
DRAWING THE LINES: GERRYMANDERING, DELIMITATION AND THE LIMITS OF ARTICLE 324 OF THE CONSTITUTION OF INDIA

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ABSTRACT

Gerrymandering is usually discussed as an American affliction, yet India's constitutional arrangements carry their own exposure to it. Article 324 gives the Election Commission of India (ECI) superintendence, direction and control over the conduct of elections, but constituency boundaries are drawn by a separate statutory Delimitation Commission whose orders carry the force of law under section 10(2) of the Delimitation Act, 2002 and are shielded by Article 329(a). This paper asks whether Indian law contains an effective check on partisan boundary-drawing. Using doctrinal analysis and a comparison with the United States, the United Kingdom, Canada and Australia, it argues that the answer has changed in recent years but remains unsatisfactory. Decisions from *Meghraj Kothari* (1967) to *Dravida Munnetra Kazhagam* (2020), *State of Goa v Fouziya Imtiaz Shaikh* (2021) and *Kishorchandra Chhanganlal Rathod* (2024) show the bar of Article 329(a) being read down, although no court has yet said what standard of review applies or when a challenge may be brought. The paper identifies an accountability gap made up of thin statutory criteria, no duty to give reasons, an executive-led appointment process and an uncertain window for challenge. It proposes a narrow, procedural standard of judicial review and a package of statutory reforms, and it places the argument against the events of 2026: the defeat of the Constitution (131st Amendment) Bill and the withdrawal of the Delimitation Bill, 2026, which leave the readjustment that follows the first census after 2026 still to come.

Keywords: gerrymandering; delimitation; Article 324; Article 329(a); Election Commission of India; judicial review; free and fair elections.

I. INTRODUCTION

A vote counts for only as much as the constituency that receives it. Two electorates of identical size and identical preferences can return very different legislatures depending on where the lines fall. The word 'gerrymander' dates from 1812, when a Massachusetts senatorial district shaped to favour the party of Governor Elbridge Gerry was likened in a newspaper cartoon to a salamander.¹ Two centuries on, the practice has outgrown its comic origin. Boundary-drawing is an exercise of political power that is routinely presented as technical administration.

Indian public law has rarely treated gerrymandering as a distinct constitutional wrong. Part of the explanation is institutional. Delimitation is entrusted neither to legislators nor to ministers but to a commission headed by a judge of the Supreme Court, and since 1976 the Constitution has held the allocation of seats between States at the level fixed by the 1971 census.² Part of it is frequency. Parliament has legislated for delimitation only four times (in 1952, 1962, 1972 and 2002), so the occasions for litigation, and with them the stock of doctrine, have been few.

That relative calm is ending. Under Articles 82 and 170 as amended, the freeze lasts until the first census taken after 2026. The population enumeration for that census is scheduled for February 2027, with 1 March 2027 as the reference date.³ In April 2026 the Union Government asked Parliament to loosen the link between delimitation and that census, to enlarge the Lok Sabha and to bring one-third reservation for women into operation sooner. The Constitution (131st Amendment) Bill, 2026 did not obtain the special majority it needed in the Lok Sabha, and the Delimitation Bill, 2026 that accompanied it was withdrawn.⁴ The readjustment therefore remains to be carried out on the existing constitutional timetable. The questions it raises, about fairness between States, about the placement of reserved seats and about the one-third reservation for women introduced by the 106th Amendment,⁵ have moved from the margins of constitutional discussion to its centre.

This paper asks a narrow question: does Indian law contain an effective check on the partisan manipulation of constituency boundaries? Its focus is Article 324, the provision that makes the ECI responsible for 'superintendence, direction and control' of elections and that the Supreme Court has described in generous terms. Delimitation, however, sits elsewhere. It belongs to a statutory Commission whose orders have the force of law and, by Article 329(a), are protected from being questioned in court. The thesis is that these two arrangements, read together, leave an accountability gap. The gap has narrowed as the Supreme Court has begun to read Article

329(a) down, but it has not closed. What remains is less a gap of forum than a gap of standards: there is no settled test for review, no statutory benchmark against which a boundary can be measured, and no duty on the Commission to explain itself.

The method is doctrinal and comparative. The paper reads the constitutional and statutory texts, the principal decisions of the Supreme Court on Articles 324 and 329 and on their municipal counterpart, Article 243ZG, and the experience of four other democracies. The numerical illustration in Part II is hypothetical and is offered only to show how boundaries alone can change outcomes. The paper does not allege partisan design in any actual Indian exercise, and nothing in it should be read that way.

Part II explains the concept and techniques of gerrymandering and Part III draws comparative lessons. Part IV sets out the Indian framework and Part V analyses the case law. Part VI identifies the accountability gap. Part VII asks whether Article 324, a narrower reading of Article 329(a) or the basic structure doctrine can close it. Part VIII examines the coming readjustment, Part IX proposes reforms and Part X concludes.

II. GERRYMANDERING: CONCEPT, TECHNIQUES AND HARMS

A. Packing, cracking and wasted votes

Gerrymandering works by changing how efficiently a party's votes are converted into seats. Its two basic techniques are *packing*, which concentrates opposing voters in a few districts that they win by very large margins, and *cracking*, which spreads them across many districts in each of which they narrowly lose. In both cases the targeted voters' ballots are 'wasted', either as surplus beyond what was needed to win or as votes cast for a losing candidate.⁶ A map that wastes one side's votes far more than the other's can hand the other side a durable majority of seats from a minority of the vote. Mapping software and fine-grained voter files have made the technique cheaper and more precise: what once demanded local knowledge and guesswork can now be produced by optimisation. The concern is therefore less occasional abuse than standing capability.

B. An illustration: the same votes, different seats

Table 1 and Figure 1 make the point with invented figures. A State has five constituencies of 100 voters each and two parties, A and B, each of which receives 250 votes statewide under

either of two maps. Under Map 1 the result broadly tracks the vote: A wins three seats and B two. Under Map 2 not one voter has changed preference, yet A's supporters are cracked across four constituencies in which A narrowly falls short and packed into one which it wins comfortably. A's tally falls from three seats to one. The efficiency gap, which is the difference between the parties' wasted votes divided by total votes, moves from -10 points to +30 points.

Table 1: Hypothetical outcomes under two maps drawn over the same electorate

Constituency	Map 1: A (%)	Map 1: B (%)	Winner	Map 2: A (%)	Map 2: B (%)	Winner
C1	55	45	A	46	54	B
C2	53	47	A	47	53	B
C3	51	49	A	48	52	B
C4	46	54	B	49	51	B
C5	45	55	B	60	40	A
Seats			A 3, B 2			A 1, B 4
Wasted votes (A / B)			100 / 150			200 / 50
Efficiency gap*			-10 points			+30 points

Illustrative figures only; they do not describe any actual State. Each constituency has 100 voters. Votes above 50 in a winning constituency are treated as surplus. *Efficiency gap = (A's wasted votes minus B's wasted votes) divided by total votes; a positive value means the map disadvantages A.

