

Report of the Regional Workshop of Experts on

# INCLUSIVE ELECTORAL PROCESS

*5-7 December 2007*

KATHMANDU, NEPAL





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South Asians for Human Rights

**Published by:**

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**Printed and published in Sri Lanka 2008**

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**ISBN-978-955-1489-08-3**

Printed and bound in Sri Lanka by Wits Associates (Pvt) Ltd.

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## ACKNOWLEDGMENTS

South Asians for Human Rights (SAHR) would like to thank the Ford Foundation for financially supporting the workshop and publication.

SAHR is grateful for the guidance and support provided by Co-Chairperson Dr. Hameeda Hossain and Dr. Devendra Raj Panday.

Special thanks are due to SAHR Nepal chapter which assisted the Secretariat with all logistic and organizational matters related to the workshop, and Secretariat staff in Colombo.

Finally, SAHR notes with appreciation the contribution of the experts and workshop participants.

## **List of Abbreviations**

ANCL	- Associated Newspapers of Ceylon
APRC	- All Party Representative Committee
BDTP	- Broadly Defined Terrorism
BJP	- Bharathiya Janatha Party
CA	- Competent Authority
CE	- Commissioner of Elections
CEC	- Chief Election Commissioner
CMEV	- Centre for Monitoring Election Violence
CPA	- Comprehensive Peace Accord
CPMF	- Central Para Military Force
CPN-D	- Communist Party of Nepal - Democratic
CPN-ML	- Communist Party of Nepal - Marxist and Leninist
CPN-UML	- Communist Party of Nepal- United Marxist and Leninist
CTG	- Care taker Government
CTP	- Core Terrorism Prone
EC	- Election Commission
FpP	- First – Past - the – Post
HoR	- House of Representatives
IC	- Interim Constitution
IG	- Interim Government
IP	- Interim Parliament
LFO	- Legal Framework Order
LPR	- List proportional Representation
LTTE	- Liberation Tigers of Tamil Eelam



MJF	- Madhesi Janadhikara Forum
MMP	- Mixed Member Proportional System
MP	- Member of Parliament
MS	- Mixed Electoral System
MTP	- Medium Terrorism Prone
NA	- National Assembly
NC	- Nepali Congress
NCD	- Nepali Congress- Democratic
NCP	- Nepali Communist Party
NP	- Nepali Congress
NSP	- Nepal Sadbhawana Party
NWPP	- Nepal Workers and Peasants Party
PR	- Proportional Representation
PVT	- Parallel Vote Tabulation
RJM	- Rastriya Jana Morcha
RLPR	- Regional List Proportional Representational System
RPP-C	- Rastriya Prajatantra Party- Chanda
RPP-T	- Rastriya prajantra Party - Thapa
SAARC	- South Asian Association for Regional Cooperation
SHED	- Society for Environment Human Development
SJMN	- Samyukta Jana Morcha, Nepal
SLBC	- Sri Lanka Broadcasting Corporation
SLFP	- Sri Lanka Freedom Party
SLRC	- Sri Lanka Rupavahini Corporation
SPA	- Seven-Party Alliance

- STV - Single Transferable Vote System
- TIB - Transparency International Bangladesh
- TU - Tribhuvan University
- UNP - United National Party
- UPFA - United Peoples Freedom Alliance

## FOREWORD

This report is the outcome of the three day regional workshop convened by SAHR from 5-7 December 2007 in Kathmandu, Nepal with experts in the fields of human rights and electoral process. Experts invited from the region included a mix of election commissioners, political party representatives, election monitors, journalists and lawyers. The workshop identified possible interventions SAHR, as a regional human rights collective, could undertake in the area of electoral reform.

The objectives of the workshop were as follows:

- To identify possible interventions by SAHR in electoral reform in the region
- To share experiences within the region on conducting free and fair elections
- To examine mechanisms including modern technology that can make the electoral process transparent
- To convene a regional pool of experts on electoral process and election monitoring

As a precursor to the workshop the SAHR Secretariat prepared a background paper which set out issues that would be the focus of the Regional Workshop of Experts on Inclusive Electoral Processes. The first section of the paper provides a short background on each country which contextualises the issues that are discussed in the second section; it flags important issues and provides relevant country examples. The paper was compiled by Ambika Satkunanathan with inputs from SAHR's country chapters.

This report is not intended to be a narrative of the proceedings of the workshop. Instead, based on the presentations and discussions that took place at the workshop, this document identifies specific problems and provides recommendations.

**SAHR SECRETARIAT**

May 2008

## BACKGROUND PAPER

### Context

At present nearly all South Asian countries under discussion are undergoing some form of electoral reform or are in the midst of preparing or pressing for elections. In nearly all countries the reform process is the result of continuous campaigning and lobbying by civil society groups, and in some cases mass citizen protests. Recent experience illustrates that elections have come to be viewed merely as a means of capturing power through political maneuvering with little regard to the integrity of the electoral process, cost of elections or the citizen's right to franchise. The Sri Lankan experience in 2004 illustrates this. When cohabitation between the President, a member of the Sri Lanka Freedom Party (SLFP), and the Prime Minister, a member of the United National Party (UNP) who commanded a majority in parliament, was breaking down, the President called for elections using the power vested in her by the Constitution to dissolve parliament any time after one year of the life of the parliament. The election, which cost nearly 9 million rupees<sup>1</sup>, gave the President's party a majority in parliament and was blamed for contributing to the derailment of an ailing peace process.

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<sup>1</sup> Dr.S.Chandrasekharan, 'Chandrika Takes a Gamble in Ordering Elections: Update 59, *South Asia Analysis Group*, 1.03.2004, at [www.saag.org/notes3/note214.html](http://www.saag.org/notes3/note214.html).

There are many loopholes in the electoral laws and rules of each country which need to be addressed through reforms. Even when there are legal provisions to ensure a free and fair election they are not implemented effectively. As most South Asian countries face common problems with regard to the electoral process, this workshop can be an opportunity for comparative analyses and exploration of problems and solutions.

## **Bangladesh**

In Bangladesh there was concern that parliamentary elections in January 2007 would not be free and fair because the outgoing government formed by the Four Party Alliance, headed by the Bangladesh National Party, made partisan appointments to the constitutional posts of the Chief Advisor to the Caretaker Government and the Election Commission without consultation. The preparation of the voter list by the Election Commission, in blatant disregard of Supreme Court directions, was also found to be flawed. Protests by opposition parties and their threats to boycott the polls scheduled for 22 January led to state repression and political violence. On January 11, 2007, the President resigned as Chief Advisor, declared an emergency and appointed a new Caretaker Government led by Fakhruddin Ahmed. These steps were backed by the military, which was asked to come in aid of the civilian government. Elections have been postponed to late 2008 to enable the CTG to undertake substantive electoral reforms. According to the Constitution, a Caretaker Government is supposed to be non-partisan (Article 58) with a Chief Adviser and 10 other Advisers who exercise executive power after the expiry of the Parliament. The Caretaker Government, as an interim government, is supposed to discharge only routine functions and ordinarily is not expected to make policy decisions. The dissolution of the CTG will take place on the date the Prime Minister assumes office.

## Pakistan

In Pakistan, after General Pervez Musharraf seized power in 1999, several amendments were made to the Constitution which subverted the electoral process and denied citizens their right to franchise. Musharraf appointed himself President on June 20, 2001 and sought to legalise his election as President for a 5-year term through a referendum on April 30, 2002. The same year when the pro- Musharraf PML(Q) party failed to win an outright majority in the Lower House (National Assembly) of Parliament Musharraf withheld enforcement of the anti-defection law and encouraged opposition parliamentarians to leave their party and lend their support to him whereby he ensured that his party's nominee for Prime Minister won by a single vote majority. Through various political deals with Islamic parties Musharraf also pushed through Parliament the Seventeenth Amendment, which retroactively legalized his 1999 coup. Musharraf's candidacy for the 2007 Presidential elections was challenged in the Supreme Court on the basis that his position in the army contravened Article 41 (1) of the Constitution which states that, "The president shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services". By virtue of holding the office of the Chief of Army Staff, Gen Musharraf could not stand for elections or hold the position of President. Fearing the Supreme Court would rule against him, Musharraf declared a state of emergency and appointed a new Chief Justice. After the Supreme Court validated his election Musharraf gave up his uniform on 29 November prior to taking oath as President for a five year term. At present the media has been gagged and restrictions imposed on canvassing for the general election scheduled to be held on January 8, 2008. With emergency in force, restrictions on media freedom and no independent judiciary, there are serious doubts that the upcoming elections will be free and fair.

## Sri Lanka

The enactment of the Second Republican Constitution in Sri Lanka in 1978 by the United National Party (UNP), which through a landslide victory commanded 5/6 majority in parliament, created a powerful executive and a new electoral system. The powerful executive created by the new constitution was not subject to checks and balances by the parliament, which considerably weakened the legislature. When J.R. Jayawardena of the UNP was elected President in the first presidential election in 1982 he eschewed parliamentary elections, which were expected to follow the presidential elections, and instead held a referendum to extend the life of the parliament. This was due to the fact that the UNP would have lost its 5/6 majority if elections had been held on the proportional representation system introduced by the 1978 Constitution. President Jayawardena therefore used the referendum, a democratic tool which ‘has an inherent legitimacy’<sup>2</sup> and ‘involves the direct participation of the people on a given issue’<sup>3</sup> in an undemocratic manner to railroad the democratic process – a perfect example of the use and usurpation of constitutional ideology.

The proportional representation electoral system introduced by the 1978 Constitution, which makes the candidate dependent on the party for nomination, solidified party loyalty and diminished legislator responsibility to the electorate and voter. In an atmosphere where there was already a lack of internal democracy within parties this has led to the dominance of the party over the processes of nomination. Hence, this system diminished the independence of the parliamentary member who was forced to vote with the party. Further, section 99 (13) of the Constitution states that a member of parliament who ceases to be a member of a recognized political

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<sup>2</sup> Radhika Coomaraswamy, ‘Legitimacy and the Sri Lankan Constitution’, *Ideology and the Constitution: Essays on Constitutional Jurisprudence*, Konark Publishers, 1997, p. 75

<sup>3</sup> Ibid.



party due to resignation, expulsion or any other reason is liable to lose his seat in parliament. This provision further erodes the independence of members of parliament and has enabled the executive, who is a member of the party that commands a majority in parliament, to have greater control of the legislature. The legislature therefore has become the puppet of the executive and it can be argued the members represent the President and not the people.<sup>4</sup>

In the past two decades electoral reform in Sri Lanka has been wedded to efforts to resolve the armed conflict with the Liberation Tigers of Tamil Eelam (LTTE). We have seen several aborted peace talks and linked constitutional reform processes, the most recent being the 2002 Ceasefire agreement between the government and the LTTE.

In 2003 the government appointed a Parliamentary Select Committee on Electoral Reforms which submitted a report in 2004. In 2006 a second committee was appointed to further consider the issue and presented its interim report in 2007. The report proposes a mixed system (first-past-the post and proportional representation) for parliamentary and provincial council elections and the re-introduction of the ward system for local government elections. The most recent effort to reform the electoral system is as part of the process to formulate a political package to resolve the ethnic conflict through the All Party Representatives Committee (APRC) appointed by President Mahinda Rajapakse in January 2006.

## Nepal

Following Jan Andolan II, Nepal has seen fundamental changes in its political structure with the curtailment of the powers of the King and the promulgation of an Interim Constitution on January 15, 2007. It is

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<sup>4</sup> Ibid.

envisaged that this would be the first step of a process which culminates in substantive constitutional reform, including the transformation of the state from a unitary monarchy to a federal republic. The Maoists who entered the peace process by accepting, among other things, the values of universal human rights and competitive multiparty democratic process are a part of the interim government in charge of seeing through the transition, including the election of a Constituent Assembly. The Constituent Assembly elections were scheduled to be held on June 20, 2007 but were postponed due to various reasons such as delay in delimiting constituencies, failure to finalize polling laws and codes of conduct and inability to mobilize staff and organize polling centres. In September the peace and reform process hit a stumbling block as the Maoists pulled out of the interim government expressing dissatisfaction and making demands concerning various aspects of governance and the peace process.

The lack of consensus between the Maoists and the other parties, mainly the Nepali Congress, whose Chairperson is also the Prime Minister, is now a major road-block to advancing political reform. There is substantial agreement that one of the mandates that resulted from Jan Andolan is the restructuring of the state within the framework of a federal republic. The Maoists are demanding that Nepal be declared a republic prior to the elections, arguing that there cannot be free and fair elections as long as the institution of monarchy, which has traditionally enjoyed the support of the Army, exists in one form or another. The other parties argue that the legitimate process would be to allow the decision to be taken at the “first meeting” of the Constituent Assembly, as per the initial agreement between parties.

For the purpose of the workshop, the disagreement regarding the electoral system is more critical and challenging. Earlier, all parties including the Maoists had agreed upon a mixed electoral system with 240 of the 497 member house elected under the first-past-the-post system, 240 elected

under proportional system and 17 nominated. Apart from the Maoists, various other interest groups including the Madhesis of Tarai, the ethnic and indigenous people, women, the *dalits* and various others including sections of civil society have been agitating for a proportional electoral system rather than a mixed system. They claim that a proportional system is the only way to ensure an inclusive Constituent Assembly that represents the diverse groups including those who have been subject to historical exploitation and marginalization. At this juncture, the announcement of the date for the Constituent Assembly elections depends on agreement between the political parties.

## **Maldives**

The Constitution of the Maldives provides for two categories of elections, the Presidential Elections and Parliamentary Elections, which are held every five years. The office of the President is omnipotent and legislative power for all intents and purposes is vested in the President. Maldives comprises of 20 administrative atolls and the capital city. The Parliament consists of forty two members “elected” by a general public vote and eight members “appointed” by the President. Any person qualified to be elected as a member of the Parliament has an equal right to elect. The Parliament consists of 2 members elected from each Atoll (constituency) and 2 members from Male’ (capital city). 8 members are appointed directly by the President. The Constitution states that the names of those qualifying to be elected as President will be notified to the Speaker of the Parliament by the Commissioner of Elections (CE). It does not however stipulate whether the CE calls for nominations, and if not, the process used to choose candidates, required qualifications etc. The Speaker of the Parliament within three days of receiving notification from the Commissioner of Elections is required to convene a meeting of Parliament and announce the names of the candidates. From among these names the Parliament selects by secret ballot a name to be nominated to the general

public for the vote for President. In 2004, President Gayoom announced that he would initiate substantive constitutional reforms but the process has been stymied by internal squabbling in the Special Majlis. However, it is expected that the reforms would be completed and will take effect in 2008, prior to the presidential elections.

## **Issues**

State reform in South Asia is often undertaken in a top-down, non-participatory manner with the public and sometimes even Parliament not given an opportunity to participate. The 'process' to bring about state reform is as important as its substance. A participatory process can create space to rise above political manipulations and move the state reform project forward, even in the event of opposition by political parties, i.e. it can contribute towards shrinking the space available for political parties to dictate the terms of the state reform process.

In Bangladesh the Caretaker government has initiated a process of electoral reform and has so far consulted with many civil society groups and political parties. It has not yet been able to meet with the BNP, the last party to form the government because of internal factions and the incarceration of several leaders on charges of corruption. Although the government claimed that the recent partial lifting of the ban on "indoor" political activities in Dhaka was in part to enable discussion between political parties and the Election Commission, parties have pointed out that allowing meetings of no more than 50 members does not permit broader discussions amongst members.

## Registration Process

One of the themes of the workshop is accountability in the preparation of electoral registers. In Bangladesh for instance, voter registration in preparation for the 2007 polls became controversial because of the exclusion of a large number of voters (12 million names) from the electoral roll. Further, the Election Commission did not comply with directions from the Appellate Division to prepare registers on the basis of the old registers. In Pakistan there were claims that at least 19.75 million voters were not registered in the new electoral rolls prepared for the 2007 election due to the existence of two separate data bases giving contrary numbers. Not surprisingly this has led to claims of political manipulation by the ruling party, particularly in the Punjab and Sindh provinces. The Legal Framework Order (LFO) promulgated by the President/Chief Executive (Chief Executive's Order number 7 of 2002) dispensed with the practice of separate electorates, in existence since 1985. For the first time in 17 years the Election Commission of Pakistan was entrusted with the preparation of a joint voters' lists of Muslim and non-Muslim citizens. The rule in Nepal which permits citizens to exercise their right to vote only in areas of their permanent residence unless they submit a migration certificate adversely affects those displaced by conflict.

