is their duty to ensure that the election is conducted honestly, justly and fairly and the corrupt practices are guarded against. He further argued that by virtue of Section 4 of Third Amendment Ordinance promulgated on 13.12.2013 sub-section 14 has been added in Section 18 whereby formation of panel made mandatory which virtually ousted an independent candidate from arena and without panel nobody can contest the election which is the violation of fundamental right of every citizen of Pakistan and also in violation of Section 35 and 36 of the Local Government Act, 2013, which are only relevant sections through which a candidate can be disqualified. He further argued that clause (d) of Section 32 has been omitted to gain undue advantage to rig the elections under which it was provided that every voter within the union council or ward shall have only one vote irrespective of the number of members to be elected from the union council or

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ward. He further argued that the delimitation officer maneuvered and delimited the union councils and town committees with mala fide intention to safeguard the interest of ruling party in utter violation of Section 10 of the 2013 Act, while including the rural area in the urban area the requirement mentioned in Section 13 have been overlooked. The delimitation process is a lengthy procedure, which was required to be conducted by a neutral person as it requires expert evidence but the delimitation process was initiated and concluded under the control of M.N.As and M.P.As.

22. Learned counsel further argued that by virtue of Third Amendment Ordinance, 2013 a proviso has been added in Section 13 whereby unbridled power has been given to the delimitation officer that he may declare any rural area to be urban area, which is totally in conflict with the spirit of Section 13 of the Section 2013 Act. He concluded the arguments with the prayer that the notification appointing Deputy Commissioners as delimitation officers be declared illegal and direction be issued to Election Commission of Pakistan to conduct the Local Government Election on the basis of old delimitation and the unconstitutional amendments made in the Third Amendment Ordinance 2013 are liable to be struck down. In support of his arguments he relied upon the following case law:-

2006 SLJ 486 (Jam Mehtab Hussain and another v. Province of Sindh and others). Article 199. Land Revenue Act, 1967, Section 6. Sindh Local Government Ordinance, 2001, Section 6, 7. Delimiting. Demarcation of Talukas and delimiting/creating union councils. Notification of. Challenge to. Exercise of powers. Question of. Constitution petition in High Court impugning said notification issued by Government of Sindh vis-à-vis demarcation of various Talukas under section 6 of LRA and subsequent

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notification issued under section 6, 7 of SLGO delimiting/creating union councils and High Court was called upon to decide following Proposition/Controversies:-

- (a) Whether under the SLGO, 2001, it is the Chief Election Commissioner or the Provincial Government which has the powers to delimit the boundaries of the Union Councils in various local areas.
- (b) Whether the impugned notification issued under Section 6 of the Land Revenue Act are justiceable.
- (c) Whether subsequent notification issued by the Provincial Government under section 6 and 7 of the SLGO 2001, creating new Union Councils in District Ghotki can be upheld.

Composition/delimitation/creation/setting up of Union, Taluka Town, District and City District were the sole prerogatives of the Provincial Government and no exception could be taken to the same. The Government did enjoy plenary powers under section of LRA to sub-divide the Province into various smaller units viz Divisions, Districts and Talukas. In instant case no visible reasons had been displayed for the purpose of delimitation of the Talukas in the manner proposed wherein said exercise had been resorted to for the specific purpose of creation of new Union Councils. Impugned notifications were set aside and declared to be without lawful authority and of no legal effect. Writ petition allowed accordingly.

23. Mr.Zafar Ali Shah, petitioner in person in C.P.No.D-4559/13 also filed an application under Order 6 Rule 17 CPC for challenging the Third Amendment Ordinance, 2013 promulgated during the pendency of his petition. Copy of the application was supplied to the learned A.G. with amended copy of petition who was already put to notice under Order 27-A C.P.C. By consent this application was also allowed and amended petition was taken on record. The petitioner referred to the population criteria attached with the guidelines issued for delimitation and argued that

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the population criteria of the union council was reduced to 10,000 to 15,000 from 15,000 to 20,000 with mala fide intention in order to manipulate the territorial limits of union councils. Originally 15,000 to 20,000 criteria was fixed through Notification dated 16.9.2013 which was subsequently reduced. The delimitation officer clandestinely issued a proposed delimitation report just after four days of modification without inviting public objections. The said modification was effected through a letter instead of notification in order to keep the public at large in complete darkness. As per guidelines the existing boundaries of the union councils/committees were to be kept intact as far as practicable and minimum changes were to be made but under the garb of modification entire boundary of existing councils/committees were changed. Most of the wards in town committees have less than minimum population of 2000. He shown us different town committees such as Taluka Bheria, Kandiaro, Mehrabpur and Naushahro Feroze. He further argued that various Dehs/villages have been included in the town committee without fulfilling the requirements envisage under Section 13 of the 2013 Act. He further argued that mala fide is apparent on the face of record as a town committee could comprise of any population between 10,000 to 50,000 which is discriminatory and against the Article 25 of the constitution.

24. He also pointed out the violation of Section 10 of the 2013 Act which mandates a uniform population for union councils and for example he quoted Taluka Bheria, Kandiaro, U.C. Shahdadko, Ghulam Shah, Kandiaro (Rural) Jam Noor Ullah and Ghanghro. The petitioner further argued that boundary of most of the U.Cs. and

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Town Committees are neither compact nor contiguous which is in contravention of Section 10 and 12 of the Act, 2013. In the nutshell the petitioner objected the entire delimitation process and he also raised allegations of gerrymandering against the government and prayed that entire delimitation exercise should be revisited without which fair elections are not possible. He further argued that the single voting right earlier provided in clause (d) of Section 32 of the Act, 2013 has been omitted deliberately with mala fide intentions to introduce illegal and unjustified amendments in future such as panel system and proxy voting which is also in contravention of the Section 33 of the Act. He argued that the panel system has been introduced under the Third Amendment for election including proxy voting which is against Article 17 and 25 of the Constitution. So far as the proviso attached with the Section 13 of the original Act 2013 in view of Third Amendment is concerned, the petitioner argued that it is a device to bestow unbridled powers to the delimitation officer who in his own discretion is allowed to declare any rural area to be urban as it deems fit. He finally prayed that the election be conducted as per councils/committees which were existed prior to the enactment of Sindh Local Government Ordinance, 2011.

25. Mr.Mehboob Awan, learned counsel for the petitioner in C.P.No.D-4763/13 which is pertaining to delimitation of District Thatta argued that Deh Karlo and Ghato have included wrongly in Union Council Khan which has been upgraded as Town Committee Var without inviting objections which is in violation of Section 10 and 13 of the Local Government Act, 2013. He further argued that now the population of newly created Town Committee Var would

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be about 10,000 to 12,000 and population on Deh Khan would be about 15,000 to 17,000 by adding above Deh in Town Committee, it would be much away from Var and the people of village will be in extreme trouble. He argued that the delimitation exercise should be revisited.

26. In the same petition, Hassan Ali and others have filed an application under Order 1 Rule 10 CPC for impleading them in this petition as respondents. By consent, application was allowed. Their counsel Mr. Shahnawaz Dahri, Advocate argued that Deh Karlo Ghato and Khan are already connected with the boundaries of Tapa and revenue district located in the same union council Var. He argued that all the above villages were part of union council Khan presently as Union Council Var, therefore, in the present setup of delimitation the same was rightly transformed into a town committee keeping in view the population criteria and procedure for delimitation.

27. Mr. Abrar Hassan, learned counsel for the petitioner in C.P.No.D-5329/13 argued that the matter pertains to the Town Committee Ghouspur, District Kashmore. He argued that the village Dahri has been included into town committee Ghouspur, which is 03 k.m. away. He pointed out page-37 which is a Notification dated 10.9.1991 whereby the Additional Chief Secretary excluded Deh Nasser and village Dehri from the limits as Town Committee Ghouspur. Learned counsel submits that after rejection of objections, an appeal was filed before the appellate tribunal Larkana Division in which it has been observed by the appellate authority that proposal of delimitation officer is not synchronized with the guidelines of the Local Government Department even then the

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delimitation officer was directed to include village Dahri into town committee Ghouspur due to its population size and characteristics. Learned counsel argued that this inclusion is for the reasons that the ruling party may achieve favorable results through gerrymandering. So far as the question of law is concerned learned counsel adopted the arguments of Dr.Farogh Naseem, advocate.

