HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. D.B. Civil Writ Petition No. 17993/2019

Jai Singh s/o Shri Dalla Singh, aged about 35 years, r/o Village Bhimgarh, Jaitaran, District Pali, Rajasthan.

----Petitioner

Versus

1. The State of Rajasthan through the Secretary, Department of Rural Development and Panchayati Raj, Secretariat, Jaipur.
2. The District Collector -cum- Magistrate, Office of District Collector, Pali.
3. The Chief Executive Officer, Zila Parishad, Pali.

----Respondents

Connected With

2. D.B. Civil Writ Petition No. 17416/2019
3. D.B. Civil Writ Petition No. 17490/2019
4. D.B. Civil Writ Petition No. 17495/2019
5. D.B. Civil Writ Petition No. 17562/2019
6. D.B. Civil Writ Petition No. 17582/2019
7. D.B. Civil Writ Petition No. 17629/2019
8. D.B. Civil Writ Petition No. 17631/2019
9. D.B. Civil Writ Petition No. 17649/2019
10. D.B. Civil Writ Petition No. 17713/2019
11. D.B. Civil Writ Petition No. 17731/2019
12. D.B. Civil Writ Petition No. 17764/2019
13. D.B. Civil Writ Petition No. 17769/2019
14. D.B. Civil Writ Petition No. 17770/2019
15. D.B. Civil Writ Petition No. 17790/2019
16. D.B. Civil Writ Petition No. 17791/2019
17. D.B. Civil Writ Petition No. 17800/2019
18. D.B. Civil Writ Petition No. 17801/2019
19. D.B. Civil Writ Petition No. 17837/2019
20. D.B. Civil Writ Petition No. 17877/2019
21. D.B. Civil Writ Petition No. 17886/2019
22. D.B. Civil Writ Petition No. 17891/2019
23. D.B. Civil Writ Petition No. 17892/2019
24. D.B. Civil Writ Petition No. 17893/2019
25. D.B. Civil Writ Petition No. 17898/2019
26. D.B. Civil Writ Petition No. 17910/2019

27. D.B. Civil Writ Petition No. 17932/2019
28. D.B. Civil Writ Petition No. 17960/2019
29. D.B. Civil Writ Petition No. 17970/2019
30. D.B. Civil Writ Petition No. 17976/2019
31. D.B. Civil Writ Petition No. 17989/2019
32. D.B. Civil Writ Petition No. 18000/2019
33. D.B. Civil Writ Petition No. 18001/2019
34. D.B. Civil Writ Petition No. 18008/2019
35. D.B. Civil Writ Petition No. 18016/2019
36. D.B. Civil Writ Petition No. 18040/2019
37. D.B. Civil Writ Petition No. 18042/2019
38. D.B. Civil Writ Petition No. 18044/2019
39. D.B. Civil Writ Petition No. 18046/2019
40. D.B. Civil Writ Petition No. 18048/2019
41. D.B. Civil Writ Petition No. 18050/2019
42. D.B. Civil Writ Petition No. 18051/2019
43. D.B. Civil Writ Petition No. 18053/2019
44. D.B. Civil Writ Petition No. 18054/2019
45. D.B. Civil Writ Petition No. 18107/2019
46. D.B. Civil Writ Petition No. 18109/2019
47. D.B. Civil Writ Petition No. 18112/2019
48. D.B. Civil Writ Petition No. 18115/2019
49. D.B. Civil Writ Petition No. 18120/2019
50. D.B. Civil Writ Petition No. 18055/2019
51. D.B. Civil Writ Petition No. 18106/2019
52. D.B. Civil Writ Petition No. 18108/2019
53. D.B. Special Appeal (Writ) No.1378/2019
54. D.B. Civil Writ Petition No.18179/2019
55. D.B. Civil Writ Petition No.18180/2019
56. D.B. Civil Writ Petition No.18183/2019
57. D.B. Civil Writ Petition No.18185/2019
58. D.B. Civil Writ Petition No.18186/2019
59. D.B. Civil Writ Petition No.18196/2019
60. D.B. Civil Writ Petition No.18199/2019
61. D.B. Civil Writ Petition No.18203/2019
62. D.B. Civil Writ Petition No.18205/2019
63. D.B. Civil Writ Petition No.18207/2019

64. D.B. Civil Writ Petition No.18181/2019
65. D.B. Civil Writ Petition No.18184/2019
66. D.B. Civil Writ Petition No.18190/2019
67. D.B. Civil Writ Petition No.17500/2019
68. D.B. Civil Writ Petition No.18247/2019
69. D.B. Civil Writ Petition No.18255/2019
70. D.B. Civil Writ Petition No.17792/2019
71. D.B. Civil Writ Petition No.18245/2019
72. D.B. Civil Writ Petition No.18251/2019
73. D.B. Civil Writ Petition No.18254/2019
74. D.B. Civil Writ Petition No.18256/2019
75. D.B. Civil Writ Petition No.18272/2019
76. D.B. Civil Writ Petition No.18295/2019
77. D.B. Civil Writ Petition No.17799/2019
78. D.B. Civil Writ Petition No.18322/2019
79. D.B. Civil Writ Petition No.17836/2019
80. D.B. Civil Writ Petition No.18232/2019
81. D.B. Civil Writ Petition No.18327/2019
82. D.B. Civil Writ Petition No.18328/2019
83. D.B. Civil Writ Petition No.18329/2019
84. D.B. Civil Writ Petition No.18360/2019
85. D.B. Civil Writ Petition No.18361/2019

For Petitioner(s) : Mr. Ankur Mathur, Mr. Ashvini Kumar Swami, Mr. Sukesh Bhati, Mr. Moti Singh, Mr. Radhe Shyam Mankad, Mr. Teja Ram, Mr. Anil Vyas, Mr. Hapu Ram, Mr. B.S. Sandhu, Mr. Ramawatar Singh, Mr. K.R. Saharan, Mr. Jitender Singh Bhaleria, Mr. Rajat Dave, Mr. Mukesh Rajpurohit, Mr. Mahaveer Bishnoi, Mr. Shambhoo Singh Rathore, Mr. Rameshwar Lal Dave, Mr. Arun Dadhich, Mr. Kuldeep Mathur, Mr. Kshamendra Mathur, Mr. A.R. Godara, Mr. Pawan Singh, Mr. Girdhar Singh Bhati, Mr. Dhirendra Singh, Mr. Babu Lal Bishnoi, Mr. Vikas Bijarnia, Mr. Shyam Lal, Mr. Shyam Vyas, Mr. Manish Patel, Mr. Vinod Choudhary, Mr. Vikram Singh Rajpurohit, Mr. S.S. Gour, Mr.Mahaveer Bhanwariya, Mr. Sanjay Soni, Mr. G.R. Punia, Senior Advocate assisted by Mr. Rajesh Punia,

Mr. Mohit Singh Choudhary, Dr. Nikhil Dungawat, Mr. L.D. Khatri, Mr. Manoj Purohit, Mr. Abhinav Jain, Mr. Parikshit Rajpurohit, Mr. Govind Lal Suthar, Mr. Narpat Singh, Mr. Manoj Bhandari, Mr. Deelip Kawadia, Mr. Manoj Kumar Pareek

For Respondent(s) : Mr. Sunil Beniwal, AAG assisted by Mr. Utkarsh Singh, Mr. Kartik Singh Lodha, Mr. Kunal Upadhyay, Mr. Piyush Bhandari

For Election Com. : Mr. Vikas Balia

HON'BLE THE CHIEF JUSTICE MR. INDRAJIT MAHANTY
HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

Date of Judgment : 13/12/2019

By the Court (Per Dr. Pushpendra Singh Bhati, J.):

1. The present bunch of cases involves a common issue and question of law, and therefore, the same is being considered and decided by this common judgment.

2. Brief facts of this case, as noticed by this Court, are that the State Government initiated a delimitation/alteration exercise vide notification dated 12.06.2019 in the State of Rajasthan in accordance with Section 101 of the Rajasthan Panchayati Raj Act, 1994 (*hereinafter referred to as 'the Act of 1994'*). The said exercise included creation/ redemarcation/ reorganization of the boundaries of the gram panchayats and panchayat samitis.

3. The scheduled process for initiating the phased alteration in first 30 days from 15.06.2019 to 14.07.2019 was for the District Collectors to prepare proposals for the delimitation of the gram panchayats and panchayat samitis. Thereafter, 30 days

from 15.07.2019 to 13.08.2019 were scheduled for inviting objections upon such proposals. Thereafter, 10 days from 14.08.2019 to 23.08.2019 were stipulated for hearing on the objections upon the draft proposals. Thereafter, 10 days from 24.08.2019 to 02.09.2019, the District Collectors were to make the necessary recommendations to the Panchayati Raj Department of the State of Rajasthan.

4. The aforementioned notification clearly indicated that such exercise was a time bound exercise, keeping in view the ensuing elections of Panchayati Raj Institutions scheduled to be held in January and February, 2020. The various parameters of population, territorial distribution and distance were stipulated. The alteration in the limits of Panchayati Raj Institutions was accordingly proceeded with.

5. The proposals/recommendations of the District Collectors were sent to the State Government, which constituted a High Powered Committee of Six Ministers on 18.09.2019 to consider the recommendation, proposals and representations before finalizing the same.

6. Thereafter, the State Government, while adhering to the said notification dated 12.06.2019 and the procedure prescribed under Section 101 of the Act of 1994, published a notification on 15.11.2019, which was notified in the gazette on 16.11.2019. The notification reflected the initiation of the exercise vide notification No.F.15(1) Punargathan/Vidhi/Panravi/2019/3014 dated 12.06.2019 and in exercise of powers conferred by Section 98 of the Act of 1994 read with Sections 9, 10 and 101, whereby the delimitation exercise culminated into a declaration.

7. Section 9 of the Act of 1994 reflects permission to the State Government to notify a village or group of villages to the Panchayat Circle and to be declared as Panchayat.

Section 10 and 11 deal with establishment of Panchayat Samiti and Zila Parishad respectively.

Section 12 deals with composition of a Panchayat. The Panchayat consists of a Sarpanch and directly elected Panchas from as many wards as are determined under sub-section (2) of Section 12. Sub-Section (2) of Section 12 provides that number of wards would be determined by dividing the Panchayat circle on the basis of population. Sub-section (2) further provides that every endeavour should be made that the population of each ward of Panchayat is having as far as practicable the same population.

Section 15 of the Act deals with reservation of seats.

Section 101 of the Act of 1994, which is fulcrum of the present litigation, deals with alteration in the limits of a Panchayati Raj Institution, and the same, for ready reference, reads as under:-

> *"101. Alteration in the limits of a Panchayati Raj Institution.-*
> *(1) The State Government may, at any time, after one month's notice published in the prescribed manner either on its own motion or at the request made in this behalf, and by notification in the Official Gazette-*
> *(a) declare the whole or a part of any local area included within the limits of a Municipality to be a Panchayat Circle; or*
> *(b) include in a Panchayat Circle and such local area or a part thereof, or as the case may be, any local area included within the limits of another Panchayat Circle; or*

(c) otherwise alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or

(d) exclude the whole or a part of any local area from a Panchayat Circle, whether on its ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle.

