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NECESSITY OF JUDICIAL REVIEW IN DELIMITATION AND THE SHIFTING REGIME OF RESTRICTIONS: TO REVIEW OR NOT TO REVIEW

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Abstract:
Delimitation, the process of redrawing electoral boundaries, forms the cornerstone of representative democracy. In India, this exercise is constitutionally mandated to uphold the principle of "one person, one value, one vote." Yet, the question of judicial review over delimitation orders remains deeply contested. Article 329(a) of the Constitution, read with Section 10 of the Delimitation Act, 2002, imposes an almost absolute bar on judicial scrutiny. This was firmly upheld in *Meghraj Kothari v. Delimitation Commission*, where the Supreme Court reasoned that judicial intervention could indefinitely stall elections. However, recent rulings mark a shift from this rigid "hands-off" approach. In cases such as *Dravida Munnetra Kazhagam v. Secretary Governors Secretariat*, *State of Goa v. Fouziya Imtiaz Shaikh*, and *Kishorchandra Chhanganlal Rathod v. Union of India*, the Court cautiously reopened avenues for judicial oversight, especially in instances of mala fide actions, arbitrariness, or illegality.
This article critically examines this evolving jurisprudence in three stages. First, it identifies challenges likely to emerge in the forthcoming nationwide delimitation post-2026, including unequal seat distribution across states with varying population growth rates and the looming risk of gerrymandering. These concerns strike at the legitimacy of electoral equality. Second, the article draws on comparative perspectives from jurisdictions such as the United Kingdom and the United States. While both have historically refrained from interfering in boundary revisions, courts have intervened to prevent racial gerrymandering, abuse of power, or errors of law. Such experiences demonstrate that limited judicial review is essential to safeguard democratic fairness. Third, the article evaluates how the Indian judiciary has begun to soften the rigidity of *Meghraj Kothari*, with *Kishorchandra Rathod* offering the strongest justification for limited review where citizens lack alternative remedies.
The central argument advanced is that absolute judicial restraint risks legitimizing electoral manipulation and undermining democracy. Courts, as guardians of constitutional values, must retain narrow powers of review to address demonstrable illegality or mala fides. Accordingly, two recommendations are proposed: first, that a larger Constitution Bench clarify and consolidate the emerging jurisprudence, and second, that legislative amendments to Articles 81 and 82 of the Constitution, alongside reforms to the Delimitation Act, 2002, be undertaken to correct structural imbalances in representation.
In conclusion, the upcoming delimitation exercise post-2026 presents both opportunity and challenge. The debate should not hinge on whether to review or not to review, but rather on delineating the circumstances in which judicial intervention is both justified and necessary. Limited, principled judicial review remains indispensable to safeguarding electoral justice in India.

Keywords: Judicial Review, Delimitation, Electoral Equality, Gerrymandering, Indian Constitution

Introduction

India, often termed as the "*largest democracy*" in the world, has seen spectacles in terms of the number of electorates and/or elected officials. (SOAS University, August 1, 2024 19:00 hours)[1] In Indian elections, electoral units, also known as constituencies, are periodically delimited. The next set of delimitations will take place after the constitutionally mandated population census occurs after 2026

[1] SOAS student, *The Indian election: Is it still the world's largest democracy?*, SOAS University Blog (August 1, 2024 19:00 hours) https://www.soas.ac.uk/about/blog/indian-election-it-still-worlds-largest-democracy

(Mohd Sanjeer Alam, Economic and Political Weekly, 2010).[2] Delimitation of electoral units may have the potential to influence the outcomes of any election, even before the ballots can be cast.[3] The highly debated topic when it comes to delimitation is the judicial review of any delimitation order. The current regime in India that flows from the Constitution of India puts an explicit bar on any judicial review of a delimitation order- which was also upheld by a Constitution Bench judgment of the Honourable Supreme Court of India.[4] However, there have been recent pronouncements, though from benches with a lesser number of judges- allowing judicial reviews of a delimitation order.[5] This unusual shift of regime raises significant questions about the stability of established judicial principles, the scope of judicial intervention in electoral matters and the potential implications for the democratic process.