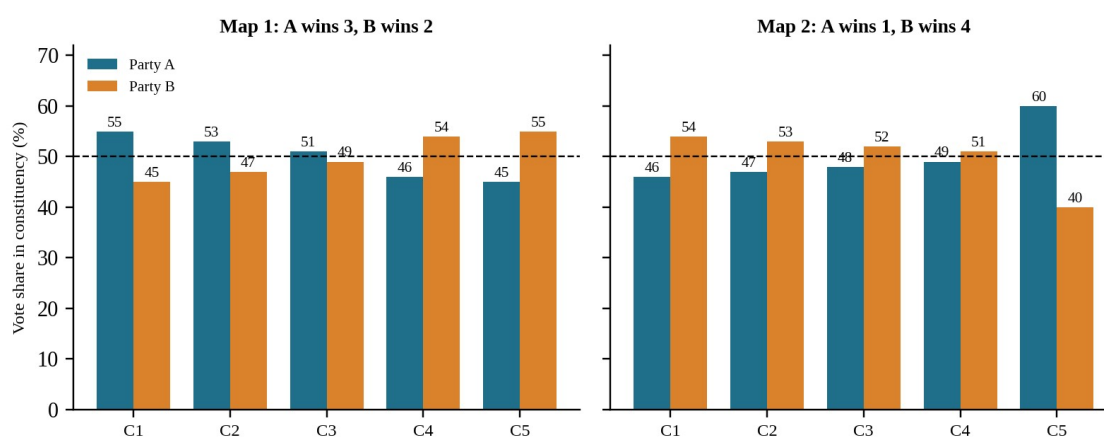


Figure 1: Vote share by constituency under the two hypothetical maps. The dashed line marks a 50% majority. Statewide, A and B each receive 50% of the vote under both maps.

The illustration also shows why outcome-based tests are contested. A result like Map 2 could arise from natural political geography, and a figure such as the efficiency gap cannot by itself prove intent. That is why Part VII favours review of procedural and measurable questions over any attempt to adjudicate partisan fairness directly.

C. Malapportionment and the three Indian layers

Malapportionment, the drawing of districts of unequal population so that one vote weighs more than another, is related but distinct. The Constitution addresses it directly. Article 81(2) requires, as far as practicable, the same ratio between seats and population both across States and across constituencies within a State, and Article 81(3) defines population by reference to the last published census. The freeze, however, means that inter-State allocation still rests on 1971 figures, and population differences across constituencies have widened with unequal demographic growth.

The Indian version of the problem therefore has three layers: boundary manipulation within a State, of the kind familiar from the American literature; inter-State malapportionment produced by the freeze; and the placement of constituencies reserved for Scheduled Castes and Scheduled Tribes under Articles 330 and 332, where the choice of which seats to reserve can affect how competitive they are.⁷

D. Why the question is constitutional

Gerrymandering offends several constitutional values at once. It weakens the equality of voters on which representation rests, it reverses the relation between electors and representatives by letting those in power choose their voters, and it erodes the legitimacy of results. Scholars have also linked it to reduced competitiveness and entrenched incumbency.⁸ The Supreme Court has repeatedly treated free and fair elections as part of the basic structure.⁹ If that is so, the boundaries within which elections are held cannot be regarded as constitutionally neutral.

III. COMPARATIVE LESSONS

A. The United States: engagement and retreat

The American story begins with the Supreme Court's decision to enter what Justice Frankfurter had called the 'political thicket'. In *Baker v Carr* the Court held that challenges to legislative

apportionment were justiciable.¹⁰ *Wesberry v Sanders* and *Reynolds v Sims* then established 'one person, one vote' for congressional and state legislative districts.¹¹ These cases concerned malapportionment, a defect that simple arithmetic can measure.

Partisan gerrymandering proved more elusive. In *Davis v Bandemer* the Court accepted justiciability in principle without agreeing on a standard, and in *Vieth v Jubelirer* a plurality found no manageable standard while Justice Kennedy left open the possibility that one might emerge.¹² *Gill v Whitford* was resolved on standing.¹³ The decisive step came in *Rucho v Common Cause*, where a 5–4 Court, speaking through Chief Justice Roberts, accepted that excessive partisanship is incompatible with democratic principles but held that federal courts have no yardstick for deciding how much is too much, so that such claims are political questions.¹⁴ Justice Kagan, dissenting, argued that manageable standards were available. The majority pointed to state legislation, citizen initiatives and state constitutional litigation as other avenues.

Those avenues have since been tried. The Pennsylvania Supreme Court struck down a congressional map under the 'free and equal elections' clause of the state constitution;¹⁵ the US Supreme Court upheld an independent redistricting commission in *Arizona State Legislature v Arizona Independent Redistricting Commission*;¹⁶ and federal courts continue to police racial gerrymandering, as in *Allen v Milligan*.¹⁷

B. Independent boundary bodies elsewhere

The American retreat is not the only comparative lesson. Many democracies have given boundary-drawing to independent commissions working to statutory criteria. The United Kingdom's four Boundary Commissions apply a numerical tolerance around a UK-wide electoral quota, consult the public on provisional proposals and report for implementation without amendment by the legislature.¹⁸ Canada draws federal districts through provincial commissions, typically judge-chaired, and its Supreme Court reads the right to vote as a right to 'effective representation', which permits departures from parity only for justifiable reasons such as geography and community interests.¹⁹ Australia entrusts redistribution to committees of its electoral commission working to statutory enrolment tolerances. What these systems share is not an outcome but a structure of four features: fixed public criteria, a numerical tolerance for population deviation, public consultation and reasons that can be read and contested. The Indian framework has the third in some measure, the first only in loose form,

and neither the second nor the fourth.