(2) Upon any action being taken under Sub-sec. (1), the State Government shall, notwithstanding anything contained in this Act or any other law for the time being in force, by an order published in the Official Gazette, make provision for the following, namely:-

(a) that in a case falling under Clause (a) of that Sub-section, a Panchayat shall be established for the local area declared to be a Panchayat Circle; or

(b) that, in case falling under Clause (b) of that Sub-section, the election of the members for additional local are shall be held; or

(c) that, in a case falling under Clause (c) of that Sub-sec. the existing Panchayats shall stand dissolved and new Panchayats shall be constituted – in accordance with the provisions of this Act within a period of six months from the appointed day; or

(d) that, in a case falling under Clause (d), the Panchayat shall stand dissolved or, as the case may be, the members who, in the opinion of the State Government, represent the local area excluded from the Panchayat Circle shall stand removed.

Provided that for so long as a Panchayat or a new Panchayat is not established under Clause (a), or the case may be, under Clause (c), all powers and duties of the Panchayat shall be exercised and performed by such administrator as the State Government may appoint in this behalf :

Provided further that no act of a Panchayat shall be deemed invalid by reason of any vacancy of the members referred to in Clause (b).

(3) Upon the exclusion of any local area of a Municipality and its declaration as or, as the case may be, inclusion in, a Panchayat Circle under Sub-sec. (1) -

(a) such area shall cease to be a Municipality;

(b) the members of the Board representing the area of the Municipality so declared or included in a Panchayat Circle shall vacate their respective offices but without prejudice to their eligibility for election to the Panchayat to be constituted for such area or, as the case may be, the Panchayat, in the area whereof, such area is included;

(c) the whole of the assets testing in, and of the liabilities subsisting against the Municipality so declared to be a Panchayat or, in case where only a part of a Municipality is included in, or declared to be a Panchayat, such portion of the said assets and liabilities as the State Government may direct, shall develop upon the Panchayat declared for such area or upon the Panchayat in which such area of the Municipality is included;

(d) until new rules, notifications, orders and bye-laws are made or issued under this Act and unless the State Government otherwise directs, all rules, notifications orders and byelaws applicable :-

(i) to the Panchayat in which such area is included; and

(ii) where the whole or a part of a Municipality is declared to be a Panchayat to the area of the Panchayat Samiti which shall, by reason of the concerned area falling in the block of such Panchayat Samiti, have jurisdiction on the area so declared to be a Panchayat.

shall continue to apply to the area so included or declared;

(e) the Panchayat so established by inclusion of any area of Municipality thereon or by the declaration of a Municipality as a Panchayat shall levy or continue to levy such of the taxes as are lawfully imposed under this Act;

(f) any such area shall cease to be subject to all rules, notifications, orders and bye-laws made under the Rajasthan Municipalities Act, 1959 (Rajasthan Act 38 of 1959); and

(g) the Panchayat in which such area in included or the Panchayat which is declared for such area and the Panchayat Samiti and Zila Parishad respectively of the Block and District, in which the area so included or declared falls, shall exercise jurisdiction over such area and the Municipality in which such area was included or, as the case may be, the Municipality which was established for such area shall cease of function therein.

(4) When any local area ceases to be a Panchayat and is included within the local limits of the jurisdiction of some other local authority, the Panchayat Fund and other property and rights vesting in the Panchayat shall vest in such other local authority and the liabilities of the Panchayat shall be the liabilities of such other local authority.

(5) When any local area is excluded from a Panchayat Circle and included in another Panchayat Circle, such portion of the Panchayat Fund and other property vested in the Panchayat of the first mentioned Circle shall vest in, and such portion of the liabilities thereof shall be the liabilities of the other Panchayat as the State Government may, after consulting both the Panchayats, declare by notification in the Official Gazette[:]

Provided that the provisions of this Sub-section shall not apply in any case where the circumstances, in the opinion of the State Government, render undesirable that transfer of any opinion of the Panchayat Fund or properties or liabilities.

(5A) When it is considered necessary so to do, whether as a consequence of an action taken under Sub-sec. (1) or otherwise, the State Government may alter the limits of a Panchayat Samiti or a Zila Parishad area and to every such case of alteration the provisions contained in the foregoing Sub-section shall mutatis mutandis apply.

(6) The State Government may, for the purpose of the foregoing sub-section, make such orders and give such directions as it may consider necessary.

(7) Save as otherwise provided in this section its provisions shall have effect, notwithstanding anything contained in this Act or the Rajasthan Municipaities Act, 1959 (Rajasthan Act 38 of 1959) or any other law for the time being in force.

Explanation – In this section "appointed day" means the day from which a change referred to in Sub-sec. (1) takes place."

Section 117 of the Act of 1994, which deals with bar to interference by the Court, reads as under:-

S.117. Bar to interference by courts in certain matters: *Notwithstanding anything in this Act,-*

(a) the validity of any law relating to the delimitation of constituencies or wards or the allotment of seats to such constituencies or wards made or purporting to be made under this Act, shall not be called in question in any court; and

(b) no election to any Panchayati Raj Institution shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under this Act."

A plain reading of the provisions of the Constitution Art.243-C, 243-K & 243-O, if read together with S.101 & S.117 of the Act, 1994 would go to show that delimitation of Panchayat area or the formation of constituencies in the said areas and allotments of seats to the constituencies could neither be challenged nor the court can entertain such challenge except on the ground that before delimitation, no objections were invited and no hearing was afforded, even though this challenge could not be entertained after the notification regarding delimitation came to be published in the official gazette. The law on the subject which has been declared by the Apex court is loud and clear and prohibits courts to entertain challenge in view of the Art.243-C, 243-K and 243-O of the Constitution in respect of the above aspects and, therefore, the challenge raised by the petitioners pertaining to delimitation of Panchayat areas or that of formation of constituency in the said area as well as allotments of seats to such constituencies cannot be entertained by the courts since from the procedure followed and material available on record, it reveals that objections were invited from the persons and hearing was afforded to them and only thereafter the District Collectors, keeping in view the guidelines, examined the matter and made recommendations to the State Government through the Divisional Commissioners.

8. The essential condition of one month's notice for exercise of delimitation under Section 101 of the Act of 1994 is mandatory, and in the State of Rajasthan, earlier the delimitation exercise has taken place in the year 1994 and thereafter lastly, in 2014, and now the exercise is being taken place in pursuance of the aforementioned notification dated 12.06.2019. The delimitation exercise was an objective assessment for effective administration and distribution of public utilities.

9. On 15-16.11.2019, notifications Number from 2989 to 3021 were issued finalizing the alteration/delimitation process for the Gram Panchayats under consideration and notifications

No.3022 to 3044 issued for alteration/delimitation process for the Panchayat Samitis.

10. The present bunch of cases lays challenge to the ramifications of various notifications issued from 16-15.11.2019 to 02.12.2019.

11. The private lawyers, while challenging the notification dated 15-16.11.2019 have laid down all their facts, which pertain to different gram panchayats and panchayat samitis.

12. Broadly, the issues raised by the private lawyers in this bunch of cases are :

(i) The delimitation/reconstitution was not initiated.

(ii) The representation for delimitation/reconstitution were not considered.

(iii) The delimitation/reconstitution is contrary to the representation.

(iv) The representation of delimitation/reconstitution was considered and recommended by the District Collector, but was not considered by the Sub-Committee.

(v) The Sub Committee changed the recommendations made by the District Collector.

(vi) The subsequent notification dated 15-16.11.2019 was issued without proper opportunity of hearing and without giving one month’s notice.

(vii) The one month’s notice as enshrined in Section 101 of the Act of 1994 was given initially but was not given at the stage when the change/alteration/delimitation was actually done or refused to be done.

(viii) The parameters and guidelines laid down in the notification dated 12.06.2019 were not adhered to strictly.

(ix) The Sub Committee did not consider the objections filed in the right perspective.

(x) The parameters and the factual matrix which were to be adhered to as per the notification dated 12.06.2019 regarding population, distance and size have not been adhered to.

(xi) The prejudicial and arbitrary considerations governed the delimitation process.

(xii) The bar under Article 243-O of the Constitution of India was restricted to the ambit of Article 243-K only i.e. limited to conduct of electoral rolls.

(xiii) The notifications issued subsequent to 15-16.11.2019 were breach of the sanctity of the Article 243-O of the Constitution and Section 101 of the Act of 1994, on the part of the State itself.

(xiv) The proposals amended by the Sub Committee were improper.

(xv) The proposals accepted by the Sub Committee were improper.

(xvi) The proposals denied by the Sub Committee were improper.

(xvii) The proposals not considered by the Sub Committee were improper.

(xviii) The proposals amended by the District Collectors were not proper.

(xix) The proposals accepted by the District Collectors were not proper.

(xx) The proposals denied by the District Collectors were not proper.

(xxi) The proposals not considered by the District Collectors were not proper.

(xxii) That opportunity of hearing and mandatory notice was not given to the parties.

Territorial, geographical, population, distance, logic, practicability and other issues involved in the delimitation have also been raised.

13. While addressing the issues, at the outset, on a previous date, Shri Mahendra Singh Singhvi, learned Senior Advocate & Advocate General submitted that the writ petitions were not maintainable in accordance with Article 243-O of the Constitution of India.

14. Learned Advocate General further submitted that Article 243-O has been inserted in Chapter IX of the Constitution by 73rd Amendment in the Constitution and is analogous to Article 329 of the Constitution of India which bars the Courts from entertaining the writ petition wherein delimitation of wards or election dispute is sought to be questioned.

15. The said Article 243-O of the Constitution of India reads as under:

> *"243O. Bar to interference by courts in electoral matters Notwithstanding anything in this Constitution*
> *(a) 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 243K, shall not be called in question in any court;*
> *(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for*

by or under any Law made by the legislature of a State"

16. Learned Advocate General also submitted that in light of the clear bar enshrined under Article 243-O of the Constitution of India, the delimitation exercise conducted in pursuance of Section 101 of the Act of 1994 initiated vide notification dated 12.06.2019 and which has culminated into a final notification dated 15-16.11.2019 ought not to be questioned.

17. Learned Advocate General also submitted that the gazette notification dated 15-16.11.2019 was a legislative act, where there was a clear prohibition of adjudication of factual matrix in light of Article 243-O.

18. Learned Advocate General further submitted that there was no statutory right or fundamental right which the petitioners can show to have been infringed and also the matters cannot be sustained on merits as well.

19. Learned Advocate General also submitted that the delimitation of the gram panchayats and panchayat samitis was a function of the State Government which did not interfere with individual right of the citizens, and thus, not amenable to judicial review under Article 226 of the Constitution.

20. Learned Advocate General also clarified that the guidelines issued on 12.06.2019 were only a broad road map of proceedings towards the notification, and once the same has culminated into a notification on 15-16.11.2019, the same cannot be challenged. Moreover, the guidelines were relaxed vide another circular dated 18.09.2019, whereby the factors of geographical location and connectivity, and the situation of the other revenue villages were also kept into consideration.

21. Learned Advocate General further submitted that creation/redemarcation/reorganization of the new panchayat samitis and gram panchayats was not a violation of fundamental right or any legal right accruing to the petitioners, who have not been able to show any direct injury or legal rights having been prejudiced or compromised by such action.

22. Learned Advocate General also submitted that the notification dated 15-16.11.2019 was only after the recommendations received from the district level were considered by the Sub Committee which applied its mind in the right perspective, keeping in view the various issues raised.

23. Learned Advocate General further submitted that the High Level Committee comprising of six ministers which was constituted vide order dated 18.09.2019, and after considering the proposals received in this regard and the recommendations sent by the District Collectors, the requisite changes in appropriate cases were made and after application of mind at various levels, the impugned notification dated 15-16.11.2019 was issued.