In many instances the Election Commission does not provide adequate information to the public about the registration process, the need to register, and eligibility requirements. Sufficient information is not publicly available on how voters may be able to register or appeal to the Commission in the event they find errors in the voters' list. In Nepal for instance, according to the most recent opinion poll, 70% of those interviewed had only 'heard' about the Constituent Assembly elections, 31% had 'knowledge' about it and only 25% were deemed to have correctly understood the concept and process. In countries such as Nepal where people live in remote and hard to access regions the proportion of people who do not have adequate information regarding registration and voting is likely to be high. In Sri

Lanka, thousands of people, though registered, have found themselves being prevented from exercising their right to franchise. In 2005, the LTTE prevented those living in the North of the country from voting in the Presidential Election of 2005, in order to ensure the defeat of Ranil Wickremasinghe the UNP candidate who was expected to receive the votes of the minority Tamils who inhabit the North. The government too has been complicit in preventing people from casting votes. In 2001 by closing checkpoints the army prevented those in the LTTE controlled areas from entering government controlled areas and casting their vote. The Supreme Court in *Sothilingam Thavaneethan v Dayananda Dissanayake* found that the closure of the checkpoints was arbitrary and violated the freedom of movement, speech and expression, and the right to equality and equal protection of the law of the petitioners.

### **Inclusivity in the Nomination Process**

The workshop will also discuss the nomination process of candidates as it impacts upon the (under) representation of certain social and ethnic groups, such as women and members of backward and scheduled castes. For example, in Sri Lanka the current party system is not conducive to the participation of women as the party, which acts as the gate-keeper to the nomination list and does not nominate women because they are not perceived as winnable candidates.<sup>5</sup> The percentage of women in parliament remains the same, around 4%, since the introduction of universal franchise. Patronage politics and nepotism are the only means through which women have been able to enter politics and contest elections. In the recent past there have even been instances of husbands who were MPs in the central government nominating wives to the provincial councils as a

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<sup>5</sup> Kishali Pinto-Jayawardena & Chulani Kodikara, 'Sri Lanka: Past and Present', *Women and Governance in Sri Lanka*, International Centre for Ethnic Studies, 2003, pp 22-26.

means of strengthening their power base in the province.<sup>6</sup> Although most parties have women's wings their purpose is not to advance the political participation and representation of women but to mobilize a vote base during elections.<sup>7</sup> Of the 117 women candidates who contested in the October 2000 parliamentary elections, the People's Alliance fielded only 14 women candidates and the UNP 8.<sup>8</sup> Despite this, women are not able to eschew parties and run as independents as they do not have the 'money and muscle'<sup>9</sup> to get elected in a very violent electoral process. In Bangladesh every political party has a parliamentary board comprising of its president, secretary and senior members who nominate candidates for parliamentary elections. There is no systematic process in any party to enable the nomination of candidates from the grass roots. The process of *mononoyan baniyya* (selling nominations for money) is common in Bangladesh too. It has been alleged that often persons are nominated on the basis of their donation to party funds or their capacity to spend money in the campaign while those who are dedicated party activists in their constituencies are ignored.

There are also instances where stipulated qualifications to stand for elections result in the exclusion of large sections of the population or discriminate against minority groups. In Pakistan, a person has to be a graduate to contest any election, i.e. hold a bachelors degree, or any other degree recognized or equivalent by the University Grants Commission. In a country where a large proportion of the population does not have access to higher education this provision effectively bars the participation of the majority of the population, particularly marginalized groups. The rules allow Madrassah certificates to be submitted in lieu of university degrees

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

and hence impacts favourably upon religious parties. In Maldives, a person has to be a male Sunni Muslim and capable of reading and writing Arabic, Dhivehi script and numerals to qualify as a member of Parliament. In the new Constitution which is expected to come into effect in 2008, the clause prohibiting women from standing for office has been removed.

The discrimination against Ahmadis, whose status as non-Muslims remains unchanged, continues in Pakistan. Ahmadis, who after being declared as members of a religious minority have virtually abstained from all elections since 1977, are required by the law to submit an affidavit before the returning officer about his/her faith. If someone objects to his/her candidature on the plea of religion, the person has to sign a declaration that s/he is not an Ahmadi. If the candidate does not do so, the nomination papers will be rejected and the candidate declared as non-Muslim. Since Ahmadis refuse to register as non-Muslims they do not take part in elections; they do not get enrolled as voters and do not field candidates for elections.

### **Political Parties and Campaign Expenditure**

The nature of the electoral system also impacts upon intra and inter-party dynamics. In Sri Lanka, while proportional representation has provided space for smaller parties to win seats it has also led to the erosion of unity within the party, especially due to the incorporation of the preference vote which encourages intra-party competition. The powerful executive who is in a position to dispense favours coupled with the proportional representation system, which makes members dependent on the party for nomination, has resulted in the party having a strong hold on the members of parliament who toe the party line, especially in the case of voting in parliament. Hence, there is no inner party democracy and no space for dissent.



In some countries party registration was made mandatory only recently, once again, with mixed results. In Bangladesh, political parties are encouraged by the Election Commission to register but compliance is not mandatory. Though parties are offered incentives such as free media coverage, as of 2003 only one party had registered with the Commission. In 2007, six parties registered, but this did not include the two major parties, the Awami League and Bangladesh National Party. In Maldives the formation of political parties was allowed only in June 2005. Currently, all political parties are required by law to register with the Office of the Commissioner of Elections. The criterion for establishment and registration of a political party is submission of personal information of 3,000 citizens who are signatories/members, to the Commissioner of Elections within nine months of application. A similar provision exists in the Nepali Interim Constitution which discriminates against those wishing to form new political parties as it requires new parties, i.e. parties not already represented in the Assembly to submit at least 10,000 signatures of registered voters.<sup>10</sup>

Campaign expenditure plays a vital role in the ability of candidates to contest elections. In many instances, the type of electoral system in place requires candidates to raise considerable amounts of money, which prevents women and those from marginalized groups from actively participating in the political process. Another result of the increase in campaign expenditure is corruption and the entry of big business and organized crime. In Bangladesh for example, major political parties tend to give nominations to businessmen (71% of those elected to Parliament in 1996 were businessmen. The figure in 2001 is more than 80%). Though the Representation of People Order, RPO, 1972, the main legal instrument regulating elections, requires contesting political parties in Bangladesh to maintain bank accounts and a proper record of income and expenditure from the day the election schedule is announced until the completion of election in all constituencies, implementation is lax.

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<sup>10</sup> Article 141 (5)

Further, there are no requirements for public declaration of the accounts of political parties. Individual candidates, however, are required to disclose campaign funds and submit a statement of expenses at the conclusion of the elections, (the ceiling being Tk 500,000) but there is no process to take action against those who do not comply. Hence, we need to explore means through which expenses can be minimized and violations are suitably addressed by the law.

Some South Asian countries have introduced such legislation with mixed results. In 2001 in Bangladesh, a Presidential Ordinance was promulgated with the agreement of the Caretaker Government to limit political party expenditure and candidates were required to file expense returns within 15 days of the announcement of election results. However, only 74 candidates complied with this requirement.<sup>11</sup> The proposal put forward by the Law Commission of India could be useful in this regard.<sup>12</sup> In order to introduce transparency and openness in the financial matters of political parties the Commission recommended that audited accounts be submitted to the Elections Commission before the prescribed date every year, with the Commission being required in its turn to publish said accounts for public information. The judgment of the Supreme Court in *Gajanan Bapat v. Dattaji Meghe*<sup>13</sup> backs the recommendation of the Commission. In Nepal, though there are provisions which require candidates to maintain a statement of expenses which they have to submit to the Election Commission, the Commission has not taken action against those who failed to comply or verified submitted accounts. Further, it has been argued that since the ceiling on spending imposed by the Commission is unrealistic, maximum

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<sup>11</sup> Fair Election Monitoring alliance, Observation Report on Bangladesh Parliamentary Elections, 01 October 2001, Dhaka: FEMA, June 2002

<sup>12</sup> Law Commission of India, One Hundred Seventieth Report on Reform of the Election Laws, May 1999.

<sup>13</sup> 1995, SCC, 347

amount of NRs 275,000, it is unlikely that any candidate would submit genuine statements. As there is no transparency with regard to campaign donations the requirement re submission of accounts is rendered pointless. One way of ensuring compliance with election laws would be to make the party accountable for violations. For instance, if current election laws do not have sufficient deterrent impact on the party, as opposed to an individual candidate, penalties could be imposed on political parties for the corrupt and illegal practices of individuals acting as agents of parties.

### **Election Malpractice**

One of the most common forms of election malpractice in the region is the misuse of public resources during elections, particularly the use and abuse of public media by governments in power. In Sri Lanka enforcement provisions relating to directions by the Election Commissioner prohibiting the use of any movable or immovable property belonging to the State or any public corporation by any candidate, political party or independent group as well as for the purpose of promoting or preventing the election, are non-existent in the 17<sup>th</sup> Amendment to the Constitution, which only imposes a vague duty on every person or officer in whose custody or control such property lies, to comply with and give effect to such direction.

In the current context the use of censorship laws to restrict the ability of rival parties to engage in election campaigning also requires further discussion. In Bangladesh a state of emergency was declared on Jan 11 2007 and a total ban imposed on political activities. The ban was partially lifted in September this year when the government lifted restrictions on indoor political activities in Dhaka in order to 'create an environment conducive to talks with political parties.' The partial lifting does little to enable political parties to function actively as it allows a political party meeting only for the purpose of discussing internal party reforms in light of the proposed electoral reforms. Further, parties are required to inform the police about

all meetings in advance and limit the gathering to fifty persons. Penalty for contravention is a prison term of two to five years and fines.

### **The Role of the Election Commission**

The autonomy of an election commission depends a great deal on whether power is concentrated in the legislative or executive branches. In instances where there is a powerful executive or where there is no separation between the executive and legislative branches the likelihood of the independence of election commission being curtailed is high. In many South Asian countries Election Commissions are viewed as partisan bodies allied with the state, which most often rubber stamp flawed elections. The politicization of every aspect of the establishment and functioning of the Election Commission contributes to this public perception. In Pakistan, the Election Commission is appointed by the President 'in his discretion' which places its independence in question. The EC does not enjoy financial autonomy and has to depend on the release of government funds and is empowered to make rules only with the approval of the President. Further, the Chief Election Commissioner (CEC) is known to be always appointed from amongst judges who are supportive of the government of the day. The appointment of Justice Irshad Hasan Khan, who conducted the 2002 elections, may be taken as an example. He was the Chief Justice of Pakistan and legitimized the military take-over of October 12, 1999 in a constitutional petition and validated all subsequent actions of the Musharraf regime. Upon his retirement, Justice Irshad was appointed as the CEC in 2001 and it was commonly believed he was 'rewarded' by Gen Musharraf for his 1999 verdict. Further, the fact that members of the EC, returning officers and members of election tribunals are all drawn from the judiciary, leads to a conflict of interest, as cases of violation of election laws are brought before the judiciary.

An example of executive interference with the functions of the Elections Commission and the electoral process is the incident in 1998 where Sri Lankan President Chandrika Kumaratunge used the power in section 7 of the Public Security Ordinance, which decrees that emergency regulations prevail over all other laws except the Constitution, to declare an island wide state of emergency.<sup>14</sup> Following this the President declared that the Election Commissioner's notice under section 22 (1) of the Provincial Councils Act, under which the Commissioner gave notice of the date of the provincial polls, was inoperative. The declaration by the President stated that the Election Commissioner's notice would remain inoperative as long as the state of emergency prevailed. The Supreme Court ruled that the interference by the Central government in the functioning of Provincial Councils was unconstitutional. It further found that the declaration compromised the independent constitutional status of the Election Commissioner and usurped the authority vested in him.<sup>15</sup> In Bangladesh no qualification criteria or selection procedures are stipulated for the appointment of the CEC or the Election Commissioners. The President appoints the CEC on the recommendation of the Prime Minister and consultation with the opposition parties or other institutions is not required, which places the neutrality of the constitutional post in doubt. Moreover, the Commission does not have an independent Secretariat, the authority to hire and fire, an independent budget, monitoring authority over political parties or a proper mechanism to resolve election disputes. In Maldives, the Election Commissioner is appointed by the President and can be removed in the same manner. No consultation between the President and Parliament is required prior to appointment or removal. The Nepali experience is similar and dissatisfaction has been expressed even with the Election Commission

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<sup>14</sup> Rohan Edrisinha and Sundari de Alwis "The Right to Vote: Its Impact on Election Laws in Sri Lanka" in *The Right to Vote and the Law Relating to Election Petitions*, Centre for Policy Alternatives, 2000, p. 26.

<sup>15</sup> Ibid.

appointed after Jan Andolan II with claims the public was given insufficient time, only three days, to make submissions or express their opinions.

Election violence is very common in South Asia and will be the focus of the workshop session. In Sri Lanka, the large size of the constituencies and the introduction of the preferential system with the Proportional Representation system have made violence during elections more probable, as even candidates from the same party compete with each other to obtain the preference votes. This acts as a deterrent to the participation of many groups, such as women, from contesting.

## PERVERSION OF THE ELECTORAL SYSTEM: COUNTRY EXPERIENCES

A discussion that seeks to study electoral reform by locating it within the process of democratization needs to also look at the structure and practice of public institutions. Most South Asian countries have established a large number of public institutions which most often due to factors such as lack of state interest and commitment and lack of funding fail to function effectively. As institutions and processes can be hijacked by political parties it is important to talk about the practice of institutions as much as their form. Moreover, the quality of persons appointed to these institutions is as important as the structures themselves.

The PR system should not be viewed as a panacea to problems relating to representation. In cases where political parties nominate candidates for instance, party bosses often place their names on top of nomination lists and those who want a place on the list will be forced to be loyal to the party bosses rather than to their constituency.

The lack of gender representation in the electoral process is a problem common to all countries in South Asia and is not merely as an issue of electoral reform but also social mores.

## **Bangladesh**

In Bangladesh the common perception is that elections constitute democracy; the public fail to understand that democracy is not restricted to the mere holding of elections. The system of the Care Taker Government (CTG) has also failed to function effectively due to failure on the part of the public to internalize principles of democracy. The decision making process lies in the hands of a powerful few in Bangladesh and often compromises are made for personal interests at the cost of the national interest.

## **India**

A large number of candidates in India have criminal cases pending against them. Bihar for instance has 42% candidates with criminal records. The crimes range from murder, attempted murder, rape and dacoity. Due to the size of the country in India each state assembly has a large number of seats and it is not uncommon for national level leaders to be unaware of the identity of the candidate contesting for his/her party since a general secretary is appointed to manage the process. Often the general secretary is also an outsider. It is therefore common for nominations to be auctioned and sold to the highest bidder. At present in the Lok Sabha 2/3 members are first time candidates of whom more than 95% are clean.

In urban areas in India such as Delhi, Hyderabad, Ahmadabad and Bangalore there is a 20-30% error in the voter rolls which is not due to a systematic attempt to exclude certain groups but because of migration. It is also the case that some people from backward communities are not allowed to vote even if they are on the roll.

Surveys have shown that Indian society is deeply divided on the issue of state funding for political parties. It is argued that state funding is important to prevent the process being hijacked by big business. On the other hand, pragmatists argue that parties consist of thugs and criminals



who would most likely accept state funding and at the same time also use illegal external funding. There is no limit on the spending of political parties. Limits have been imposed only on the expenditure of candidates.

## **Nepal**

Muslims and backward communities are excluded from the electoral process in Nepal. This also raises questions regarding the categorization of communities, i.e. which community should be defined/construed as backward and on what basis?

## **Pakistan**

In the state of UFP, due to Taliban control and intimidation all schools and colleges have been closed and women received letters ordering them not to venture out of their homes, which in effect will prevent them from exercising their right to franchise.

The requirement that a person produce an ID to register to vote discriminates against many people who don't have a permanent address and hence are barred from voting and remain outside the electoral system. Often photo IDs are not examined properly and the ID cards of many women do not have photos.

The law which states that only graduates are eligible to stand for elections contravenes the democratic principle that everyone who has a right to vote should be able to stand for elections. A petition challenging the acceptance of Madarassah certificates as the equivalent of university certificates was filed in the Supreme Court but has still not been heard.