This article will examine the concept of judicial review of delimitation in India. The article is segmented into three sections. The initial section of this piece will examine present concerns and difficulties that can be deduced from the existing legal and related literature in relation to the fourth coming delimitation exercise. This section will mostly include exploratory inferential research. The second phase of the research will also involve conducting exploratory inferential research. This phase is divided into two parts. The first part will examine foreign precedents where the Courts have reviewed the readjustment of electoral units. In these cases, the Courts have consistently refused to consider any legal or constitutional restrictions and have instead conducted a judicial review of the delimitation of electoral units. This supports our argument that Indian courts should also have the authority to review such readjustments. The second sub-set of the second half will demonstrate how the Indian Courts have permitted the review of readjustment of electoral units in order to establish a shift in the regime of *judicial hand-off*. The final section of this article will consist of qualitative inferential research. It will utilize the qualitative analysis of the Indian cases discussed in the second sub-part of the second section to determine whether a strong argument can be made for judicially reviewing the two issues described in the first section of this article.

The primary aim of the article is to support the idea of granting the Courts the jurisdiction to examine the orders and actions related to the delimitation of electoral units, based entirely on factual evidence, legal precedents and established authority. The following section of this article will initially elucidate the process of delimitation in India prior to commencing the primary arguments and submission, as previously said.

Delimitation Detailed

Statutory Provisions

The word delimitation refers to, "*the action of fixing boundaries.*"[6] It primarily entails redrawing or altering the existing boundaries of electoral seats. According to McMillan, the rationale behind this is that individuals voting in one area have no greater influence on the outcome than those voting in another location.[7] In other words, it is an endeavour to ensure that an elector from a smaller state, like Sikkim or Goa, has the same voting power as an elector from a larger state, such as Maharashtra or Uttar Pradesh. To uphold the principles of "*one person, one value, one vote.*"[8]

[2] https://www.jstor.org/stable/25742000?seq=8
[3] https://journals.sagepub.com/doi/abs/10.1177/00219096241295634
[4] Meghraj Kothari v. Delimitation Commission
[5] https://www.livelaw.in/supreme-court/delimitation-commissions-orders-arent-immune-from-judicial-review-supreme-court-265934
[6] GOVT. OF INDIA, LEGAL GLOSSARY (Ministry of Law and Justice, Govt. of India) p 117
[7] Alistair McMillan, *Delimitation, Democracy, and End of Constitutional Freeze*, 35(15) EPW, 1271 (2000), https://www.jstor.org/stable/4409148
[8] Aditi, Vikrant Singh and Aman Ashesh, *Redrawing the Electoral Boundaries: Debunking the Doxas of Delimitation*, 1 Samanvaya Research Series © 2020 Pranab Mukherjee Foundation (2020), https://pmf.org.in/research-series/samanvaya-research-series-vol-1/

Article 81 of the Indian Constitution specifies the number of seats assigned to both houses of the Indian Parliament. The current count of seats in the lower chamber of the Indian Union Legislature, i.e. the House of People's (hereinafter "**Lok Sabha**"), stands at five hundred thirty members elected from Indian states and twenty members chosen from the Union Territories, for a total tally of five hundred fifty.[9] The further portions of Article 81 of the Constitution of India, explain that the number of seats in Lok Sabha, which are from the States, shall be allocated in such a manner that "*the ratio between that number and the population of the state is, so far as practicable, the same for all States*."[10] The population in the context of Article 81 of the Constitution of India was described as the population which may have been indicated by the last preceding census.[11] Initial text of Article 81 of the Constitution of India stated that the states should be "*divided, grouped or formed into territorial constituencies*" in such a manner that there is one member for every 750,000 of the population and not more than one member for every 500,000 of the population.[12]

Article 82 of the Constitution of India states that after every census, the distribution of seats of the Lok Sabha, to the States and the division of each State into territorial constituencies will be reevaluated by the authority specified by Parliament, according to the rules set by law.[13]

Parliament enacted the Delimitation Act 1972, followed by the Delimitation Act 2002, to alter Lok Sabha seats on a regular basis, as empowered by Article 82 of the Indian Constitution.[14] This Act established the *'Delimitation Commission*' to realign Lok Sabha seats using 1971 census data. The modifications made by the Delimitation Commission influence the allocation of Lok Sabha seats to each state, as well as the overall number of seats in each state's legislative assembly.[15] Although Article 82 of the Constitution of India specifies that delimitation should take place after each census, an amendment in 2002 inserted a provision stating that delimitation "*shall not be necessary*" until the census data beyond the year 2026 are announced.[16] Essentially, freezing the delimitations exercise till the census after 2026. This constitutional freeze on delimitation has brought to the forefront the contentious issue of judicial review in matters of delimitation. The next part will delve into the legal and constitutional barriers to judicial review, analysing the established restrictions and their implications on democratic processes.