24. Learned Advocate General, in support of his submission, relied upon the precedent law laid down by the Hon'ble Supreme Court in ***State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors., reported in 1995 Supp (2) SCC 305***, relevant portion of which reads as under:-

> *"**45.** What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or*

the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in Meghraj Kothari v. Delimitation Commission [(1967) 1 SCR 400 : AIR 1967 SC 669] . In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or Section 9 of the Delimitation Commission Act and published under Section 10(1) of that Act is not part of an Act of Parliament, its effect is the same. Section 10(4) of that Act puts such an order in the same position as a law made by Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and Sections 2(kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act,

1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31-8-1994.

46. *While supporting the judgment of the High Court, the respondents raised some additional contentions. The first contention was that it was not competent for the State Government under Section 96-A of the Act to delegate its power to the Director, the delegation being in contravention of the provisions of Article 243(g) of the Constitution. We have pointed out earlier that under the Constitution, Governor means the State Government. Article 154(1) enables the Governor to exercise the executive power of the State either directly or through officers subordinate to him in accordance with the Constitution. Hence by virtue of Article 163, the State Government can exercise the power through its officers. Neither Article 243(g) nor any other provision in Part IX of the Constitution prevents the Governor and, therefore, the State Government from delegating its power mentioned in the said Part to any subordinate officer. The Act makes a specific provision by Section 96-A thereof for the State Government to delegate all or any of its powers under the Act to any officer or authority subordinate to it subject to such conditions and restrictions as it may deem fit to impose. The State*

Government by a notification issued on 9-5-1994 under Section 96-A delegated its powers under Sections 3 and 11-F of the Act to the Director. We have already pointed out that the power delegated under Sections 3 and 11-F of the Act would impliedly include the power to declare 'village' under Section 2(t) of the Act although the said section is not mentioned in the notification specifically. Hence we do not see any substance in this contention either."

25. Learned Advocate General has also placed reliance on the judgment rendered by this Hon'ble Court at Jaipur Bench in ***Bhupendra Pratap Singh Rathore Vs. State of Rajasthan & Ors., reported in 2015(2) WLC (Raj.) 607***, relevant portion of which reads as under:-

16. In this regard, let us first take note of 73rd amendment to the Constitution by which Part-IX consisting of Art.243 to Art.243-O have been introduced in the Constitution. Constitution of Panchayats has been prescribed u/Art.243-B and duration of Panchayat which remain in force for a period of five years from the date appointed for its first meeting and no longer is regulated in terms of Art.243-E and Art.243-K regulates the elections of Panchayats which shall be vested in the State Election Commission for its superintendence, direction and control of the preparation of electoral rolls and conduct of all elections to the Panchayats and at the same time there is an absolute bar to interference by courts u/Art.243-O examining the validity of any lawrelating to delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made u/Art.243-K shall not be called in question in any court and at the same time, no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for, by or under any law, made by the Legislature of the State.

17. It is in the light of the aforesaid provisions of the Constitution that we have to examine the provisions of the Act, 1994. The State enactment, which is the Rajasthan Panchayati Raj Act, 1994, has been suitably amended to bring it in conformity with the amended provisions– 73rd amendment of the Constitution. S.2(1)(ii) of the Act, 1994 provides 'Block' & 'Panchayat Circle' which shall mean the local area over which a Panchayat Samiti or, as the case may be, a Panchayat exercises its jurisdiction. 'Panchayat Area' & 'Panchayat Circle' have also been defined u/S.2(1)(xvi) which envisages the territorial area of a Panchayat.

18. At the same time, S.9 of the Act, 1994 lays down establishment of Panchayat and S.10 of the Act relates to the establishment of Panchayat Samiti. It is by a notification published in the official gazette, declaring any local area, comprising a village or a group of villages not included in a municipality or a cantonment board which is constituted under any law for the time being in force be called a Panchayat Circle and for every local area declared as such there shall be a Panchayat and the same should be notified in the official gazette and such of the local area, within the same District to be a Block and for every Block declared as such, there shall be a Panchayat Samiti having jurisdiction, over the entire Block excluding such of the portions of the Block as are included in a municipality or a cantonment board constituted under any law for the time being in force and have its office in any area comprised within the excluded portion of the Panchayat Samiti and every Panchayat Samiti has to be notified in the official gazette.

19. S.101 of the Act, 1994 envisages powers of the State Government for alteration of limits of Panchayati Raj Institutions and for undertaking the exercise of alteration of limits of Panchayat Institutions, the State Government has to issue a public notice to be published in the prescribed form and by notification in official gazette may declare

whole or any part of the local area included within the limits of a municipality to be a Panchayat Circle; or include in a Panchayat Circle any such local area or a part thereof or, as the case may be, any local area included within the limits of another Panchayat Circle; or alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or excluding the whole or a part of any local area from a Panchayat Circle, whether on its ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle and as regards validity of any law relating to the delimitation of constituencies or wards or the allotment of seats to such constituencies or wards, made or purporting to be made, there is a complete bar to interference by courts in such matters, as provided u/S.117 of the Act, 1994.

20. It may be relevant to note Art.243-O of the Constitution and so also S.101 & S.117 of the Rajasthan Panchayati Raj Act, 1994 which read ad infra:-

> *"**Article 243-O. Bar to interference by courts in electoral matters**.– Notwithstanding anything in this Constitution–*
> *(a) 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 243K, shall not be called in question in any court;*
> *(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.*

"21. At the same time, the relevant provisions under the Act, 1994, relevant for the purpose are quoted ad infra:-

*"**S.101. Alteration in the limits of a Panchayati Raj Institution**: (1) The State Government may, at any time, after one month's notice published in the prescribed manner either on its own motion or at the request made in this behalf, any by notification in the Official Gazette,-*

(a) declare the whole or a part of any local area included within the limits of a municipality to be a Panchayat Circle; or

(b) include in a Panchayat Circle any such local area or a part thereof or, as the case may be any local area included within the limits of another Panchayat Circle; or

(c) otherwise alter the limits of a Panchayat Circle by amalgamating one Panchayat Circle into another or by splitting up a Panchayat Circle into two or more Panchayat Circles; or

(d) exclude the whole or a part of any local area from a Panchayat Circle, whether on its ceasing to be a rural area or, as the case may be, for its being included within the limits of another Panchayat Circle.

(2) - (7) XXX XXX XXX"

***S.117. Bar to interference by courts in certain matters:** Notwithstanding anything in this Act,-*

(a) the validity of any law relating to the delimitation of constituencies or wards or the allotment of seats to such constituencies or wards made or purporting to be made under this Act, shall not be called in question in any court; and

(b) no election to any Panchayati Raj Institution shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under this Act."

A plain reading of the provisions of the Constitution Art.243-C, 243-K & 243-O, if read together with S.101 & S.117 of the Act, 1994 would go to show that delimitation of

Panchayat area or the formation of constituencies in the said areas and allotments of seats to the constituencies could neither be challenged nor the court can entertain such challenge except on the ground that before delimitation, no objections were invited and no hearing was afforded, even though this challenge could not be entertained after the notification regarding delimitation came to be published in the official gazette. The law on the subject which has been declared by the Apex court is loud and clear and prohibits courts to entertain challenge in view of the Art.243-C, 243-K and 243-O of the Constitution in respect of the above aspects and, therefore, the challenge raised by the petitioners pertaining to delimitation of Panchayat areas or that of formation of constituency in the said area as well as allotments of seats to such constituencies cannot be entertained by the courts since from the procedure followed and material available on record, it reveals that objections were invited from the persons and hearing was afforded to them and only thereafter the District Collectors, keeping in view the guidelines, examined the matter and made recommendations to the State Government through the Divisional Commissioners.

22. Their Lordships of the Apex Court in ***Meghraj Kothari Vs. Delimitation Commission & Others*** *reported in* ***AIR 1967 SC 669*** *at para-25 observed, ad infra:-*

"25. In our view, therefore, the objection to the delimitation of constituencies could only be entertained by the Commission before the date specified. Once the orders made by the Commission under Sections 8 and 9 were published in the Gazette of India and in the official gazettes of the States concerned, these matters could no longer be reagitated in a court of law. There seems to be very good reason behind such a provision. If the orders made under Sections 8 and 9 were not to

be treated as final, the effect would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Section 10(2) of the Act clearly demonstrates the intention of the Legislature that the orders under Sections 8 and 9 published under s.10(1) were to be treated as law which was not to be questioned in any court."

23. *It has been examined by the Apex Court in* ***State of U.P. & Others Vs. Pradhan Sangh Kshettra Samiti & Others*** *reported in* ***1995 Suppl.(2) SCC 305*** *at para-46, which reads ad infra:-*

"46. What is more objectionable in the approach of the High Court is that although Clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in the connection, refer to a decision of this Court in Maghraj Kothari Vs. Delimitation Commission & Ors. In that case, a notification of the Delimitation Commission whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or

the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10(1) of that Act is not part of an Act of Parliament, its effect is the same. Section 10(4) of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-O in place of Article 327 and Sections 2(kk), 11F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994."

24. Keeping in view the law laid down by the Apex Court, in our considered view, the gazette notification dt.05.11.2014 relating to delimitation of Panchayat area; or formation of constituencies in the said area; or allotments of seats to the constituencies is a legislative act in nature and could neither be challenged nor the court can entertain such challenge and in view of the law declared by the Apex Court, prohibiting courts to entertain challenge in view of Art.243-C, 243-K and 243-O in respect of the above aspects, raised by the petitioners pertaining to constitution/reconstitution/delimitation of Panchayat areas under the gazette notification dt.05.11.2014 cannot be entertained by this court u/Art.226 of the Constitution and the objection and contentions canvassed by the petitioners in view of Art.243-C, 243-K read with 243-O coupled with law declared by the Apex Court, is wholly devoid of substance.

25. So far as the objection raised by counsel for petitioner that in the judgment cited by the Apex Court, as there was a clear prohibition of S.10(2) of the Delimitation Act, the writ petitions are maintainable as the Delimitation Act is not applicable in the facts & circumstances of the instant case. The objections raised is of no substance for the reason that under 73rd amendment to the Constitution, while introducing Part-IX bar to interference by courts in electoral matters u/Art.243-O(a) and corresponding amendments made in the Rajasthan Panchayati Raj Act, 1994 while functioning for delimitation/alteration of the Panchayati Raj Institutions are regulated in terms of S.101 of the Act, 1994 and at the same time, there is a bar to interference by courts in the matters relating to delimitation of constituencies and wards u/S.117 of the Act,1994 and that being so, the principles laid down by the Apex Court are applicable in the facts & circumstances of the instant case and the gazette notification dt.05.11.2014 being a legislative act in nature and keeping in view the bar to interference in the matters relating to the delimitation of the constituencies u/Art.243-O(a) of the Constitution and so also S.117 of the Act, 1994, the submission made by the petitioner suffers lack of merit.

26. In our considered view, we find substance in the preliminary objections raised by the respondents which deserve worth acceptance and keeping in view the

mandate of Art.243-O(a) of the Constitution read with S.117 of the Act, 1994, once a notification of delimitation of constituencies dt.05.11.2014 has been published in the official gazette u/S.101 of the Act, 1994, it has got the force of law and going by the effect of Art.243-O(a), interference by courts in respect of delimitation of constituencies is barred. Such is the importance of the said notification and the non-obstante clause therein is important and become operative.

27. Consequently, all the writ petitions lack merit and being not maintainable accordingly stand dismissed. No costs."

Learned Advocate General has relied upon the aforementioned precedent law to strengthen his averment that any interference by the High Courts, after the notification of delimitation has been published, would be barred by Article 243-O of the Constitution of India.