Table 2: Boundary-drawing frameworks compared

Jurisdiction	Who draws the lines	Standards	Consultation	Role of courts
United States	Legislatures in most States; independent commissions in some	Equal population; limits on racial gerrymandering	Varies by State	Population and race claims justiciable; partisan claims not in federal courts (<i>Rucho</i>); state courts may act
United Kingdom	Boundary Commissions for England, Scotland, Wales and Northern Ireland	Statutory tolerance around the electoral quota	Public consultation on provisional proposals	Implementation follows the statutory process
Canada	Provincial commissions, often judge-chaired	'Effective representation'; departures from parity must be justified	Public hearings	Review under s 3 of the Charter (<i>Saskatchewan Reference</i>)
Australia	Electoral Commission redistribution committees	Statutory enrolment tolerances	Public suggestions and objections	Limited
India	Delimitation Commission of three members (or the ECI where Parliament so provides, as in Assam in 2023)	Criteria 'as far as practicable'; no numerical tolerance	Draft proposals, objections, public sittings; no duty to give reasons	Bar in art 329(a) and s 10(2), now read down but undefined (Part V)

C. Three lessons for India

First, the hard problem is not recognising partisan gerrymandering but articulating a neutral standard that a court can apply. Second, where courts decline to act, the structure and independence of the line-drawing body become the main safeguard. Third, doctrine does well

to separate claims that are measurable, such as population equality and compliance with statutory criteria, from claims that require a judgment about partisan fairness. India's difficulty differs from America's. Indian courts have not refused jurisdiction on prudential grounds; the constitutional text itself speaks of a bar, and the open question is how far that bar reaches.

IV. THE INDIAN CONSTITUTIONAL AND STATUTORY FRAMEWORK

A. Representation, readjustment and the freeze

Article 81 fixes the composition of the House of the People and, in clause (2), the principle of equal seat-to-population ratios. Article 82 provides that after each census Parliament shall readjust the allocation of seats to the States and the division of each State into territorial constituencies 'by such authority and in such manner' as Parliament may by law determine. Article 170 makes parallel provision for State Assemblies. Parliament has used this power four times, enacting the Delimitation Commission Act 1952 and the Delimitation Acts of 1962, 1972 and 2002.

The freeze deserves emphasis. The 42nd Amendment suspended readjustment of seat allocation on later censuses until the first census after 2000. The 84th Amendment extended the suspension to the first census taken after 2026, and the 87th allowed boundaries, though not the number of seats, to be redrawn on the 2001 census. The Commission constituted under the 2002 Act accordingly redrew boundaries within States without altering inter-State allocation, and its orders took effect in 2008.²⁰

B. Articles 327 and 329(a)

Article 327 empowers Parliament to legislate on all matters relating to elections, 'including the delimitation of constituencies', subject to the provisions of the Constitution. Article 329(a) then provides that, notwithstanding anything in the Constitution, the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or 328, 'shall not be called in question in any court'. The bar is thus constitutional and not merely statutory. Article 329(b) separately confines challenges to elections to an election petition.

C. The Delimitation Act, 2002

The Act constitutes a Commission of three members: a serving or retired judge of the Supreme Court as chairperson, the Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner, and the State Election Commissioner of the State concerned. Members of Parliament and of the State legislature sit as associate members without a vote.²¹ Section 9 directs that constituencies shall, as far as practicable, be geographically compact areas, having regard to physical features, existing administrative boundaries, facilities of communication and public convenience, and that reserved constituencies be located by reference to the concentration of the relevant communities. The Commission must publish its proposals, invite objections and hold public sittings. Section 10(2) provides that its orders, once published in the Gazette, 'shall have the force of law and shall not be called in question in any court'.

What the Act omits is equally telling. It sets no numerical tolerance for population deviation between constituencies, requires no reasons for the Commission's choices, forbids no use of political data and states no standard of partisan neutrality. Its criteria are framed as considerations to be applied 'as far as practicable', which leaves wide discretion.

D. Article 324 and the Election Commission

Article 324(1) vests the 'superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections' in the Election Commission. The text does not mention delimitation. The Chief Election Commissioner or an Election Commissioner does sit on every Delimitation Commission, but as one member of three and by force of the 2002 Act rather than Article 324. The ECI's constitutional role and the Commission's statutory role are therefore adjacent but not integrated.

That separation is a legislative choice and not a constitutional necessity. Parliament has made separate provision, in section 8A of the Representation of the People Act 1950, under which the ECI itself, rather than a Delimitation Commission, carried out the exercise for Assam and published a final order in August 2023 after public hearings, retaining 126 Assembly and 14 Lok Sabha constituencies.²² The constitutional validity of that arrangement has been challenged. For present purposes the episode shows two things: the ECI can be made the delimiting authority when Parliament so decides, and an electoral authority can run a

consultative boundary process of the kind the 2002 Act describes.

E. Delimitation in practice

The 2002 exercise, the first for three decades, redrew boundaries within States and re-determined reserved seats. It is widely regarded as having been carried out with institutional seriousness, though political parties and civil society criticised aspects of it, including population deviations and the placement of reserved constituencies. More recently, the Delimitation Commission for Jammu and Kashmir, headed by a retired judge of the Supreme Court, changed the strength and regional distribution of the Assembly (from 107 to 114 seats on the petitioners' count, including 24 notionally allotted to Pakistan-occupied Kashmir), and several parties alleged regional bias.²³ This paper takes no position on those allegations. They are mentioned because they illustrate the kind of grievance for which the framework must provide a principled answer, whatever the merits of any given complaint.

Table 3: Principal constitutional and statutory provisions

Provision	Subject	Relevance to gerrymandering
Art 81(2)–(3)	Equal ratio of seats to population; population by last published census	Source of the equal-vote principle
Arts 82, 170(3)	Readjustment after each census; freeze until first census after 2026	Timing of the coming exercise
Art 324	Superintendence, direction and control of elections	Wide authority over the conduct of elections, not over boundaries
Art 327	Parliament's power to legislate on elections, including delimitation	Basis of the Delimitation Act
Art 329(a)	Bar on questioning the law of delimitation	Insulation from review, now read down in part
Art 329(b)	Election petition as the route to contest elections	Timing bar on pre-election challenges
Arts 330, 332	Reservation for Scheduled Castes and Scheduled Tribes	Placement of reserved seats

Delimitation Act 2002, s 9	Criteria: compactness, administrative boundaries, communication, reserved seats	Loosely drawn standards
Delimitation Act 2002, s 10(2)	Orders have the force of law and are not to be questioned in court	Statutory finality
Representation of the People Act 1950, s 8A	ECI to delimit where Parliament so provides	Shows the ECI can be the delimiting authority

V. THE JUDICIAL APPROACH

A. Article 324: plenary but residual

The foundational decision on Article 324 is *Mohinder Singh Gill v Chief Election Commissioner*. The Constitution Bench held that Article 324 is a reservoir of power that operates in the vacuum left by legislation and enables the Commission to act so as to secure free and fair elections. The power remains subordinate to valid law made by Parliament, and its exercise must conform to natural justice and the rule of law.²⁴ The Court returned to the theme in the *Special Reference* on the Gujarat elections, stressing the continuity and integrity of the democratic process.²⁵

The independence of the ECI itself has also been litigated. In *Anoop Baranwal v Union of India* a Constitution Bench directed that, until Parliament legislated, appointments to the Commission be made on the advice of a committee including the Leader of the Opposition and the Chief Justice of India; Parliament later enacted a statute that replaced the Chief Justice with a Union Cabinet Minister on the committee.²⁶ The matter bears on delimitation because one member of every Delimitation Commission is drawn from the ECI, and that member's credibility rests on the independence of the body he comes from.