28. Barrister M.Mansoor, learned counsel appearing in C.P.No.D-4463/13 argued that entry No.1 of Schedule-7 does not cover the delimitation so no rule could be framed for the delimitation by the Government of Sindh, hence the Sindh Local Council (Election) Rules, 2013 cannot be considered as rules for the purposes of delimitation. He further argued that in the Third Amendment through a proviso incorporated under Section 13, blanket powers have been given to the delimitation officer. He also opposed to the introduction of panel system and argued that due to condition of panel, an independent candidate cannot contest the election unless he forms his own panel or allowed to be joined any political party. For the rest, he adopted the arguments of petitioners M/s. Mureed Ali Shah and Zafar Ali Shah.

29. Mr.Yasir Ahmed Shah, learned counsel for the petitioner in C.P.No.D-5404/13 adopted the arguments of petitioners Mureed Ali Shah and Zafar Ali Shah. He further argued that Section 18(10), (12), (13) and (14) are ultra vires to the constitution to the extent of inconsistency with Article 4, 8, 17, 25, 32 and Article 140-A of the Constitution. He argued that the area of Saddar Town has been unlawfully transferred into District East through entry No.3, page-37 of the notification dated 4.11.2013. He

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further argued that in seven U.Cs District East old charge numbers are mentioned and no voter list has been issued with new charge numbers and the voters will face numerous difficulties and practically it will be not possible for them to cast their votes. In the initial proposal new charge and circle numbers were mentioned but in the final proposal again old numbers are mentioned. Learned counsel further argued that the Notifications dated 4.11.2013 and 21.11.2013 have been issued without lawful authority and liable to be declared null and void.

30. Mr.Moharram G.Balouch, learned counsel for the petitioner in C.P.No.D-5325/13 pointed out page-35 of court file and argued that union council Sobho Mangsi of Taluka Mehar has population of 15870 which is newly created union council. Initially the area of Sobho Mangsi was under union council Nau Goth now the Sobho Goth has been merged in union council Aghmani. He claims that the distance between Sobho Mangsi and Aghmani is about 10 k.m, earlier the voters of Sobho Mangsi were casting their votes in Nau Goth within the distance of 01 Km. He submits that objections were filed which were not considered, however the appellate tribunal vide order dated 7.11.2013 directed the delimitation officer to resubmit his proposal. Learned counsel further referred to page-45 which is a letter written by Commissioner Hyderabad Division to Research Officer, Government of Sindh with the request that the Secretary Local Government may consider the request to restore the original delimitation order by Deputy Commissioner Dadu whereby the union council Sobho Khan Mangsi with headquarter at village Sobho Khan Mangsi was proposed and to consider the formation of union council Aghmani with the headquarter at village

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Aghmani. He prayed that the order dated 7.11.2013 be set aside and proposal for formation of union council Sobho Khan Mangsi with its headquarter at village at Sobho Khan Mangsi be restored.

31. Mr.Muhammad Waseem Sammo, learned counsel for the petitioner in C.P.No.D-5369/13 argued that originally Deh Morchadai and Mirwari were in union council Kharochan District Thatta but now the said villages have been merged in union council Keti Bander District Thatta which has at least 40 Km. distance for the voters to travel and cast their votes. He argued that the objections were filed against the delimitation proposal but no opportunity was afforded to the petitioner. He further argued that the appeal was filed before appellate authority against the proposal which was also dismissed without appreciating the facts. He prayed that not only the impugned order is liable to be set aside but the Deh Morchadai and Mirwari are liable to be merged into union council Kharochan from union council Keti Bunder to restore the original position.

32. One intervener Pir Sikandar Shah through Mirza Sarfraz Ahmed, advocate has filed an application under Order 1 Rule 10 CPC. By consent this application was allowed and taken on record. Counsel for the intervener argued that both the aforesaid villages have been rightly merged into union council Keti Bunder. He also opposed the contention of the petitioner's counsel regarding the distance of 40 k.m. Assistant Commissioner, Ghorabari Dr.Ghulam M.Korai argued that 10 villages from union council Khorachan were withdrawn and adjusted due to change and formation of new districts.

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33. Mr.Mehboob Awan, learned counsel for the petitioner in C.P.No.D-4724/13 argued that directions be issued against all the respondents to conduct the elections in accordance with law. It has been prayed that the present Government be directed to deploy Army during local bodies election at District Thatta for maintaining law and order situation. He further prayed that judicial officers be appointed to conduct local bodies elections to be held at District Thatta. This petition is in a generalized form. No doubt as and when the elections of local bodies will be conducted by the Election Commission, naturally in order to conduct fair, free and transparent elections the Election Commission will take all necessary preventative measures for which there is no need of directions at this premature stage.

34. Mr.Khalid Javed Khan, learned Advocate General Sindh gave us a short background of the date of promulgation of 2013 Act and the subsequent amendment made therein through Amendment Ordinances. Sindh Local Government Act was promulgated on 16.9.2013 and first amendment came into effect from 2.11.2013, second Amendment Ordinance from 25.11.2013 and Third Amendment Ordinance promulgated on 13.12.2013. During pendency of above petitions Second and Third Amendment Ordinances have been passed by the Sindh Assembly on 20.12.2013 on which assent of Governor of Sindh is awaited. Learned A.G. argued that under the original Act there was no population limit for the union committee but it was as may be determined by the Government, however, by virtue of first amendment the population figure was fixed between 40,000 to 50,000 but in the Third Amendment it was reframed with the range 10,000 to 50,000. The learned A.G. further argued that the union councils of District Council Karachi

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were converted into union committees. He shown us the order dated 13.11.2013 passed by the hon'ble Supreme Court in C.P.No.77/2010 and argued that the Government of Sindh had given the date 18.1.2014 for local bodies elections in Sindh but Chief Secretary Sindh applied to the Election Commission of Pakistan for extension. The A.G. has produced a copy of letter dated 10.12.2013. In paragraph 3 of the letter, the Chief Secretary clearly stated that the Government repeatedly submitted before the hon'ble Court (Supreme Court) that it was not possible for the Government and the Election Commission to hold free, fair and transparent elections on such a short notice for which more time is needed. He requested in the concluding paragraph of the letter that the local bodies elections in Sindh on 18.1.2014 may be deferred to a date as may be mutually agreed for the election in the month of March, 2014. Learned A.G. argued that this application was made but it was orally rejected. He further argued that as a result of demand made by various political parties including M.Q.M., the District Council was abolished and first time the Union Committee has been added in the definition of council provided in clause xvii of the Section 3 of the Act, 2013. He admitted that the increase made in the union committees through delimitation process to convert union council into town committees was an affirmative action of the Government to treat the all equals and not for any gerrymandering.

35. He further argued that the delimitation process was completed within a short span of time though the delimitation process was not carried out under the directions of hon'ble Supreme Court or the Election Commission of Pakistan but the Government by its own felt

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it appropriate to initiate delimitation exercise and it was completed fairly keeping in view the instructions of Election Commission of Pakistan that the census block should not be broken. He admitted that the elections are to be held on the basis of census carried out in the year 1998. Learned A.G. responded that Dr.Farogh Naseem quoted few American judgments in which there was no such example that the elections were to be carried out in the year 2013 on the basis of census carried out in the year 1998 so the examples are distinguishable. He further averred that electoral roll available with the Election Commission of Pakistan on the basis of which the National Assembly and Provincial Assembly elections were carried out so on the basis of same electoral roll the election of local bodies can be conducted and since census blocks were not broken there should be no difficulty to the voters to cast their votes. He admits that there is some variation in some rural population throughout the Province of Sindh but he reiterated that this variation could not be avoided otherwise the census block would have been broken so the threshold of population ranging between 2000 to 3000 could not be strictly maintained. Learned A.G. also referred to Section 34 of the Sindh Local Government Act, 2013 and argued that though Election Commission shall conduct the election but so far as the date of election is concerned it was to be announced by the Government with the consultation of Election Commission. He submitted that the hon'ble Supreme Court has given strict directions to the Government of Sindh for Local Bodies Elections on the given date. Accordingly Sindh Local Council (Election) Rules were prepared and copy was sent to Election Commission of Pakistan. It was further stated that a meeting was convened by the Election Commission of

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Pakistan on 3.10.2013 and after some more meetings, the Act was further amended with the rules and finally the third amendment Ordinance was brought into field. He argued that the entire process of law making was completed in a transparent manner and in accordance with the guidelines of Election Commission of Pakistan for conducting free and fair local bodies elections in the Province of Sindh.