26. Learned Advocate General, to fortify his averment that if there is no injury caused and there is no legal right has been infringed, then no interference by the High Court is called for, has placed reliance on the precedent law laid down by the Hon'ble Supreme Court in ***Ravi Yashwant Bhoir v. Collector, reported in (2012) 4 SCC 407***, relevant portion of which reads as under:

*"**58.** Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the lis. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal*

right or legally protected interest of the complainant but juridically harm of this description is called damnum sine injuria.

***59.** The complainant has to establish that he has been deprived of or denied of a legal right and he has sustained injury to any legally protected interest. In case he has no legal peg for a justiciable claim to hang on, he cannot be heard as a party in a lis. A fanciful or sentimental grievance may not be sufficient to confer a locus standi to sue upon the individual. There must be injuria or a legal grievance which can be appreciated and not a stat pro ratione voluntas reasons i.e. a claim devoid of reasons."*

27. Learned Advocate General advocating the non-interference by the Court only on the basis of convenience of some party as a criteria to interfere has referred to the judgment rendered in ***J.R. Raghupathy v. State of A.P, reported in (1988) 4 SCC 364***, relevant portion of which reads as under:

*"**30.** Much of the above discussion is of little or academic interest as the jurisdiction of the High Court to grant an appropriate writ, direction or order under Article 226 of the Constitution is not subject to the archaic constraints on which prerogative writs were issued in England. Most of the cases in which the English courts had earlier enunciated their limited power to pass on the legality of the exercise of the prerogative were decided at a time when the courts took a generally rather circumscribed view of their ability to review ministerial statutory discretion. The decision of the House of Lords in Padfield case [LR 1968 AC 997: (1968) 1 All ER 694: (1968) 2 WLR 924] marks the emergence of the interventionist judicial altitude that has characterized many recent*

judgments. In view of the recent decision of the House of Lords in Council of Civil Service Unions [(1984) 3 All ER 935 (HL)] it would be premature to conclude that in no circumstances would the courts be prepared to apply to the exercise by the Crown of some non-statutory powers the same criterion for review as would be applicable were the discretion conferred by statute. In the ultimate analysis, the present trend of judicial opinion in England on the question as to whether a 'prerogative' power is reviewable or not depends on whether its subject matter is suitable for judicial control. All that we need is to end this part of the judgment by extracting the cautionary note administered by H.W.R. Wade in his Administrative Law, 5th Edn. at p. 352 in these words:

"On the one hand, where Parliament confers power upon some minister or other authority to be used in discretion, it is obvious that the discretion ought to be that of the designated authority and not that of the court. Whether the discretion is exercised prudently or imprudently, the authority's word is to be law and the remedy is to be political only. On the other hand, Parliament cannot be supposed to have intended that the power should be open to serious abuse. It must have assumed that the designated authority would act properly and responsibility, with a view to doing what was best in the public interest and most consistent with the policy of the statute. It is from this presumption that the courts take their warrant to impose legal bounds on even the most extensive discretion."

31. *We find it rather difficult to sustain the judgment of the High Court in some of the cases where it has interfered with the location of Mandal Headquarters and quashed the impugned*

notifications on the ground that the Government acted in breach of the guidelines in that one place or the other was more centrally located or that location at the other place would promote general public convenience, or that the headquarters should be fixed at a particular place with a view to develop the area surrounded by it. The location of headquarters by the Government by the issue of the final notification under sub-section (5) of Section 3 of the Act was on a consideration by the Cabinet Sub-Committee of the proposals submitted by the Collectors concerned and the objections and suggestions received from the local authorities like the Gram Panchayats and the general public. Even assuming that the Government while accepting the recommendations of the Cabinet Sub-Committee directed that the Mandal Headquarters should be at place 'X' rather than place 'Y' as recommended by the Collector concerned in a particular case, the High Court would not have issued a writ in the nature of mandamus to enforce the guidelines which were nothing more than administrative instructions not having any statutory force, which did not give rise to any legal right in favour of the writ petitioners."

28. Learned Advocate General further submitted that the right of delimitation is with the State and once the notices have been given initially, the administrative convenience can be looked into.

29. To fortify the issues raised and as summarized by this Court earlier, as well as to overcome the bar of Article 243-O of the Constitution of India, following precedent laws have been cited on behalf of the petitioners.

30. Learned counsel for the petitioners have relied upon the precedent law laid down by the Hon'ble Supreme Court in ***State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors., reported in 1995 Supp (2) SCC 305***, relevant portion of which reads as under:

> *"**51.** We must also make it clear that we had passed the interim order, as stated earlier, pending the decision and without prejudice to the contentions of the State Government that the election process once started could not be set at naught by raising objections on the ground that the delimitation of the panchayat areas was defective. We have pointed out that the original delimitation of the panchayat areas having been made much prior to the election notification of 31-8-1994, the respondent-writ petitioners could not have challenged the same after the said notification and the Court could not have entertained the challenge. There was, therefore, no invalidity in the action taken by the State Government by its notification of 31-8-1994 to commence the election process. We are, in these proceedings, referring to the lacuna in the steps taken by the State Government to finalise the panchayat areas only with a view to point out that it was obligatory on the State Government to hear the objections before the panchayat areas were finalised. The ratio of the decisions of this Court in Visakhapatnam Municipality v. Kandregula Nukaraju [(1975) 2 SCC 773 : (1976) 1 SCR 544] , S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] , Baldev Singh v. State of H.P. [(1987) 2 SCC 510] , Sundarjas Kanyalal Bhatija v. Collector [(1989) 3 SCC 396] and Atlas Cycle Industries Ltd. v. State of Haryana [1993 Supp (2) SCC 278] requires that a reasonable opportunity for raising the objections and*

hearing them ought to be given in such matters since the change in the areas of the local bodies results in civil consequences. It was not disputed before us that the action of bringing more villages than one under one gram panchayat when they were earlier under separate gram panchayats, does involve civil consequences. However, as held in Visakhapatnam Municipality [(1975) 2 SCC 773 : (1976) 1 SCR 544] , S.L. Kapoor [(1980) 4 SCC 379] , Baldev Singh [(1987) 2 SCC 510] , S.K. Bhatija [(1989) 3 SCC 396] and Atlas Cycles [1993 Supp (2) SCC 278] cases, in matters which are urgent even a post-decisional hearing is a sufficient compliance of the principle of natural justice, viz., audi alteram partem. It is in view of this position in law that the State Government had offered to hear the grievances of the writ petitioners before the High Court and before us."

31. Learned counsel for the petitioners have also relied upon the precedent law laid down by the Hon'ble Supreme Court in ***Bharati Reddy v. State of Karnataka, reported in (2018) 12 SCC 61***, relevant portion of which reads as under:-

"***11.*** *We do not find any merit in this contention. We are of the view that a voter in a particular panchayat cannot be rendered remediless if he is aggrieved by the election of the Adhyaksha of the Panchayat. In Kesavananda Bharati v. State of Kerala [Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225] , a thirteen-Judge Bench of this Court held that Article 368 of the Constitution does not enable Parliament to alter the basic structure or framework of the Constitution. The basic structure of the Constitution could not be altered by any constitutional amendment and it was held in unambiguous terms that one of the basic*

features is the existence of constitutional system in judicial review. This view was followed by a Constitution Bench in Minerva Mills Ltd. v. Union of India [Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625] . In L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] , a seven-Judge Bench of this Court has held that jurisdiction conferred upon the High Courts under Articles 226/227 of the Constitution and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and tribunals may perform a supplementary role in discharging the powers conferred by Articles 226/227 and Article 32 of the Constitution of India. It has been held as under: (SCC p. 301, para 78)

"78. … We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in [the Supreme] Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded."

12. *In I.R. Coelho v. State of T.N. [I.R. Coelho v. State of T.N., (2007) 2 SCC 1] , a Bench of nine Judges has again held that power of judicial review is the part of the basic structure of the Constitution. The power to amend cannot be equated with the power to frame the Constitution.*

13. *It is thus clear that power of judicial review under Articles 226/227 of the Constitution is an essential feature of the Constitution which can neither be tinkered with nor eroded. Even the*

Constitution cannot be amended to erode the basic structure of the Constitution. Therefore, it cannot be said that the writ petition filed by Respondents 6 to 9 under Article 226 of the Constitution is not maintainable. However, it is left to the discretion of the court exercising the power under Articles 226/227 to entertain the writ petition."

32. Learned counsel for the petitioners have further relied upon the judgment rendered by the Hon'ble Andhra Pradesh High Court in ***S. Fakruddin v. Govt. of A.P., reported in AIR 1996 AP 37***, relevant portion of which reads as under:-

*"**16-17.** The dissenting opinion of Bhagwati J., in Minerva Mills (AIR 1980 SC 1789) is adverted to in Harinath (1993 (2) Andh WR 484) (FB) (supra) and the following is stated therein on the interpretation of the Constitution and the laws that the same "would pre-eminently be a matter fit to be decided by the judiciary, because it is the judiciary which alone would be possessed of expertise in this field ……. and the judiciary is vested with the power of judicial review to determine the legality of the executive action and the validity of the legislation passed by the legislature …… this power of judicial review is conferred on the judiciary by Arts. 32 and 226 of the Constitution", while stating that*

"The power of judicial review is an integral part of our constitutional system and without it, there will be no Government of laws and the rule of law would become a teasing illusion and a promise of unreality."

The learned Judge added a limitation:

"Of course, when I say this, I should not be taken to suggest that effective alternative institutional

mechanisms or arrangements for judicial review cannot be made by Parliament".

The learned Judge again observed in the next sentence:

"But what I wish to emphasise is that judicial review is a vital principle of our Constitution and it cannot be abrogated without affecting the basic structure of the Constitution."

This has however given rise to another line of judgments one in S.P. Sampath Kumar v. Union of India, AIR 1987 SC 386 in P. Sambamurthy v. State of A.P. : (AIR 1987 SC 663). These judgments proceed on the footing that the basic features of the Constitution stand protected for Art. 32, the power of the Supreme Court, cannot be taken away and its power under Art. 136 can be a proper safeguard of judicial review of any adjudication by the alternative authority or forum provided however it is an effective alternative institutional mechanism or arrangement of judicial review. This view in Sampath Kumar found a fuller expression in P. Sambamurthy (supra). This judgment also emphasises that it is through the power of judicial review conferred on an independent institutional authority such as the High Court that the rule of law is maintained, and every organ of the State is kept within the limits of the law and that "Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death knell of the of rule law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it." We can conclude, without confining to the limits of the

pronouncement in S. Harinath (1993 (2) Andh WR 484) (FB) (supra), that a Constitution amendment which tends to take away the Constitutional courts power, that is the power of the High Courts under Art. 226 of the Constitution shall be invalid. There can be no matter in the hands of the Legislature in its function as the law maker which will be kept out of the scrutiny of the Courts however limited that scrutiny be. Even the conservative view that if there is an alternative effective and efficient mechanism for judicial review which is as independent as the High Court, its power under Art. 226 of the Constitution Will not be available, leaves scope for the Court to see whether the mechanism is such that the Court should refrain and not exercise its jurisdiction. We are inclined to extent this principle and hold as above as respects the matters which are sought to be excluded from the judicial review under Art. 243-O of the Constitution which has been brought in by the 73rd Amendment. We are conscious of the fact that this provision has similarities with what is provided under Art. 329 of the Constitution of India. After the words "but subject to the provisions of Art. 329-A" which had been introduced in Art. 329 i.e., the words figures and letters "but subject to the provisions of Art. 329A" have been omitted since some part of the amendment was held ultra vires in Indira Gandhi (AIR 1975 SC 2299) (supra). Art. 329 reads as follows:

"Notwithstanding anything in this Constitution (a) 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 Art. 327 or Art. 328 shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

Simultaneously with the Constitution of India which contained in Part XV the provisions as to superintendence, direction and control of elections to be vested in an election commission and the bar to interference by Courts in electroal matters, came the Representation of the People Act, 1950 followed soon by the Representation of the People Act, 1951. There was an attempt to amend Art. 329 itself by making it subject to the provisions of Art. 329A, but the controversy generated finally ended with the 44th amendment, dropping and omitting the amendment therein. The controversy as to the forum for challenge to the election to Lok Sabha which erupted on account of the 42nd amendment led to the verdict of the Supreme Court in Indira Gandhi v. Raj Narain (AIR 1975 SC 2299) (supra). A contemporaneous legislation for election to the legislative bodies gave reasons for contemplation that election laws under which law makers were elected to their respective houses should be left free of any state control (judiciary is a state) so that no one flirted with the basic features of the democracy and that the election commission alone should deal with all matters relating to the electoral rolls and elections. The earliest test whether the inhibitions under Art. 329 estopped the High Courts as well as the Supreme Court from going into the validity of elections in exercise of their respective constitutional powers is found in the judgment of the Supreme Court in the case of N.P. Ponnuswami v. Returning Officer,

Namakkal, AIR 1952 SC 64. The judgment of the Court by Fazal Ali J., while dealing with Art. 329(b) of the Constitution considered the question what is meant by the words 'no election shall be called in question', and observed as follows (Para 8):

"A reference to any treatise on elections in England will show that an election processing in that country is liable to be assailed on very limited grounds, one of them being the improper rejection of a nomination paper. The law with which we are concerned is not materially different, and we find that in S. 100, Representation of the People Act, 1951, one of the grounds for declaring an election to be void is the improper rejection of nomination paper."