B. The ouster in Meghraj Kothari

On delimitation, the traditional authority is *Meghraj Kothari v Delimitation Commission*, a Constitution Bench decision. The Court held that an order made and published under the Act acquires the force of law and that Article 329(a) forbids any court from questioning its validity.²⁷ The reasoning looked to the integrity of the electoral timetable: if every voter could challenge boundaries, elections could be halted indefinitely. For decades the case was read as an absolute bar.

C. The bar read down: DMK, Fouziya and Kishorchandra

The last six years have unsettled that reading. In *Dravida Munnetra Kazhagam v State of Tamil Nadu*, a three-judge bench considered Articles 243O and 243ZG, which mirror Article 329 for local bodies, and held that judicial intervention was permissible to secure free and fair elections, treating the correction of an arbitrary or mala fide exercise of power as part of the election process and not as a questioning of it.²⁸ In *State of Goa v Fouziya Imtiaz Shaikh* a three-judge bench affirmed that approach, upheld the High Court's quashing of ward-reservation orders and held that the bar in Article 243ZG(a) did not apply on those facts.²⁹

Kishorchandra Chhanganlal Rathod v Union of India brought the point to Article 329(a) itself. The appellant challenged the reservation of the Bardoli Assembly constituency for Scheduled Castes under the 2002 Act. The Gujarat High Court had dismissed the petition at the threshold on the strength of Article 329(a). A two-judge bench of the Supreme Court disapproved the view that a delimitation order is wholly insusceptible to review under Article 226. It reasoned that Article 329(a) restricts scrutiny of the validity of a law relating to delimitation but cannot be taken to cover every action in a delimitation exercise, and it relied on *DMK* and *Fouziya*. On the facts, however, the Court found no ground to disturb the 2006 delimitation, and it did not set out a test for when review is warranted.³⁰

Two cautions follow. *Kishorchandra* was decided by a two-judge bench and distinguishes, rather than overrules, a Constitution Bench decision; how it fares against *Meghraj Kothari* remains open. And none of these cases involved a claim that boundaries were drawn for partisan advantage. They establish that a door is ajar, not what lies beyond it.

D. Jammu and Kashmir

In *Haji Abdul Gani Khan v Union of India* the Supreme Court dismissed a challenge to the constitution of the Jammu and Kashmir Delimitation Commission and to the exercise it carried out. The Court held that the Commission had been validly constituted under the Reorganisation Act 2019 read with the Delimitation Act 2002, that the readjustment was lawful, and that the time limit in section 10(6) of the 2002 Act was not mandatory.³¹ The challenge went to the Commission's authority, not to partisan design, so the decision tells us little about how a gerrymandering claim would fare.

E. Article 329(b) and the timing problem

Article 329(b) permits challenges to elections to Parliament or a State legislature only by election petition. In *NP Ponnuswami* the Court read it as confining election disputes to the post-result stage so that the process, once begun, is not interrupted.³² The rationale is sound, since a system in which courts could suspend elections at any stage would give any litigant a veto. But it creates a trap for delimitation. A defective boundary becomes visible only after it has been used in an election, and by then Article 329(b) channels the grievance into an election petition that is poorly suited to testing a boundary order. The realistic window for challenge is therefore the period between publication of the order and notification of the next election. The recent cases, which tie the reach of the bar to whether elections are imminent or in progress, make that window the pivotal question in practice.

Table 4: Principal authorities and their significance

Case	Issue	Significance for this paper
<i>NP Ponnuswami</i> (1952)	Art 329(b) and election disputes	Elections are contested only by election petition
<i>Meghraj Kothari</i> (1967)	Delimitation orders and art 329(a)	Orders have the force of law; traditional reading is an absolute bar
<i>Mohinder Singh Gill</i> (1978)	Scope of art 324	Plenary but residual; subject to law and natural justice
<i>Special Reference No 1 of 2002</i>	ECI and the Gujarat elections	Reaffirms the breadth of art 324
<i>DMK v State of Tamil Nadu</i> (2020)	Arts 243O and 243ZG (local bodies)	Intervention to correct arbitrary or mala fide action permitted
<i>State of Goa v Fouziya Imtiaz Shaikh</i> (2021)	Art 243ZG(a) and ward reservation	Affirms <i>DMK</i> ; bar inapplicable on the facts
<i>Anoop Baranwal</i> (2023)	Appointments to the ECI	Interim selection committee; independence of the ECI
<i>Haji Abdul Gani Khan</i> (2023)	J&K Delimitation Commission	Challenge to constitution and authority rejected
<i>Kishorchandra Chhanganlal Rathod</i>	Art 329(a) and Art 226 review	Delimitation orders not wholly immune; no test laid down

(2024)		
<i>Rucho v Common Cause</i> (US, 2019)	Partisan gerrymandering	Non-justiciable in federal courts

VI. THE ACCOUNTABILITY GAP

Read together, the cases produce a two-tier picture. At the level of election administration the ECI wields broad and judicially supported authority, subject to review for fairness and legality. At the level of boundary-drawing, the Delimitation Commission exercises a power that is constitutionally protected, only partly reviewable and exercised under loosely drawn criteria. The body with the strongest mandate to secure free and fair elections has no corresponding authority over the geography of those elections.

The gap has six components.

1. **No substantive benchmarks.** The Act's criteria are permissive. With no numerical tolerance for population deviation, no duty to avoid dividing communities of interest without reason and no rule on political data, there is nothing against which a boundary can be measured. Compactness is an aspiration 'as far as practicable' and is not defined. Where standards are absent, honest discretion and manipulation look the same.
2. **Review that is possible but undefined.** After *Kishorchandra* the claim that no court may look at a delimitation order is no longer safe. But the Court gave no test, no timetable and no indication of which defects qualify. A litigant cannot tell whether a population disparity, a departure from section 9 or an inference of partisan purpose would be enough. Uncertainty of this kind discourages careful challenges and rewards tactical ones.
3. **Institutional design.** The Commission is constituted by the Union Government, and the Act subjects the choice of chairperson to no independent nomination process. The ECI member sits as one among three. Associate members drawn from legislatures give political voices a seat without a vote, which may aid transparency but also supplies a channel of informal influence. None of this suggests that past Commissions acted improperly. The point is that the design depends on the character of appointees and not on structural safeguards.
4. **Opacity.** Commissions publish draft proposals and take objections, but they need not

explain why one configuration was preferred, disclose the data they relied on or publish alternatives they considered. Without reasons there is nothing to review even in principle, and the public has no basis for judging fairness.