An innovation in 2002 led to an increase in the number of women's seats, which despite failing to meet the demands of human rights groups

was generally viewed as a positive step. 2005 saw a regression with the withdrawal of the seats that were given to women in local bodies. With regard to possible political support and voter turnout in Pakistan it is commonly assumed that if a political party has a certain number of male votes then they'd have the same number of female votes, as it is assumed that a woman will vote in the same manner as her husband.

Political parties are viewed as the weakest link in the democratic process in Pakistan; there is no internal audit or democracy within political parties. As party leadership is in a few hands intra-party elections are rendered meaningless. Further, frequent changes to the law make it difficult to establish a system of accountability. According to the law parties are allowed to raise money through party membership but since parties have very few card carrying members due to poverty, they receive an extremely small sum in this manner. The bulk of the money raised by the parties goes into the coffers of the leaders of the parties.

The majority of people seeking nominations shop around. For instance there are certain persons who have joined each party thrice. The party nomination system too is not transparent.

It is also common for candidates in power to publish advertisements at government expense. For instance, the Punjab CM initiated a literacy campaign before the election so that his face would be on every billboard in the state. The use of religion in campaigns is also common.

## **Sri Lanka**

The PR system has had a positive impact by increasing minority representation in the political system. On the other hand as the party has more control over the nomination process in the PR system the link between the candidate and the electorate has been eroded.

Political participation and representation of women is limited in Sri Lanka. Even the Parliamentary Select Committee which was established to propose reform to the electoral system failed to heed the requests of women's groups to provide reservation for women.

With regard to the independence of the election holding authority, the Seventeenth amendment to the Constitution was flouted by the executive and as a result an Independent Election Commission was not established. Since the EC was not appointed the former Election Commissioner continues to function. The entire structure is in danger of collapsing in the event of his retirement or death.

Political parties do not share the audited statement of accounts of party expenses with their members at the general meetings or conventions. In recent years a considerable amount of underworld resources have been seeping into political campaigns.

The emergence of religious fundamentalism has had an impact on the handling of women's issues by the legislature. There have been instances where progressive political trends in government were high jacked or subverted by the intrusion of religious fundamentalism. For instance, Buddhist priests who entered parliament through the right-wing Sinhala nationalist party, Jathika Hela Urumaya (the national heritage party) vehemently opposed the Prevention of Domestic Violence Bill when it was presented in parliament on the basis that the Bill adversely affected the values of the "Sinhala" tradition as the law was westernized and not suitable for Sri Lankan culture.

Widespread abuse of state resources and state media during elections, particularly by the ruling party is common in Sri Lanka.



# BEST PRACTICES AND RECOMMENDATIONS

## **Best Practices**

### **The Conduct of Elections**

Delimitation in India is undertaken by an independent authority, the Delimitation Commission. According to the Constitution even the Supreme Court does not have the authority to intervene with the recommendations or decisions of the Delimitation Commission.

In India each candidate is allowed to have only one polling agent inside the polling booth. This person can be relieved by another person but persons cannot be changed after 3 p.m. because it is during that period, when most of the votes have been cast, that the names of those who have not voted can be taken out in order to enable the casting of fake votes.

Vote counting in India takes place two days after the election. Within the two days the EC obtains reports from all electorates and in the event of reports of malpractices another election is scheduled. All votes are counted only after the re-election is complete to ensure that the voting trend is not made public in case it impacts on the vote.

## **Civil Society Initiatives**

In 2005 in Bihar after 4 years of work, around 60-70 civil society organisations together with the media advocated for reforms to decriminalize politics. Media scrutiny was extremely intense in Bihar and the media used research carried out by civil society and the Election Commission to produce public awareness programs on the criminalization of politics. Information was gathered through reports by Election Watch and circulated to Supreme Court judges, High Court judges, senior civil servants, the police etc. As a result, most political parties became aware that their conduct was being watched. In response to civil society advocacy efforts the Chief Minister designate gave an undertaking he would not appoint persons with criminal records, and for the first time in more than thirty years Bihar had a cabinet with no criminal records.

## **Political Party Reform & Funding**

India has found the right to information a useful tool in publicizing the financial statements of parties and ensuring transparency in funding and financial management of political parties.

With the aim of preventing private capital funding elections, state funding in the form of state TV and radio time was made available to political parties contesting in the Constituent Assembly elections in Nepal.

A decision of the Supreme Court of India recognizes the authority of the EC to call for the accounts of political parties including their receipts and expenditure during elections<sup>16</sup>.

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<sup>16</sup> *Common Cause v Union of India* AIR 1996 SC 3081.

## **Criminalisation of the Electoral Process**

The Indian Supreme Court has held that voters have the right to information about criminal antecedents, assets and liabilities, and educational qualifications of candidates who seek their votes. The Election Commission has made a proposal to the government that in cases where an elected member is charged with a serious crime (penalty of more than 5 years) the person should be suspended for the duration of the case.

A landmark Supreme Court judgment stated that all candidates have to declare their financial and criminal records and would be disqualified in the event they're convicted of a crime. The Supreme Court also required candidates to declare pending cases because cases often run for decades. When the first Supreme Court judgment on the subject was given the Government of India appealed against it on the basis they did not wish to make such cases public. After they lost the appeal in the Supreme Court the government introduced a bill to overturn the judgment of the Court. The Court struck down the amendment on the ground it was unconstitutional. At the same time civil society formulated a strategy at the grassroots level and began working in every state in the country with partners. As part of this process they established citizen election committees with non-partisan members such as retired civil servants, judges etc., i.e. people known for their honesty and without any political affiliation. Hence began Election Watch which was carried out in 15 to 20 states.

In India the two major parties, the Congress and the Bharathiya Janatha Party (BJP) have begun inner party scrutiny which requires first time candidates to submit an affidavit to party leaders on their criminal records and pending cases before their candidature is considered.

## **Model Code of Conduct**

In India the Model Code of Conduct has no statutory standing. The Supreme Court however has given a potent weapon to the Election Commission to enable it to enforce the provisions of the Model Code. It allows the EC to take remedial measures and steps as the Commission may deem fit to achieve the objects of the Code. The Supreme Court held that the Model Code can be enforced by the Election Commission under its plenary powers under Article 324 from the date it announces the schedule for a general election or a bye-election<sup>17</sup>, whereby it acts as a watchdog to ensure, particularly, that the ruling parties at the Centre and in the States do not misuse their official position and official machinery for their partisan ends.

## **Election Commission**

In India the law provides that officers and staff of the Central and State Governments when deployed on election duty become subject to the superintendence, control and discipline of the Election Commission. The Election Commission has the power to transfer/suspend an officer found wanting in the performance of his election duties and recommend disciplinary action against him to the government concerned. The government has to inform the Commission within six months of the action taken against the delinquent officer.

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<sup>17</sup> *Union of India v Harbans Singh Jalal and Ors* SLP (Civil) No.22724 of 1997 before the Supreme Court, decided on 26<sup>th</sup> April, 2001.



## Recommendations

Building public confidence in electoral processes must include:

- setting up an effective and impartial election apparatus that is open and transparent;
- involving the political contestants in all basic elements of the election process;
- opening the election process to the observation of citizens and civic organizations;
- convincing the electorate of the importance of the elections, that their personal safety and ballot secrecy will be secure and the results of their voting will be respected; and
- ensuring a trustworthy independent monitoring process

Transparency in an electoral sense has numerous aspects:

- 1) It applies to allowing political contestants to view all aspects of electoral preparations, from the drafting of election laws and selection of electoral administrators to the tabulation of results and resolution of electoral complaints.
- 2) It also applies to allowing the public to witness the steps of the election process, usually through nonpartisan domestic and international election monitors and news media.

## **Reform**

- Since the effective functioning of electoral systems, such as the proportional representation system, depends heavily on the democratic functioning of political parties, civil society should lobby for reform of political parties.
- Ensure that a constitution drafting process is legitimate and includes citizen participation.
- Generate discussion on the practices of institutions as much as their form.
- Campaign for strong and independent Election Commissions.
- Take legal action where possible to protect people's right to information, right to free choice and franchise.
- Focus on one or two issues for advocacy. Choose issues with which the vast majority of citizens can identify, such as transparency in political party funding and criminal records of candidates.

## **Conduct of Elections**

- Ensure that the voter list is inclusive and accurate.
- Formulate a code of conduct to be enforced by an independent Election Commission.

## **Minorities, Women and other Marginalised Groups**

- Initiate comprehensive social policies in the areas of health, education and employment to redress the marginalization of minorities and women from the political process.
- Contain criminalization of politics as a strategy to enable increased participation of marginalized groups.
- Democratize political parties to increase the participation of marginalized groups. Political parties should encourage the participation of minorities.
- Introduce a quota to ensure political representation of minorities and marginalized groups.

## **Funding of Political Parties and Campaign Expenditure**

- Use the right to information as a tool in publicizing the financial statements of parties in order to achieve transparency in funding and financial management of political parties.
- Require candidates to declare their assets and liabilities before elections, ideally at the point of submission of nomination papers
- Require candidates and political parties to account for independently audited campaign expenditures during and after elections
- Place limits on election spending by candidates and parties

- Ensure that existing law regarding candidates with convictions or criminal cases pending against them, especially offences involving misuse of public property, are observed in a transparent manner.
- Assign oversight over all state-owned and government-controlled media institutions to the Election Commission or a Competent Authority automatically at the commencement of the election campaign.
- Institutionalize election expenditure as it is likely that political parties would be less corrupt than individuals.
- Impose statutory limits on the amount that can be spent on each activity, i.e. impose not only a limit on the amount spent but also specify the size of posters, hold campaign meetings with all candidates instead of allowing separate meetings for candidates etc.
- Require disclosure of expenses beyond elections.
- With regard to private funding of political parties make the process transparent and impose a ceiling on private sector funding.

## SAHR'S ROLE IN MONITORING ELECTIONS IN SOUTH ASIA

Since election monitors have to be harsh, regional monitors, such as SAHR, who want to be acceptable in all South Asian countries might not wish to take a critical stance. SAHR might therefore wish to extend pre-election assistance to the country to rectify the problems rather than undertake monitoring. SAHR could also study systems prior to elections and put forward recommendations.

The importance of long-term monitoring cannot be underestimated. Preparation for election sets the stage for election-day. In Bangladesh for instance there is pre-election, election-day and post-election violence. Post-election violence is most often worse than election-day violence. In this regard, SAHR could focus on one or two common regional pre-election issues. A common monitoring methodology for all SAARC members might also be useful.

In most South Asian countries numerous reports with recommendations for reforms to reduce malpractices have been produced. Yet, there has been limited or no implementation. Civil society too is not adequately mobilized to utilize the reports to lobby for reform. SAHR could fill this lacuna by studying the reports and utilizing the recommendations for advocacy.

Activities other than monitoring, such as training, are also important. SAHR for instance could provide technical support to regional monitors by using its network to assist countries find trainers/expertise.

# POSSIBLE INTERVENTIONS BY SAHR

## **Lobbying**

- Lobby for citizen participation in constitution making/electoral reform processes in South Asia.
- Build coalitions with like minded groups to expand impact. Involve as many groups as possible.
- Engage with concerned authorities and lobby to bring about systemic changes.
- Focus on the inclusivity of electoral process and rights of minorities.
- Focus on migrant issues, particularly related to women.
- Assist country chapters lobby for political party reform.

- Identify a couple of issues for long term observation instead of lobbying for wholesale reforms – choose issues with which the majority of people identify.

## **Regional Networking/Discussions**

- Initiate regional discussions not only on the structure and form of institutions but also their practices and how they relate to political practice.
- Use the SAHR network to assist countries find trainers/expertise by acting as catalyst and bringing people together.
- Organize a meeting of regional election commissioners, both present and past which could lead to the formation of an informal network of South Asian election commissioners. Also ensure the participation of other stakeholders in the meeting.

## **Research**

- Research should be conceived broadly and focus on a wide range of issues.
- Facilitate the establishment of a small unit to undertake research. It is also important to undertake empirical research.



- Due to the situation in Bhutan SAHR should give special emphasis to the problems faced by Bhutanese and undertake a fact finding mission to Bhutan.
- Conduct comparative studies on:
  - the impact of state funding to political parties
  - election laws in the region and how this has interacted with other structures such as the judiciary
- Study past reports and recommendations of election monitors and mobilize local SAHR chapters to lobby for reform and sensitize parliamentarians.
- Undertake research on:
  - proportional representation
  - the gap between law and practice

## **Election Monitoring**

- Since SAHR is a human rights lobby group it should not avoid monitoring elections. SAHR should focus on both long-term monitoring and monitoring on the day of the election.
- Lobby respective state parties to form an inter-governmental election monitoring mechanism. While this initiative is being undertaken efforts should be made to spearhead a citizens' initiative.

- Ensure that international standards are maintained at all times during election monitoring.
- Formulate a common methodology on election monitoring for all SAARC members.

## Annexure 1

# COUNTRY PAPERS & SESSION SUMMARIES

## Electoral Reforms as Part of State Reforms

### Electoral Reforms as a Component of State Reforms: a View from Nepal

*Birendra Prasad Mishra*<sup>18</sup>

#### Executive Summary

After a decade-old armed conflict, Nepal is in the midst of a peace process. In order to establish sustainable peace, it has to surmount several challenges simultaneously. Presently, of several important issues, two major issues have engaged the attention of all sections of Nepalese society - (1) Electoral reforms and (2) State reforms.

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<sup>18</sup> Birendra Prasad Mishra, PhD is retired professor of Philosophy, Tribhuwan University, Kathmandu, Nepal served as an Election Commissioner for six years(1994-2000) in Nepal. Mishra has published two books and several articles in journal, magazines and newspapers about the electoral process and current political issues.

Nepal has instituted some kind of electoral system or another at different points of time to elect representatives at the national and local levels. However, there is a deadlock amongst the seven-party alliance (SPA) with regard to the electoral system for conducting upcoming Constituent Assembly (CA) election. Although the Interim Constitution provides for a mixed electoral system (MS), the Interim Parliament has advised the government to adopt Proportional Representation (PR) for the same. In order to adopt the PR system instead of the MS, the Constitution has to be amended for which two-thirds majority is required, which is not possible till consensus among the SPA is attained.

This paper has been written with a view to furnishing some suggestions which may facilitate stakeholders to take a decision in choosing an electoral system acceptable to all. It could also facilitate the reformation of the State by way of restructuring to achieve the goal of creating a new Nepal.

## **Introduction**

Nepal is at a critical period of its history of about two and a half centuries. The transition was from the old feudal system to absolute monarchy, from absolute monarchy to constitutional monarchy, and now to a suspended monarchy that is about to be abolished. Nepal has been unable to function as a state as it failed to absorb all its cultures, ethnic groups, marginalized communities and religious and lingual identities within the state which provided grounds for the rise and continuation of sustained insurgency led by the Maoists. The electoral system of Nepal is on the threshold of change, from the traditional First-Past-the-Post (FPtP) system to a mixed one that may be adopted to conduct the forthcoming CA election.

## **1. State of the State**

Nepal was a feudal state until the mid twentieth century. Political changes started taking place with the independence movement in India. During the last sixty years there has been a continuous struggle for sharing political power.

Statecraft has been dominated by some communities from the very inception of the country about 238 years ago. It is significant to mention here that before 1951(2007 BS) the whole country was run on ad hoc basis as there was no Civil Service to implement the decisions of the government which were taken by the Rana rulers for 104 years. It was family rule. The monarchy was overthrown by armed revolution carried out by the Nepali Congress in September 1950. King Tribhuvan exiled himself in India based on the terms of an agreement signed in Delhi , all powers were restored to the king, who in turn, declared democracy with a promise to hold a Constituent Assembly election to frame a constitution to establish a parliamentary form of government in Nepal.

During 1951 to 1959, several nominated governments were formed by the king but due to instability, no government could function well nor was a solid foundation laid for an effective civil service until 1959. This government too could not survive as the elected PM was dismissed and parliament was dissolved in December 1960 by the king. After this short span of the democratic governance, the party-less Panchayat system was introduced and lasted for about three decades.

The multiparty system was restored with the People's movement in 1990, which continued until the king took all powers in 2002 and dismissed the elected PM. In short, it can be safely said that during the last six decades, neither the political institutions nor the civil service was allowed to grow and flourish and several groups and communities were marginalised.