Proceeding further to consider the question (para 9)

"…….. whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition."

Fazal Ali J., gave his opinion in these words (at p 68 of AIR):

"In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at

an intermediate stage before any Court. It seems to me that under the election law, the only significance which the rejection of a nomination paper has consisted in the fact that it can be used as a ground to call the election in question. Art. 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. I think it follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court. If the grounds on which an election can be called in question could be raised at an earlier stage and errors, if any, are rectified, there will be no meaning in enacting a provision like Art. 329(b) and in setting up a special tribunal. Any other meaning ascribed to the words used in the article would lead to anomalies, which the Constitution could not have contemplated one of them being that conflicting views may be expressed by the High Court at the pre-polling stage and by the election tribunal, which is to be an independent body, at the stage when the matter is brought up before it."

Discussion about the scheme of Part XV of the Constitution and the Representation of the People Act, 1951 in the judgment provides the clue for the conclusions of the Court and the observations that follow i.e., where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of. The Court has itself made the statement. "It should be mentioned here that the question as to what the powers of the High Court under Arts. 226 and 227 and of this Court under

Art. 136 of the Constitution may be, is one that will have to be decided on proper occasion". This indicates that the Court proceeded on the footing that the ordinary jurisdiction of the Courts alone was excluded under Art. 329 and not the extraordinary jurisdiction of the High Courts under Art. 226 of the Constitution or that of the Supreme Court under Art. 136. The Courts apply the bar to their power when remedy is provided under the statute in respect of a right or liability created by it as a rule of prudence. They decline to exercise their extraordinary jurisdiction under Art. 226 of the Constitution as a self-imposed restriction.

18. *The issue how and when extraordinary jurisdiction under Art. 226 should be exercised by the Courts has come for consideration in recent judgments of the apex court and its pronouncements on it are available to guide us. Patanjali Sastri, C.J., who presided the Bench which pronounced the judgment in B.P. Ponnuswami (AIR 1952 SC 64) (supra) separately spoke about the duty of the constitutional Courts in The State of Madras v. V.G. Row, AIR 1952 SC 196 in the context of the challenge to the validity of Criminal Law Amendment Act (1908) (as amended in Madras by Madras Act 11 of 1950) in these words (at p. 199 of AIR):*

"Before proceeding to consider this question, we think it right to point out, what is sometimes overlooked, that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted 'due process' clause in the Fifth and Fourteenth Amendments. If, then, the

Courts in this country face upto such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the 'fundamental rights', as to which this Court has been assigned the role of a sentinel on the 'qui vive'. While the Court naturally attaches great weight to the legislative judgments, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the Courts in the new set up are out to seek clashes with the legislatures in the country."

Though in the minority judgment of the Supreme Court in the course of noticing the evolution of law in this behalf, the Supreme Court has adverted to the above passage and commented in the case of Kihota Hollohon v. Zachilhu, AIR 1993 SC 412 in these words (at pp 459-460 of AIR):

"More recently, Patanjali Shastri, C.J., while comparing the role of this Court in the constitutional scheme with that of the U.S. Supreme Court, pointed out is the State of Madras v. V.G. Row, 1952 CR 597 : AIR 1952 SC 196 that the duty of this flows from express provisions in our Constitution while such power in the U.S. Supreme Court has been assumed by the interpretative process giving a wide meaning to the 'due process' clause. Sastry C.J., at p 605 (of SCR): (at p 199 of AIR), spoke thus: ……..

We are in respectful agreement with the above statement of Sastry C.J., and wish to add that even though such an obvious statement may have been necessary soon after the Constitution came

into force and may not be a necessary reminder four decades later at this juncture, yet it appears apposite in the present context to clear the lingering doubts in some minds. We have no hesitation in adding further that while we have no desire to clutch at jurisdiction, at the same time we would not be deterred in the performance of this constitutional duty whenever the need arises."

Majority view in Kihota's case (AIR 1993 SC 412) as to the scope of the judicial review and in answer to the question whether the Constitution (52nd amendment) Act, 1985 insofar as it sought to introduce the 10th Schedule was destructive of the basic structure of the Constitution as it was violative of the fundamental principles of Parliamentary democracy, a basic feature of the Indian constitutionalism and the question whether under the Indian constitutional scheme, there is any immunity from constitutional correctives against a legislatively perceived political evil of unprincipled defections induced by the lure of office and monetary inducements is stated after an indepeth study in these words (at p 451 of AIR):

"In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under paragraph 6, the scope of judicial review under Arts. 136 and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity."

The Court said so on the face of the express language in paragraph 7 of the 10th Schedule of the Constitution introduced by the Constitution

(52nd) Amendment Act, 1985 which provides "Bar of jurisdiction of Courts: Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a Member of a House under this Schedule".

19. *We must record in fairness to the learned Advocate-General that he has expressed his agreement with the view that the provisions as to the exclusion of the jurisdiction of the Court introduced from time to time by the Constitution Amendments including Art. 243-O with which we are concerned bar the ordinary jurisdiction of the Courts and not the extraordinary jurisdiction of the High Courts and the Supreme Court under Art. 226, 32 or 136 of the Constitution of India. Learned counsel for the Union of India has however drawn our attention to the judgment of the Supreme Court in S.T. Muthusami v. K. Natarajan, AIR 1988 SC 616 to emphasise and reiterated what has always been the refrain of those who support the bar to the jurisdiction of the Constitutional Courts that as in respect of matters falling under Art. 329 of the Constitution, so in respect of matters falling under Art. 243-O thereof the bar applies to the High Court's jurisdiction under Art. 226 of the Constitution. The pronouncement of the Supreme Court in the said case however is not based on any examination of the issue whether by the Constitution Amendment the Court's power under Art. 226 of the Constitution can be taken away. We have on the other hand a clear statement in the judgment of the Supreme Court in the case of Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman, AIR 1985 SC 1233. "The High Court acted within its jurisdiction in entertaining the writ petition and in issuing a*

Rule Nisi upon it, since the petition questioned the vires of the laws of election". The Court however in this judgment observed "though the High Court did not lack the jurisdiction to entertain the writ petition and to issue appropriate directions therein, no High Court in the exercise of its powers under Art. 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked. The imminence of the electoral process is a factor which must guide and govern the passing of orders in the exercise of the High Court's writ jurisdiction. The more imminent such process, the greater ought to be the reluctance of the High Court to do anything or direct anything to be done which will postpone that process indefinitely by creating a situation in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution. India is an oasis of democracy, a fact of contemporary history which demands of the Courts the use of wise statements in the exercise of their extraordinary powers under the Constitution. The High Courts must observe a self-imposed limitation on their power to act under Art. 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to Legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are part of the process of 'election' within the meaning of Art. 329(b) of the Constitution". Although in the interim order of the Court, the above observations give us the Court's

thinking, in the final order in this behalf also as the Court reiterated the same in these words:

"The order dated March 30, 1982 which we will presently reproduce, contains our reasons in support of this conclusion. Very often, the exercise of jurisdiction, especially the writ jurisdiction involves questions of propriety rather than of power. The fact that the Court has the power to do a certain thing does not mean that it must exercise that power regardless of the consequences."

The preponderance of the judicial opinion and the view of the Supreme Court as expressed in various pronouncements leave no doubt in our mind notwithstanding the bar that the bar is to the ordinary jurisdiction of the Courts and not to the extraordinary jurisdiction under Art. 226 of the Constitution and Art. 136 thereof. It is not necessary for us therefore to pronounce that Art. 243(O) is unconstitutional; simply it does not take away the power of this Court under Art. 226 of the Constitution to examine the validity of any law relating to the elections including the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Art. 243K of the Constitution. As respect challenge to the election or any intermediary stage in case there is an alternative effective and independent mechanism provided, the Court shall abstain to interfere except on jurisdictional errors i.e., when infirmity is based on violation of constitutional mandate, mala fides, non-compliance with Rules of natural justice and perversity. It will be so for the reason of prudence as well as defence to the legislation by the Parliament in exercise of its constituent power."

33. Learned counsel for the petitioners have also placed reliance on the judgment rendered by the Hon'ble Punjab and Haryana High Court in ***Prithvi Raj v. State Election Commission, reported in AIR 2007 P&H 178***, relevant portion of which reads as under:-

> *"**28.** The words and expressions that appear in Article 243 ZG(b) of the Constitution must be strictly construed and any interpretation beyond the simple grammatical connotations of the words and expressions appearing therein would be impremissible. The word election……and the expression……, called into question……", used in Article 243 ZG(b) of the Constitution, clearly postulate that where an election can be called into question by way of an election petition, presented before such authority and in such manner as is provided for by a statute enacted by the Legislature of a State, challenge to such election i.e. calling in question the election, would have to be made by way of an election petition, filed before an Election Tribunal. In such a situation, the High Court, in the exercise of its discretion, under Article 226 of the Constitution of India would relegate the petitioner to his remedy of filing an election petition.*
>
> ***29.** However the High Court's jurisdiction to issue an appropriate writ, order or direction to further the cause of an election would not be affected, in any manner, as, such a petition does not call into question an election. A petition, seeking an expeditious conclusion of an election, or filed with the object of facilitating the conduct of an election, would not be a cause, calling into question, an election and, adjudication, thereof would not be declined, by relegating the aggrieved petitioner to*

the remedy of filing an election petition. Thus, the words, appearing in Article 243 ZG(b) of the Constitution, clearly postulate that the legislative intent expressed therein, would come into operation only where a petition discloses a grievance, that calls into question an election.