5. Reserved constituencies. The choice of seats to reserve under Articles 330 and 332 is where boundary decisions meet the representation of historically disadvantaged communities. The Act directs that reserved seats be located where the relevant population is proportionally largest, but the choice of particular constituencies, and the periodic change in which seats are reserved, can affect competitiveness. Transparency matters here more than anywhere, so that communities can see that placement serves representation and not electoral convenience.

6. Timing. Delimitation occurs at long intervals, which magnifies its consequences and leaves little room for correction. The window for challenge, discussed in Part V.E, is both narrow and uncertain.

VII. CAN ARTICLE 324, ARTICLE 329(a) READ NARROWLY, OR THE BASIC STRUCTURE FILL THE GAP?

A. The limits of Article 324

It might be argued that Article 324 lets the ECI supply what the Delimitation Act omits. *Mohinder Singh Gill* makes that difficult. Article 324 operates where the statute is silent; it cannot override a statute that occupies the field, and it cannot enlarge the ECI's role in a process Parliament has given to another body. The ECI's contribution is better understood as institutional than adjudicative. Through its representative on the Commission, and through its continuing responsibility for the electoral rolls on which delimitation rests, it can insist on procedures that promote transparency and data integrity. Section 8A of the 1950 Act shows that a larger role is available, but only if Parliament confers it.

B. Reading Article 329(a) by its words

A more promising argument lies in the text of Article 329(a). The clause bars questioning of 'the validity of any law relating to the delimitation of constituencies'. A complaint that the Commission departed from the statutory criteria it was bound to apply, or ignored the procedure the Act prescribes, concerns the legality of its conduct and not the validity of the law. This is, in substance, the distinction that *Kishorchandra* gestures towards when it separates the 'law'

from 'every action' in a delimitation exercise. The difficulty is *Meghraj Kothari*, which treated the Commission's order as the law itself. A court adopting the narrower reading must either confine *Meghraj Kothari* to challenges to the merits of the Commission's choices or rely on the timing rationale. Either way, the narrower reading yields only an irregular and fact-bound remedy unless it is paired with a clear standard.

C. Basic structure and manifest arbitrariness

The strongest argument is constitutional. The Supreme Court has held that no constitutional provision is immune from review against the basic structure, that judicial review is itself part of that structure, and that free and fair elections form part of it.³³ If a delimitation were shown to defeat equality of the vote or to be driven by partisan purpose, a court could treat the case not as a question about the validity of a law under Article 329(a) but as a question about the limits of what any constitutional provision may be read to authorise. The Court has also developed the idea that legislation may be struck down for manifest arbitrariness, meaning that it is capricious, irrational or without adequate determining principle.³⁴

The route has costs. A court invoking the basic structure against a delimitation order departs from the text of Article 329(a) and from a long line of authority, and it intervenes in a process with immediate electoral consequences. A prudent doctrine would therefore be narrow. It would reserve review for demonstrable violations, such as gross population disparity unexplained by the statutory criteria or evidence of deliberate partisan design, and leave ordinary disagreements about where lines should fall to the Commission.

D. A limited standard of review

The American debate suggests what such a standard might look like. A court need not decide how much partisanship is too much. It could ask three questions of a boundary order: whether the Commission complied with the Act's own criteria; whether population deviations lie within a tolerance that those criteria can justify; and whether the Commission recorded reasons that make its choices intelligible. These are procedural and measurable questions of a kind courts routinely handle. They would not make the judiciary the arbiter of political fairness, but they would restore a minimum of legality to a process that Article 329(a), as long understood, placed beyond scrutiny. Judicial innovation can go only so far, however. Standards, institutions and procedures are better supplied by legislation than by courts.

E. Anticipating objections

Three objections deserve an answer. The first is that review would draw courts into politics. The proposal confines review to measurable and procedural questions and leaves the choice of lines to the Commission. The Supreme Court has long reviewed electoral matters without becoming an electoral authority, and checking compliance with statutory criteria is a conventional judicial task.

The second is that delimitation demands expertise courts lack. The proposal does not ask courts to draw maps. It asks them to verify that an expert body has complied with the standards that bind it and has explained itself, as courts do in many regulatory settings. The third is that finality is itself a constitutional value, since the legitimacy of an election depends on certainty about the constituencies in which it is held. That is a serious point, and it is the strongest reason for a short, time-bound review window in place of open-ended litigation. Finality is better served when disputes are resolved before the electoral cycle begins than when grievances are suppressed until they resurface as attacks on the legitimacy of results.

VIII. THE COMING READJUSTMENT

A. The 2026 package and its defeat

The Bills introduced in April 2026 are instructive even though they failed. As described in contemporaneous analysis, the package proposed to expand the Lok Sabha substantially, to permit delimitation on the 2011 census, and to bring the women's reservation into operation by the 2029 general election; the Delimitation Bill would also have empowered the Union Government to constitute a Commission and would have replaced the 2002 Act.⁴ Critics, particularly from southern States, argued that redrawing on those terms could disadvantage States that had lowered fertility and could favour the governing party, while supporters presented it as the quickest route to women's representation. The Constitution (131st Amendment) Bill was defeated for want of a special majority and the other two Bills were withdrawn. The existing text therefore governs: readjustment awaits the publication of the first census after 2026, and the reservation under the 106th Amendment will operate only after the delimitation that follows.

The episode matters for this paper in two ways. It confirms that the central questions of seat

allocation are, and should be, political questions to be settled in Parliament with the support of a broad majority. It also shows how much weight a single delimitation process will carry: it will fix the arena for elections for a generation, determine how the freeze is lifted, place reserved seats and operationalise a major constitutional reform. A process carrying that load needs rules that are settled in advance and visible to all.

Box 1: Applying the three-question test to the hypothetical Map 2

Part VII.D proposed that a court reviewing a boundary order should ask three questions: whether the Commission complied with the Act's own criteria, whether population deviations lie within a justifiable tolerance, and whether reasons were recorded. This box applies those questions to the hypothetical electorate in Part II.B, to show what the test can and cannot do. The figures are invented and do not describe any actual State or Commission.