36. So far as the delimitation process is concerned he argued that it was started keeping in view the date given by the hon'ble Supreme Court for local bodies election. The Deputy Commissioners were appointed delimitation officers and the public notices were also published in the leading newspapers. After hearing of appeals, the final delimitation proposals were received through Commissioners and the same were published in the final gazette on 13.11.2013 for Hyderabad, Mirpurkhas, Sukkur and Larkana Divisions and on 21.11.2013 for Karachi Division. The entire process was completed in view of population, public convenience and territorial contiguity without any gerrymandering. The guidelines were also issued by the Local Government Department to the delimitation officers on the basis of ground realities and as per direction of the Election Commission of Pakistan received from time to time. He further argued that in the meeting held on 3.10.2013 in the Election Commission of Pakistan, it was directed that census blocks should not be broken and the delimitation be made on the basis of population census 1998 and electoral roll of 2001 be adjusted accordingly. If the criteria of the population for union committees to 40,000 to 50,000 was to be kept in mind then the census blocks must have been broken so in order to cope up with this problem the

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fluctuation was made in the population which is now between 10,000 to 50,000.

37. He also shown us the Notification dated 21.11.2013 and argued that variation is done in all districts. He further argued that various areas of Pakistan are urbanizing day by day hence, the rural area has been included in the urban area which is in fact favorable to the residents of locality, which is an affirmative and constructive action. Since the last representation made to the Election Commission of Pakistan on 10.12.2013 by the Chief Secretary Sindh for extension of time in local bodies election was declined so in order to ensure election on the given date the Third Amendment Ordinance, 2013 was promulgated on 13.12.2013 so that the election can be held. In response to the arguments made by the learned counsel for the petitioners, the learned A.G. responded that it is difficult to maintain exact figures of population hence, the one man one vote concept or theory is not possible in the strict sense. The composition/population of the each area is based on reasonable classification without committing any discrimination or violation of Article 25 of the Constitution. He further argued that the delimitation guidelines were issued earlier which could not be followed properly due to certain difficulties hence by virtue of post facto legislation the population figure of union committees was revised/fixed between 10,000 to 50,000 and a proviso was also added in Section 13 of the 2013 Act. He referred to an unreported judgment passed by learned division bench of this court in C.P.No.D-3206/13 and unreported judgment of the learned divisional bench of Lahore High Court passed in W.P.No.23040 of 2013, the ratio of both the judgments made it clear that the Provincial

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Government may undertake and carry out exercise of delimitation and may also frame the rules for the delimitation. Learned A.G. submitted that under Section 11 of the Act, 2013, it is the prerogative of the Government to delimit the wards in Municipal Committees and Town Committees and Corporation in the prescribed manner, so there is no necessity to even frame the rules, however, in the Sindh Local Council (Election) Rules, 2013, the necessary rules relating to the delimitation process were also incorporated.

38. He further referred to Section 138 of the 2013 Act, which clearly provides that the Government may make rules to carry out the purpose of the Act in particular and without prejudice to the generality and such rules may provide for all or any other matters enumerated in Schedule-VII and all matters incidental, consequential and supplemented thereto. To respond the objection raised regarding the formation of panel and or proxy system introduced through last amendment, the learned A.G. referred to Section 33 of the Act which provides that election will be held on party basis however, to address this argument he submitted that after introduction of panel system the number of ballot papers will be reduced from 11 crores to 03 crores approximately. The ballot paper will contain only party name and symbol and through one vote 09 candidates will be elected so independent person can contest the election through panel only, however, all candidates will submit their independent forms and after submitting proxy/authority letter from the political party concerned, their candidatures will be finalized after the date of withdrawal of candidature. Learned A.G. further argued that there may be certain difficulties or deficiencies

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in the statute but if such difficulties do not materially affect the elections process and in case of substantial compliance, violation of law if any may be ignored as the date of election is fast approaching. He further argued that mala fide cannot be attributed to the legislature and in case the petition is allowed as prayed the entire process of election will be kept in abeyance. In support of his arguments he relied upon the following case law:-

(1). 2004 SCMR 1903 (Ghulam Mustafa Insari & others v. Government of the Punjab and others). In this judgment, principles in the context of equality clauses of the Constitution have been discussed in detail but there is no need to reproduce it again as counsel for one of the petitioners Dr.Farogh Naseem has already made reliance on it.

(2) 2011 SCMR 363 (Jahangir Sarwar and others v. Lahore High Court and another) Principle of reasonable classification or differentia was not misinterpreted or misconstrued as Article 25 of the Constitution did not prohibit reasonable classification with regard to operation of law. Provisions of Sindh Judicial Service Rules, 1994, could not be made applicable in the Province of Punjab. Supreme Court declined to interfere in the judgment passed by High Court.

(3) PLD 2011 SC 44 (Pakcom Limited and others v. Federation of Pakistan and others). Article 25. Discriminatory legislation or a policy formulated. Well entrenched principles on the subject of discriminatory legislation enumerated. It would not be enough to say that a piece of legislation or a policy formulated thereunder is discriminatory but it is to be substantiated by applying certain well entrenched principles on the subject of discriminatory legislation which are as follows:-

- (i) The expression 'equality before law' or the 'equal protection of law' does not mean that it secures to all persons the benefit of the same laws and the same remedies. It only requires that all persons similarly situated or circumstanced shall be treated alike.
- (ii) The guarantee of equal protection of law does not mean that all laws must be general in character and

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universal in application and the State has no power to distinguish and classify persons or things for the purpose of legislation.

- (iii) The guarantee of equal protection of laws forbids class legislation but does not forbid reasonable classification for the purpose of legislation. The guarantee does not prohibit discrimination with respect to things that are different. The State has the power to classify persons or things and to make laws applicable only to the persons or things within the class.
- (iv) The classification, if it is not to offend against the constitutional guarantee must be based upon some intelligible differentia bearing a reasonable and just relation to the object sought to be achieved by the legislation.
- (v) Reasonableness of classification is a matter for the courts to determine and when determining this question, the courts may take into consideration matters of common knowledge, matters of common report, the history of the times and to sustain the classification, they must assume the existence of any state of facts which can reasonably be conceived to exist at the time of the legislation.
- (vi) The classification will not be held to be invalid merely because the law might have been extended to other persons who in some respect might resemble the class for which the law is made because the legislature is the best judge of the needs of particular classes and the degree of harm so as to adjust its legislation according to the exigencies found to exist.
- (vii) One who assails the classification must show that it does not rest on any reasonable basis.
- (viii) Where the legislature lays down the law and indicates the persons or things to whom its provisions are intended to apply and leaves the application of law to an administrative authority while indicating the policy and purpose of law and laying down the standards or norms for the guidance of the designated authority in exercise of its powers, no question of violation of Article 25 arises. In case, however, the designated authority abuses its powers or transgresses the limits when exercising the power, the actual order of the

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authority and not the State would be condemned as unconstitutional.

- (ix) Where the State itself does not make any classification of persons or things and leaves it in the discretion of the Government to select and classify persons or things, without laying down any principle or policy to guide the Government in the exercise of discretion, the statute will be struck down on the ground of making excessive delegation of power to the Government so as to enable it to discriminate between the persons or the things similarly situated.

(4) NLR 1999 Service 67 (Ahmad Yar Chowhan v. Federal Public Service Commission). The provisions of Articles 18, 25 and 27 of the Constitution which were taken into consideration in the judgment in the case of Mushtaq Ahmad Mohal (supra) are no longer enforceable. Moreover, a compensatory or protective discrimination may not offend Articles 18, 25 and 27 of the Constitution in appropriate cases.

(5) PLD 1983 SC 457 (Fauji Foundation and another v. Shamimur Rehman). Power of Court to examine. Court itself being a creature of Constitution, its powers are limited to examine legislative competence or to such other limitations as are provided in Constitution. When a Court which is a creature of the Constitution itself, examines the vires of an Act, its powers are limited to examining the legislative competence or to such other limitations as are in the Constitution; and while declaring a legislative instrument as void, it is not because the judicial power is superior in degree or dignity to the legislative power but because it enforces the Constitution as a paramount law either where a legislative instrument is in conflict with the constitutional provision so as to give effect to it or where the Legislature fails to keep within its Constitutional limits.

(6) PLD 1989 SC 166 (Federation of Pakistan and others v. Haji Muhammad Saifullah Khan and others). "The High Court found that there was nothing to show that the Governor ordered the dissolution of the Provincial Assembly after obtaining the previous approval of the President. Nor was there anything at all on the record to show that a situation had arisen in the Province of the Punjab wherein the Government of that

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province could not be carried on in accordance with the provisions of the Constitution and an appeal to the electorate was necessary. Hence, the order of dissolution passed by the Governor too was not sustainable in law. We are inclined to agree.”