'Juggernauting' Judicial Review

The Juggernaut on Judicial Review

The Constitution of India, along with certain other statutory provisions, provides an embargo on judicial review of any matter pertaining to the delimitation of constituencies. Section 10 of the Delimitation Act 2002 provides, "*order shall have the force of law and shall not be called in question in any court.*"[17] The mentioned section is read with Article 329(a) of the Constitution of India - which states, "*the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court*." The Supreme Court of India, in the landmark case of Meghraj Kothari v. Delimitation Commission[18] has pointed out that such a bar on judicial review, through the scheme of Article 329(a) of the Constitution of India and Section 10 of the Delimitation Act 2002, is necessary otherwise, any voter, if they desired, could prolong an election indefinitely by raising concerns about

[9] INDIA CONST. art. 81 cl. 1
[10] INDIA CONST. art. 81 cl. 2 (a)
[11] INDIA CONST. art. 81 cl. 3
[12] INDIA CONST. art. 81cl. 1 (b), substituted by The Constitution (Seventh Amendment) Act, 1956; Under § 4 (3) of the Representation of the People Act, 1950 it was provided that all constituencies shall be single-member constituencies.
[13] INDIA CONST. art. 82
[14] https://www.jstor.org/stable/42753697?seq=3
[15] Delimitation Act, 2002 § 4
[16] INDIA CONST. art. 82, as amended by Constitution (Eighty-fourth Amendment) Act, 2002
[17] Delimitation Act 2002 § 10(2) *pari materia* to Delimitation Commission Act 1972 § 10 (2)
[18] (1966) SCCOnLine SC 12 (hereinafter "**Meghraj Kothari**")

the delimitation of the constituencies through various legal channels.[19] The Constitution Bench judgment of Meghraj Kothari, in the current context, is one of the biggest roadblocks in the way of judicially reviewing acts of the Delimitation Commission.[20] Provisions akin to Article 329 of the Constitution of India are found in Articles 243O and 243ZG, which serve as *mutatis mutandis* adaptations of Article 329(a), tailored to apply specifically to Panchayats and Municipalities—the governing bodies in rural and urban areas, respectively.[21]

The United States (hereinafter "**US**") judicial framework offers an intriguing parallel to India, with the US Supreme Court similarly treating the reorganisation of electoral units as a political question.[22] This doctrine, like India's judicial hands-off approach, underscores the judiciary's reluctance to intervene in electoral matters, but with notable exceptions, as discussed in furtherance. The next part of this article examines how foreign jurisdictions and legal precedents have approached the judicial review of electoral unit revisions, offering insights into when and how courts may intervene in such matters.

Focusing on Foreign

While the Indian regime imposes a strict embargo on judicial review in delimitation matters, other jurisdictions provide valuable insights into how such restrictions might be mitigated. The discussion on foreign jurisdiction shall concern mainly the United Kingdom ("**UK**") and the Court of Appeal judgment of R v. Boundary Commission for England.[23] In addition, we will examine a US judgement, despite the US Supreme Court's stance that the issue of readjusting electoral units falls outside the jurisdiction of the judiciary according to the political question doctrine. However, it is our belief that while the court's dictums and the reasoning in the judgement we are about to discuss may not be legally binding, they do carry persuasive weight.