30. *The above exposition requires further elucidation. If the grievance put forth, falls within any of the grounds enumerated, for the filing of an election petition under Sections 89 and 108 of the Election Commission Act, Article 243 ZG(b) of the Constitution would come into play, and the grievance urged, would have to be redressed by filing an election petition, after the conclusion of the election. The High Court, would in the exercise of judicial restraint, relegate such a petitioner to his remedy of an election petition. This exercise of judicial restraint cannot be equated with lack of or bar of jurisdiction. Thus, the Full Bench in Lal Chand's case (supra) did not commit any error of law, while holding that Article 226 of the Constitution, being an integral part of the basic structure of the Constitution, could not be diluted and exercise thereof could not be barred by any provision of the Constitution of India. The judgments of the Hon'ble Supreme Court in Ponnuswami's case and Mohinder Singh Gill's case (supra), were apparently not brought to the notice of the Full Bench. The principle of judicial/jurisdictional restraint enunciated therein was apparently not placed before the Full Bench.*

31. *Reference may also be made to judgments of the Hon'ble Supreme Court reported as State of U.P. v. Pradhan Singh Kshetra Samiti (supra), Anugrah Narain Singh v. State of Uttar Pradesh (supra), Jaspal Singh Arora v. State of Madhya Pradesh, (supra).*

32. *In State of U.P. v. Pradhan Singh Kshetra Samiti (supra), the Hon'ble Supreme Court, while considering the ambit and scope of clause (a) of Article 243—O of the Constitution, which bars any Court from taking cognizance of any dispute, raised with respect to delimitation of constituencies etc., held as follows:—*

"What is more objectionable in the approach of the High Court is that although clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the Courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in Meghraj Kothari v. Delimitation Commission, (1967) 1 SCR 400 : (AIR 1967 SC 669). In that case, a notification of the Delimitation Commissioner whereby a city which had been a general constituency was notified as reserved for the Scheduled Castes. This was challenged on the ground that the petitioner had a right to be a candidate for Parliament from the said constituency which had been taken away. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were

not subject to the scrutiny of any Court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be termed as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from Court to Court. Although an order under Section 8 or 9 of the Delimitation Commission Act and published under Section 10(1) of that Act is not part of an Act of parliament, its effect is the same. Section 10(4), of that Act puts such an order in the same position as a law made by the Parliament itself which could only be made by the Parliament itself which could only be made by it under Article 327. If we read Article 243-C, 243-K and 243-O in place of Article 327 and Section 2(k k), of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged or the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31st August, 1994."

34. Reliance has also been placed by learned counsel for the petitioners on the precedent law laid down by the Hon'ble Supreme Court in ***L. Chandra Kumar v. Union of India,***

reported in (1997) 3 SCC 261, relevant portion of which reads as under:

> *"**76.** To express our opinion on the issue whether the power of judicial review vested in the High Courts and in the Supreme Court under Articles 226/227 and 32 is part of the basic structure of the Constitution, we must first attempt to understand what constitutes the basic structure of the Constitution. The doctrine of basic structure was evolved in Kesavananda Bharati case [(1973) 4 SCC 225] . However, as already mentioned, that case did not lay down that the specific and particular features mentioned in that judgment alone would constitute the basic structure of our Constitution. Indeed, in the judgments of Shelat and Grover, JJ., Hegde and Mukherjea, JJ. and Jaganmohan Reddy, J., there are specific observations to the effect that their list of essential features comprising the basic structure of the Constitution are illustrative and are not intended to be exhaustive. In Indira Gandhi case [1975 Supp SCC 1] , Chandrachud, J. held that the proper approach for a Judge who is confronted with the question whether a particular facet of the Constitution is part of the basic structure, is to examine, in each individual case, the place of the particular feature in the scheme of our Constitution, its object and purpose, and the consequences of its denial on the integrity of our Constitution as a fundamental instrument for the governance of the country. (supra at pp. 751-752). This approach was specifically adopted by Bhagwati, J. in Minerva Mills case [(1980) 3 SCC 625] (at pp. 671-672) and is not regarded as the definitive test in this field of Constitutional Law.*
>
> ***77.** We find that the various factors mentioned in the test evolved by Chandrachud, J. have already been considered by decisions of various Benches of this*

Court that have been referred to in the course of our analysis. From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme. While several judgments have made specific references to this aspect [Gajendragadkar, C.J. in Keshav Singh case [(1965) 1 SCR 413 : AIR 1965 SC 745] , Beg, J. and Khanna, J. in Kesavananda Bharati case [(1973) 4 SCC 225] , Chandrachud, C.J. and Bhagwati, J. in Minerva Mills [(1980) 3 SCC 625] , Chandrachud, C.J. in Fertilizer Kamgar [(1981) 1 SCC 568] , K.N. Singh, J. in Delhi Judicial Service Assn. [(1991) 4 SCC 406] , etc.] the rest have made general observations highlighting the significance of this feature.

78. *The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. [See Chapter VII, "The Judiciary and the Social Revolution" in Granville Austin, The Indian Constitution : Cornerstone of a Nation, Oxford University Press, 1972; the chapter includes exhaustive references to the relevant preparatory works and debates in the Constituent Assembly.] These attempts were directed at ensuring that the judiciary would be capable of effectively*

discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power

of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. *We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."*

35. Mr. Vikas Balia, learned counsel appearing for the Election Commission submitted that the sanctity of the deadline prescribed under Article 243-E of the Constitution of India for holding the elections in the panchayats every five years would be violated, if a prolonged adjudication and interference by the Hon'ble Court takes place, as the elections are scheduled to be held in January and February, 2020, and the election commission itself would require some time to finalize the same.

36. Learned counsel for the Election Commission also furnished the schedule, under which the Election Commission was working to conduct the time bound elections of the gram panchayats and panchayat samitis.

37. At this juncture, when the arguments were at the stage of conclusion, a query was made to the learned Advocate General by the Court, as to whether any other notification has been issued after 15-16.11.2019, to which learned Advocate General submitted that the State shall file a separate affidavit regarding position of the notifications issued after 15-16.11.2019.

In response to such query, though he candidly accepted that the notifications have been issued after 15-16.11.2019, the learned Advocate General submitted that for assistance of the Court and in furtherance of the argument already made, further arguments shall be made by the learned Additional Advocate General, Mr. Sunil Beniwal.

38. The State was asked to file an affidavit because the Court was seriously concerned about continuance of the process of delimitation, even after final notification of 15-16.11.2019 was published whereupon the learned Advocate General sought some time to furnish the affidavit and to explain the notification post 15-16.11.2019.

Time prayed for was allowed, and thereafter, affidavit was filed.

39. Mr. Sunil Beniwal, learned Additional Advocate General, on the next date, submitted that position of the notifications is as follows.

On 23.11.2019, notification No.3085 and 3086 were issued making corrections in the error which were purely in the shape of a corrigendum. Thereafter, notifications Number 3095 to 3116 were issued on 01.12.2019/02.12.2019 making amendments in the earlier notification of 15-16.11.2019. On 01.12.2019 itself, the State Government again issued notifications Number 3117 including Gram Panchayats which were left out in the original notification of 15-16.11.2019 and also on the same date issued notification No.3118 whereby the original notification of 15-16.11.2019 was altered and left out Panchayat Samitis were also included.

40. Mr. Sunil Beniwal, learned Additional Advocate General further submitted that the notifications post 15-16.11.2019 were on three counts, namely:

(i) To remove typographical errors.

(ii) To cover the omissions regarding consideration of representations and recommendations, while making delimitation of gram panchayats and panchayat samitis.

(iii) To cover the left out bodies from the consideration earlier.

41. Learned Additional Advocate General further referred to Section 15 of the Rajasthan Clauses Act, 1955, whereby the power to revise was always available with the State. The said Section 15 reads as under:-

> *"15. Power or duty to be exercisable from time to time.— Where, by any Rajasthan law, any power is conferred or any duty is imposed then, unless a different intention appears, that power may be exercised and that duty shall be performed from time to time as occasion requires."*

42. Learned Additional Advocate General also submitted that the exercise was completed on 02.12.2019, and thus, in pursuance of the notice under Section 101 of the Act of 1994, they were entitled to make such revision/correction/review, whereby the omissions by the Committee were to be taken care of and it was not a new exercise, and it was a merely consideration of the omissions made by the Sub Committee.

43. Learned Additional Advocate General further submitted that the inadvertent errors and omissions in consideration of the representations and recommendations required the State to re-visit the exercise, and the amendment was necessitated on

account of such consideration, which was under the purview of the power to revise which emanated out of Section 15 of the Rajasthan General Clauses Act.

44. Learned Additional Advocate General also submitted that the objections for certain gram panchayats were invited and proposals regarding the same were sent, but such objections and proposals were not considered, while issuing the final notification dated 15-16.11.2019, and therefore, in continuation, other notifications were issued on 23.11.2019 and 01/02.12.2019 relating to gram panchayats and panchayat samitis were issued. The details furnished by the learned Additional Advocate General reads as follows.

On 15-16.11.2019, notifications Number from 2989 to 3021 were issued finalizing the alteration/delimitation process for the Gram Panchayats under consideration and notifications No.3022 to 3044 issued for alteration/delimitation process for the Panchayat Samitis. Thereafter, on 23.11.2019, notification No.3085 and 3086 were issued making corrections in the error which were purely in the shape of a corrigendum. Thereafter, notifications Number 3095 to 3116 were issued on 01.12.2019/02.12.2019 making amendments in the earlier notification of 15-16.11.2019. On 01.12.2019 itself, the State Government again issued notifications Number 3117 including Gram Panchayats which were left out in the original notification of 15-16.11.2019 and also on the same date issued notification No.3118 whereby the original notification of 15-16.11.2019 was altered and left out Panchayat Samitis were also included.

45. Learned Additional Advocate General further submitted that certain gram panchayats, for which objections were invited,

proposals were made, and the matters were placed before the Six Member Ministerial Sub Committee and they were included in the notification dated 15-16.11.2019. However, as per learned Additional Advocate General, the decision relating to some gram panchayats were reconsidered and amendment was brought by notification dated 01.12.2019.

46. Learned Additional Advocate General also submitted that after carrying out the exercise of delimitation, as many as 1257 new gram panchayats have been constituted vide notification dated 15-16.11.2019, and thereafter, by way of amending the said notification, another notification dated 01.12.2019 was published, whereby further 178 new gram panchayats were notified.

47. In support of his submissions, learned Additional Advocate General relied upon the precedent law laid down by the Hon'ble Supreme Court in ***Thammanna v. K. Veera Reddy, reported in (1980) 4 SCC 62***, relevant portion of which reads as under:

> *"**16.** Although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless, normally, "a 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something". As per James, L.J., in Re Sidebothem [(1880) 14 Ch D 458] referred to by this Court in Bar Council of Maharashtra v. M.V. Dabkolkar [(1976) 1 SCR 306 : (1975) 2 SCC 702] and J.N. Desai v. Roshan Kumar [(1976) 1 SCC 671, 681 : AIR 1976 SC 578, 584] ."*

48. Learned Additional Advocate General has also relied upon the precedent law laid down by the Hon'ble Supreme Court in ***Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, reported in (1970) 2 SCC 484***, relevant portion of which reads as under:

> *"**32.** If he is not a person summoned to be bound by the order but a person who is heard in a dispute between others merely to be of assistance in reaching the right conclusion he can hardly have a grievance. The Advocate-General must after he has done his duty leave the matter to the complainant and the advocate or the Bar Council to take the matter further if they choose. In no event the Advocate-General is in the nature of a party having independent rights which he can claim are injured by the decision. The decision does not deny him anything nor does it ask him to do anything. It is thus that Lord Denning says that in these disciplinary proceedings the Attorney-General is not a party as in a lis and after the decision, his duty ends. Lord Denning points this out clearly by saying that the Advocate-General in that case could not have been aggrieved by the order of the Deputy Judge if he had acquitted the delinquent advocate in that case. The Attorney-General's interest was found by Lord Denning in relation to the Crown and the Colony and that too for the special reason that appeal court had denied that the Deputy Judge possessed jurisdiction to hear the case. In our country the Advocate-General does not represent the Executive or the Legislature or the Judiciary in disciplinary proceedings before the Disciplinary Committee. His function is advisory and more akin to an amicus curiae. He is not to take sides except in so far his arguments lend weight to the case of the one side or that of the other. Beyond that he is*

not interested in the dispute either in his personal capacity or in his capacity as an Advocate-General. He does not represent the Government in these proceedings. If the Government was interested the notice would have gone to it. In other statutes, where the Central Government is vitally interested, as for example, in the Chartered Accountants' Act, the notice does not go to the Advocate-General but to Government and the Government appears through the Advocate-General. The Advocate-General under the Act finishes his duty when the hearing is over and he cannot be considered to be a party interested or a "person aggrieved". I do not find anything in the Act which indicates that the Advocate-General is to be treated as "person aggrieved" by a decision whether in favour of the advocate or against him. Indeed it would have been the easiest thing to give a right of appeal to the Advocate-General eo nomine without including him in the compendious phrase "person aggrieved". If he is not noticed, the order would be held to deny him something which the law entitled him to. That is quite different. The larger proposition contended for by Mr Desai is therefore not acceptable to me.