“But we are not unmindful of the fact that the whole nation is geared up for elections and we do not propose to do anything which makes confusion worst confounded and creates a greater state of chaos which would be the result if the vital process of elections is interrupted at this juncture. The Courts always keep in view the higher interest of Pakistan while resolving matters of national importance in accordance with the Constitution and law. National interests must take precedence over private interests and individual rights. The forthcoming elections are at hand and the people of Pakistan must be allowed to choose their representatives for the National Assembly on party basis, a right which is guaranteed to them under the Constitution. The writ jurisdiction is discretionary in nature and even if the court finds that a party has a good case, it may refrain from giving him the relief if greater harm is likely to be caused thereby than the one sought to be remedied. It is well settled that individual interest must be subordinated to the collective good. Therefore, we refrain from granting consequential reliefs, inter alia, the restoration of the National Assembly and the dissolved Federal Cabinet.”

(7). (2011) 1 Supreme Court Cases 236 (Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others). The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the “substance” or “essence” of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the “essence” of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential.

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39. After concluding the arguments learned A.G., Sindh, Dr.Farogh Naseem, learned counsel exercised the right of rebuttal for self and on behalf of other petitioners. He argued that to cover up the illegalities, the Third Amendment was made for the purpose of delimitation in which only 1998 census was to be considered. So far as the housing census 2012 is concerned it is still incomplete. He referred to the definition of population provided in clause (liv) of Section 3 of 2013 Act, which means the population in accordance with last preceding census officially published. So far as the argument advanced by the learned A.G. that delimitation was made with due care so that the census blocks should not be broken, in this regard, Dr.Farogh Naseem shows us a document (Census 2011) available at the Website of Population Census Organization of Pakistan, <http://www.census.govt.pk/census2001.php>. and argued that according to this document, it is clear that a census block is not more than 200 to 250 houses. The range of census charge & census circle is 5 to 7. He responded that in view of this official document the argument of learned A.G. is unsubstantiated that the proper delimitation could not be made without breaking census blocks which is not a big deal in the present scenario when the census block is not more that 200 to 250 houses, so this cannot be made a valid reason to dislodge the population of town committee “40,000 to 50,000” to “10,000 to 50,000”, which is a huge fluctuation and the same has been done with the sole motive to commit gerrymandering. He further referred to page-6 of the documents filed by learned A.G. during the course of his arguments which is a statement showing total number of district wise union councils in the Province of Sindh. In the first column the total population of Union Councils

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after delimitation 2001 are mentioned while in the second column union councils/union committees after delimitation 2013 are mentioned. Learned counsel argued that only in Karachi Division, earlier 178 union councils were in existence which have been now converted into 280 union committees. He again referred to the **PLD 1993 SC 473** (Mian Muhammad Nawaz Sharif case).

40. Mr.Zahid Khan, learned Deputy Attorney General contended that he has no instructions from the Federation of Pakistan in this matter. However, Muhammad Najeeb, Joint Provincial Election Commissioner Sindh was present in person who submitted that the Election Commission of Pakistan never directed the Government of Sindh to impose any law or rules. No panel election was suggested, however, he admitted that direction were given by the Election Commission not to break the census blocks. He further contended that delimitation exercise was initiated by the Government of Sindh on its own will and nothing was directed by the Election Commission of Pakistan in this regard.

41. In the nut shell and to summarize the cumulative effect of pleas raised in all petitions, it is clear that everybody is questioning the exercise of delimitation carried out by the government through deputy commissioners. Various legal defects and flaws have been pointed out in the process of delimitation. Some of the petitioners have also challenged the third amendment ordinance which has been passed by the Provincial Assembly of Sindh and assent of Governor Sindh is awaited. Fact remains that not only the Third Amendment Ordinance 2013 was brought in the field during the pendency of the various petitions but

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the same was also passed by the Sindh Assembly during the pendency of these petitions. Few petitioners filed applications under order 6 Rule 17 C.P.C which were allowed and amended petitions assailing the third amendment ordinance were taken on record and learned AG was put to notice under Order 27-A of the C.P.C. The learned A.G also consented to the amended petitions only to the extent of bringing the same on record and argued that since pure questions of law are involved, he will address the challenge to the third amendment Ordinance orally without filing reply/comments to the amended petitions. Most of the petitioners in the context of delimitation raised the allegations of gerrymandering against the govt. The backdrop and ambiance of the case is the shortcomings occurred in the exercise of delimitation which not only became crucial and critical but also augmented the allegations of gerrymandering.

42. Now we would like to discuss the term or phrase “gerrymandering” repeatedly argued and defended before us. In this regard, we would like to share our own research which we made to understand what is the term gerrymandering? And what we find out through a document hosted on website that in the process of setting electoral districts, gerrymandering is a practice that attempts to establish a political advantage for a particular party or group by manipulating district boundaries to create partisan advantaged districts. The resulting district is known as a gerrymander, however, that word can also refer to the process. When used to allege that a given party is gaining disproportionate power, the term gerrymandering has negative connotations. In addition to its use achieving desired electoral results for a particular party,

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gerrymandering may be used to help or hinder a particular demographic, such as a political, ethnic, racial, linguistic, religious, or class group. The word gerrymander (originally written Gerry-mander) was used for the first time in the Boston Gazette on 26 March 1812. The word was created in reaction to a redrawing of Massachusetts state senate election districts under the then governor Elbridge Gerry. In 1812, Governor Gerry signed a bill that redistricted Massachusetts to benefit his Democratic-Republican Party. When mapped, one of the contorted districts in the Boston area was said to resemble the shape of a salamander. Gerrymander was a portmanteau of the governor's last name and the word salamander. The redistricting was a notable success. In the 1812 election, both the Massachusetts House and governorship were won by Federalists by a comfortable margin (costing Gerry his seat), but the senate remained firmly in Democratic-Republican hands. The author of the term gerrymander may never be definitively established. Historians widely believe that the Federalist newspaper editors Nathan Hale, and Benjamin and John Russell were the instigators, but the historical record does not have definitive evidence as to who created or uttered the word for the first time. Some political science research suggests that, contrary to common belief, gerrymandering does not decrease electoral competition, and can even increase it. Some claim that, rather than packing the voters of their party into uncompetitive districts, party leaders tend to prefer to spread their party's voters into multiple districts, so that their party can win a larger number of races. Gerrymandering can have an impact on campaign costs for district elections. If districts become increasingly stretched out, candidates must pay increased costs for transportation

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and trying to develop and present campaign advertising across a district. Gerrymandering may be advocated to improve representation within the legislature among otherwise underrepresented minority groups by packing them into a single district. This can be controversial, as it may lead to those groups' remaining marginalised in the government as they become confined to a single district. Candidates outside that district no longer need to represent them to win elections. Another way to avoid gerrymandering is simply to stop redistricting altogether and use existing political boundaries such as state, county, or provincial lines. While this prevents future gerrymandering, any existing advantage may become deeply ingrained. The United States Senate, for instance, has more competitive elections than the House of Representatives due to the use of existing state borders rather than gerrymandered districts. Senators are elected by their entire state, while Representatives are elected in legislatively drawn districts.

Ref: <http://en.wikipedia.org/wiki/Gerrymandering>

43. At this juncture, we would also like to limelight the comparative study of laws of delimitation in Pakistan and India. In Pakistan we have “**Delimitation of Constituencies Act, 1974**”. In the definition clause of Section 2, the Commission means the Election Commission. The relevant sections/provisions relating to the exercise of delimitation are as under:-

“3.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.

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9. 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, existing boundaries of demonstrative units, facilities of communication and public convenience and other cognate factors of ensure homogeneity in the creation of constituencies:

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.

10. Reports of Commission and list of constituencies. (1) For the purpose of delimiting constituencies, the Commission may receive and consider representation, hold inquiries, summon witnesses and record evidence, and shall prepare and publish in the official Gazette a preliminary report and list of constituencies specifying the areas proposed to be included in each constituency.

(2) Any person entitled to vote at an election to the National Assembly or a Provincial Assembly may, within (fifteen) days of the publication of the report under sub-section (1), make a representation to the Commission in respect of the delimitation of constituencies.

(3) The Commission shall, after hearing and considering the representations, if any, received by it, make such amendments, alterations or modifications, in the preliminary list published under sub-section (1) as it thinks fit or necessary, and shall publish in the official Gazette the final report and list of constituencies showing the areas included in each constituency.

10A. Power of Commission to make amendment, alteration or modification in the final list of constituencies, notwithstanding anything contained in this Act, the Commission may, at any time, of its own motion, make such amendments, alterations or modifications in the final list of constituencies published under sub-section (3) or in the areas included in a constituency, as it thinks necessary”.