In the UK, the Boundary Commission under the relevant legislation, were also immune from judicial review. The rationale behind the same was that the minister or commissioner who is appointed by the Crown cannot be put under judicial scrutiny.[24] The Court of Appeal, for this purpose, also looked into other legislations which restricted the judicial review of other ministers of the Crown and opined that,

> "*It is of the essence of parliamentary democracy that those to whom powers are given by Parliament shall be free to exercise those powers, subject to constitutional protest and criticism and parliamentary or other democratic control. But any attempt by ministers or local authorities to usurp powers which they have not got or to exercise their powers in a way which is unauthorised by Parliament is quite a different matter. As Sir Winston Churchill was wont to say, "that is something up with which we will not put." If asked to do so, it is then the role of the courts to prevent this happening*"

The Court of Appeal pointed out that in the absence of any executive power, distinctions exist between a minister or local authority and the Boundary Commission. The court pointed out that in the existence of certain circumstances, the court may be empowered to intervene in the acts of the Boundary Commission of England.[25] But then it has to be noted that the courts allowed the case not as a matter

[19] Id. *r.w.* Association of Residence of Mhow (Rom) v. Delimitation Commission of India, (2009) 5 SCC 404
[20] Bar Association v. Chief Electoral Officer [2015] SCC OnLine Mad 8205 p 23
[21] W.B. State Election Commission v. Communist Party Of India (Marxist), AIR 2018 SC 3964
[22] Baker v. Carr, 369 US 186 (1962)
[23] [1983] EWCA Civ J0125-2
[24] S. A. de Smith, *Boundaries between Parliament and the Courts*, 18(3) The Modern Law Review, 281 (1955), https://www.jstor.org/stable/1091524
[25] Stephen Thomson and Denis Edwards, "Stair Memorial Encyclopaedia" chapter 96

of law but rather after an extensive discussion on the merits of the case.[26] But if the merits make it clear that there exists any "*error of law, bias, improper purpose and irrationality*", a revision of the electoral unit by the boundary commission is not immune from judicial review.[27]

As previously noted, in the United States, the judicial review of electoral unit readjustments is not currently practised. However, there doesn't exit a blanket restriction on the same. The case in point being Shaw v. Reno.[28] The case involved the alleged racial segregation of election districts in the state of North Carolina- a lawsuit was filed against the state and federal government alleging racial *gerrymandering*.[29] The US Supreme Court has stated that if boundaries cannot be justified without considering race, they may be subject to challenge as potential violations of the equal protection clause.[30] Thus, an action can lie.[31] However, recently, in the honourable Supreme Court of the US made the water muddy for judicially reviewing the readjustment of electoral units[32] and now it is an open question as to even in the case of racial *gerrymandering*- whether the courts can review the readjusted electoral units.[33] Whether or not Reno stands valid as a law is a question, but the fact that even after Rucho- racial *gerrymandering* may still be a ground to challenge a readjustment of electoral units.[34] The act of *gerrymandering* refers to the practice of dividing a geographical area into electoral units, often of highly irregular shape, in order to give one political party or fraction an unfair advantage by weakening the voting strength of the other.[35] Interestingly, while the term "*gerrymandering*" was not explicitly used, during the debates in the Constituent Assembly on the restriction of judicial review concerning the readjustment of electoral units (and other election matters under Article 329 of the Constitution of India), Hukum Singh notably highlighted:

> "*If the Commission, as our object is, feels that responsibility and does its job with full responsibility, then I am sure the minorities shall have nothing to fear. But with a little apathy and some ill-adjustment in the delimitation this Commission can certainly work much havoc and those minorities may not even get what they ordinarily would have got according to their population.*"[36]

It is quite evident that the fact of restricting judicial review of the readjustment of electoral units is not new and the concern that the benefit of this fact may be taken to gerrymander has been there since the inceptions of the restrictive provisions. Regrettably, the upcoming census and the subsequent delimitation exercise scheduled post-2026 are anticipated to give rise to several contentious issues,

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[26] Michael Supperstone, James Goudie, Paul Walker, "Supperstone, Goudie and Walker on Judicial Review" chapter 18.11

[27] PL v Boundary Commission for Northern Ireland [2019] NIQB 74

[28] 509 U.S. 630 (1993) (hereinafter "**Reno**")

[29] Robert A. Blake, "A Step Toward A Colorblind Society: Shaw v. Reno" 29 Wake Forest L. Rev. 937 https://advance.lexis.com/api/document/collection/analytical-materials/id/3S3T-WC50-00CW-40MT-00000-00?cite=29%20Wake%20Forest%20L.%20Rev.%20937&context=1523890&icsfeatureid=1517130

[30] Stephen Menendian, *What Constitutes a "Racial Classification"?: Equal Protection Doctrine Scrutinized*, 24 Temp. Pol. & C.R. L., 81 (2014), https://www.academia.edu/70507305/_What_Constitutes_a_Racial_Classification_Equal_Protection_Doctrine_Scrutinized