Table B1: The three-question test applied to Map 2

Question	Application to Map 2	Outcome
1. Compliance with the statutory criteria	Map 2 divides A's supporters across C1 to C4 and gathers them in C5. Whether that departs from section 9 (compactness, administrative boundaries, communication) depends on facts the vote figures do not reveal.	Cannot be answered from vote data; needs the Commission's records
2. Population deviation within tolerance	Every constituency has 100 voters under both maps, so deviation is zero.	Passes
3. Reasons recorded	The 2002 Act requires none. Under the proposal in Part IX (item 3), the Commission would have to explain why this configuration was preferred over alternatives such as Map 1.	Not reviewable today; reviewable after reform

Illustrative figures only. The outcome column states how the question would be answered on

the hypothetical facts.

What the example shows

Population equality is necessary but not sufficient. Map 2 passes the second question perfectly, yet it turns an even statewide vote into one seat for A and four for B, and its efficiency gap moves from -10 to $+30$ points. A numerical tolerance, which Part IX proposes, protects the equal weight of each vote. It cannot by itself detect a map that wastes one side's votes far more than the other's.

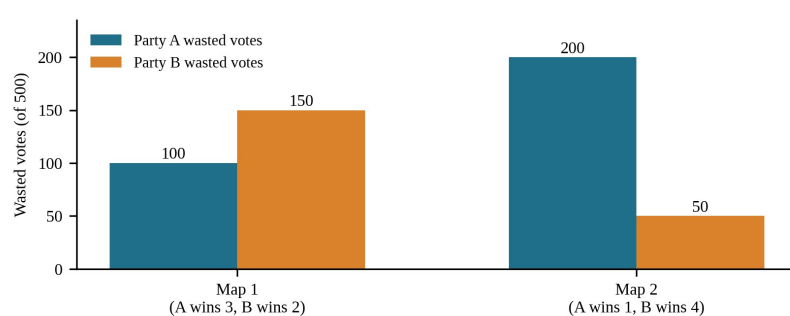


Figure B1: Wasted votes for each party under the two hypothetical maps. Total votes cast are 500; the efficiency gap is the difference in wasted votes divided by 500.

The test does not prove intent, and does not claim to. A result like Map 2 could follow from natural political geography, as Part II.B notes. The value of the test lies in what it does with a result of this kind. Where the Commission has recorded reasons grounded in the statutory criteria, such as a river, an administrative boundary or a settlement pattern, the review ends there. Where it has recorded none, a court has nothing against which to weigh the map, and the three questions fall back on the first, which then depends on the Commission's records.

The reforms work as a package. Question 1 is empty unless Parliament codifies criteria that can be breached, and question 3 is empty unless it requires reasons. For that reason Part IX pairs codified criteria and a bar on partisan data with a duty to publish data, draft maps and reasons. The competitiveness measures that item 3 would require are the natural place to report a figure such as the efficiency gap. Its role would be informational, showing where a map deserves explanation and not deciding whether it is lawful.

B. Two State illustrations: Tamil Nadu and Assam

Two States show the framework at work. Tamil Nadu shows where the ECI's authority is strongest and where the absence of boundary standards becomes visible. Assam shows what happens when Parliament makes the ECI itself the delimiting authority. The paper relies on reported figures and takes no position on partisan design in either State.

Tamil Nadu: The current position

The rolls. Article 324 operates most clearly on the electoral rolls. The ECI conducted a Special Intensive Revision of the Tamil Nadu rolls from 27 October 2025 to 23 February 2026. The electorate stood at 6.41 crore before the exercise, the draft roll of 19 December 2025 showed about 5.44 crore, and the final roll about 5.67 crore.³⁶ Reported deletion figures differ by the stage counted: about 97 lakh names were removed at the draft stage and 27.5 lakh were added during claims and objections, leaving a net fall of about 74 lakh.³⁷ The exercise illustrates the contrast on which Part VI rests: the ECI's powers over who votes are well developed, while its powers over the geography in which votes are counted are not.

The 2026 Assembly election. Polling for the 234-seat Assembly took place on 23 April 2026. Reports describe the outcome as the State's first hung Assembly: the Tamilaga Vettri Kazhagam (TVK) emerged as the largest party with 108 seats, ahead of the DMK with 59 and the AIADMK with 47, against a majority mark of 118.³⁸ Published vote-share figures differ between sources, so the paper does not rely on them and cites the result for context only, not as evidence of any boundary effect. The efficiency gap used in Part II was devised for two-party contests, and a multi-cornered result of this kind would call for measures designed for several parties.

Constituency size. On the final roll, the largest Assembly constituency in Chennai district,

Sholinganallur, has 5,36,991 electors and the smallest, Harbour, 1,16,896, a ratio of about 4.6 to 1.³⁹ Against a State average of about 2.4 lakh electors per constituency (5.67 crore across 234 seats), these are roughly 2.2 times and 0.5 times the average. The figures are electors and not census population, and the boundaries date from the 2008 order, so they show how far electorates have drifted and say nothing about cause. They show why a numerical tolerance matters. The 2002 Act sets none, whereas the tolerance of ten per cent proposed in Part IX

would require any such departure to be justified in writing at the next delimitation.

The inter-State dispute. Tamil Nadu has 39 Lok Sabha seats. At an all-party meeting on 5 March 2025 the State Government and most parties present resolved to form a joint action committee of southern States against a redistribution that could reduce the State's share, the Chief Minister arguing that a purely population-based exercise could cut its seats from 39 to 31.⁴⁰ Others argued that on the same principle the State could gain seats, and Union ministers said that southern States would not be disadvantaged.⁴¹ The paper takes no side. The episode shows that this question turns on political choices that Part VIII.C assigns to Parliament and not to the Commission.

Assam: The Election Commission as delimiting authority

Under section 8A of the Representation of the People Act 1950, delimitation in Assam, Arunachal Pradesh, Manipur and Nagaland is carried out by the ECI once the President rescinds a deferment order made under the Delimitation Act. The ECI began the Assam exercise in December 2022 on 2001 Census figures, published a draft on 20 June 2023, invited objections, held public hearings and issued its final order on 11 August 2023, retaining 126 Assembly and 14 Lok Sabha constituencies (Part IV.D).⁴² Ten opposition leaders from nine parties petitioned the Supreme Court against the draft and against section 8A, which they called arbitrary, opaque and discriminatory, and they objected to the use of different average Assembly sizes for different districts.⁴³ On 24 July 2023 the Court declined to stay the exercise, reasoning that a process already under way should not be interrupted at that stage, but issued notice on the validity of section 8A and said that the challenge merited scrutiny.⁴⁴

Table B2: The two States compared

Feature	Tamil Nadu	Assam
Authority over boundaries	Delimitation Commission under the 2002 Act (2008 order); ECI controls the	ECI itself, under s 8A of the 1950 Act (2023 order)

	rolls under art 324	
Standards	Criteria of s 9; no numerical tolerance	Method disputed, including use of different average Assembly sizes by district
Where the issue surfaced	Spread of electors per constituency on the 2026 roll; inter-State seat share	Petition to the Supreme Court during the exercise
What it shows for Part VI	A framework with strong authority over the rolls and none over boundary standards	Consultation is workable, but the question of method reached court without a settled test

Compiled from the reports cited in notes 36 to 44.