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In the Indian “**Delimitation Act 2002**”, the Commission means the Delimitation Commission constituted under Section 3 of the Act. The relevant sections are reproduced as under:-

“3. As soon as may be after the commencement of this Act, the Central Government shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:-

(a) one member, who shall be a person who is or has been a Judge of the Supreme Court, to be appointed by Central Government who shall be the Chairperson of the Commission;

(b) the Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner, ex officio.

Provided that after the nomination of an Election Commissioner as a member under this clause, no further nomination under this clause shall be made except to fill the casual vacancy of such member under Section 6; and

(c) the State Election Commissioner of concerned State, ex officio.

Explanation— For the purpose of clause (c), the State Election Commissioner of the concerned State, in respect of the duties of the Commissioner relating to that State, means the State Election Commissioner appointed by the Governor of that State under clause (1) of Article 243K.

9(1) The Commission shall, in the manner herein provided, then, distribute the seats in the House of the People allocated to each State and the seats assigned to the Legislative Assembly of each State as readjusted on the basis of 1971 census to single member territorial constituencies and the delimit them on the basis of the census figures as ascertained, at the census held in the year 1991, having regard to the provisions of the Constitution, the provisions of the Act specified in Section 8 and following provisions, namely:-

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(a) all constituencies shall, as far as practicable, be geographically compact areas, and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience;

(b) every assembly constituency shall be so delimited as to fall wholly within one parliamentary constituency;

(c) constituencies in which seats are reserved for the Scheduled Castes shall be distributed in different parts of the State and located, as far as practicable, in those areas where the proportion of their population to the total is comparatively large; and

(d) constituencies in which seats are reserved for the Scheduled Tribes shall, as far as practicable, be located in areas where the proportion of their population to the total is the largest.

(2) The Commission shall—

(a) publish its proposals for the delimitation of constituencies, together with the dissenting proposals, if any, of any associate member who desires publication thereof, in the Gazette of India and in the Official Gazette of all the States concerned and also in such other manner as it thinks fit;

(b) specify a date on or after which the proposals shall be further considered by it;

(c) consider all objections and suggestions which may have been received by it before the date so specified, and for the purpose of such consideration, hold one or more public sittings at such place or places in each State as it thinks fit;

(d) thereafter by one or more orders determine—

(i) the delimitation of parliamentary constituencies; and

(ii) the delimitation of assembly constituencies, of each State.”

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We have also seen the Delimitation Rules framed by Government of Punjab and Sindh.

The relevant rules of **“Punjab Local Governments (Delimitation) Rules, 2013”**

3. Delimitation of Wards : (1) For purposes of election, a Municipal Committee may be divided into such number of wards, as the Government may determine keeping in view the population prescribed for the Municipal Committee under the Act.

(2) A ward shall be a single member ward and the number of wards in a Municipal Committee shall not be less than eleven or more than fifty.

(3) 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, as far as possible, be uniform.

4. Delimitation of Union Council: (1) The Government may determine the number of union councils for the Metropolitan Corporation, a Municipal Corporation and a District Council.

(2) 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 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.

(3) 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 or a District Council; and

(c) the population of the Union Councils within a local government shall be uniform.

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While the relevant rules of “**Sindh Local Councils (Election) Rules, 2013**” are as under

Chapter-III, Delimitation of Electoral Units

8. (1) Government shall notify the delimitation officers and appellate tribunals for the purpose of delimitation of electoral units.

(2) For the purpose of election, a local area shall be divided into electoral units keeping in view the number of seats of the Council and the population of the local area.

(3) The electoral units within the area shall be delimited having regard to the territorial unity and as far as practicable, to distribution of population and public convenience.

(4) As many Delimitation Officers as deemed necessary shall be appointed to assist in the delimitation work.
9. (1) The delimitation officer shall arrange to have a preliminary list of electoral units delimited under rule 8, published in such manner as he deems fit, together with a notice inviting objections or suggestions within such time as may be specified by Government.

(2) Any person entitled to vote at an election may, within specified time, make a representation in respect of the delimitation of the electoral units to such officer or authority, as Government may appoint in this behalf.
10. (1) The Appellate Tribunal or authority may after considering the representation and hearing those who wish to be heard make such amendments, alterations or modifications in the preliminary list published under rule 9 as it may deem fit:

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Provided that an officer or authority dealing with a representation may, if thinks appropriate, refer it to Government for decision.

(2) The Appellate Tribunal may on a representation made to it, after hearing those who wish to be heard, revise the final lists of delimitation of a council, by recording reasons thereof.

(3) After disposal of all representation made under sub-rule (1), Government shall arrange to have the final list of electoral units published in the Official Gazette and in case of urgency, in the manner as it deems fit.

44. We have also come across with another document relating to the subject of delimitation according to which the boundary delimitation is the drawing of boundaries, particularly of electoral precincts, states, counties or other municipalities. In the context of elections, it can be called redistribution in order to prevent unbalance of population across districts. Unbalanced or discriminatory delimitation is called "gerrymandering". Though there are no internationally agreed processes that guarantee fair delimitation, several organizations, such as the Commonwealth Secretariat, the European Union and the International Foundation for Electoral Systems have proposed guidelines for effective delimitation. In international law, the related national delimitation is the process of legally establishing the outer limits (borders) of a state within which full territorial or functional sovereignty is exercised. Countries delimit electoral districts in different ways. Sometimes these are drawn based on traditional boundaries, sometimes based on the physical characteristics of the region and, often, the lines are drawn based on the social, political and cultural contexts of the area. These processes of boundary delimitation can have a

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variety of legal justifications. Often, because of the powerful effects this process can have on constituencies, the legal framework for delimitation is specified in the constitution of a country. The Institute for Democracy and Electoral Assistance (IDEA) recommends the following pieces of information be included in this legal framework:

- The frequency of such determination;
- The criteria for such determination;
- The degree of public participation in the process;
- The respective roles of the legislature, judiciary and executive in the process; and
- The ultimate authority for the final determination of the electoral units.

A number of international organizations including the Organization for Security and Co-operation in Europe, the European Commission for Democracy Through Law (the Venice Commission), the Commonwealth Secretariat, and the Electoral Institute of Southern Africa (EISA) have established standards which their members are encouraged to prescribe to. Among these standards the International Foundation for Electoral Systems (IFES) lists the most common as being Impartiality, Equality, Representativeness, Non-Discrimination and Transparency. As part of its report, European Commission for Democracy Through Law: Code of Good Practice in Electoral Matters, Guidelines and Explanatory Reports adopted October 2002, the Venice Commission in which following guidelines were proposed:

2.2 Equal voting power: seats must be evenly distributed between the constituencies.

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- i. This must at least apply to elections to lower houses of parliament and regional and local elections:
- ii. It entails a clear and balanced distribution of seats among constituencies on the basis of one of the following allocation criteria: population, number of resident nationals (including minors), number of registered voters, and possibly the number of people actually voting. An appropriate combination of these criteria may be envisaged.
- iii. The geographical criterion and administrative, or possibly even historical, boundaries may be taken into consideration.
- iv. The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).
- v. In order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods.
- vi. With multimember constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries.
- vii. When constituency boundaries are redefined which they must be in a single-member system, it must be done impartially; without detriment to national minorities; taking account of the opinion of a committee, the majority of whose members are independent; this committee should preferably include a geographer, a sociologist, and a balanced representation of the parties and, if necessary, representatives of national minorities.

Dr. Lisa Handley, a consultant on issues of democratic governance including voting rights, electoral system design, electoral boundary delimitation and electoral dispute resolution for the United Nations, the United

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Nations Development Fund (UNDP), the International Foundation for Election Systems (IFES), and International IDEA. remained involved in electoral assistance in many countries. In the last couple of years she participated in election missions in Afghanistan, Azerbaijan, the Democratic Republic of the Congo, Georgia, Kosovo, Liberia, Lebanon, Nigeria, Sierra Leone, Sudan and Yemen. In her study sponsored by the International Foundation for Electoral Systems, Dr. Lisa Handley recommended the following considerations for delimitation:

- i) population density
- ii) ease of transportation and communication
- iii) geographic features
- iv) existing patterns of human settlement
- v) financial viability and administrative capacity of electoral area
- vi) financial and administrative consequences of boundary determination
- vii) existing boundaries
- viii) community of interest

According to her the delimitation process should:

- be managed by an independent and impartial body that is representative of society, comprising persons with the appropriate skills;
- be conducted on the basis of clearly identified criteria such as population, distribution, community of interest, convenience, geographical features and other natural or administrative boundaries;
- be made accessible to the public through a consultation process;

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- be devoid of manipulation of electoral boundaries to favour political groups or political interests;
- be conducted by one body;
- include all spheres of government, both national and local. Ref: [http://halmaigabor.hu/dok/107-\[Lisa Handley Boundary Delimitation\]](http://halmaigabor.hu/dok/107-[Lisa_Handley_Boundary_Delimitation]).