[31] Earl M. Maltz, "Voting Rights After Shaw V. Reno: Political Questions And Representational Politics: A Comment on Shaw v. Reno" 26 Rutgers L. J. 711 https://advance.lexis.com/api/document/collection/analytical-materials/id/3S3T-9D80-00CV-909M-00000-00?cite=26%20Rutgers%20L.%20J.%20711&context=1523890&icsfeatureid=1517130

[32] Rucho v. Common Cause, 588 U.S. 684 (2019) (hereinafter "**Rucho**")

[33] https://www.jstor.org/stable/26958734?seq=43

[34] https://harvardlawreview.org/print/vol-133/rucho-v-common-cause/

[35] BLACK'S LAW DICTIONARY 756 (9th ed., Bryan A. Garner ed., 2009) see also James R. Dalton, *Making Politics De Minimis in the Political Process: The Unworkable Implications of Cox v. Larios in State Legislative Unworkable Implications of Cox v. Larios in State Legislative Redistricting and Reapportionment Redistricting and Reapportionment*, 2004(5) BYU L. Rev., 1999 (2004), https://digitalcommons.law.byu.edu/lawreview/vol2004/iss5/8/

[36] At that point, the responsibility of delimitation was vested with the Election Commission of India- here, "Commission" is referred to the Election Commission of India see Constitution of India https://www.constitutionofindia.net/debates/16-jun-1949/#136104 (August 1, 2024 19:00 hours)

with *gerrymandering* emerging as a significant concern. This facilitates a transition to the examination of the contentious issues addressed in the subsequent section.

Population Paradoxes and the Perils of Political Partitioning

The contentious issues that will be discussed in this section pertain to two main aspects. Firstly, there is the concern regarding the unequal distribution of seats in various states, which is based on their population growth rate. Secondly, there is an issue regarding the possibility of *gerrymandering*.

Unequal Distribution of Seats

Ever since the 1971 delimitation exercise, there has been an ongoing concern regarding the impact of states with higher population growth rates on the formation of government.[37] This situation deviates from the principle of '*one person, one value, one vote*'. Due to this, the delimitation was frozen through the Forty-second Constitutional Amendment Act so that the states with a controlled population growth under the family planning policy were not essentially penalized.[38] Vaishnav and Hintson have conducted extensive research, supported by data analysis, to illustrate the potential impact of population disparity on the allocation of seats following the forthcoming delimitation exercise post-2026.[39] The data suggests a significant disparity between the northern and southern states of India. As an example, northern states like Uttar Pradesh and Bihar will gain seats, while southern states like Tamil Nadu and Kerala will lose seats.[40]

There exists a demand to take into consideration the proportion of voters in a state as the basis for readjustment, rather than the total number of voters. It is clear that Tamil Nadu would see a decrease of seven seats, while Uttar Pradesh would experience an increase of seven seats, if the 2001 Census were to be considered. On the other hand, the number of voters per constituency in Tamil Nadu is expected to exceed that of Uttar Pradesh.[41]

The Constitution of India, under the schema of Articles 81 and 82, is silent on the manner and basis of delimitation. The same is discussed under section 9 of the Delimitation Act, 2002.[42] The said provision provides that, "*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*" shall be taken into consideration while readjusting the constituencies, while the apex court has specifically stated:

> "*Population, though important, is only one of the factors that has to be taken into account while delimiting constituencies which means that there need not be uniformity of population and electoral strength in the matter of delimitation of constituencies. In other words, there is no insistence on strict adherence to equality of votes or to the principle one vote—one value*"[43]

It is worth noting that the Eighty-Fourth Amendment of the Constitution of India, which occurred after the aforementioned judgement, made a significant change by separating the common use of the

[37] https://www.jstor.org/stable/42753697

[38] Alistair McMillan, *Constitution 91st Amendment Bill: A Constitutional Fraud?*, 36(4) EPW, 1171 (2001), https://www.jstor.org/stable/4410475.

[39] Milan Vaishnav and Jamie Hintson, *India's Emerging Crisis of Representation*, Carnegie Endowment for International Peace (August 1, 2024 19:00 hours) https://carnegieendowment.org/research/2019/03/indias-emerging-crisis-of-representation?lang=en.