What the two States show together. Assam supplies three points. A consultative process run by an electoral authority is feasible, which supports the larger ECI role in Part IX (item 7). The Court's refusal to stay the exercise is the timing rationale of Part V.E in operation: a challenge made while the process runs does not halt it. And the petitioners' complaint was about method, which codified criteria and a duty to give reasons would answer before the order is made. Tamil Nadu supplies the converse. Even where the ECI's role is strong, the freeze and the lack of a tolerance leave electorates of very different sizes with no standard against which to test them. In both, the gap lies in standards and not in forum, which is the argument of Part VI.

B. The inter-State dimension

Although this paper concentrates on boundary manipulation within States, the freeze on inter-

State allocation presents a distinct problem of fairness. Article 81(2)(a) contemplates the same ratio of seats to population across States, yet allocation still reflects 1971 figures. States with lower population growth fear that recalculation on current figures will reduce their share, while more populous States argue that equal representation demands it. This is a contested question of federal and democratic principle that no Commission applying statutory criteria can resolve. It underlines why the choices made in the coming exercise must be transparent, reasoned and settled in a forum accountable to the Union as a whole, and why the reforms below treat inter-State allocation as a matter for Parliament and the Union-wide institutions and not for the Delimitation Commission.

IX. REFORM PROPOSALS

The proposals below correspond to the components of the gap identified in Part VI, with an added item on inter-State allocation. Table 5 sets out the correspondence before each proposal is developed.

Table 5: Gaps and proposed responses

Gap in the present framework	Proposed response
No substantive benchmarks	Codified criteria, numerical tolerance, restriction on partisan data
Review undefined	Narrow, time-bound review on defined grounds; clarification of art 329(a)
Institutional design	Collegium appointment and security of tenure
Opacity	Published data, draft maps and recorded reasons
Reserved constituencies	Reasoned, published criteria for placement and rotation
Timing	Early publication of the process timetable; expedited review window
Inter-State dimension	Decision in an accountable, Union-wide forum

1. Codified criteria. Parliament should amend the Delimitation Act to set a numerical tolerance for population deviation between constituencies within a State, to require contiguity

and compactness by a defined measure, to require respect for administrative and community boundaries, and to bar the use of partisan data, including earlier election results, in drawing boundaries. The authors suggest a tolerance not exceeding ten per cent either side of the State average, with any wider departure justified in writing by reference to the statutory criteria. Comparable jurisdictions show the value of statutory tolerances.

2. Stronger independence. The chairperson and members should be appointed by a collegium or committee that includes the Leader of the Opposition, following the model that the Supreme Court prescribed for Election Commissioners in *Anoop Baranwal*. Fixed terms and protection from removal during the exercise would reinforce independence. Associate members should be consulted openly and on the record.

3. Reasons and transparency. The Commission should publish the data and software it uses, release draft maps with supporting analysis, record reasons for accepting or rejecting objections and alternatives, and report standard measures of compactness, population deviation and competitiveness for each proposed map. Transparency does not remove discretion but makes its exercise visible. The Law Commission of India and the National Commission to Review the Working of the Constitution have both urged electoral reforms of a broadly similar character.³⁵

4. A narrow, time-bound review window. Parliament should provide an expedited process, before a designated High Court bench or directly before the Supreme Court, for challenging a final order on defined grounds only: non-compliance with the statutory criteria, deviation beyond the tolerance, or absence of reasons. The authors suggest a short filing period from publication in the Gazette and a fixed period for decision, closing well before the next election is notified. A time limit of this kind answers the legitimate concern, which explains Article 329(b), that litigation must not unsettle elections already under way.

5. Constitutional clarification. The ambiguity in Article 329(a) could be resolved by amendment confining the bar to challenges to the merits of the allocation of seats while preserving review of compliance with the statutory criteria and with Article 81(2). Such an amendment would codify a position that the Supreme Court is already approaching by interpretation.

6. **Reserved seats.** The criteria for selecting and rotating reserved constituencies should be published in advance, applied uniformly across States and explained in each State's report.

7. **A defined role for the ECI.** Without altering the division of responsibility, the ECI should be required to supply the Commission with certified electoral roll and census-linked data, to publish an independent analysis of proposed maps against the statutory criteria, and to report to Parliament on the process after its completion. Inter-State allocation should be settled by Parliament, after consultation with the States through an appropriate Union-wide forum, and not by the Commission.

X. CONCLUSION

The Constitution contains a powerful guarantee of free and fair elections in Article 324 and an equally powerful bar in Article 329(a) against questioning the law of delimitation. The two provisions were not designed to work against each other, but in operation they leave a gap: the institution entrusted with the integrity of elections has no authority over the geography on which elections turn, and that geography is drawn under criteria too loose to enforce.

The law is not what it was. *DMK*, *Fouziya* and *Kishorchandra* have loosened the bar, and the Court no longer treats a delimitation order as wholly beyond reach. What the Court has not yet supplied, and what only Parliament can supply properly, is a standard of review, a timetable for challenge and rules that make a Commission's reasoning visible. The American experience offers a warning rather than a model: its courts found a workable rule for population equality, then declined to find one for partisan fairness. India need not repeat that path. It has a delimitation process that is institutionally independent and has generally commanded respect, and the task is to turn that reputation into rules.

Delimitation is not a technicality. It fixes the arena in which every future election is fought. The coming readjustment, whenever the 2027 census data allow it to proceed, is the right moment to ensure that the lines are drawn under rules the electorate can see, test and trust.