**Table No: 1,**  
**Ethnic and Regional Analysis of Members of Parliament (1959)**

Level	Khasi	Mongol/ Kirat	Madhesi	Dalit	Newar	Others	Total
HoR or Lower House	64	17	24	--	4	--	109
Senate	23	4	3	--	6	--	36
Total	87	21	27	--	10	--	145
%	60.0	14.5	18.6	--	6.9	--	100

*Source: Neupane (2003), p-70*

**Table- 2**  
**Ethnic and Regional Analysis of Members of Parliament (1999)**

Level	Khasi	Mongol/ Kirat	Madhesi	Dalit	Newar	Others	Total
Upper House in 1999	35	6	7	4	8	--	60
Lower House in 1999	124	30	39	--	12	--	205
Total	159	36	46	4	20	--	265
%	60.0	13.6	17.4	1.5	7.5	--	100
Ethnic % in total population	31.6	22.3	30.9	8.6	5.6		

*Sources- Devakota, (2033); 79- 111&200-202, Khanal, (2055); 45- 95,  
 Dursanchar (2056) & NIMD, 1999; Neupane (2003), p-69-70.*

**Table No: 3,**  
**Caste/Cultural analysis of the Local Election, 1999**

Level	Khasi	Mongol/ Kirat	Madhesi	Dalit	Newar	Others	Total
Chairmen	50	13	7	--	5	--	75
Mayors & Dy.	57	10	24	--	25	--	116
Total	106	23	31	--	30	--	191
%	55.4	12.0	16.2	--	15.7	--	100

Sources-NIMD, 1999; Neupane(2003), p-70

**Table No: 4,**  
**Ethnic and Regional analysis of the Ministers in 1999 and 1959**

Level	Khasi	Mongol/ Kirat	Madhesi	Dalit	Newar	Others	Total
Ministers in 1999	13	--	3	--	3	--	19
M. of State	5	1	2	--	--	--	8
Asst. Ministers	2	3	--	--	--	--	5
Total	20	4	5	--	3	--	32
%	62.6	12.5	15.6	--	9.4	--	100
Ministers in 1959	10	5	3	--	1	--	19
%	52.6	26.3	15.8	--	5.3	--	100

Sources: *The Kathmandu Post*, July 1, 1999, Neupane (2003), p. 67.

Nepal has more than a hundred castes and ethnic communities and more than 92 languages (source-Census report-2001), different cultures and religions. Figures are given below to illustrate the exclusion of several communities.

### **Academic Field**

Tribhuvan University (TU) is the pioneer national institution in the country. In TU, in the year 1999, out of 9 Deans, the Khas had 4, the Madhesi had 1 and the Newar 4. The Khas occupied all 5 posts of Director. Of 169 posts of Professors, the Khas had 87, the Madhesi had 23 and the Newar 59. Amongst high-ranking administration officials, the Khas had 15, the Madhesi had 2 and the Newar had 7.

### **Commerce and Industry**

In the Nepal Chamber of Commerce in 1999, of 25 leading persons, the Khas had 4, the Madhesi had 11 and the Newar had 11. In the Nepal Udyog Banijya Mahasangh (Federation of Nepalese Chambers of Commerce and Industries) in 1999, of 17 leading persons, the Khas had 4, the Madhesi had 4 and the Newar had 9.

### **Judiciary**

In 1999, the condition of the Judiciary was not better than the above mentioned institutions as of 18 judges of the Supreme Court, the Khas had 16 and the Newar had 2 Judges. In the Appellate Court, of 107 Judges, the Khas had 74, the Madhesi had 16, the Mongol/Kirat had 2 and the Newar had 15. Of 110 District Judges, the Khas had 91, the Madhesi had 2, the Mongol/ Kirat had 2 and the Newar had 32 Judges.

### **Constitutional Service (post)**

Similarly, in the Public Service Commission, of 6 members, the Khas had 3, the Madhesi had 1, the Newar had 1 and the Mongol/Kirat had 1 member. In the Election Commission, of 6 Commissioners, the Khas had 3, the Madhesi had 1 and the Newar had 3 Commissioners. In the Commission for Investigation of Abuse of Authority, of



5 commissioners, the Khas had 3, the Mongol/Kirat had 1 and the Newar had 1 commissioner.

In the Planning Commission, of 6 members, the Khas had 3, the Madhesi had 1 and the Newar had 2 members. The data proves that no Dalit and hardly any member of indigenous groups have acquired any position in important institutions. (Neupane, 2003)

**Table No: 5**

**Ethnic and Regional analysis of high officials of various Services in 1999.**

level	Khas	Mangol/ Kirat	Madhesi	Dalit	Newar	Others	Total
Secretary or Equivalent	29	--	3	--	7	--	39
Secretary & Joint Sec. in Palace Services	20	--	--	--	8	--	28
Add. Sec. & Joint Sec.	69	1	3	--	21	--	94
Army (above Major Gen.)	7	--	--	--	--	--	7
Police IGP & AIGP	3	1	--	--	1	--	5
CDOs	62	1	3	--	6	--	72
Total	190	3	9	--	43	--	245
%	77.5	1.2	3.7	--	17.6	--	100
Secretaries in 1959	7	--	1	--	3	--	11
Bada Hakim	21	7	2	--	2	--	32
Total	28	7	3	--	5	--	43
%	65.1	16.3	6.9	--	11.6	--	100

Source: Devakota(2033), 239 and 274, NIMD, 1999, Neupane(2003), P 68.

## **2. Demand for more space (proportional representation and more inclusion)**

With the dawn of democracy sixty years ago, there has been symbolic representation of marginalized communities including Madheshis, indigenous groups, Dalits and women. During the thirty years of party less Panchyat system there was no freedom to establish or be a part of any community organization. There were however some informal cultural organizations like Sadbhavana Parishad in Tarai, which raised issues related to their communities. After the restoration of multiparty democracy in 1990, the Constitution of 1990 guaranteed the right to association. Subsequently, several organizations were established and began advocating for the rights of various marginalized communities.

The Maoists began their armed struggle in 1996 with a list of 20-point demands, including restructuring the state along the lines of ethnic autonomous regions. In the 12-point understanding signed in November 2005 by the seven-party alliance (SPA), there was a call for democracy, peace, prosperity and progressive social transformation. In the Comprehensive Peace Accord it is clearly mentioned that Nepal will be a federal state. Since there has been a continuous demand in the Tarai region for a proportional representation system in the forthcoming CA election, the Prime Minister addressed the nation for a second time at midnight of 7 February 2007, assuring the people that the demands of the Madhesi Janadhikara Forum (MJF), a political group of the Tarai region would be met. According to his assurances the interim constitution was amended and electoral constituencies delimited on the basis of equal population distribution. The seats have been increased on the basis of 49/51% between Madhes and hill regions. Representation of the Madhesis, Dalits, Indigenous Nationalities, Women and Backward communities has been ensured in the 240 seats allotted for the LPR component as well as in the administration. The federal system of governance will also be ensured in the new constitution.

The allotment of parliamentary seats in the Tarai region has been a contentious issue since the Constitution of 1990 was promulgated arbitrarily dividing the country into 75 districts and incorporated a criterion for delimiting the electoral constituencies as well as the fixing the number of seats for the House of representatives. It is an open secret that the zonal and the district administrative divisions were structured to perpetuate the domination of one community over others. For this simple reason, many eminent scholars, like the late Dr Hark Gurung, suggested a reorganization of the state by reducing the number of districts. This issue has been engaging the attention of the scholars but has failed to draw the attention of the state.

### **3. Electoral History**

Looking at the history of elections in Nepal, we find that an electoral process was initiated in the late 1940s. During the last sixty years from 1948 to November 2005, Nepal has been experimenting with the most primitive electoral methods such as selecting members to the Advisory Assembly General through direct elections to the National Panchayat, to the most sophisticated methods like the Single Transferable Vote system in electing members to the Upper House of the sovereign Parliament in the post People's movement era.

#### **3.1 First national election under the Constitution of Nepal (Act) 1948 (2004 BS)**

The first election to the national legislature was held in accordance with Art.22. (a), of the Constitution of Nepal Act (2004) effective from April 1, 1948, which provided for, "a State Legislature of Nepal which shall consist of His Highness the Maharaja and two Chambers to be

known respectively as the Rashtra Sabha<sup>19</sup> and the Bharadari Sabha<sup>20</sup>. (b) The Rashtra Sabha shall consist of not less than sixty and not more than seventy members, both elected and nominated, (c) The Bharadari Sabha shall consist of not less than twenty and not more than thirty members, nominated by His Highness to represent as far as possible the chief national interests and activities. (d) The legislature of Nepal shall be a permanent body not subject to dissolution, but as near as possible one-fourth of the members thereof shall retire every year and new members be elected or nominated as the case may be in accordance with the provisions in that behalf to be fixed by the President at the beginning of the first session”.

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<sup>19</sup> National Assembly

<sup>20</sup> Assembly of the appointees by the Maharaja

**Table No: 6.****Composition of the Elected House in 1949:**

S.N.	Representation	No. of Seats
1.	Elected Jilla (district) pradhan panchas <sup>7</sup>	32
2.	Elected Pradhan Panchas of Kathmandu, Patan, Bhaktapur and Birjung cities	4
3.	Elected Members from the different interests as per seats mentioned below	
	I. Merchants and traders (paying Rs 100 or more as custom duty) to elect-seat	1
	II. Elected from Jamindars 8 and holders of Birtas 9 (owning more than 20 Ropanis <sup>10</sup> or 10 bighas <sup>11</sup> of land or paying Rs 1000 or more as land revenue	1
	III. Elected from Intelligentsia (Matriculate or Madhyama or those with higher degree	2
	IV. Government servants to elect	1
	V. Laborers to elect	1
4.	Nominated members (nominated by the PM (Maharaja) to elect	28
Total No of Seats		70

Sources: Devkota (1980)

The then Prime Minister Padma Shamsher Rana proclaimed there would be forty-two members who would be elected and twenty-eight who would be nominated to the House of seventy members. Since there was change of guard a report on the implementation of the Constitution was submitted to the new Prime Minister Mohan Shamsher JBR in 1950 by Subrna Shamsher JBR (who became the chief Election 1959).

According to the report, there were no rules and regulations on the conduct of elections. Nor was there political awareness amongst the people. Hence, it was a tedious task to prepare voter lists. Only five nomination papers were received for two elected posts and of five persons three were reluctant to contest. Consequently, two persons were elected unopposed. Similarly, there were no nomination from Zamindars (Landlords) and Birta-holders but on the last date of filing nominations four applications from Naya Muluk (Banke, Bardia, Kailali and Kanchanpur)<sup>21</sup> and one from Kathmandu were received. Since it was difficult to decide upon their eligibility to contest, the elected representatives were advised to be present the next time. With regard to the elected representatives from merchant and trader groups, there was only one candidate, hence, he was elected unopposed. One representative was elected from the Civil Service. No election could take place for the single representative to be elected from Labourers. The list of names included 26 nominated members and 27 nominated members for the Bhardari Sabha and consisted of names of elected members from different districts and interests. It indicated the absence of representatives not elected from the eleven constituencies, including the eight districts, Birgunj Town panchayat, Merchant and trader; and Labourers constituencies (Devkota, 1971, pp.708-714).

### **3.2 Royal proclamation to hold election to a Constituent Assembly in 1951**

As stated above, after his return from India in February 1951, King Tribhuvan promulgated the Interim Government of Nepal Act (1951). It remained operative till a new constitution, The Constitution of the Kingdom of Nepal (1959) was proclaimed by the then King Mahendra

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<sup>21</sup> These four districts were returned by British colonial Government of India after military assistance to cope with the Lucknow revolt by prime minister Junga Bahadur Rana of Nepal.

on February 12, 1959, leaving the promise of holding elections to the Constituent Assembly unfulfilled (Mishra, 2006).

### **3.3 Election under the Constitution of 1959**

The Constitution of the Kingdom of Nepal, 1959 too had envisioned a bi-cameral Parliament which consisted of His Majesty and two houses, known as the Senate (Mahasabha) and the House of Representative (Pratinidhi Sabha). The Senate consisted of thirty-six senators of whom eighteen were elected by the HoR and eighteen were nominated by His Majesty in accordance with Art.21. The election of the Senators was through the proportional representation system by means of a single transferable vote. The elections for the 109 members of the House of Representatives (HoR) were held on the basis of one vote in one electoral district by the electors of the 109 electoral districts (constituencies) who were citizens of Nepal and had attained the age of twenty-one years.

In the HoR elections held in 1959 for 109 seats, the Nepali Congress won 74 seats securing 67.9 % of the seats with 666898 votes, which added up to 37% of total votes. Nepali Rashtravadi Gorkha Parishad bagged 19 seats securing 17.4% of the seats with 305118 votes covering 17% of the total votes. Samyukta Prajatantra Party garnered 5 seats securing 4.6% of the seats with 177408 votes making 10% of the total votes. The Nepali Communist Party got 4 seats securing 3.7% of seats with 129142 votes having 7% of the total votes. Nepal Praja Parishad (Acharya Faction) won two seats securing 1.8% of the seats with 53,038 votes covering only 3% of the votes. Similarly, Nepal Praja Parishad (Mishra) won one seat securing 0.9% of the seats with 59,820 votes covering 3.5% of the total votes. Interestingly, Nepal Prajatantric Mahasabha, Tarai Congress and Nepal Rashtriya Congress could not secure any seats in the House even after obtaining 59,816, 36,107 and

12,707 votes covering 3.5%, 2% and 1% of the total votes respectively. Independents won 4 seats securing 3.7% of the seats with 291,247 votes covering 16% of the total votes. (Devakota, 1980, p.111).

### **3.4 Elections under the Panchayat System (1961-1990)**

There was direct rule of the King until a new party-less Panchayat System was introduced through the proclamation of the new Constitution of Nepal 2019 (1962). There was no provision for the Election Commission (EC) in the new Constitution. Elections to Village, District and the National Panchayat were being conducted by the district and zonal administrations. The highest legislative body was termed the Rashtriya Panchayat (National Legislative) whose composition was provided for in Art.34(2) of the Constitution.



**Table No: 7.****Composition of National Panchayat 1962:**

S.N.	Representation	No. of Seats
1.	Members elected by Zonal Assembly	90
2.	Members elected by class and professional organizations	
	i. Nepal peasant organization	4
	ii. Nepal youth organization	4
	iii. Nepal Women's organization	3
	iv. Nepal Laborer organization	2
	v. Nepal Ex- army organization	2
3.	Elected members from graduate constituency	4
4.	The king to nominate 15% of the total number of the members selected	16
<b>Total No of Seats</b>		<b>125</b>

Sources: Devkota (1980)

Thus, the total number of the Rashtriya Panchayat was 125 and the total number of members to be elected was 109. Ninety members of the National Panchayat were elected by the members of the Zonal Assembly consisting of the members of the District Panchayat within that Zone. So, the election to the Rashtriya Panchayat was held indirectly and not through universal franchise.

With the second amendment to the Constitution on January 27, 1967, there were some significant changes in the composition of the Rashtriya Panchayat. The total number of elected members was increased to 112 by fixing the number of members to be elected from each district. The quota of members nominated by the King was also increased from 15% to 20%. The various zones were divided into four groups with the condition of holding elections for one group in one year staggering the elections to four years. Provision for constituting an EC was also included.

The third amendment was made to Art. 34 of the Constitution on December 15, 1980. With regard to the composition of the Rashtriya Panchayat, the total number of elected members was kept intact, but there was a 5% increase in the number of nominated members as per Art. 34 (a and b). In the case of nominated members, the King had to nominate persons representing the following fields—(1) Political field, (2) Class organization, (3) Intellectual field, (4) Different communities of Nepalese society and (5) other persons deemed appropriate by His majesty. Significantly, Art. 34 (3) provided for the election of members to be held on the basis of adult franchise once in every five years in the manner prescribed by law.

The third amendment made any district from where more than one member is to be elected, to be treated as a single constituency irrespective of the number of members to be elected from such a district. Thus, the mode of election was changed to a different system in which a voter has as many votes as seats to be filled. This system is known as Block Vote system. According to this amendment, of 75 districts, 38 districts had two seats to be filled whereas the balance 38 districts had only one member to be elected. Thereafter, elections were held on the basis of universal adult franchise.

### **3.5 Elections under the Constitution of Kingdom of Nepal 1990**

The Constitution of the Kingdom of Nepal, 1990 is the outcome of the people's movement, which culminated in the restoration of a multi-party parliamentary system replacing the party-less Panchayat system which lasted for three decades. As per the agreement reached between the King and the political parties spear-heading the movement, a new Constitution was proclaimed in 1990. The Constitution was drafted by representatives nominated by the political parties as well as by the King. The Constitution provided two electoral systems for parliamentary elections. One system was followed in electing members to the House of Representatives (HoR) also known as the Lower House, and the other system used in the National Assembly (NA), also called the Upper House. The First-Past-the-Post system (FPtP) was used to elect members to the HoR, while the Single Transferable Vote system (STV) system was used for the NA election.