[40] Id.

[41] Id.

[42] Shreenath A. Khemka and Aniket Pandey, *Readjustment of the Commons: Evaluating Claims of Southern Resistance*' 6(1) CALJ, 138 (2021), https://www.calj.in/post/readjustment-of-the-commons-evaluating-claims-of-southern-resistance-shreenath-k-aniket-pandey

[43] R.C. Poudyal v. Union of India, (1994) Supp (1) SCC 324.

term "*population*" under Articles 81(2)(a) and (b) of the Constitution of India. This meant that while the allocation of seats among the states remained based on the 1971 Census[44], the division of constituencies within each state was determined by the more recent 2001 Census.[45] It will be interesting to watch the approach that will be taken by the delimitation commission and/or the union legislature in addressing this existing challenge. However, any action taken by the legislature and/or the delimitation commission may not be judicially reviewed. We have delved into this topic in more detail, but first, allow us to briefly address the issue of challenge in relation to the potential for *gerrymandering*.

The Great Indian Gerrymandering

The allegations of *gerrymandering* have not been properly made out in Indian electoral history. However, there have been instances where it has been seen that the political party or alliance running the union government during the time of previous instances of delimitation has been able to get better election performance.[46] However, those factors alone do not meet the criteria for classifying it as *gerrymandering*. Similarly, when the Union of India announced the delimitation of the newly created Union Territory of Jammu and Kashmir (hereinafter "**J&K**"), concerns were raised about the possibility of *gerrymandering* of constituencies.[47] This illustrates that the current system of laws is viewed as being not so adequately equipped, if not completely unprepared, to safeguard against such a situation. Furthermore, even if they are prepared, there remains a possibility of foul play.

In other scenarios, when there is a possibility of rights being violated or any suspicious activity taking place, the Constitution of India provides us with the opportunity to approach the doors of the judiciary. Even though the J&K delimitation notification was not questioned for *gerrymandering,* it did prompt a legal challenge.[48] The Court dismissed the same challenge serving as a reminder of the common issue that arises with delimitation in India - the restriction on judicial review. However, recent rulings by the Supreme Court have begun to carve out exceptions, challenging the rigidity of this established doctrine

Trifecta of Transformation

The Supreme Court of India, in three recent cases, has come up with a new perspective that directly goes against the position which was firmly established by Meghraj Kothari. The first instance of this trifecta of cases being the order in the case of Dravida Munnetra Kazhagam v. Secretary Governors Secretariat.[49] The case was regarding the delimitation of local body seats and the bar on judicial review put by Articles 243 O and 243 of the Constitution of India. The honourable Supreme Court of India cited the dictum of the honourable Court in the case of the Election Commission of India v. Ashok Kumar[50] - where the Court interpreted the *judicial hands-off* doctrine in a manner that allowed for the review of actions undertaken by the Election Commission, despite such actions being barred from judicial scrutiny under Article 329 of the Constitution of India, as well as those of the Delimitation Commission, framing them as matters related to elections. The Court in Ashok Kumar argued that any court is empowered to look into the acts or decisions of any statutory authority when it is "*a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.*" Based on this ratio, the Court in DMK bypassed the restriction of Articles

[44] INDIA CONST. art. 81 cl. 3 proviso cl. (i) *r.w.* INDIA CONST. art. 82 third proviso cl. (i).
[45] INDIA CONST. art. 81 cl. 3 proviso cl. (ii) *r.w.* INDIA CONST. art. 82 third proviso cl. (ii).
[46] Alistair, *supra* note 15
[47] Haseeb A Drabu, *J&K delimitation exercise sets a dangerous precedent*, The Indian Express (August 1, 2024 19:00 hours) https://indianexpress.com/article/opinion/columns/jk-delimitation-exercise-sets-a-dangerous-precedent-7698697/
[48] Haji Abdul Gani Khan v. Union of India, (2023) SCC OnLine SC 138
[49] (2020) 6 SCC 548 (hereinafter "**DMK**")
[50] (2000) 8 SCC 216 (hereinafter "**Ashok Kumar**")