35. *The advocate here explained that he was held guilty before the Magistrate in the circumstances in which he was placed. The fact of his conviction as well as his full statement bearing on his conduct were before the Disciplinary Committee of the State Bar Council. They had to choose between the two, that is to say, the result of a summary trial without going into merits and proof of the misconduct. Having examined the advocate and seen the record, the Disciplinary Committee of the State Bar Council chose to accept the plea of the advocate and held that he was not guilty. They were also satisfied that the summary proceedings in the criminal trial in England offended against the principles of natural justice. They were*

entitled to this view on which much can be said on both sides. If the Advocate-General's view of the case was not accepted by the Disciplinary Committee he could not have any grievance. He could not make this into his own cause or a cause on behalf of persons he did not represent. He had done his duty and the matter should have rested there. For this reason I am of the view that in this case the Advocate-General was not a "person aggrieved" within the meaning of Section 37 of the Advocates' Act even on the narrow ground and the appeal filed by him before the Disciplinary Committee of the Bar Council of India was incompetent."

49. Learned Additional Advocate General has further relied upon the precedent law laid down by the Hon'ble Supreme Court in ***Mohd. Serajuddin v. State of Orissa, reported in (1975) 2 SCC 47***, relevant portion of which reads as under:

*"**64.** The matter can also be looked at from another angle. According to Article 286, no law of a State shall impose or authorise the imposition of tax on the purchase or sale of goods where such purchase or sale takes place in the course of import of the goods into or the export of the goods out of the territory of India. There is nothing in this article which restricts the exemption from payment of tax to only one sale or purchase. Likewise, there is nothing in Section 5 of the Central Sales Tax Act which restricts the sale or purchase occasioning export or import to only one sale or purchase. The fact that Section 5 refers to sale or purchase in singular and not in plural would not make much material difference because according to Section 13 of the General Clauses Act, unless there is anything repugnant in the subject or context, words in the singular shall include the plural, and vice versa.*

Although in a vast majority of cases it would be only one sale or purchase which would qualify for exemption from payment of tax, this is not an absolute rule. There is nothing in law to rule out two sales qualifying for the exemption, if the facts of the case show that each of the sales is so interlinked with the export of the goods, that the export can be said to be direct result of the two sales which are part of one integrated transaction."

50. Reliance has also been placed by the learned Additional Advocate General on the precedent law laid down by the Hon'ble Supreme Court in ***U.P. Hindi Sahitya Sammelan v. State of Uttar Pradesh, reported in (2014) 9 SCC 716***, relevant portion of which reads as under:

*"**34.** In what we have stated above, we are unable to agree with the learned Senior Counsel for the appellant that since the Statement of Objects and Reasons accompanying the Uttar Pradesh Official Language (Amendment) Bill, 1989 expressly records "demand for the declaration of Urdu as the second language of the State was made from time to time", the impugned law covers the situation contemplated in Article 347 and, therefore, invoking the legislative power by the State Legislature under Article 345 is constitutionally bad.*

***36.** Article 367 of the Constitution is an interpretational provision. Clause (1) of Article 367 reads:*

*"**367.Interpretation**.—(1) Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it*

applies for the interpretation of an Act of the legislature of the Dominion of India.

*(2)-(3)***"*

37. *By virtue of the above provision in the Constitution, the provision of Section 14 ["**14.Powers conferred to be exercisable from time to time**.—(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then, unless a different intention appears, that power may be exercised from time to time as occasion requires. (2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887."] of the General Clauses Act, 1897 applies to the interpretation of the Constitution and that leaves no manner of doubt that the State Legislature may exercise its power under Article 345 from time to time. We do not find any merit in the argument of the learned Senior Counsel for the appellant that Section 14 of the General Clauses Act has no application in the present case since a different intention appears in the constitutional scheme of Part XVII. We have already explained the constitutional scheme of Part XVII and so also ambit and scope of Articles 345 and 347. For the reasons we have indicated above, we do not find any merit in the argument of the learned Senior Counsel for the appellant that the power of the State Legislature under Article 345 gets exhausted after a single use. The argument is constitutionally flawed and does not flow from Articles 345 and 347. In our view, it will be unreasonable to construe Article 345 in the manner suggested by the learned Senior Counsel for the appellant. It is said that law and language are both organic in their mode of development. In India, these are evolving through the process of accepting*

legitimate aspirations of the speakers of different languages. Indian language laws are not rigid but accommodative—the object being to secure linguistic secularism."

51. Learned Additional Advocate General has also placed reliance on the precedent law laid down by the Hon'ble Supreme Court in ***B.N. Shankarappa v. Uthanur Srinivas, reported in (1992) 2 SCC 61***, relevant portion of which reads as under:-

"***7.*** *As pointed out earlier Section 4(1) empowers the Deputy Commissioner to do two things, namely, (i) to declare an area as a Mandal, and (ii) to specify its headquarter. The word 'also' preceding the words 'specify its headquarter' cannot be understood to convey that the power once exercised would stand exhausted. Such a construction sought to be placed by counsel for the respondent does not accord with the language of the provision. It merely conveys that when the Deputy Commissioner constitutes a Mandal for the first time it will be necessary for him to specify its headquarter also. This power to specify the headquarter conferred on the Deputy Commissioner can be exercised from time to time as occasion requires by virtue of Section 14 of the Karnataka General Clauses Act. The attention of the High Court was not drawn to the provision in Section 14 when it disposed of the Writ Appeal No. 2564 of 1987 and Writ Petition No. 375 of 1989 on May 28, 1991. It is true that the power conferred by sub-section (2) of Section 4 can be exercised where there is a change in the area of the Mandal either by addition or reduction in the area. Under clause (c) of sub-section (2) of Section 4 the Deputy Commissioner is also invested with the power to alter the name of any Mandal. The scheme of sub-section (2) would, therefore, show that when*

there is any increase or decrease in the area of any Mandal, the Deputy Commissioner may, after the previous publication of the proposal by notification, exercise that power and rename the Mandal, if so required. The absence of the power in sub-section (2) of Section 4 to specify the headquarter afresh does not necessarily mean that once the initial constitution of the Mandal takes place and the headquarter is specified the power is exhausted, notwithstanding Section 14 of the Karnataka General Clauses Act. If such an interpretation is placed on the scheme of Section 4 of the Act neither the Deputy Commissioner nor any other authority will thereafter be able to alter and specify any other place as the Mandal's headquarter. Such a view would create a vacuum and even when a genuine need for specifying any other headquarter arises, the authorities will not be able to exercise power for want of a specific provision in the Act and that may lead to avoidable hardship and complications. It is, therefore, essential that we read the provision of the Act in a manner so as to ensure that such a vacuum does not arise and the power is retained in the concerned authority which can be exercised should a genuine need arise. In J.R. Raghupathy v. State of A.P. [(1988) 4 SCC 364] this Court observed that the ultimate decision as to the place or location of Mandal headquarter is left to the government to decide and conferment of discretion upon the concerned authority in that behalf must necessarily leave the choice to the discretion of the said authority and it would not be proper for the courts to interfere with the discretion so exercised. This is not to say that the discretion can be exercised in an arbitrary or whimsical manner without proper application of mind or for ulterior or mala fide purpose. If it is shown that the discretion was so

exercised it would certainly be open to the courts to interfere with the discretion but not otherwise.

8. *We are, therefore, of the opinion that if the situation so demands and there is justification for altering the place of headquarter, it would be open to the Deputy Commissioner to exercise power under Section 4(1) of the Act read with Section 14 of the Karnataka General Clauses Act to meet the situation. We, therefore, allow this appeal, set aside the impugned order of the Division Bench of the High Court and restore the order of the learned Single Judge directing that the writ petition, which gave rise to the writ appeal, shall stand dismissed. However, in the facts and circumstances of the case there will be no order as to costs."*

52. Reliance has also been placed by the learned Additional Advocate General on the judgment rendered by this Hon'ble Court at Jaipur Bench in ***Babu Lal Gurjar Vs. State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 15467/2019*** decided on 27.09.2019), relevant portion of which reads as under:-

"I have heard the submissions made by counsel for the parties and perused the material available on record.

This Court finds that Section 101 of the Act of 1994 gives power to the State Government for altering limits of Gram Panchayats. The requirement is of giving one month's notice to be published in a particular manner and the same notice should specify the proposed Panchayat. This Court finds that the respondents have complied with the requirement of Section 101 of the Act of 1994 in the present cases and accordingly, their action cannot be termed as arbitrary while issuing the notices, as required under Section 101 of the Act of 1994.

This Court further finds that various authorities have been prescribed in the notice issued under Section 101 of the Act of1994, where objections are invited from the people concerned, such as Tehsildar, Sub-Divisional Officer, District Collector and before these authorities, such objections can be filed by the persons feeling aggrieved against formation of Gram Panchayat. The mechanism provided for filing objections is well defined and people have been given rights to approach the authorities by way of making their grievances and the affording of opportunity by the State Government satisfies the requirement of Section 101 of the Act of 1994.

This Court finds that the various guidelines have been issued by the State Government where criteria have been prescribed for change/creation of new Gram Panchayat. The broader guidelines prescribed, were required to be kept in mind while taking decision. The case of the petitioners with regard to not adhering to the request or not considering their objections, this Court finds that if different sections of people/villagers give their own suggestions with respect to formation of Gram Panchayat/delimitation, the authorities, who have to take decision, look into all the considerations, which are required and as such it cannot be said that the Administrative Authorities, have been given unfettered power to work, as per their own whims.

This Court further finds that the guidelines which have been issued by the State are for the purpose of taking into account the various aspects i.e. administrative convenience & convenience of the people concerned and if the guidelines are laid down by the State Government, the authorities have to take into account all the aspects of the matter before recommending the formation/delimitation of the Gram Panchayats.

This Court finds that the respondent-State has proceeded for formation of new Gram Panchayats/delimitation in view of the requirement, as has been envisaged in view of the various schemes of the State Government and further, as per the requirement prescribed under Section 101 of the Act of 1994. The grievance of the petitioners is that opportunity has not been granted to them or their objections have not been considered, this Court finds that if the Authorities have received objections/representations from the petitioners/other people, the same are duly considered and accordingly, the recommendations are made to the higher authorities.