#### **3.5.1 Elections to the HoR**

The HoR consisted of two hundred and five members. They were elected on the basis of one- man-one-vote through secret ballots in accordance with the provisions of the law. Thus, there were 205 seats to be filled in the HoR by FPtP, in which a candidate obtaining the highest or maximum votes was elected even by a margin of one vote.

Three general elections and two local bodies elections were conducted in accordance with the Constitution of 1990. The first general election was conducted in 1991, the second was conducted as a mid-term poll in 1994 and the third in 1999. Similarly, the first local body elections were conducted in 1992 and the second in 1997.

**Table No: 8.**

**Results of the last three general elections (with % of votes received and seats elected)**

Party	2048 (1991)			2051 (1994)			2056 (1999)		
	Seats elected & % of seats	% of votes		Seats elected & % of seats	% of votes		Seats elected & % of seats	% of votes	
CPN- UML	69	33.66	27.98	88	42.92	30.85	71	34.63	30.74
NC	110	53.66	36.75	83	40.48	33.35	111	54.15	36.14
RPP-C	3	1.46	6.00	--	--	--	00	00	3.33
NSD	6	2.92	4.10	3	1.49	3.39	5	2.44	3.13
RPP-T	1	0.49	5.38	20	9.75	17.93	11	5.37	10.14
SJMN	9	4.39	4.83	00	00	1.32	1	0.49	0.84
NWPP	2	0.98	1.25	4	1.95	0.98	1	0.49	0.55
CPN- ML	--	--	--	--	--	--	00	00	6.38
RJM	--	--	--	--	--	--	5	2.43	1.37
CPN-D	2	0.98	2.43	--	--	--	--	--	--
INDEP	3	1.46	4.17	7	3.41	6.18	--	--	--

*Source: Election Commission*

### **3.6. Analysis of the elections to the House of Representatives (HoR):**

All three elections to the HoR were conducted on the basis of the FPTP. As observed earlier the elected Houses suffered from two deficiencies. First, the House was deprived of its proportionality. Secondly, the House was not an inclusive House at all.

#### **3.6. A. No Proportional Representation**

##### **a. Extra over representation (more seats with comparatively high percentage of votes)**

Analysis of the results of the elections shows the following facts with regard to the votes received by the parties and independents and the seats won. In the first election to the Lower House, the CPN-UML obtained 33, 66% of the total number of seats with 27.98 % of the votes, the NC won 53.66% of seats with 36.75 % of votes. Similarly, in the second general election the CPN-UML bagged 42.92 % of seats with 30.85 % of votes, and the NC won 40.48 % of seats with 33.35 % of votes. In the third election too, the CPN-UML won 34.63 % of seats with 30.74 % of votes and the NC bagged 54.15 % of seats with 36.14 % of votes.

##### **b. Over representation (more seats with fewer votes)**

In the third general election, the RJM obtained 2.43 % of the seats with only 1.37 % of the total valid votes cast in the election. Similarly, the NWPP won 1.95 % of the seats with 0.98% of the votes in the second election.

### **c. Under representation**

#### **(Less seats with comparatively low percentage of votes)**

In the first general election,, the RPP- C won 1.46 % of seats with 6.00 % of votes, the NSP won 2.92 % of seats with 4.10 %of votes, the RPP-T obtained 0.49 % of the seats with 5.38 % of the votes, the SJMN got 4.39% of the seats with 4.83 % of votes, the NWPP got 0.98% of the seats with 1.25 5 of votes, the CPN-D obtained 0.98% of the seats with 2.43 % of the votes, and independents got 1.46% of the seats with 4.17 % of the total valid votes polled in the election. In the second general election, the NSP won 1.49 % of the seats with 3.39 % of the votes; the RPP obtained 9.75 % of the seats with 17.93 % of the votes, and Independents bagged 3.41 % of the seats with 6.18 %of the votes. Similarly, in the third general election, the NSP bagged 2.44 % of the seats with 3.13 % of the votes, the RPP-T secured 5.37 % of the seats with 10.14 %of the seats, the SJMN obtained 0.49 % of the seats with 0.84 %of the votes, the NWPP bagged 0.49% of the seats with 0.55 % of votes cast in the election.

### **d. Comparative under representation (Less seat with more votes)**

In the second general election, the NC bagged only 40.48 % of the seats with 33.35 % of total valid vote cast in the election in comparison to the CPN-UML which obtained 42.92 % of the seats with 30.85 %of votes.

## **3.6. B. No Inclusiveness**

Apart from no proportional translation of votes into seats, the non- representation or lack of just representation of several castes, language groups and other indigenous groups in the HoR, as illustrated by the table below, was subject to severe criticism from different quarters.

**Table-9:**  
**Socio-cultural Discrimination after Peoples' movement 1990:**

Caste name	Population % in '01 Census	Seats in HoR & % in 1991		Seats in HoR & % in 1994		Seats in HoR & % in 1999	
		No.	%	No.	%	No.	%
Kshetri	15.80	28	13.7	29	14.1	29	14.2
Brahmin	12.74	77	37.6	86	42.00	77	37.6
Magar	7.14	3	1.5	5	2.4	6	3.00
Tharu	6.75	15	7.3	13	6.3	10	4.9
Tamang	5.64	5	2.4	4	2.00	4	2.00
Newar	5.48	14	6.8	13	6.3	14	6.8
Mushalman	4.27	5	2.4	4	2.00	2	1.00
Yadav	3.94	5	2.4	8	3.9	12	5.9
Kami	3.94	--	----	--	--	3	1.5
Rai	2.79	5	2.4	5	2.4	5	2.4
Gurung	2.39	7	3.4	5	2.4	6	3.00
Damai	1.72	1	0.5	--	--	--	--
Limbu	1.58	7	3.4	4	2.00	7	3.5
Thakuri	1.47	11	5.4	11	5.4	13	6.5
Teli	1.34	--	--	--	---	2	1.00
Sanyasi	0.88	--	--	--	--	2	1.00
Dhanuk	0.83	--	--	--	--	1	0.5
Brahmin (T)	0.59	5	2.4	6	2.9	5	2.4
SunuSwar	0.42	--	--	--	--	1	0.5
Haluwai	0.22	--	--	--	--	3	1.5
Rajput	0.21	5	2.4	3	1.5	--	--
Marwari	0.19	--	--	--	--	1	0.5
Thakali	0.06	3	1.5	1	0.5	1	0.5
Other indig- enous castes	1.02	5	2.4	4	2.00	4	2.00

Source: Gurung, (1998), IIDS, (2000), CBS (2002), National Census Report

From the above data, some conclusions can be easily drawn with regard to representation of castes and indigenous nationalities in the Lower House of Parliament.

**a. Over representation (more elected than their percentage of population)**

Among hundred and one castes/cultural enumerated in the last Census, 2001, only 23 castes/cultural were represented in the last three HoR. The population of Brahmin is 12.74 % of the total population of the kingdom, but the group has obtained 38 to 42 % of the seats in the House. The other castes whose representation in the House is more than their population in the kingdom are, -- Thakuri, Gurung, Newar and Thakali in the hills. Thakuris are 1.47 % of the national population, whereas their representation in the House varies from 5.4% to 6.5 %. Similarly, Gurungs are only 2.39 % of the population, but their representation varies from 2.4% to 3.4 %, Newars are 5.48% of the population, but enjoy 6.3% to 6.8 % of representation, Thakalis are 0.06 % of population and enjoy 0.5 % to 1.5 % representation and Sunwars constitute 0.42 % of the population, but have been represented only once in the HoR.

In the Tarai region too some castes are over represented. Though Brahmins are only 0.59 % of the population their representation varies from 1.5 % to 2.9 %. Yadavs enjoy more representation as it varies from 2.4 5 to 5.9 % compared to their population of only 3.94 %. Haluwais are 0.22 % of the population and have been represented only once.



### **b. Under representation**

With regard to ethnic representation, we find that there are several groups that are under represented in the House. Kshetris are marginally less represented as their population is 15.80 % and their representation varies from 13.7 % to 14.1 %. Magars cover 7.14 % of the population, but their representation varies from 1.5 % to 3.00 %. Damai/Dholi are 1.72 % of the population but have obtained 0.5% representation in the first House. Kamis are a substantial 3.94 % of the population but are not represented in the HoR (1.1 % in the Upper House). Rais are 2.79 % of the population and their representation is constant at 2.4%. Tamangs are 5.64 % but their representation varies from 2.00% to 2.4%.

Tharus constitute 6.75 % of the population but their representation has declined from 7.3 % in the first House to 6.3 % in the second House and further to 4.9 % in the third House. Telis are 1.34% of the population, but their representation is 1.00 %. Dhanuks are 0.83 % of the population but were represented only once in the House.

## **4. The Intermediate Objective -Need for conducting forthcoming CA election:**

The decade old armed conflict led by the Maoists took a significant turn with the signing of the 12-point understanding with the seven-party alliance (SPA) on November 22 which set out their commitment to fight against the autocratic monarchy and establish democracy. The conduct of a Constituent Assembly election was also one of the major commitments undertaken by all parties to the agreement. Accordingly, in April 2006 the SPA started a peaceful agitation with the support of the Maoists which continued for nineteen days resulting in the King's proclamation restoring the dissolved parliament and surrendering all powers to the people.

Consequently, the House of Representatives was restored, GP Koirala was appointed PM and a government of six parties was formed. Both sides declared ceasefire and the peace process started thereupon. A meeting of high level leaders of the seven political parties and the Communist Party of Nepal (Maoist) was held on November 8 to map out the peace process. At this meeting it was decided that the CA would be a house of 425 members and elections would be held on the basis of a mixed electoral system. Two hundred and five members would be elected through the FPTP system and two hundred and four members would be elected under the PR system.

Accordingly, the Comprehensive Peace Accord (CPA) was signed by the PM and the president of the CPN-Maoists on 21 November, 2006. Subsequently, the Interim Parliament (IP) was formed with the participation of the Maoists and the Interim Constitution (IC) was ratified by the IP and passed by the restored Parliament. The Interim Government (IG) was formed and the Maoists joined the government on April 1, 2007. The government decided to hold polls on June 20, 2007. As it was not possible to hold elections on time, the date of polls was shifted to November 22, 2007. Meanwhile, the Maoists came out with 22-point charter of demands to be met by the government. The two main demands were the declaration of the country as a republic by the IP and holding of election only on the basis of PR system. The Maoists resigned from the government on September 18, 2007. Since further discussions among the seven parties on these issues and especially on the continuation of the alliance became essential, it was decided to postpone elections for the time being. The new date has not yet been announced.

#### **4.1 Mixed electoral system (MS)**

A Mixed electoral system, as the very name suggests, is an electoral system, which is a mixture of two electoral systems— FPtP and PR. A MS can be one of two kinds -- Mixed Member Proportional System (MMP) or Parallel system

#### **4.2 Parallel System (PS):**

As stated above, initially the FPtP system of election was to be adopted to elect members for 205 seats and elections for 204 seats were to be held under PR system. The second amendment to the IC has increased the number of the seats under FPtP component to 240 as per the recommendations of the Delimitation Commission and the number of seats under PR component has also been increased equally. The seats have been increased in response to the demands made in Tarai region for proportional representation on the basis of 49/51 per cent of the populations of the Tarai and hill regions respectively. Thus, the total number of the seats to be contested is now 480.

Significantly, the Parallel system is used in 21 countries. Armenia, Guinea (Conakry), Japan, South Korea, Pakistan, the Philippines, Russia, the Seychelles, Thailand, Timore-Leste and Ukraine use the FPtP single-member districts alongside a List PR component, while Azerbaijan, Georgia, Kazakhstan, Lithuania and Tajikistan use the Two-Round System for the single- member district component of their systems.

### **4.3 Shortcomings of the Parallel System**

All parliamentary elections, held in the past through the FPtP system, proved that the results were never proportional and inclusive. Since FPtP is a part of the whole mixed system accepted for the CA election, the final results will not be proportional. Hence, the results will be semi proportional. Other demerits are mentioned below:

- 1 It cannot guarantee inclusiveness which all-indigenous communities, Dalits, women and Madhesis are demanding because parties contesting election under the FPtP system field only those candidates whose chances of victory are more without caring for inclusive representation.
- 2 It often requires by-election.
- 3 It is very difficult to arrange absentee voting.
- 4 Apart from obtaining only semi proportional representation, the constituency-wise result will be unexpected because of the very nature of the FPtP in which a candidate gets elected even by one vote. Illiterate voters may get confused by two ballot papers meant for two separate components.
- 5 The use of two ballot papers will also create some difficulty. Unlike Germany, Nepal can hardly afford a two-ballot system, as illiterate voters cannot express their choices by separately stamping their votes on the symbols/names of the candidate and the party for which they wish to vote.

#### 4.4. Suggestion for the CA polls

##### 4.4.1. Mixed member Proportional system:

As stated earlier, in PS, FPtP and LPR systems operate simultaneously and independently. Therefore, the greatest demerit of this system is the increased disproportionality in the votes translated into seats elected. The gap between the votes polled by a political party and the total number of seats it gets in return is unbridgeable.

If the intermediate objective is to conduct the CA polls using the mixed electoral system as enshrined in the IC, it will be advisable to adopt Mixed Proportional Members (MMP) system in place of PS which has been accepted for the CA polls. If MMP system is adopted, it will finally bridge the gap between the votes received by the parties and the seats won by them in the election by compensating them through the national list of elected candidates in the event there is disproportionality in the seats won under FPtP component. Since this system like the PS has two electoral systems operating simultaneously, it does justice to the parties in the final results by providing more seats in proportion to the percentages of the total votes they obtain. It compensates for the loss of seats they suffer under FPtP component in which seats are won by obtaining the highest votes ignoring the proportionality of votes.

To clarify further, it can be said that the crucial distinction between the Parallel System and the MMP is that in MMP, the list of PR seats compensate for any disproportionality produced by the district seat results in FPtP component as the parties that have no seats or less seats will be awarded seats from the national PR lists to bring their representation up to approximation. This system is used in 9 countries including Germany and New Zealand. Of 9 countries, 8 countries use FPtP system and Hungary uses PR system (Mishra, 2007).

## 5. Merits of Regional List Proportional Representational (RLPR) system

Every electoral system has its own dynamics. List Proportional Representation (LPR) system may be useful for elections where a society is homogenous but in a country like Nepal, which has more than one hundred castes and ethnic communities a different kind of electoral system is required. Significantly, in Israel, there is one district of 120 members whereas in Chile it consists of only two members. (IDEA, p.82) There is no alternative to the RLPR system on the following grounds:

### 5.1. a. Practicality

Several parties including the CPN-UML and the CPN-Maoists are advocating the use of the PR system and especially the National List PR system that has become a contentious issue and is fraught with practical difficulties. When the number of parties contesting an election is significantly big it may create problems regarding the size of the ballot papers as has recently taken place. The size of the ballot papers to be printed for the CA polls has increased to forty inches to include the names of more than sixty parties which will pose a big headache for an illiterate voter. If the size of the ballot paper is comparatively small illiterate voters will find it easier to cast their vote. If ballot papers are big voters may have to take at least three to four minutes in casting their votes which means that less number of voters will cast their vote in a limited time. Precise ballot papers facilitate the voter, especially, the illiterate ones, to identify their favoured symbols without wasting time as delay in casting the vote some times leads to overcrowding and creates commotions at polling booths.

**5.1. b. Close relation between the voter and the elected representative**

LPR system destroys the relationship between the voter and the elected representative. On the contrary, RLPR system will enable close relations between the voters and their representatives at the regional level.

**5.1. c. Convenient electoral system**

In contrast to the PR system the RLPR system will easily provide grounds for the representation of more than 100 castes and ethnic groups.

**5.1. d. Inclusive representation**

In the National List system representatives will be elected nationally and no voter will know who he voted for and who his representative is as people vote for a political party and not an individual. In a country like Nepal which has regions with different cultural, lingual and ethnic identities there is no probability of a local candidate getting elected in LPR. However, in RLPR local people will be represented by their own representatives. This will also meet one of the demands of the Maoists who seek autonomy for ethnic and cultural groups and it can pave the way for state restructuring.