243 O and 243 ZG of the Constitution of India and looked into the decisions of the Delimitation Commission.

The next case being the State of Goa v. Fouziya Imtiaz Shaikh.[51] A similar issue of the embargo on judicial review as put by Articles 243 O and 243 ZG of the Constitution of India- was raised in this case as well. The court took an interesting view in this judgment, noting the application of the *judicial hands-off* doctrine, at least under Articles 243 O and 243 ZG of the Constitution of India - is "*only during the process of election*." The Court opined that delimitation is not a part of the election process.[52] The same has also been upheld that the delimitation process is a process independent of any election previously by even a constitution bench.[53] The Court thus pointed out that any challenge of "*illegal orders*" made by any authority may be made out before the commencement of the election process, before any writ courts.[54] It is to be noted that the Court, through this ratio, did not overturn Meghraj Kothari. The crucial aspect of that being the relevant legislation in the case of Fouziya Imtiaz Shaikh did not have any *pari materia* provisions like section 10 of the Delimitation Act 2002- with respect to giving the force of law to the delimitation orders. But it does point out a writ court's power to look into readjustment of electoral units in case of "*illegal orders*." This was cited in the order of the last case of this trifecta of cases that we are discussing in this section.

The last case in this trifecta is the order of Kishorchandra Chhanganlal Rathod v. Union of India.[55] This case was related to the Delimitation Commission notifying the assembly constituency of Bardoili as a seat reserved for the Scheduled Caste community, where the restriction of Article 329(a) of the Constitution of India directly might have applied- as opposed to DMK and Fouziya Imtiaz Shaikh, where the restriction was through the mirroring provision of Articles 243 O and 243 ZG of the Constitution of India. The Court, in this case, also took an intriguing position. The Court stated,

> "*If judicial intervention is deemed completely barred, citizens would not have any forum to plead their grievances, leaving them solely at the mercy of the Delimitation Commission. As a constitutional court and guardian of public interest, permitting such a scenario would be contrary to the Court's duties and the principle of separation of powers*"[56]

In stating the above, the Court also cross-referred to DMK and the stand that it took regarding the writ courts being empowered to look into such orders which are "*mala fide or arbitrary*" as also affirmed by Fouziya Imtiaz Shaikh.[57] But the most interesting part of this order is the way it has bypassed the roadblock of Meghraj Kothari. The Court, in the order, went behind the reasoning of the *judicial hands-off* as put forward by the scheme of Article 329(a) of the Constitution of India and Section 10 of the Delimitation Act 2002. The Constitutional bench judgment of Meghraj Kothari, as also pointed out earlier, argues in the absence of such a *judicial hands-off* mechanism- judicial review may become the tool for causing unnecessary delay in any election procedure.[58] The Court in Kishorchandra Rathor concluded in that instant case the appellant was not trying to do that and stated that "[a] *constitutional court can undertake the exercise of judicial review within the limited sphere at an appropriate stage*"[59] The expression of the Court as to "*limited sphere*" and "*appropriate stage*" becomes of grave importance. The next and penultimate portion of this piece will try to infer the implication of this

[51] (2021) 8 SCC 401 (hereinafter "**Fouziya Imtiaz Shaikh**")
[52] https://www.scobserver.in/journal/sc-judgment-review-2021-elections-and-democracy-state-of-goa-v-fouziya-imtiaz-sheikh/
[53] Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman, (1985) 4 SCC 689
[54] Id. at ¶ 64
[55] (2024) SCC OnLine SC 1879 (hereinafter "**Kishorchandra Rathor**")
[56] Id at ¶ 5
[57] Id at ¶ 6
[58] Meghraj Kothari at ¶ 20
[59] Kishorchandra Rathor at ¶ 9

trifecta of cases on any possible judicial challenge on the fourth coming nation-wide delimitation post-2026.

Infusion Implications

The major conclusion of the above discussion, or at least the discussion of the trifecta of cases, makes it clear that the Meghraj Kothari jurisprudence has not been diluted, but there exists a mere infusion of other opinions. As this section of the article will solely discuss about the implications of the infusion of the Meghraj Kothari jurisprudence through other opinions on any potential judicial challenge on the fourth coming nation-wide delimitation post-2026 ("**Potential Challenge**"), we will majorly concern ourselves with the dictums and reasoning of the Court in Kishorchandra Rathor as opposed to two other cases of the trifecta. Since Kishorchandra Rathor directly deals with the restriction scheme put forward by Article 329(a) Constitution of India and Section 10 of the Delimitation Act 2002 and does not mirror provisions for local bodies. For the purposes of our discussion, the two instances as pointed out in the initial phases of the article i.e. the issue of unequal distribution of seats and possible *gerrymandering*- will be taken up to simulate as the basis of the Potential Challenge. We will take both of these scenarios and test if the infused Meghraj Kothari jurisprudence will allow us to have a successful admissible challenge; for this purpose, we will use the method of qualitative inferential analysis.