As regards, grievance of the petitioners that personal hearing has not been afforded, this Court finds that the State Government has not altogether excluded the right of hearing to the people concerned and if the hearing of some individual is possible, the State Government itself has decided to undertake such exercise.

This Court further finds that to give a direction to afford personal hearing to all the people will not be possible, considering the nature of job, which has been assigned to the authorities. It goes without saying that in each village, there are different groups of people, who have different interest and different political considerations and the authorities have to keep in mind the guidelines, which have been issued by the State Government and as such affording of hearing to each individual, cannot be made possible, in view of the nature of job, which is assigned to the authorities.

This Court further finds that formation of Gram Panchayat/delimitation is an act, which is required to be done by the State Authorities, as per law. The right of an individual to remain in a particular Gram

Panchayat or to be excluded/change anew Gram Panchayat cannot be claimed as a fundamental right. The Authorities have to consider the various considerations in their mind before taking such decisions. If this Court accepts the plea of the petitioners, the situation would be like formation of Gram Panchayat, as per the wishes of particular people and the same cannot be in accordance with law.

This Court further finds that the issue with regard to right of an individual in respect of formation of Gram Panchayat is concerned, the Division Bench has observed at page 17 of the judgment in the case of ***Bhupendra Pratap Singh Rathore Vs. State of Rajasthan & Ors. (supra)*** *that there are two things,which are mandatory; (i) notice inviting objections is required to be given before delimitation and (ii) hearing has to be afforded and in such eventuality, action of the State Government cannot be faulted. The relevant para of the Division Bench is quoted hereunder:-*

"A plain reading of the provisions of the Constitution Art.243-C, 243-K & 243-O, if read together with S.101 & S.117 of the Act, 1994would go to show that delimitation of Panchayat area or the formation of constituencies in the said areas and allotments of seats to the constituencies could neither be challenged nor the court can entertain such challenge except on the ground that before delimitation, no objections were invited and no hearing was afforded, even though this challenge could not be entertained after the notification regarding delimitation came to be published in the official gazette. The law on the subject which has been declared by the Apex court is loud and clear and prohibits courts to entertain challenge in view of the Art.243-C, 243-K and 243-O of the Constitution in

respect of the above aspects and, therefore, the challenge raised by the petitioners pertaining to delimitation of Panchayat areas or that of formation of constituency in the said area as well as allotments of seats to such constituencies cannot be entertained by the courts since from the procedure followed and material available on record, it reveals that objections were invited from the persons and hearing was afforded to them and only thereafter the District Collectors, keeping in view the guidelines, examined the matter and made recommendations to the State Government through the Divisional Commissioners."

This Court finds that the argument of learned counsel for the petitioner that the Division Bench had primarily considered the issue pertaining to issuance of notification by the State Government and the same has got the force of law and as such the Division Bench did not interfere in the bunch of writ petitions, this Court finds that the Division Bench has not only considered the impact of Gazette notification, which was finally issued by the Government but the Division Bench of this Court has also considered the grievance raised by the petitioners, where the authorities have not issued the final notification. The Division Bench after considering the scope of Section 117 of the Act of 1994 and Article 243(O) of the Constitution of India, came to the conclusion that right of an individual is not to the extent of challenging the notification which is issued by the State Government.

This Court does not find any substance in the submission of learned counsel for the petitioner that judgment of the Division Bench is not applicable in the present cases. This court further finds that the Co-ordinate Bench in the case of Ramji Lal Gautam Vs. The State of Rajasthan & Ors. (supra) has also taken a view that formation of new Gram Panchayat is an administrative power of the State Government

and individual does not have any fundamental right to claim that different Panchayat is to be formed in a particular form.

This Court does not find any substance in the present bunch of writ petitions and accordingly the writ petitions are dismissed. The interim orders passed by this Court also stand vacated. A copy of this order be separately placed in each file."

53. Heard learned counsel for the parties as well as perused the record of the case, alongwith the precedent laws cited at the Bar.

54. In the changed circumstances, while the original challenge was only to the final notification dated 15-16.11.2019, the Court, on submissions and affidavit having been filed on its query, has to now adjudicate upon the notifications post 15-16.11.2019.

55. This Court takes note of the fact that the delimitation exercise was initiated vide notification dated 12.06.2019, while exercising the powers under Sections 9, 10 and 101 of the Act of 1994.

56. This Court further takes note of the fact that the exercise was having a time schedule, which included raising of proposals by the District Collectors, inviting of objections, hearing upon the objections and the recommendations to be made by the District Collectors from 15.06.2019 to 02.09.2019. Thereafter, the recommendations alongwith all the representations were placed before a Sub Committee comprising of Six Ministers constituted by the Government of Rajasthan vide order dated 18.09.2019, whereafter the Sub Committee in its deliberations has considered

about 5,000 proposals, and out of which about 1500 proposals were accepted.

57. This Court has already noted above the issues raised by various counsels for the petitioners, but broadly, the issues can be classified in two categories; firstly, the grievances arising out of the delimitation exercise prior to 15-16.11.2019 and the grievances arising out of delimitation exercise continuing after 15-16.11.2019 upto 01-02/12/2019.

58. The individual lawyers explained the territorial, geographical, population, distance, logic, practicability and other issues involved in the delimitation upto date of 15-16/11/2019, which does not require any consideration on merits as the iron curtain with the strength of Article 243-O of the Constitution and Sections 101 and 117 of the Act of 1994 has been drawn on 15/16.11.2019.

59. The issues pertaining to the factual matrix of the guidelines and the representations /recommendations/consideration made by the Sub Committee are of factual matrix, and by virtue of Article 243-O of the Constitution read with Section 101 of the Act of 1994, there is a bar in the interference by this Court, after the result of the delimitation was notified. Admittedly, in all the present writ petitions under adjudication before this Court, the final notification had been issued on 15/16.11.2019.

60. This Court also finds that the bar under Article 243-O of the Constitution of India is completely fortified by the precedent law of ***State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra)*** and ***Bhupendra Pratap Singh Rathore Vs. State of Rajasthan & Ors. (supra)***.

61. In light of the aforesaid judgments, this Court is not inclined to travel beyond the bar created under Article 243-O of the Constitution of India, and while maintaining the sanctity of the same, deems it appropriate to uphold all the proceedings upto the notification dated 15/16.11.2019.

62. In ***State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra)***, the Hon'ble Supreme Court has already held that although Clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the courts in electoral matters including questioning of the validity of any law relating to delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the question of the validity of the delimitation of the constituencies and also the allotment of seats to them, cannot be gone into.

63. However, this Court is perturbed to see that the sanctity of the constitutional provision of Section 243-O of the Constitution of India read with Section 101 of the Act of 1994 has been breached by the State in an arbitrary, rash and negligent manner, and it is not palpable that number of notifications could be made for continuing the delimitation exercise regarding gram panchayats and panchayat samitis beyond the iron curtain of the final notification issued on 15-16.11.2019.

64. This Court further finds that the changes in the notification can be accepted only to the extent that it is in the shape of corrigendum to deal with the typographical errors, but making fresh consideration/reconsideration/changing of the notification dated 15/16.11.2019 substantially by changing the recommendations and making fresh delimitation, amounts to

crossing the constitutionally religious bar of Article 243-O of the Constitution of India.

65. Section 101 of the Act of 1994, on a careful examination, gives power to the State Government for making alteration in the limits of a Panchayati Raj Institution, after one month's notice to be published in the prescribed manner, either on its own motion, or at the request made on its behalf, and in this case, adequate opportunity of hearing and the first notice were in place for the final notification on 15-16.11.2019. But thereafter, the State could not have carried on the delimitation as a continuing process by issuing further notifications.

66. This Court further finds that since the first notice dated 12.06.2019 an exhaustive exercise was conducted, which resulted into a notification in the official gazette on 15/16.11.2019, and thus, the proceedings under Section 101 of the Act of 1994 came to an end. The mandate of Section 101 of the Act of 1994 does not permit the State Government to have multiple delimitation exercises in a continued form after the final notification is issued.

67. As noted above, on 23.11.2019, notification No.3085 and 3086 were issued making corrections in the error which were purely in the shape of a corrigendum. Thereafter, notifications Number 3095 to 3116 were issued on 01.12.2019/02.12.2019 making amendments in the earlier notification of 15-16.11.2019. On 01.12.2019 itself, the State Government again issued notifications Number 3117 including Gram Panchayats which were left out in the original notification of 15-16.11.2019 and also on the same date issued notification No.3118 whereby the original notification of 15-16.11.2019 was altered and left out Panchayat Samitis were also included. Thus, the subsequent notifications, except the one issued for rectification of typographical error, are required to be quashed.

68. The legislative intention behind the constitutional mandate under Articles 243-O, 243-K read with the statutory mandate of Sections 101 and 117 of the Act of 1994 was the reason why this Court is inclined not to permit the State of

Rajasthan to itself breach the forbidden area of delimitation after the final notification was issued on 15-16.11.2019.

69. This Court is of the opinion that Section 15 of the Rajasthan General Clauses Act is merely a power to the State to revise its own orders, and such revision as a normal administrative exercise should be acceptable; but Section 15 itself carves out an exception whereby if there is a provision to the contrary, that means, if there is a bar to revision, the same cannot be taken shelter of by the State to demolish the constitutional and statutory bar. Here the exercise is governed by the Constitution and the Act of 1994, and once a clear bar and procedure have been laid down for judicial review, the violation thereof, in the name of revision, could not be permitted.

70. The State has been unable to answer the repeated queries of the Court as to how on one hand, they are pressing upon that the sanctity of the notification dated 15/16.11.2019 which is a culmination of the delimitation exercise after issuance of notice on 12.06.2019, which cannot be gone into in exercise of the judicial review in light of Article 243-O, and on the other hand, the State itself has breached the sanctity of the notification culminating arising out of Section 101 of the Act of 1994 after one month's notice by issuing subsequent notifications, and amending/recreating and conducting continuous exercise of delimitation in respect of number of gram panchayats and panchayat samitis.

71. In view of the aforesaid observations, while dismissing all the issues pertaining to non-consideration of representations/non-consideration of recommendations/changes made in recommendations/changes made by the Sub Committee/changes not considered by the Sub Committee/not considered in the proposals/not considered by the District Collectors are held to be not maintainable, as this Court draws a strict line while adhering to the precedent laws of ***State of U.P. & Ors. Vs. Pradhan Sangh Kshettra Samiti & Ors. (supra)*** and

Bhupendra Pratap Singh Rathore Vs. State of Rajasthan & Ors. (supra). This Court is conscious that it cannot cross the golden line, which reflects the mandate of the Constitution of India itself, as laid down under Article 243-O. Thus, the petitions are dismissed as far as the pre-proceedings to the notification dated 15/16.11.2019 are concerned. However, at the same time, this Court is of the considered opinion that such golden line prescribed by the Constitution of India read with Section 101 of the Act of 1994 cannot be crossed by the State as it will amount to abuse of process of law, as the delimitation exercise cannot be an ever continuing exercise, and the same has to be completed in one procedure, spanning between the initial notice which in this case was dated 12.06.2019 to the final notification which was 15/16.11.2019 and has to be brought to an end then and there. It cannot be an ever continuing exercise, as it shall jeopardize the sanctity of the mandate of the Constitution, and thus, all the notifications subsequent to the notification dated 15/16.11.2019, pertaining to the issue in question, stand quashed and set aside, except for the notifications which are purely rectifying the typographical errors.

72. All the cases stand disposed of accordingly. All pending applications also stand disposed of.

(DR. PUSHPENDRA SINGH BHATI),J (INDRAJIT MAHANTY),CJ

Skant/-