**5.1. e. Political Identities**

RLPR system provides grounds for acknowledgment of political identity and inclusion which regional, ethnic and the marginalized communities have demanded. Hence, if opportunities are provided to these regions and communities to elect their own

representatives prevailing tensions in some areas will be eased. It would also meet some of the major demands of the people. For this scheme, all 75 districts should be formed into clusters of 21 regions (can be extended to 25 or 26), purely for election purposes, consisting of not more than 12 to 15 seats, (can be further reduced to 10 to 13 seats). This could be done by clubbing together three to four small districts or two to three big districts without disturbing the existing administrative boundaries of the districts. The temporary regional boundaries should be based on language, communication facilities, accessibility and the development status of the area. Representation of the people by their own will provide political identity to many ethnic and cultural groups. It may indeed, be the first step towards state restructuring.

## **6. The Ultimate goal —State reforms through the Regional List system**

If the final goal of the people's movement is to create a new Nepal, apart from holding the CA election, which should be viewed as an intermediate objective, it is time for all to contemplate on the procedure and planning for the same. We should not confine to CA election through LPR system alone but decide to adopt the RLPR system for the CA election which will pave the way for a federal, republican democratic Nepal in the future.

### **6.1. RLPR system for 235 seats**

The IC provides for 240 seats to be contested under LPR system. An independent study suggests that election be held only for 235 seats as shown in table 6. The number suggested under the Regional list system is lesser than what was suggested by the Delimitation Commission by 5 seats as per details provided below. Every region will now be a cluster



of three to four districts. There will be 21 regions having 235 seats altogether. The whole country can be divided on the regional basis in the following manner without changing the existing boundaries of any district:

**Table-10:****Proposed Regional Preoperational Representations Model**

S.N.	Districts	Population In Thousand	Seats in HoR	Seats to be added as per Regional lists	Seats added as per Delimitation Commission
1	Jhapa, Morang and Sunsari	2156	18	4	5
2	Ilam, Taplejung, and Panchathar	519	7	-	
3	Sankhuwasabha, Terahthum Dhankuta and Bhojpur	641	7	-	
4	Khotang, Okhaldhunga, Solukhumbu and Udaipur	777	7	1	1
5	Saptari, Siraha, Dhanusha and Mahottari	2357	19	5	6
6	Dolakha, Sindhupalchok, Sindhuli Ramechhap and Kavre	1387	13	1	1
7	Lalitpur, Bhaktapur and Kathmandu	1645	12	4	3

8	Rasuwa, Nuwakot and Dhading	667	7	-	-
9	Chitawan and Makwanpur	864	7	2	2
10	Sarlahi, Rautahat, Bara and Parsa	2037	17	3	6
11	Gorakha, Lamjung, Tanahu and Manang	730	9	-	-
12	Kaski, Parbat, Syanja, Myagdi, And Mustang	985	10	-	1
13	Baglung, Gulmi, Arghakhanchi And Palpa	1042	10	-	-
14	Pyuthan, Rolpa and Rukum	610	6	-	-
15	Nawalparasi, Rupandehi and Kapilvastu	1753	13	5	5
16	Jajarkot, Salyan, Surkhet and Dailekh	862	9	-	-
17	Dang, Banke and Bardiya	1230	10	2	3
18	Bajura, Achham, Bajhang And Doti	714	7	-	-
18	Jumla, Kalikot, Mugu, Humla and Dolpa	309	5	-	-
20	Kailali and Kanchanpur	994	7	2	3
21	Dadeldhura, Baitadi and Darchula	482	4	1	-
<b>Total</b>		-	<b>205</b>	<b>30</b>	<b>35</b>

## **6.2. RLPR System- Alternative 1**

The basis for the above suggestion is the portion of 100,000 persons accepted as the electorate for one seat. Accordingly, there will be an increase of about 23 seats in the eleven regions in both Tarai and hills, including four seats in the Kathmandu valley and one each in Kavre, Chitawan and Dang. Hence, only 235 seats should be contested under the RLPR system. In order to conduct a meaningful, proportional and qualitatively inclusive CA in Nepal, the total seats can be increased by 50/60 to include constitutional experts, civil society organizations including professional organizations, disabled, religious minorities and those communities who cannot be elected on the strength of their numbers (Mishra, 2007).

## **6.3. RLPR System- Alternative 2**

If FPtP is eliminated then there is no need to hold election for the 240 earmarked seats. Hence, elections for the 240 seats and some 60 seats for those segments not included in the government should be held under the RLPR system. 55/65 seats are reserved for some eminent constitutional experts, civil society, professional organizations, disabled and a few seats for those communities who cannot be elected on the strength of their population. The total number of the CA will be well within the limit of 301/305.

The political strategy of the Maoists underwent some change after the conclusion of their party's fifth plenum held a few months ago. The Maoists submitted 22-point demands to the government and requested that two major demands be fulfilled before the CA polls. The Maoists insisted on the country be declared a republic by the IP and the full PR system be adopted for the CA polls.

The special Session of the IP adopted two resolutions by a majority asking the government to bring amendments to the IC to declare Nepal a republic and adopt full LPR for CA polls. These two resolutions may not pass for lack of two-third majority as the Nepali Congress (NC) opposes these moves.

#### **6.4. RLPR System- Alternative 3**

If the SPA finally decides to adopt LPR for all 480 seats, as the IC has already been amended to enable election to 240 under FPtP and another 240 under LPR, it is not yet late to consider the Regional List proportional system in place of the National list system. The country will have 21 to 26 or more regions clubbing two to three small districts together in its fold on the basis of languages, ethnicity, communication facilities providing efficient administrative machinery and the development status of the districts to conduct CA elections (Mishra,2007).

### **7. Conclusion and Recommendations**

Although, the conduct of the CA polls is the need of the hour, it is equally important that we think of the future. Holding the CA election is a means and not an end. The ultimate goal is to build a new Nepal where all citizens feel they are equal not only in the eyes of law but in practice as well. Where nobody is marginalized and no community is discriminated against in the future. To achieve this goal the country will have to be declared a federal state. Of course, the details of the restructuring will be decided by the elected CA. In the meantime, adoption of the regional list proportional representation system will be a small step towards state reorganization.

## **Independence and Effectiveness of Election Holding Authority**

### **Lessons from India: The Role of the Judiciary in Safeguarding the Independence and Effectiveness of the Election Commission**

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#### **India and Democracy**

In the inimitable words of the Supreme Court of India<sup>22</sup>, '*India is an oasis of democracy, a fact of contemporary history*'. The smooth and peaceful transfer of power from one government to another, both at the Centre and in the States, on the basis of elections, where even a sitting Prime Minister of India and several Chief Ministers of States were humbled at the hustings, has manifestly demonstrated to the whole world that India is one of the most stable democracies in the globe, apart from being the largest one with an electorate of over 675 million. Since the country achieved independence on 15<sup>th</sup> August, 1947 and became a sovereign democratic republic on 26<sup>th</sup> January, 1950, fourteen (14) countrywide general elections have been

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<sup>22</sup> *Lakshmi Charan Sen & Ors. v AKM Hassan Uzzaman & Ors.* AIR 1985 SC 1233.

held to constitute the House of the People (Lower House of the Indian Parliament), as and when they became due under the Constitution of India, and more than 300 general elections to the State Legislative Assemblies have been held. The free and fair manner in which these elections have been conducted and held under the superintendence, direction and control of the Election Commission of India, has firmly established the people's faith and confidence in the fairness of the electoral process and has helped in deepening democracy in the country. For all this, the real credit must go to the great wisdom and foresight of founding fathers of our Constitution. While framing the Constitution and laying down its basic structure, they mandated that democracy shall be one of the inalienable basic features of the Constitution<sup>23</sup>. The concept of democracy as visualized by the Constitution of India presupposes the representation of the people in Parliament and State Legislatures by the method of elections<sup>24</sup>.

## **The Election Commission of India**

Democracy being the basic feature of India's constitutional setup, there can be no two opinions that free and fair elections to the legislative bodies would guarantee the growth of a healthy democracy in the country. It is universally accepted that 'Free, fair, fearless and impartial elections are the guarantee of a democratic polity. Effective mechanism is the basic requirement for having such election.'<sup>25</sup> To ensure free and fair elections, there are three pre-requisites: an independent authority to conduct these elections that is insulated from political and executive interference, a set of laws which governs the conduct of elections and in accordance whereof the authority charged with the responsibility of conducting these elections should hold them, and a mechanism to resolve all doubts and disputes arising

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<sup>23</sup> *Kesavanand Bharati v State of Kerala* AIR 1973 SC 1461

<sup>24</sup> *NP Ponnuswami v Returning Officer, Namakkal* AIR 1952 SC 64.

<sup>25</sup> *VS Achuthanandan v PJ Francis & Another* (1999) 2 LRI 4000.

in connection with these elections. The Constitution of India has paid due regard to all these imperatives and provided for all three matters. The Constitution has created an independent Election Commission of India, in which vests the superintendence, direction and control of preparation of electoral rolls for, and the conduct of, elections to the offices of President and Vice-President of India and to Parliament and State Legislatures (Article 324). [A similar independent constitutional authority has been created for conduct of elections to municipalities, panchayats and other local bodies (Articles 243K and 243 ZA)]. The authority to enact laws for elections to the offices of President and Vice-President and to Parliament and State Legislatures has been reposed by the Constitution in Indian Parliament (Articles 71 and 327). [Laws relating to conduct of elections to municipalities, panchayats and other local bodies are framed by the respective State Legislatures (Articles 243K and 243 ZA)]. All doubts and disputes relating to elections to the offices of President and Vice-President are dealt with by the Supreme Court (Article 71). The initial jurisdiction to deal with all doubts and disputes relating to elections to Parliament and State Legislatures vests in the High Court of the State concerned, with a right of appeal to the Supreme Court (Article 329 and Part VI of the Representation of the People Act 1951). The disputed matters relating to elections to municipalities, etc. are decided by the lower courts in accordance with the laws made by the respective State Governments.

In order to ensure the purity of the election process in India, the framers of the Constitution believed the responsibility to hold free and fair elections in the country could be effectively discharged by the Election Commission only if it is insulated from political and executive interference and function as an agency independent from external pressures from the party in power and executive of the day. Therefore, adequate safeguards have been provided in Article 324, which establishes the Election Commission, to ensure its independence and insulate it from political and executive interference. For instance, it stipulates the Chief Election Commissioner

can be removed only by way of impeachment on the same grounds and in the like manner as a Judge of the Supreme Court of India. In the case of other Election Commissioners it states they cannot be removed except upon the recommendation of Chief Election Commissioner.

The Constitution envisages that the Election Commission may either be a single member Commission, consisting only of the Chief Election Commissioner, or a multi-member body, with Chief Election Commissioner as Chairman and such number of other Election Commissioners as the President of India may from time to time determine [Article 324(2)]. The appointment of Chief Election Commissioner and Election Commissioners is made by the President on the advice of the Union Council of Ministers. There is no specific qualification laid down either in the Constitution or any law for Chief Election Commissioner or Election Commissioners. It was contended that as the Chief Election Commissioner is placed at par with a Judge of the Supreme Court in the matter of his removal from office, for his appointment too he should possess qualifications similar to that of a Judge of the Supreme Court. The Supreme Court however rejected that contention<sup>26</sup>. As a normal convention, the Chief Election Commissioner and Election Commissioners are appointed from amongst the senior bureaucrats holding the rank of Cabinet Secretary or Secretary to the Government of India or other equivalent office and hold office for a term of six years or till the age of 65 years, whichever is earlier.

When the Election Commission was initially constituted in 1950, it was a single member body and continued so until October 1993, except for a brief period from 16<sup>th</sup> October, 1989 to 1<sup>st</sup> January, 1990, when it was a three-member body. From October, 1993 onwards, it is a three-member body. In the matter of decision-making, the Chief Election Commissioner and Election Commissioners enjoy the same powers and decisions are

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<sup>26</sup> *Bhagawati Prashad Dixit Ghorewala v Rajiv Gandhi* AIR 1986 SC 1534.



taken by simple majority in the event of any difference of opinion.<sup>27</sup> The Election Commission seems to have been made into a multi-member body in view of the observations of the Supreme Court that 'two heads are better than one, and particularly when an institution like the Election Commission is entrusted with vital functions, and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however, all-wise he may be. It ill-conforms to the tenets of the democratic rule'<sup>28</sup>.

### **Role of Judiciary in strengthening of democracy and Election Commission**

It is now nationally accepted, and internationally acclaimed, that the Election Commission of India has shown remarkable success in the conduct of free and fair elections to Parliament and State Legislatures in India in an exemplary manner during the last five decades. It is true that the independence of an institution depends upon the persons who steer it. But in so far as the Election Commission is concerned, it cannot be denied that the strength and effectiveness with which it has been able to discharge its constitutional duties and functions is due to the judicial support lent by the Supreme Court and High Courts of India. The Constitution provides in Article 329(b), that 'Notwithstanding anything in this Constitution..... 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'. What is the meaning of 'election' as used in Article 329(b) and at what stage the judiciary can step into the electoral process

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<sup>27</sup> Election Commission (Conditions of Service of Election Commissioners and Transaction of Business) Act, 1991.

<sup>28</sup> *SS Dhanoa v Union of India & Ors* AIR 1991 SC 1745.

came to be considered by the Supreme Court soon after promulgation of the Constitution when the first general elections were held in India in 1951-52. The nomination paper of one of the candidates in an Assembly Constituency was rejected by the Returning Officer at the time of scrutiny of nominations. The aggrieved candidate approached the Madras High Court for a direction to the Returning Officer to include his name in the list of contesting candidates as he felt that his nomination had been improperly rejected. As the High Court refused to intervene in view of the abovementioned Article 329(b), the matter was taken to the Supreme Court. The Supreme Court held<sup>29</sup> that the word 'election' used in Article 329(b) connotes the entire procedure to be gone through to return a candidate to the legislature, and further observed that:-

- 1) Having regard to the important functions which Legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time-schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.
- 2) In conformity with this principle, the scheme of the election law in this country (India) as well as in England is that no significance should be attached to any thing which does not affect the 'election'; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.'

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<sup>29</sup> *NP Ponnuswami v Returning Officer, Namakkal* AIR 1952 SC 64.

The Supreme Court was more categorical about the conduct of elections proceeding without any interference from other authorities in a subsequent matter<sup>30</sup> where it observed that:

- a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.
- b) Election, in this context, has a very wide connotation commencing from the presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.'

But this does not mean that courts shall not interfere at all in electoral matters when the process of election is on, even if a palpable error is committed by the election authorities acting beyond their jurisdiction. A word of caution was added by the Supreme Court<sup>31</sup> that judicial intervention is available, if, without interrupting, obstructing, or delaying the progress of the election proceedings, the assistance of the court is sought for merely correcting or smoothening the progress of the election proceedings or removing the obstacles therein or preserving vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared. But the erroneous actions which are amenable to correction in the writ jurisdiction of the courts should have the effect of interfering with the free flow of the scheduled election or hinder the progress of the election which is of paramount consideration<sup>32</sup>.

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<sup>30</sup> *Mohinder Singh Gill v Chief Election Commissioner* AIR 1978 SC 851.

<sup>31</sup> *Election Commission of India v Ashok Kumar & Ors* AIR 2000 SC 2979.

<sup>32</sup> *Manda Jaganath v KS Rathnam* AIR 2004 SC 3600.

As mentioned above, the Constitution vests the ‘superintendence, direction and control’ of elections in the Election Commission. The Supreme Court has held that the words ‘superintendence, direction and control’ are broad terms and may cover powers, duties and functions of many sorts, administrative or others, depending upon circumstances – essentially administrative and, marginally, even judicative or legislative<sup>33</sup>. Though the Commission, like all other authorities in a state governed by the rule of law, is bound to act in accordance with the laws enacted by Parliament, the Supreme Court has however held that where the laws made by Parliament are silent or make insufficient provision to deal with a situation in the conduct of elections, the Election Commission as a creature of the Constitution, has inherent powers to take all such measures as are considered necessary to deal with the infinite variety of situations in such a vacuous area<sup>34</sup>.

Given below are some of the examples of exercise of its plenary powers by the Election Commission under the Constitution, armed with the abovementioned judicial pronouncements of the apex court of the country.