Disturbed Distribution

The main issue of the problem of unequal distribution was the way of execution of the delimitation exercise, i.e. taking into consideration the total number of voters to delimit electoral units as opposed to taking into consideration the proportion of voters in a state.[60] The method of boundary determination is a matter of administrative discretion as long as it complies with section 9 of the Delimitation Act 2002. In addition, it should be noted that Kishorchandra Rathor only permits a court challenge within a restricted scope, specifically when there is an order that is deemed "*illegal*" or any order that is considered "*mala fide or arbitrary*". It is safe to infer that a challenge based on the fact that the Delimitation Commission did not take the proportion of voters in a state into account as opposed to the total number of voters in a state to readjust the electoral units may not succeed as that may not stand the test of Kishorchandra Rathor. But that may not be the case with *gerrymandering*.

Guarding from Gerrymandering

Indian regime currently does not have notable cases where the Courts have considered or successfully proven any instances of *gerrymandering* except State of M.P. v. Devilal.[61] Even in this case- there was a mere mention of *gerrymandering.* However, there have been cases in which the court has expressed the view that if anything has even the slightest chance of enabling and leading to possible *gerrymandering*, the courts have a duty to restrict those.[62] Therefore, it is reasonable to infer that a well-constructed case of *gerrymandering* has the potential to be accepted by the Courts, overcoming the roadblock presented by Meghraj Kothari and the limitations of judicial scrutiny as determined by the Kishorchandra Rathor. However, a Judicial Review might be undertaken for reasons beyond what has been mentioned. Any judicial review that may be needed beyond the cause of *gerrymandering* may bring us back to square one.

Conclusion and Recommendations

The roadblock of Meghraj Kothari standstill, even after the trifecta of cases, specifically Kishorchandra Rathor, because none of them were empowered to make any changes to any

[60] Milan *supra* note 16

[61] (1986) 1 SCC 657

[62] The Electoral Bond Scheme, introduced through the Finance Act 2017 and Finance Act 2016- was criticized for the possibility of enabling *gerrymandering*- inter alia other issues. The Court struck down the said Scheme; see Association for Democratic Reforms v. Union of India, (2024) 5 SCC 214

Constitution Bench decision. The intriguing position taken by the three-judge benches in all three cases of our trifecta is not immune from getting ignored and/or overturned by any bench of similar or greater strength due to the glaring existence of Meghraj Kothari. The continued reliance on the *Meghraj Kothari* regime, as established through the trifecta of cases, is not a viable long-term solution. Accordingly, the first recommendation is for interest groups, including public interest litigation organisations and political parties within India's electoral framework, to advocate for the ratio in *Kishorchandra Rathor* to be upheld by a Constitution Bench or, preferably, by a bench larger than that in *Meghraj Kothari*.

The second part of the recommendation is not regarding the aspect of judicial review of readjustment of electoral units but rather with a legislative recommendation to amend Articles 81 and/or 82 of the Constitution of India along with the Delimitation Act 2002 in any manner that shall be able to give a solution to the problem of unequal distribution of seats among states. This problem is not a novel but also existed in 2001, which prompted the need to freeze the delimitation till 2026.[63]

In conclusion, it has to be recognized that there exists a need to exercise judicial hand-off in election matters; otherwise, as Meghraj Kothari mentions, judicial review will become a weapon that causes unnecessary delays. But the hobgoblin of that may not open doors to foul play. Election in a democracy is the show of sovereign will, the sovereign being the people. Any foul play in such an election will just defeat the object of democracy at a very fundamental level. The courts, being the vanguards of democratic ethos in this country, should have the right and duty to safeguard democracy from any foul play. In case there is any blatant foul play in the elections, whether to judicially review or not to review should not be the question.

[63] Aditi *supra* note 5