45. According to the report submitted on the **General Elections to Legislative Assemblies of Manipur, Orisa, Pondicherry and Uttar Pradesh in 1974 and Gujrat in 1975**, it was observed in ch. II, that the Delimitation Commission had to ensure that, as far as practicable, all constituencies should be more or less equal in population and should be geographically compact areas in which administrative units were kept intact and not unnecessarily broken. These administrative units mainly consisted of districts, sub-divisions, talukas or police stations. However, for proper delimitation, the Delimitation Commission had to select even a lower administrative unit so that it could be kept unbroken, like, village panchayat, panchayat union, revenue inspector circle, lekhpal circle, pargana, mouza, depending upon the administrative set up of the states concerned. Apart from the above, physical features of the areas, like, hills, deserts, rivers, streams, etc., means of communication and considerations of public convenience had also to be kept in view while drawing the boundaries of the constituencies.

46. A plain preview of the above documents overwhelmingly demonstrate that the delimitation is a serious business which cannot be done in a slipshod manner or in spur of moment but it requires hectic and strenuous efforts. Even in our own Delimitation Act, 1974 detailed procedure is provided for the delimitation of constituencies in which the

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commission has to receive and consider representation, hold inquires, summon witnesses and record evidence and shall prepare and publish in the official gazette a preliminary report. Any person entitled to vote in the NA and PA may make a representation and the commission after hearing and considering the representation make amendments or modifications in the preliminary list. No doubt under the Local Government Act 2013 the Sindh Government under Section 10 and 11 has the prerogative to delimit the union councils and wards but under the letter of law it is clearly provided that they have to maintain territorial unity, population of union council in a district shall be uniform and the boundaries shall not cross the limits of revenue taluka and for the purposes of delimitation of an urban area a ward shall as far as possible consist of a census block or adjoining census block. It is further provided under Section 12 that any area declared as union, town, municipality or corporation shall as far as possible be compact and contiguous with territorial unity.

47. What happened in this case is vide Notification dated 26.9.2013, the Deputy Commissioners of respective districts were appointed Delimitation Officers in respect of local councils established under the Sindh Local Government Act 2013. On 19.8.2013 guidelines for delimitation of constituencies were issued. Though in the guidelines it was stated in the criteria that area as far as possible shall remain compact, contiguous and as far as possible minimum changes will be in the present set up. It was further provided as one of the conditions in the procedure that in the rural areas as far as possible the delimitation of present union councils may not be

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disturbed. Though it was provided that the delimitation officers can seek assistance in the delimitation work from the Assistant Commissioners, Mukhtiarkars and other relevant officers in the district but nothing was provided to maintain transparency in the delimitation process or to make it foolproof or watertight that the delimitation officers may hold the inquiries and summon the witnesses for the purposes of making the delimitation exercise fair and transparent. Almost all the petitioners have challenged the delimitation process being sham, mock or nontransparent and pleaded that their objections were not considered by the delimitation officers nor any ample opportunity afforded to them. We have also seen the orders passed by appellate authorities and noticed that though their powers were quasi-judicial in nature but they have disposed of almost all appeals in a slipshod manner and they maintained the delimitation proposal as it is without passing any speaking orders which totally nullified and made redundant the creation of an appellate forum.

48. There is no cavil to the proposition advanced by the learned AG. that when the powers are already conferred upon the govt. under the Sindh Local Government Act 2013 to undertake and carry out the exercise of delimitation then it was not obligatory to make the rules but the fact remains that the delimitation officers were appointed on 26.9.2013 and the guidelines were issued much earlier on 19.8.2013 but the Sindh Government promulgated Sindh Local Councils (Election) Rules, 2013 on 27.11.2013, though the rule primarily germane to the election but in the same rules Chapter-III was dedicated to the delimitation of electoral units in which neither the earlier notification appointing the delimitation officers nor the guidelines issued were

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protected however in Rule 8 it is provided that the Government shall notify the delimitation officers and appellate tribunals and for the purposes of election a local area shall be divided into electoral units keeping in view the number of seat of the council and the population of the local area. It is further provided that electoral units within the area shall be delimited having regard to the territorial unity and as far as practicable, to distribution of population. Again in Rule 9 it is provided that the delimitation officer shall arrange preliminary list of the units delimited together with a notice inviting objections or suggestions. Nothing has been said regarding the inquiry, summoning the witnesses or recording the evidence which was most crucial exercise which must have been carried out prior submitting the final delimitation proposal which has not been done in this case and such lapses became the root cause of the allegations of gerrymandering against the Government.

49. Another facet which cannot be ignored that most of the petitioners have also pleaded that while completing the task of delimitation, rural areas have been included in the urban area unlawfully which is a glaring contravention of Section 13 of the Act. The council for the petitioner in C.P.No.D-4803/13 shown us an issue of newspaper daily "Jurrat" dated 8.10.2013 in which a public notice was issued by the Deputy Commissioner for the delimitation of District Shaheed Benazirabad which was to be started from 10.10.2013 till 18.10.2013. The public notice shows that within nine days only, the delimitation exercise which is always a hectic exercise was to be completed. In our view the implication of Sections provided for delimitation and declaration of urban and rural areas are two distinct subjects with different compliances. The learned A.G.

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rightly argued that urbanizing a rural area is beneficial, constructive and advantageous for the residents and it may be a matter of pleasure and contentment for them but at the same time one has to keep in mind that for declaring any rural area urban, a proper Section and procedure is already provided under the law which must be adhered to and cannot be ignored callously. The public notice referred to above only relates to the delimitation without providing any details of union councils/committees/wards but nothing has been said to inform the general public for the inclusion of any rural area into urban. We have referred to the above public notice as instance and find out similar lapses and irregularities in other petitions as well.

50. In the Sindh Local Government (Third Amendment) Ordinance, 2013 promulgated on 13.12.2013 by virtue of Section 3 a proviso has been added in sub-section (1) of Section 13 which reads as under:-

“Provided that where the delimitation officer has come to the conclusion that an area which is rural, has acquired the status of urban areas at the time of delimitation under this Act he may declare such rural area to be urban area and such area shall deem to be urban areas accordingly.”

The above post facto legislation has been made to cover up the irregularities, deficiency and the violation of Section 13, which otherwise make it evident without any shadow of doubt that during the delimitation process the compliance of Section 13 was utterly violated and an attempt has been made to cover up and protect the noncompliance. This proviso is also discriminatory and illegal and made to circumvent the original text of Section 13 though in our view the proviso attached to any section is cannot be read

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in isolation and the powers given in the proviso cannot be uncontrolled or independent to the original section. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. If the enacting portion of a section is not clear a proviso appended to it may give an indication as to its true meaning. As stated by Lord Herschell: "Of Course a proviso may be used to guide you in the selection of one or other of two possible constructions of the words to be found in the enactment, and show when there is doubt about its scope, when it may reasonably admit of doubt as to having this scope or that, which is the proper view to take of it. And Lord Watson in the same case said; "I perfectly admit that there may be and are many cases in which the terms of an intelligible proviso may throw considerable light on the ambiguous import of the statutory words." A distinction is said to exist between provisions warded as 'proviso', 'Exception' or 'Saving Clause', 'Exception' is intended to restrain the enacting clause to particular cases; 'Proviso', is used to remove special cases from the general enactment and provide for them specially; and 'Saving Clause' is used to preserve from destruction certain rights, remedies or privileges already existing. **Ref: Principles of Statutory**

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Interpretation (Fourth Edition) 2006 by Justice G.P. Singh. Since in this case proviso has been added to nullify the original text and provided protection with retrospective effect to the acts of delimitation officers to cover up illegalities committed by them in the exercise of delimitation with the amendments made on 13.12.2013 with retrospective effect from 16.9.2013 therefore, this amendment is unconstitutional which virtually made impossible to hold fair and free elections in terms of Section 34 of the Sindh Local Government Act, 2013 and under Articles 218 and 219 of the Constitution of Pakistan, 1973. We are also of the firm view that this proviso has been added to circumvent our judgment passed in C.P.No.D-4924/13 on 5.12.2013 in which while remanding a matter to the Appellate Tribunal we had observed the noncompliance of Section 13 of the original Act, 2013 before adding the proviso and directed to the Appellate Authority to decide the appeal afresh. It was also found in some appellate orders that the delimitation officers in their comments tried to justify the inclusion of rural areas into urban with the plea that said rural areas begun to develop which suffice to show their own admissions that the requirements envisaged under Section 13 were not fulfilled and proviso has been added later on with the sole purpose to undo their fault and illegalities.

