[**Democratic rule**](https://www.dawn.com/news/1634261/democratic-rule)

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IT is very unfortunate that at their very first test members of the People’s Alliance of the Gupkar Declaration in Kashmir split on the issue of delimitation of assembly constituencies. Mehbooba Mufti of the People’s Democratic Party refused to appear before the Delimitation Commission. All were agreed that the wrongs of Aug 4, 2019, should be undone first.

Delimitation is one of the most delicate and highly controversial problems in democratic governance. But it is also ignored until controversy catches up with it. The issue is simple. How do you draw up the boundaries of electoral constituencies in order to ensure fairness to all? Britain woke up pretty late to the problem. There is an electoral commission, a late entrant. It establishes boundary committees and evaluates its reports. Rules prescribe guidance.

Within the constraints of the existing majority electoral system it is clearly desirable that votes should be, as nearly as possible, of equal value: a vote in A should be worth as much as a vote in B. If this is to be substantially achieved, the boundaries of constituencies should be drawn in such a way that their electorates do not differ too greatly in size. Other factors may also have to be taken into account in drawing the boundaries, but it is of the greatest importance that the process should not be influenced by considerations of party advantage. Another and a hugely neglected factor in India — the Muslim seats. They depend entirely on how Muslim majority areas are grouped.

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India has a delimitation commission set up by an act of parliament.

The commission is charged with the task of readjusting “on the basis of the latest census figures” the allocation of seats in the Lok Sabha to the states, the total number of seats in state assemblies, and the division of each state into territorial constituencies for the purpose of elections to the Lok Sabha and to the assemblies. The electoral roll is common to both. A given number of assembly constituencies are grouped to form a parliamentary constituency. Upon publication “every such order shall have the force of law”. This is valid. Not so what follows: “And shall not be called in question in any court.” No law can oust the powers of judicial review conferred by the Indian constitution on the supreme court and the high courts. Even an amendment to the constitution cannot do that, for judicial review is incontestably an integral part of the ‘basic structure’ of the constitution.

Ouster clauses are strictly construed by the courts. It does not prevent the courts from reviewing a delimitation order. Drawing the boundaries of any constituency on the ground inter alia that it is grossly unfair or that the commission did not follow the rules of natural justice by giving a reasonable opportunity for a hearing to the political parties or interested citizens’ bodies.

We owe to the research of Alistair McMillan details of the grossly unfair delimitation as it obtains now. He points out, for instance, that “a vote in Calcutta North-West, with 698,009 electors, is worth roughly four times as much as one in Thane in Maharashtra, where there are 2,771,746 electors”.

In 1962, the US supreme court carried through a political revolution by ordering that long under-represented urban and suburban areas be given their proper weight in state legislatures. It is not a ‘political question’ exempt from judicial review. Two years later chief justice Earl Warren carried the process further and delivered the famous quotes on the weightage to rural areas.

Chief justice Earl Warren said: “A predominant consideration in determining whether a state’s legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature. … Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinised.

“…Legislators are elected by voters, not farms or cities or economic interests. If ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. …

“And, if a state should provide that the votes of citizens in one part of the state should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the state, it could hardly be contended that the right to vote of those residing in the disfavoured areas had not been effectively diluted.”

Muslims have suffered because their leaders do not do the homework which a challenge requires.

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