*Recognition of political parties* – One of the most vital vacuous areas in the enacted laws in India is the law governing recognition of political parties. In order to address this lacuna the Commission has promulgated the Election Symbols (Reservation and Allotment) Order 1968 to provide for recognition of political parties, resolution of disputes within recognized parties on account of splits and mergers and all other allied matters. It was alleged that several evils and malpractices that exist amongst political parties today was due to this order providing for their recognition. Rejecting this allegation, the Supreme Court observed that the reasons for the existence of such evils, malpractices, etc., were to be found elsewhere and not in

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<sup>33</sup> *Mohinder Singh Gill v Chief Election Commissioner* AIR 1978 SC 851.

<sup>34</sup> *Supra*

this order and upheld its constitutional validity under Article 324 of the Constitution<sup>35</sup>. The Supreme Court further held that the Commission can even call for the accounts of political parties including their receipts and expenditure during elections<sup>36</sup>.

*Election Schedule* – The law provides that the general elections to the House of the People and the Legislative Assembly of a State shall be called by the President/Governor on such dates as may be recommended by the Election Commission. There has been some controversy as to whether the dates so recommended by the Election Commission are binding on the President/Governor. This has now been set to rest by the Supreme Court whereby the Apex Court has held that it is the exclusive domain of the Election Commission to frame the schedule or calendar for elections, keeping in view the parameters laid down by the Constitution that the general elections should be held within a period of six months before the completion of the normal term of the House of the People/State Legislative Assembly (and within six months of the dissolution of the House of the People/State Legislative Assembly, if the House/Assembly is prematurely dissolved)<sup>37</sup>.

*Model Code of Conduct* – The Model Code of Conduct is a unique document formulated by the political parties themselves through mutual consent so as to provide a level playing field for all political parties and candidates. It has no statutory standing. However, the Supreme Court has given a potent weapon to the Election Commission to enforce the provisions of the Model Code by taking such remedial measures and steps as the Commission may deem fit to achieve the objects of the Model Code. The Supreme Court held that the Model Code can be enforced by the Election Commission under its plenary powers under Article 324 from the date it

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<sup>35</sup> *Kanhiya Lal Omar v RK Trivedi and Ors* AIR 1986 SC 111.

<sup>36</sup> *Common Cause v Union of India* AIR 1996 SC 3081.

<sup>37</sup> *Special Reference Case No.1 of 2002* AIR 2003 SC 87.

announces the schedule for a general election or a bye-election<sup>38</sup>, whereby it acts as a watchdog to ensure, particularly, that the ruling parties at the Centre and in the States do not misuse their official position and official machinery for their partisan ends.

*Deployment of Central Para Military Forces during election period* – In connection with a bye-election to a State Legislative Assembly, the Election Commission desired the deployment of one company of a Central Para Military Force (CPMF) to maintain a peaceful atmosphere in the constituency conducive to the conduct of free and fair election. The Central Government, however, took the view that the law and order being a State subject under the Constitution, the CPMFs (Central Reserve Police Force, Central Industrial Security Force, Border Security Force, etc.) could not be deployed unless a request was made to that effect by the State Government concerned. The Supreme Court did not accept this view of the Central Government and observed that the perceptions of the Election Commission during elections in this behalf should be given due regard. Accordingly, the Supreme Court directed the Union Ministry of Home Affairs (which controls the CPMFs) to sit with the Election Commission and discuss the matter. As a result the CPMFs are now deployed as and when demanded by the Commission. Further, its officers have a say in the matter of actual posting of CPMFs at the polling stations and on patrolling duties in the constituencies at the time of elections. This has brought about a dramatic change so as to ensure free and fair elections. An illuminating example of such deployment of CPMFs at the Commission's insistence is the deputation of nearly 650 companies of CPMFs in the State of Uttar Pradesh when it went to the polls recently in 2007.<sup>39</sup>

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<sup>38</sup> *Union of India v Harbans Singh Jalal and Ors* SLP (Civil) No.22724 of 1997 before the Supreme Court, decided on 26<sup>th</sup> April, 2001.

<sup>39</sup> *Election Commission of India v Union of India* Writ Petition No.606 of 1993 before the Supreme Court, order dated 11<sup>th</sup> and 14<sup>th</sup> October, 1993.

*Disciplinary control of Election Commission over election staff* – There is no separate election machinery in the field for preparation of electoral rolls and conduct of elections. The Election Commission utilises the services of Central and State Government employees for these purposes. The law provides that these officers and staff of the Central and State Governments when deployed on election duties become subject to the superintendence, control and discipline of the Election Commission. On this account too there was tension between the Election Commission and the Central and State Governments. On the intervention of the Supreme Court an agreement was reached between the Election Commission and the Central and State Governments to the effect that the Election Commission could transfer/suspend an officer found wanting in the performance of his election duties and recommend disciplinary action against him to the government concerned and that the government would intimate to the Commission within six months of the action taken by it against the delinquent officer<sup>40</sup>.

*Disclosure of criminal antecedents, assets and liabilities, and educational qualifications by candidates* – The Supreme Court has held that electors have the right to information about the criminal antecedents, assets and liabilities, and educational qualifications of candidates who seek their votes so that the electors may make an informed choice while choosing their representatives. As Parliament seemed reluctant to make statutory provisions to that effect, the Supreme Court observed that this was one of those vacuous areas where the Election Commission could step in to fill the gap under Article 324 of the Constitution<sup>41</sup>. Pursuant thereto, the Commission now requires<sup>42</sup> every candidate to submit (in the form of an affidavit prescribed by it) provide details of his past convictions, if any,

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<sup>40</sup> *Election Commission of India v Union of India* Writ Petition No.606 of 1993 before the Supreme Court, order dated 21<sup>st</sup> September, 2000 AIR 2001 SCW 2398.

<sup>41</sup> *People's Union for Civil Liberties v Union of India and Ors* AIR 2003 SC 2363.

<sup>42</sup> See Election Commission's Order No.3/ER/2003/JS-II, dated 27<sup>th</sup> March, 2003.

pending criminal cases against him, if any, his assets as well as those of his spouse and dependent children, his liabilities and educational qualifications. The non-furnishing of the affidavit may result in the summary rejection of the nomination paper of the defaulting candidate. The affidavits and the contents thereof so obtained from candidates by the Commission are widely disseminated and given wide publicity through print and electronic media for the information of electors of the concerned constituencies. These affidavits are also uploaded on the website of the Commission and on the websites of the Chief Electoral Officers of the States concerned.

The above is only an illustrative and not exhaustive depiction of the support which the judiciary has extended from time to time to the Election Commission in strengthening its hands and making it an effective tool to deliver free and fair elections in India under its constitutional dispensation and mandate.



## **Presentation of Findings from Monitoring Elections in Bangladesh: Challenges for the Future**

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### **Pourashava and by-elections monitored in 2004**

- Pourashava Elections held in first week of May, June, July 2004
- By-elections in Dhaka-10 held on July 1 2004
- By-elections in Munshiganj-1 held on 6 June 2004
- By-elections in Gazipur-2 held on 1 August 2004

Findings and results of election monitoring at two levels:

- 1 Setting analytical, monitoring and definitional standards
- 2 Assessing governance and quality of electoral process
  - Electoral participation
  - Electoral violence
  - Electoral irregularities

## 1. Brotee's Analytical Framework

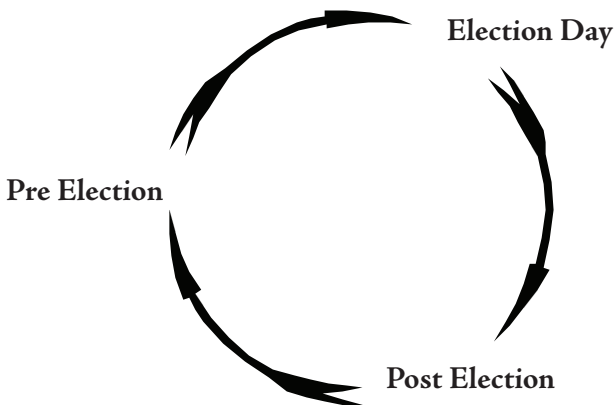
### 1.a. Premise

- The term free and fair is political rhetoric and not a scientific definition of electoral standard. It describes the credibility of an election.
- Our premise is that elections in Bangladesh are largely 'not free' and 'not fair'. Evaluation must be in relative not absolute terms.
- Free choice of the electorate is at the core of democracy. It is the responsibility of the state to protect this right of citizens and not allow it to be obstructed by any means.
- The key elements in assessing the degree of freeness and fairness in elections would entail an analysis of the quality of (free) participation
  - of candidates
  - of political parties
  - of voters

The participation of women, ethnic and religious minorities who are easy victims of violence and exclusion is also important. Free participation is determined by the way the process is administered, whereby voters are able to freely choose their representatives without coercion, manipulation, intimidation or violence.

### 1.b. The cyclical effect of the electoral environment on disenfranchisement

The disenfranchisement of voters can be a political objective in an unhealthy democracy and the process begins well before elections and is present during pre-during and post election phases. This is the cyclical effect of electoral environment on disenfranchisement.



- Post election violence in one constituency becomes pre election violence for the neighboring constituency. e.g. Nandail killing affect Mymensing Sadar elections.

### 1.c. Eight challenges to successful voter participation

Every election so far monitored confirms that 8 challenges must be overcome for voter population to become true voters.

1. Being able to come out of the house to cast vote.
2. Facing no obstruction on the way to the polling center.
3. Being able to stand in a queue leading to polling booth.

4. Being able to stamp the ballot paper, drop it into the box after receiving the indelible ink mark on the thumb.
5. The ballot is accepted by the presiding officer.
6. Vote is cast within a reasonable time.
7. Votes are counted in the presence of all polling agents of contending candidates and election observers.
8. Declaration of the vote result as counted.

### **Findings show**

- The fact a voter is registered does not mean s/he can go to polling center.
- Voter turnout does not necessarily mean voter enters booth.
- Voter entering booth does not necessarily mean the person voted by free choice.
- Voter entering booth does not necessarily mean person cast the vote.
- Vote cast is not necessarily a vote counted.

**Hence, voter turnout is not voter participation. And official rate of vote cast is not the 'real' vote cast.**

## 2. Operational Definitions

Findings fall into 3 main themes.

- Electoral participation
- Electoral violence
- Electoral irregularities

Operational definitions of these themes evolved from empirical data obtained from election monitoring.

### **Electoral Participation**

The freedom of every adult citizen to exercise his/her constitutional right to seek nomination (as candidate) to represent his/her community and the right to franchise (as voter).

### **Electoral Violence**

An act of applying physical force, such as *opohoron*, *ballot chintai*, *kendro dakhol*, *nirjaton*, to create fear with the use of fire arms and other weapons to hurt or kill with the intent to obstruct participation or influence the electoral process in one's favour or to take revenge for not receiving support.

### **Electoral Irregularity**

A state contrary to the rules or to what is normal or established as a regular practice in the running and management of the electoral process. The constant presence of violence and administrative irregularities in our electoral system primarily obstructs free participation.



<b>Electoral Irregularity Index</b>	<b>False / proxy / fake / jaal votes</b>	<b>Tempting with bribes (prolovon) Errors in voter list</b>
<p>Election officials stamp ballot papers</p> <p>Security personnel stamp ballot papers</p> <p>Outsiders occupy booths and stamp ballot papers (cadre/ shantrashi / Mastan)</p> <p>Polling agents stamp ballot papers</p> <p>Supporters of candidates stamp ballot papers</p>	<p>‘Intentional’ changes in voter list made by candidate / local political leaders / local administration and local elite persons.</p> <p>For example, voter in one area enlisted in another; one voter enlisted in more than one area; enlisted voter name with distorted information on address, spouse, parents etc.</p>	<p>Bribing voters with money / service / promise of development and other facilities by candidate / local political leader / local MP / minister</p>

### **3. Setting a time and booth standard**

Findings show that booth: time ratio does not allow 100% or even 80% vote to be cast in 8 hours. Calculation shows a need to restructure the system.

#### **1. Standard time required to cast 1 vote**

- Parliamentary elections : 1 min. (1 ballot)
- City Corporation elections : 2 min. (3 ballots)
- Union Parishad elections : 2 min. (3 ballots)
- Pourashava elections : 2 min. (3 ballots)

#### **2. Standard ratio of booth: voter**

- 1 booth for 450-500 voters (1 ballot)
- 1 booth for 250-300 voters(3 ballots)

1 vote per min. is the international standard

### **4. Monitoring strategy to assess elections**

- Long term mobile monitoring covering pre-during and post election.
- Center based observation on election- day.
- Pre & post election community perception study on electoral environment through interviews and FGDs.
- Survey on errors in voter list through house to house sampling and interview with voters on election day.
- Survey on voters in centers to assess jaal / proxy vote on election day.



## Sample size and tools of inquiry

Election	Tools of inquiry & sample size					
	Long term Monitoring	Pre-post election interview	Pre election FGDs	Voter list survey	Voter sample on election day	Case studies
Munshiganj	Open ended guideline 100% coverage	8,550	515 participants in 83 FGDs	7,500 voters (35 centers) or 41%	3,525	3 selected
Dhaka 10	Open ended guideline 100% coverage	Nil	1,766 participants in 152 FGDs	23,876 voter respondents (49 centers) or 48%	6,592	12 selected
Gazipur	Open ended guideline 100% coverage	23,400	974 participants in 130 FGDs	1,40,123 voters (45 centers) or 26%	6,072	1 selected
Pourashava	Open ended guideline 100% coverage	1,47,888	21,252 participants in 3,832 FGDs	332 centers from 115 pourashavas	23,000 in 30 pourashavas and 62 centers	11 selected

## 2.1 Electoral Participation

### Official versus real voter participation

Name of election	Official (EC)	Real	Jaal vote
Pouroshova	75%	53%	22%
Munshiganj-1	46%	20%	26%
Dhaka-10	39%	18%	21%
Gazipur-2	58%	54%	4%

Real or genuine votes = Official – jaal votes

*All officially declared results do not take into account the number of fake votes cast. Therefore, there is usually a large margin of error in the results.*

### Vulnerable community and women voter participation

Name of election	Vulnerable participation	Women participation
Pouroshova	242 incidences/ 159 hamla/ 23 pouroshova effected	48%
Munshiganj 1	23 incidences/8 unions	27%
Dhaka 10	Nil	25%
Gazipur 2	4 non-Muslim community/4 centers	35%

*Out of the four electoral events three experienced violence on vulnerable communities thereby obstructing their free participation. In Parbotipur Pouroshova, voter population decreased by 52%, as a result of violence.*

### **Candidate participation**

<b>Name of election</b>	<b>Status of candidate participation</b>
Pourashava Election	Most candidates were able to freely participate 5% were obstructed and 33 candidates withdrew candidature under pressure.
Munshiganj-1 By-elections	Candidate participation was obstructed. Even foreign observers in kolapara Union of Srinagar Thana fled in fear.
Dhaka-10 By-elections	Candidate obstructed, assaulted, unable to campaign  Campaign material of only ruling party candidate was visible
Gazipur-2 By-elections	Free participation of candidates.

Gazipur had the best environment for candidate participation while Dhaka 10 had the worst followed by Munshiganj. Candidates freely participated in Pouroshova elections.

### **Status of voter roll: margin of error**

<b>Munshiganj 1</b>	<b>Dhaka 10</b>	<b>Gazipur 2</b>
60%	65%	45%

In case of Pouroshova, 80% of the voter rolls used in 92 pouroushovas had errors. The scale of error in voter list is large and comparable to stronger democracies such as India where it ranges from 40% - 50%. This large margin of error is a scope for large input of fake votes as witnessed in Dhaka 10 (where 30% of voters who did not live there anymore were registered with the voter list).

## 2.2 Electoral Violence

Number of incidents of violence that occurred:

Pouroshova	Munshiganj 1	Dhaka 10	Gazipur 2
941	155	260	29

How many incidents of violence make a credible election? The question is, how many people were disenfranchised due to this violence?

### Perpetrators and victims of violence

#### Case 1

Pourashava: 941 incidents of electoral violence occurred

	Ruling party cadres	Opposition party	Admin/local elect.officials
Hamlakari	320 (49%) cases	32(5%) cases	85 (13%) cases
H. Sikar	in 36 (5%) cases	139 (20%)	11 (2%)

## Local election officials were not victims.

### Case 2

Dhaka 10: 233 incidents of election day violence

On election day 233 incidents of violence occurred in all 103 centers.

Presiding officer involved:	26
Ruling party cadre:	115
'Utthi mastaan' of ruling party:	46
Magistrate:	15
Local leaders of ruling party:	23
Central leader of ruling party:	3
Security personnel:	5
Total	233

It is important to note that ruling party supporters/cadres/candidates were found to be the main perpetrator of violence. Dhaka 10 shows involvement of the administration and electoral officials in violence.