51. We have also observed that proper population criteria during the delimitation process was not followed and many petitioners complained that the figure of population has not been fixed keeping in mind the population criteria and they have actually demonstrated through the final proposals submitted by the delimitation officers. The only plea taken by the learned A.G. that proper delimitation could not have

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been made without breaking the census blocks. This is not the logical reply to upset and or disturb the delimitation guidelines and criteria especially for the reasons that the census block is not more than 200-250 houses.

52. The population limit/figure of union committee in metropolitan corporation was earlier between 40,000 to 50,000 but through the Third Amendment Ordinance, 2013 dated 13.12.2013 by virtue of Section 8, Schedule-I in part "C" was amended and under the heading "union committee in metropolitan corporation" for the figure "40,000 to 50,000" the figures "10,000 to 50,000" were substituted. The interesting thing which we have noted that the amendments were made on 13.12.2013 whereby a crucial fluctuation and change in the population was made but the final delimitation proposals were submitted by the Commissioners which were published in the official gazette on 13.11.2013 for Hyderabad, Mirpurkhas, Sukkur and Larkana Divisions while on 21.11.2013 for Karachi Division, which shows that this amendment too was made to protect the defects of delimitation through a post facto legislation and this is for the reasons that the Amendment Ordinance has been made applicable with retrospective effect. This aspect is also directly related to the exercise of delimitation and fluctuation ranging from 10,000 to 50,000 is totally discriminatory, unrealistic and found without any justification. Such type of irrational amendments give rise to the allegations of gerrymandering. One thing is more important to point out that the learned A.G. produced a photocopy of letter dated 10.12.2013 which was written by the Chief Secretary, Government of Sindh to the Election Commission of Pakistan in which besides highlighting his grievances regarding the dates of Local Government

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Elections in Sindh he clearly took the stand that the Government repeatedly submitted that it is not possible for the Government and the Election Commission to hold free, fair and transparent local government elections at such a short date and in the prayer he requested for the date of local government elections in the month of March, 2014. He further requested that pending decision of his application, schedule for local government elections in Sindh may not be announced as it would seriously prejudice and unnecessarily inconvenience to the people in Sindh. Though learned A.G. argued that this application was orally rejected but immediately after two days the Third Amendment Ordinance was brought into field. The Sindh Government may have been facing some problems and they may be rightly of the view that free and fair elections are not possible on the given date in view of Section 34 of the Local Government Act read with Articles 218 and 219 of the Constitution but it does not mean that by introducing unconstitutional amendments in the law they can overcome their problems, in fact they have created more problems for them due to violation of law in the exercise of delimitation. The learned A.G. also shown us the final proposal of the delimitation and pointed out that in fact in each town committee, union committee, ward and union council there is visible disparity and fluctuation in the population which shows that the settled population criteria was not followed but this incident cannot be covered through the post facto legislation which prima facie show the delimitation exercise was completed without following the population criteria and to give the legal cover amendments were made in the law after the oral rejection of their application for extension of time in the date of election.

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53. The learned A.G. also shown us a statement showing total numbers of District Wise union councils after delimitation of 2001 and 2013. The statement particularly shows that in Karachi Division after 2001 delimitation there were 178 union councils and after 2013 delimitation 280 union committees have been created which makes a difference of 102 of union committees. If we see from the same statement for the entire Province of Sindh including Karachi the grand total of the union council as per delimitation exercise 2001 was 1110 which is now 1061 while the total number of union committees is 446, which suffices to show that during delimitation exercise, the appropriate population criteria was not respected in order to draw delimitation proposals within the premise of law. The protection given under the Third Amendment Ordinance, 2013, is quite discriminatory amongst the population and masses of different union councils/union committees, wards etc. in many ways. Though clause (d) of Section 32 of the Sindh Local Government Act, 2013 was omitted by the Sindh Local (Amendment) Act, 2013 promulgated on 2.11.2013, which provided that every voter within the union council shall have only one vote irrespective of the number of members to be elected from the union council or ward but it does not mean that blanket or unbridled powers can be exercised through post facto legislation to introduce huge fluctuation in the population from 10,000 to 50,000 which was earlier 40,000 to 50,000 which was otherwise not so marginal in our view but keeping in view the present fluctuation and variation in figure, the earlier figure seems to had some rational nexus in which gigantic discretion could not have been exercised by the delimitation officer.

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54. The cases cited from American jurisdiction reveals that in the case of **White v. Weiser** the court invalidated reapportionment plan. The average deviation of all districts from ideal was .745%, the largest district exceeded the ideal by 2.43% and the smallest district under the ideal by only 1.7%. The plan was rejected in favour of one where the largest district exceeded the ideal by .086% and the smallest was under the ideal by .063%. It was also held in this case if a plaintiff can demonstrate that the population difference are not a product of good faith, the State will be required to prove that such significant variance between district was necessary to achieve some legitimate goal. In the case of **Mahan v. Howell** the court held that the most overrepresented district exceeded the ideal by 5.8% and the most unrepresented was under by 4.1% for a total variation of 9.9%, the court held that 9.9% total variation does not make out a prima facie case and does not require any special justification. We have also highlighted what is actually the term 'gerrymandering' and how to prevent it. The crux of the matter in relation to the proper delimitation and keeping in view the other valid considerations and the criteria laid down for delimitation at large, we are of the firm view that instead of involving Deputy Commissioners being a single person to carry out this serious exercise, an independent commission or impartial body be formed/constituted with an independent and viable appellate forum to hear the appeals with equal opportunity to the stakeholders and then notify the final delimitation proposal, so that nobody should be given a chance to raise allegations of gerrymandering against the Government. As in the present form of delimitation various petitioners has leveled allegations that the Deputy Commissioners and the

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appellate authorities were under the extreme pressure of Government and sitting M.N.As. and M.P.As.

55. Some of the petitioners argued that the name of union councils/committees have been changed during the delimitation process unlawfully, which is in contravention of Section 16 of the 2013 Act. The letter of law is clear that a council shall unless Government notifies otherwise be known as the council of the place where its office is situated. During the proceedings we have been shown through documents that in the delimitation exercise the names of few union councils were changed for which a separate procedure is already provided under Section 16 and the powers bestowed upon the delimitation officer under Section 10 and 11 have nothing to do with the change of name of any council. So any such act which is in violation of law cannot sustain.

56. The next vital question raised by the various petitioners is against Section 4 of the Third Amendment Ordinance, 2013 through which a subsection (12) has been added into section 18 of the Local Government Act, 2013. The spirit in the wake of this addition in the form of a subsection is to impose a mandatory condition for formation of panel. The new subsection provides that there shall be a panel consisting of nine contesting candidates, including general members, woman, peasant or labourer and non-Muslim for contesting election in a union council or a union committee as the case may be. The proviso attached to the subsection envisages that the panel so constituted may act through one of its members duly authorized by it. A new subsection (14) has also been inserted which provides that in case a political party or

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independent candidates fail to form a panel for contesting election the nomination papers of all other independent candidates or nominees of a political party shall be deemed to have been rejected. Through this amendment an independent candidate who may be so pious, competent having integrity and entitled to contest the local bodies election is ousted which is a sheer violation of Sections 35 and 36 of the 2013 Act in which no condition of panel is attached. It is also opposed to the Articles 17 and 25 of the Constitution. Unless such independent person or persons form a panel, they cannot contest the election which is in fact a unique type of system introduced first time to debar and infringe upon the fundamental right of a citizen of Pakistan. No lawful justification has been advanced by the learned A.G. Sindh through which this amendment may be defended except that through this exercise huge number of ballot papers can be saved. He further argued that in terms of Section 33 of the Sindh Local Government Act, 2013 the election of the local government shall be held on party basis hence the panel system was introduced. This arguments cannot be used as a tool or weapon to stifle and strangulate the fundamental rights of citizen of Pakistan. Perhaps the learned A.G. overlooked the proviso of Section 33 in which it is clearly provided that any candidate may contest election as independent candidate and may subsequently join any party. The introduction of election through panel is in conflict with the proviso of Section 33 in which the independent candidate can contest the election and thereafter, at his own will, he may or may not join any party. Under Article 140A of the Constitution of Pakistan it is the responsibility of each Province to establish by law a Local Government System and devolve, political, administrative and financial responsibility and

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authority to the elected representatives of the local Government. We feel no hesitation to hold that sub-section (12) and (14) added in Section 18 of the Sindh Local Government Act 2013 are violative of Articles 17 and 25 of the Constitution of Pakistan.