NOTES

1. The term is attributed to a cartoon published in the *Boston Gazette* in 1812, which likened a Massachusetts State Senate district drawn under Governor Elbridge Gerry to a salamander.
2. Constitution of India, arts 82 and 170(3), as modified by the Constitution (Forty-second Amendment) Act 1976, the Constitution (Eighty-fourth Amendment) Act 2001 and the Constitution (Eighty-seventh Amendment) Act 2003.
3. Office of the Registrar General and Census Commissioner, India, notifications and press release of 30 March 2026 (house-listing phase from 1 April 2026; population enumeration in February 2027; reference date 1 March 2027). See also PRS Legislative Research, 'Issues for Consideration: Delimitation Bills of 2026' (April 2026).
4. Constitution (131st Amendment) Bill 2026, Delimitation Bill 2026 and Union Territories Laws (Amendment) Bill 2026, introduced in the Lok Sabha on 16 April 2026. The first of these was defeated on 17 April 2026 (press reports record 298 votes in favour and 230 against, and differ on the exact two-thirds threshold quoted); the other two were withdrawn the same day. See PRS Legislative Research (n 3) and the contemporaneous reports in *LiveLaw* and *The Hindu*.
5. Constitution (One Hundred and Sixth Amendment) Act 2023, inserting arts 330A, 332A and 334A. Press reports record that the Act was notified as in force from 16 April 2026, although the reservation itself operates only after the delimitation that follows the first post-2026 census.
6. Nicholas O Stephanopoulos and Eric M McGhee, 'Partisan Gerrymandering and the Efficiency Gap' (2015) 82 *University of Chicago Law Review* 831.
7. Of the 543 elected seats in the Lok Sabha, 84 are reserved for Scheduled Castes and 47 for Scheduled Tribes under art 330, as allocated by the Delimitation of Parliamentary and Assembly Constituencies Order 2008.
8. Samuel Issacharoff, 'Gerrymandering and Political Cartels' (2002) 116 *Harvard Law Review* 593.
9. *Indira Nehru Gandhi v Raj Narain* 1975 Supp SCC 1; *Mohinder Singh Gill v Chief Election Commissioner* (1978) 1 SCC 405.
10. *Baker v Carr*, 369 US 186 (1962).
11. *Wesberry v Sanders*, 376 US 1 (1964); *Reynolds v Sims*, 377 US 533 (1964).
12. *Davis v Bandemer*, 478 US 109 (1986); *Vieth v Jubelirer*, 541 US 267 (2004).
13. *Gill v Whitford*, 585 US 48 (2018).
14. *Rucho v Common Cause*, 588 US 684 (2019).
15. *League of Women Voters of Pennsylvania v Commonwealth*, 178 A 3d 737 (Pa 2018).

16. *Arizona State Legislature v Arizona Independent Redistricting Commission*, 576 US 787 (2015).
17. *Allen v Milligan*, 599 US 1 (2023).
18. Parliamentary Constituencies Act 1986 (UK), as amended in 2011 and 2020. The comparative entries in Table 2 state the position as understood at the time of writing and are given in summary form.
19. *Reference re Provincial Electoral Boundaries (Saskatchewan)* [1991] 2 SCR 158; Electoral Boundaries Readjustment Act (Canada); Commonwealth Electoral Act 1918 (Australia), pt IV.
20. The Delimitation of Parliamentary and Assembly Constituencies Order 2008 gave effect to the work of the Commission constituted under the Delimitation Act 2002.
21. Delimitation Act 2002, ss 3 to 5 (composition and associate members), s 9 (criteria) and s 10(2) (orders to have the force of law).
22. Election Commission of India, final delimitation order for Assam, published 11 August 2023 under s 8A of the Representation of the People Act 1950 (126 Assembly and 14 Lok Sabha constituencies retained).
23. Delimitation Commission for Jammu and Kashmir, final order of May 2022, constituted under the Jammu and Kashmir Reorganisation Act 2019 read with the Delimitation Act 2002.
24. *Mohinder Singh Gill v Chief Election Commissioner* (1978) 1 SCC 405.
25. *Special Reference No 1 of 2002* (Gujarat Assembly Election matter) (2002) 8 SCC 237.
26. *Anoop Baranwal v Union of India* (2023) 6 SCC 161; Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act 2023.
27. *Meghraj Kothari v Delimitation Commission* AIR 1967 SC 669 (Constitution Bench); [1967] 1 SCR 400.
28. *Dravida Munnetra Kazhagam v State of Tamil Nadu* (2020) 6 SCC 548 (2019 INSC 1326), concerning arts 243O and 243ZG.
29. *State of Goa v Fouziya Imtiaz Shaikh*, Civil Appeal No 5892 of 2021, decided 12 March 2021; (2021) 8 SCC 401.
30. *Kishorchandra Chhanganlal Rathod v Union of India* 2024 INSC 579; [2024] 7 SCR 1124 (decided 23 July 2024). For a reading of the decision as permitting review for manifest arbitrariness and irreconcilability with constitutional values, see Arohi Malpani and Simone Vaidya, 'To Review or Not to Review: Delimitation Dilemma' (*Law School Policy Review*, 25 February 2025).
31. *Haji Abdul Gani Khan v Union of India*, 2023 INSC 124; 2023 SCC OnLine SC 138 (decided 13 February 2023).

32. *NP Ponnuswami v Returning Officer, Namakkal Constituency* AIR 1952 SC 64.
33. *L Chandra Kumar v Union of India* (1997) 3 SCC 261; *IR Coelho v State of Tamil Nadu* (2007) 2 SCC 1; *Indira Nehru Gandhi v Raj Narain* 1975 Supp SCC 1.
34. *Shayara Bano v Union of India* (2017) 9 SCC 1.
35. Law Commission of India, *170th Report on Reform of Electoral Laws* (1999); National Commission to Review the Working of the Constitution, *Report* (2002).
36. Election Commission of India and Chief Electoral Officer, Tamil Nadu, press conferences of 19 December 2025 (draft roll) and 23 February 2026 (final roll), as reported by Prasar Bharati News Services (newsonair.gov.in) and Deccan Herald.
37. Reports of 23 February 2026 in The Tribune, The Wire and Onmanorama, which give differing deletion counts according to the stage of the exercise.
38. Election Commission of India, Trends and Results, General Election to Assembly Constituencies, May 2026 (results.eci.gov.in), and press compilations; compilations differ on vote shares.
39. Prasar Bharati News Services, 23 February 2026 (largest and smallest electorates in Chennai district). The ratio and the comparison with the State average are the authors' calculation.
40. Reports of the all-party meeting of 5 March 2025, Chennai, in The Daily Pioneer and The South First.
41. Reports of the same date in The South First and Organiser on the arguments and on the Union Government's stated position.
42. Representation of the People Act 1950, s 8A; ECI final order of 11 August 2023 (n 22); LiveLaw reports of 2023 on the draft proposal and hearings.
43. Writ petitions of Assam opposition leaders, July 2023, as reported in The Leaflet and LiveLaw.
44. Supreme Court order of 24 July 2023 (Chandrachud CJI, Pardiwala and Misra JJ), as reported in LiveLaw and Deccan Herald.