57. When a right is safeguarded by a Constitutional guarantee is called 'fundamental right' because by doing so it has been placed beyond the power of any organ of State, whether, Executive or Legislative to act in violation of it. Such a right cannot be taken away, suspended or abridged. The fundamental rights are natural rights which are personal to the individual as a citizen of a free and civilized community. The essential characteristic of fundamental rights is that they impose limitations, express or implied, on public authorities, interfering with their exercise. It is the duty of the Court to protect Fundamental Rights granted in the Constitution. Article 199 of the Constitution empowers this court to issue any appropriate directions for the enforcement of Fundamental Rights conferred by the Constitution. The superior courts time and again pronounced that any law which is inconsistent and in contravention of fundamental rights or which took away or abridged such rights, is void, to the extent of such contravention. Paramountcy of fundamental right is recognized by the Constitution limiting the powers of State organs to the extent that what had been conferred by the Constitution as fundamental rights, could not be taken away or abridged by the State. What had been guaranteed by the Constitution as a fundamental right could not be annihilated or taken away in the garb of reasonable restrictions. The infringement of fundamental rights can be in many ways. The discrimination which means "making a

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distinction or difference between things.” a distinction, a difference, distinguishing mark or characteristics; the power of observing differences accurately or of making exact distinctions; discernment. But discrimination against a group or an individual implies making an adverse distinction with regard to some benefit, advantage or facility. Discrimination thus involves an element of unfavorable bias and it is in that sense that the expression has to be understood to this extent. However, it becomes an act of discrimination only when it is improper or capricious exercise or abuse of discretionary authority, and the person against whom that discretion is exercised faces certain appreciable disadvantages which he would not have faced otherwise. Under Article 25 of the Constitution, reasonable classification is not prohibited but it is required that all persons similarly placed should be treated alike.

58. The cumulative effect of the law laid down in the precedents cited by the learned counsel for the petitioners is already well known and well settled that if no standard is setup to avoid the violation of equality clause, the court can judicially review to see whether or not the powers delegated has been exercised arbitrarily. When a provision of statute which is ex facie discriminatory and a provision thereof may be capable of being pressed into service in discriminatory manner the former provision would be liable to be struck down on the ground of violation of Article 25. The court generally lean towards upholding the constitutionality of a statute rather than destroy it unless such a statute is ex facie discriminatory or capable of discriminatory application or violates any provision of the Constitution it may be declared void ab initio since its

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inception. Article 25 of the Constitution enshrined the basic concept of religion of Islam which is now known as the golden principle of modern jurisprudence which enjoins that all citizens are equal before law and are entitled to equal protection of law, however, the above clause does not prohibit treatment of citizen on the basis of reasonable classification. Where on the face of a statute no classification at all and no visible differentia with reference to the object of the enactment as regards the person or persons subject to its provisions then the presumption was displaced. Function of judiciary is not to legislate or question the wisdom of legislature in making a particular law nor it can refuse to enforce law even if the result of it be to nullify its own decision. Vires of law can be challenged being violative of any provision of the Constitution. Doctrine of severability permitted a court to sever the unconstitutional portion of a partially unconstitutional statute in order to preserve the operation of any uncontested or valid remainder but if the valid portion was so closely mixed up with the invalid portion that it could not be separated without leaving an incomplete or more or less mixed remainder, the court would declare the entire act void. In the latest judgment of hon'ble Supreme Court reported in **2013 SCMR 1752 (contempt proceedings against the Chief Secretary and others)** which is a case commonly known as "civil servants/police out of turn promotion, transfer and deputation cases", the hon'ble Supreme Court strike down the various legislations, which were meant to protect the right of specific class of persons. The hon'ble Supreme Court held that mala fide cannot be attributed to the legislature but if a legislature deliberately embarks upon a venture to nullify considered judicial verdict in an unlawful

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manner, trample the constitutional mandate and violates the law then it is difficult to attribute bonafide to it either. In the case of **Workers Party Pakistan** the hon'ble Supreme court held that the Election Commission is charged with responsibility to organize and conduct the election. Article 218 implied that Election Commission is responsible not only for conducting the election itself but also for making all necessary arrangements for the said purpose.

59. So far as the precedent quoted by the learned A.G. Sindh the expounded principles are that Article 25 did not prohibit the reasonable classification. In the **Pakcom** case the hon'ble Supreme Court laid down the detailed guidelines which require that all persons similarly situated shall be treated alike. The guarantee of equal forbids class legislation but does not forbid reasonable classification. The classification should be based on intelligible differentia. The legislature is the best judge of the needs of particular classes and degree of harm so as to adjust its legislation according to the exigencies. In the **Fauji Foundation** case it was held that the powers of court are limited to examine legislative competence and while declaring a legislative instrument void, it is not because a judicial power is superior in degree or dignity to the legislative power but because it enforces the Constitution where a legislative instrument is in conflict with constitutional provision. The learned A.G. argued that the election is approaching fast and if any wrong or violation of law is committed even then this court may ignore the illegalities and in support of his arguments he referred to the case of **Haji Saifullah** in which though hon'ble Supreme Court was fully in agreement that the order of

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dissolution of assembly was not sustainable but no consequential relief was allowed for the reason that the whole nation was geared up for election so the court held that national interest must take precedence over private interest and individual right. In this case we are of the firm view that the case of **Haji Saifullah** has hardly any relevance in which the question of toppling down of the elected Government was in issue. Here, the vires of law under which elections of the local government are to be conducted is the subject matter in which besides committing the lapses in the constitutional mandate, the venue or the arena for the independent candidates have also been closed down unless they form a panel which cannot be considered a reasonable classification made in the law. Lastly, he cited the case of Indian Supreme Court on the notion of substantial compliance, in which it was held that if the requirements are procedural or directory in that they are not of the essence of the thing to be done but are given with a view to orderly conduct of business they may be fulfilled by substantial if not strict compliance. It was further held that a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential. In this regard we would like to observe here again that the lapses in the delimitation process and the effect of Third Amendment Ordinance, 2013 have far reaching adversative effects which cannot be considered mere directory so the question of substantial compliance, either partial or impartial does not arise when the amendments are ab initio void and or in derogation of the law and the constitutional mandate.

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60. For the foregoing reasons, the aforesaid petitions are admitted to regular hearing and disposed of in the following terms:-

(a) The entire delimitation exercise carried out by the delimitation officers is declared to have been conducted in violation of Sections 10, 11, 12 and 13 of the Sindh Local Government Act, 2013 and the guidelines issued by the Government. Consequently, the final delimitation proposal published in official gazette on 13.11.2013 for Hyderabad, Mirpurkhas, Sukkur and Larkana Divisions and the Notification dated 21.11.2013 published for Karachi Division both are set-aside.

(b) The Elections of Local Government may be conducted on 18.01.2014 in the Province of Sindh on the position as existing prior to the delimitation process started in the year 2013.

(c) If the Sindh Government is of the view that the exercise of delimitation is necessary prior to Local Government Elections in Sindh then the Government may make a request to the hon'ble Supreme Court and the Election Commission of Pakistan for the extension in the date of election.

(d) If the date is extended by the hon'ble Supreme Court of Pakistan and the Election Commission for the delimitation purpose, then it is suggested that an independent commission or body be formed by the Government of Sindh with proper rules and the procedure to deal with the objections and also provide an independent forum of an appellate authority to hear and decide the appeals in the delimitation cases.

(e) The amendments made through Sections 3, 4 and 8 of the Sindh Local Government (Third Amendment) Ordinance, 2013 (which is now passed by the Sindh Assembly) whereby a proviso has been added in Sub-section (1) of Section 13, Sub-Section 12 & 14 have been added in Section 18 and substitution made in Schedule-I, in Part-C under the head "Union Committee in Metropolitan Corporation" for the figures "40,000-50,000" to the figures "10,000 to 50,000" in Sindh Local Government Act 2013 are violative of Sections 12, 13, 34, 35, 36 and 153-A of the Sindh Local Government Act, 2013 and also opposed to the Articles 17, 25, 140A, 218 and 219 of the Constitution which are struck down accordingly.

[C.P.NO.D-5098/2013 & other connected petitions]

Karachi:
Dated.26.12.2013

Judge

Judge