## 2.3 Electoral Irregularities

Wherever code of conduct was broken, electoral administration was found ineffective and inadequate. There is a direct co-relation between violence and administrative irregularity in electoral system.

Munshiganj	Dhaka 10	Gazipur 2
26%	100%	10%

Findings show that every center of Dhaka 10 was corrupted by irregularity while in Munshiganj 26% of the centers were subjected to the same. In Pouroshovas, ministers and MPs openly campaigned in 63.47% Pouroshovas in favour of specific candidates- flouting electoral code of conduct. Violence and irregularity are major factors that obstruct and discourage healthy participation.

### **Concluding remarks**

1. Pouroshova was generally accepted as a well administered election. Administration demonstrated innovative and responsive action to maintain integrity of the process.
2. The negative indicators are at the lower end in Gazipur 2 and it has also been accepted as a well held election.
3. Compared to this Dhaka 10 was a disaster and Munshiganj 1 was the least unsatisfactory.

The cases above prove:

1. Election Commission can conduct relatively well held elections. (Then why do cases like Dhaka 10 occur?)
2. The role of political parties, biased electoral officials, politicized administration and 'ghost' party agents crowding booths put together equals an unclean and unhealthy electoral system.

The question remains:

If an election officer stamps a ballot paper, or a non-voter votes or even if a political leader intimidates the voters it may all be viewed as

minor irregularities in Bangladesh. This condition may not qualify the election as 'unfree' and 'unfair', just as in the case of the Pouroshova and Gazipur elections.

What qualifies 'unfair' elections? How many incident of irregularity will constitute an unfair and unfree election? How many attacks will disenfranchise enough voters? Who sets the standards? How many fake votes make a fake election? How many errors in a voter list makes for a bad voter list? How many times must MPs, ministers and election officers breach the code of conduct before we can say that the system has collapsed?

## **Challenges for the future**

Setting a new standard of zero tolerance

1. Correct the voter list to give every voter the right to vote. This is the first step on the road to democracy. What matters is an all inclusive voter list.
2. The Caretaker Government is a necessary condition for the smooth transfer of power but is not a sufficient condition to strengthen the entire electoral system in Bangladesh.
3. Focus on the Election Commission: A strong and independent Election Commission can be both a necessary and sufficient condition to administer and protect all electoral processes at all times throughout the year. Campaign for it, press for it, demand for it again and again – until it happens.

4. Control interference of political leaders in local elections by legitimizing their role in it within a strict code of conduct implemented by an independent EC.
5. Take legal action where possible to protect people's right to information, right to free choice and franchise.



# How to Increase Political Participation and Representation of Marginalised Groups?

## Impact and Lessons Learnt

### Group 1-Quotas for women and backward and scheduled castes and tribes

What are the measures undertaken by South Asian countries to redress the marginalization of certain groups and communities from the electoral process?

Nepal - Since the Constituent Assembly is yet to be constituted no legal decision has been taken with regard to quotas. However,  $\frac{1}{3}$  representation for women and representation for Dalits and ethnic minorities is being mooted by several parties. Historically, 33% of the upper caste groups have controlled over 70% seats. Groups are therefore striving to ensure there is wide representation in the Constituent Assembly.

Pakistan- there is nominal representation of women.

Sri Lanka- there is no quota for women. Only 4% women in parliament.

Bangladesh- 1/3 representation for women in local government. Forty five seats have been reserved for women, but they are indirectly elected by political parties represented in Parliament. Hence, they have no constituency.

India- there is a three tier system in place. There is reservation for women in local government structures. Scheduled castes and tribes have reservations according to their population proportion. Several attempts to table a Women's Reservation Bill have failed.

All participants agreed that reservation is imperative to guarantee wide representation. At the same time they also recognized that is virtually impossible to ensure that every single group/community is represented.

## **Group 2- Under representation of social and ethnic groups**

Participants chose to define the term 'marginalized' to incorporate a wide range of groups including groups that are isolated geographically and internally displaced persons.

It was felt that quotas alone were inadequate to address under representation. The importance of comprehensive social policies in the areas of health, education and employment was also highlighted.

Participants suggested the pooling micro-minorities to ensure inclusion and political representation of all groups.

The containment of criminalization of politics was flagged as a strategy that would enable increased participation of marginalized groups.

The importance of the watch-dog function of civil society was stressed by participants.

The democratization of political parties was another issue which participants felt would contribute towards increasing the participation of marginalized groups.

### **Group 3- Migrant workers/expatriates**

The participants felt the right to cast a postal vote should be extended to students studying abroad, refugees and nomadic tribes. Questions were raised as to how this would function in the case of illegal workers.

It was suggested that provision be made for proxy voting.

#### **Recommendations**

- The Election Commission should ensure that minorities are included in the electoral roll.
- Political parties should engage the participation of minorities.
- A quota system should be put in place to ensure political representation of minorities and marginalized groups.
- Reservations should be made for the under-privileged in the education system

## **Corruption and Criminal Practices**

### **Independent Elections Administration in Respect of Public Resources and State Media: The Constitutional Framework in Sri Lanka<sup>43</sup>**

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#### **Introduction**

The widespread abuse of state resources and state media during elections were two of the primary factors which led to reform in the form of constitutional amendment, to strengthen the independence and powers of the electoral administrative mechanism in 2001. Sri Lanka is one of Asia's oldest formal democracies, having introduced the universal adult franchise in 1931. This long and unbroken tradition of democracy, however, does not mean Sri Lanka's experience with democracy is unblemished. Despite a deeply rooted and spontaneous faith among the public with regard to the prospects for political change through elections, the respect for legality

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<sup>43</sup> Session on Corruption and Criminal Practices; Sub-Theme (A): Abuse of Public Resources and Public Media and its influence / impact on Voting Patterns and Election Outcome

and the integrity of the electoral process has been less than perfect from the very earliest elections before and after independence; a situation which also seems to enjoy a high tolerance among the voting public and which thereby renders reform more difficult. The use of financial and socio-political forms of influence and patronage to manipulate electoral outcomes therefore has a pedigree as long as Sri Lanka's democracy.

The Seventeenth Amendment to the Constitution, enacted in 2001, sought to strengthen the independence of the elections administration machinery through changing the structure, composition and manner of appointment and removal of a new Election Commission to replace the office of Commissioner of Elections. The new Election Commission was also provided with a wider scope of substantive powers and greater powers of enforcement. In respect of composition, the independence of the new Election Commission was enhanced through widening the field of appointments to include experts and civil society in addition to a regular administrative service support structure. The idea was to ensure stakeholder representation in decision-making in the administration of elections. In respect of independence, the Seventeenth Amendment provided that appointments to the Election Commission be made by a new and non-partisan Constitutional Council, and secured tenure comparable to superior court judges. The new constitutional framework specifically envisaged enhanced powers for the Election Commission over the prevention of the abuse of public and state resources and of the state-owned and controlled media.

The most remarkable feature about this constitutional framework for the administration of elections, however, is that it has never been implemented in the manner intended. Initially because of a lack of agreement between the then President and the Constitutional Council as to the latter's nomination as Chair of the Election Commission, and subsequently due to the non-constitution of the Constitutional Council itself once the terms of the first members had lapsed, an Election Commission has never been

appointed. Fortunately, a savings clause in the Seventeenth Amendment Act, section 29 (2), provided that in the event for whatever reason of the non-constitution of an Election Commission, the person holding office of Commissioner of Elections immediately prior to the commencement of the Seventeenth Amendment, would be empowered to exercise the enhanced powers of the Election Commission until such time as the Commission is appointed. It is under this provision that Mr. Dayananda Dissanayake, Commissioner of Elections, has administered two major elections, the General Elections of April 2004 and the Presidential Elections of November 2005, exercising the powers under the Seventeenth Amendment.

## **Public Resources**

A major feature of electoral malpractice in Sri Lanka is the abuse of state resources by the ruling party at the point at which the election is called. This ranges from the illegal use of government offices, finances, staff and vehicles for election purposes, to the transfer of police officers and public officials involved in the conduct of elections to facilitate acts of malpractice with impunity, or as measures of punitive action against those unwilling to acquiesce or fearless enough to resist illegal or illegitimate activities. The reports of the European Union Electoral Observation Missions to Sri Lanka during the General Elections of 2001 and the Presidential Elections of 2005 have made this point. This type of abuse has clearly had an impact in terms of unfair advantage and distorted the outcomes of elections, including as the reports of the Centre for Monitoring Election Violence (CMEV)<sup>44</sup> show, in the use of violence during the campaign and on election day. The Final Report of the People's Action for Free and Fair Elections (PAFFREL) on the Presidential Election of 2005 states as follows:

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<sup>44</sup> See [www.cpalanka.org](http://www.cpalanka.org). See also Paikiasothy Saravanamuttu (2007) *Electoral Violence and Dispute Resolution in Asia-Pacific: Sri Lanka Case Study* (Bangkok: UNDP), forthcoming.

“...this practice seems to have increased in comparison to previous years. Incidents such as using ministry and government employees for campaign work, use of state vehicles for propaganda activities, grants of concessions and privileges to groups of people with political motives were all reported under this caption. The reported incidents reveal the use of thousands of government employees, hundreds of official vehicles, state buildings and other government resources on a massive scale.”<sup>45</sup>

It was to prevent precisely this kind of malpractice that the strengthened Elections Commission was established by the Seventeenth Amendment. Many of these activities are illegal under the existing law including the statutes governing parliamentary and presidential elections.<sup>46</sup> The purpose of the Seventeenth Amendment therefore was to strengthen the enforcement machinery rather than to consolidate and clarify the statutory provisions concerning substantive offences. Article 104B (2) accordingly provided as the duty of the Commission to secure the enforcement of all such laws relating to the conduct of elections and referenda, and further established the duty of all authorities of the State charged with the enforcement of such laws to co-operate with the Commission.

Article 104B (4) (a) provided that the Commission shall have the power during the period of an election to prohibit the use of any movable or immovable property belonging to the State or any public corporation: (i) for the purpose of promoting or preventing the election of any candidate,

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<sup>45</sup> PAFFREL (2005) *Observation Report on the Presidential Election*, 17<sup>th</sup> November 2005; at p.7

<sup>46</sup> See Parliamentary Elections Act No. 1 of 1981 as amended; Elections (Special Provisions) Act No. 14 of 2004; Presidential Elections Act No. 15 of 1981 as amended; Provincial Councils Elections Act No. 2 of 1988 as amended; Local Authorities Elections Ordinance No. 53 of 1946 as amended; Referendum Act No. 7 of 1981. See also Sundari de Alwis & Rohan Edrisinha (2000) *The Right to Vote and the Law relating to Election Petitions* (Colombo: Centre for Policy Alternatives)

political party, or independent group; or (ii) by any candidate, political party, or independent group contesting at such election. Article 104B (4) (b) established the duty of every person or officer in whose custody or under whose control such property is for the time being to comply with and give effect to a direction by the Commission.

While to some these may seem an inadequate provision of powers given the wide prevalence and impunity with which electoral malpractices occur in Sri Lanka, at the time, there were several reasons for this formulation. Firstly, the main concern was the inadequacy of the enforcement powers of the Commissioner of Elections, which had to be remedied. There was an implicit intention that once the enforcement framework was in place with a strengthened new institution, Parliament could then consolidate, clarify and further add to the statutory law in terms of offences and other aspects of substantive regulation.<sup>47</sup> For example, the law relating to the offence of ‘treating’, which concerned the provision of financial or other benefit with a view to obtaining an illegitimate advantage for a candidate, was widely perceived to be obsolete, not least in respect of redundant and ineffectual punishments. Moreover, such a rationalisation of statutory law would have been a major reform exercise taking a considerable period of time. The idea then was that these matters could be dealt with once the main problem was addressed at a time when there was wide support among Opposition parliamentary parties for the reforms and there was the possibility of gaining the requisite two-thirds majority in Parliament for a constitutional amendment.

Secondly, at the stage of drafting the Bill which became the Seventeenth Amendment (there were several versions of the Bill, and necessarily so

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<sup>47</sup> The amalgamation of Sri Lanka’s piecemeal election laws into a uniform code has been a longstanding recommendation of the present Commissioner of Elections, Mr. Dayananda Dissanayake. See *The Sunday Island*, 2<sup>nd</sup> April 2006: at p.1



given that it was the initiative of a multiplicity of political parties, some of which also consulted independent opinion and civil society), a consensus emerged that the grant of a general power to the Commission in wide terms was preferable to textual enumeration of specific powers, on the ground that this would enable the widest discretion and supple use of jurisdiction by the future Election Commission. Indeed, a generality of powers granted by the Constitution to the Commission is more in consonant with the spirit and purpose behind the Seventeenth Amendment than an enumerative approach, which could potentially constrain the Commission in the politically charged circumstances of an election campaign when rapid, imaginative and decisive interventions to prevent malpractice would be critical. Thus the argument was that a general power would free the Commission from vexatious legal challenges and unnecessary interpretative disputes.

## State Media

Article 104B (5) gives the Election Commission certain powers of regulation over the media in general, and the principal State broadcasters, the Sri Lanka Broadcasting Corporation (SLBC) and Sri Lanka Rupavahini Corporation (SLRC) in particular.<sup>48</sup> Under Article 104B (5) (a), the Commission has the power to issue, in respect of the holding of any election or referendum, such appropriate guidelines to any broadcasting or telecasting operator, or any proprietor or publisher of a newspaper, as the Commission considers necessary to ensure a free and fair election. Article 104B (5) (b) places a special obligation on the chairpersons of the SLBC and the SLRC, 'to take all necessary steps to ensure compliance with any guidelines as are issued to them under sub-paragraph (a)'. In terms of Article 104B (5) (c),

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<sup>48</sup> It should be noted that the Seventeenth Amendment covers only the SLBC and SLRC, and excludes other State-owned or controlled broadcasters such as the Independent Television Network (ITN), as well as the State-owned and government controlled print media belonging to the Associated Newspapers of Ceylon (ANCL) Group.

where either of those state media institutions contravenes such guidelines ‘...the Commission may appoint a Competent Authority...who shall, with effect from the date of such appointment, take over the management of... [the SLBC or the SLRC]...in respect of all political broadcasts or any other broadcast, which in the opinion of the Commission impinge on the election, until the conclusion of the election...’ During the period a Competent Authority has taken over such management, the SLBC or the SLRC cannot discharge any function connected with such management.

The powers of the ompetent Authority referred to in Article 104B (5) (c) are enumerated in detail in the Competent Authority (Powers and Functions) Act No. 3 of 2002. Under the 16 sub-sections (a – p) of section 2 of the Act, the Competent Authority (CA) is empowered to supervise and control radio and television services of the SLBC and SLRC respectively while maintaining in the public interest, and in the interests of a free and fair election, high standards in programming. The CA assumes all the powers and functions assigned to the corporations under their parent Acts<sup>49</sup>, not only in relation to management, but also programming, production, advertising and content regulation. Section 3 of the Act requires the CA to ensure compliance by the SLBC and SLRC of not only the guidelines issued by the Elections Commission<sup>50</sup>, but also the statutory conditions set out in the provision regarding good taste and decency, balance, accuracy, impartiality and the public interest.

As usually happens in Sri Lanka during election campaigns, the role of the state media institutions was the subject of controversy in 2004 also, when the General Elections of April that year became the first to be held under the new Seventeenth Amendment framework. The Commissioner

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<sup>49</sup> i.e., Sri Lanka Broadcasting Corporation Act No. 37 of 1966 and Sri Lanka Rupavahini Corporation Act No. 6 of 1982

<sup>50</sup> *vide* Article 104B (5) (a)

of Elections issued guidelines to the media in March 2004. During the course of the campaign, the conduct of the SLBC and SLRC were seen to be falling short of the constitutional and statutory standards of balance and impartiality expected of them, and in the last week of the campaign, the Commissioner of Elections appointed a Competent Authority in respect of both institutions to enforce the guidelines.

The Election Commissioner's guidelines for fair and balanced reporting were impugned by the Sri Lanka Rupavahini Corporation by way of a fundamental rights application to the Supreme Court on 31<sup>st</sup> March 2004, as was the Commissioner's appointment of a Competent Authority to take over certain news and political programmes that were seen to be flouting those guidelines. The petitioners' prayer for interim relief by way of suspending the guidelines and staying the appointment of the Competent Authority were rejected by the Supreme Court.

Hindsight only reinforces that these events were at the time considered remarkable for the fact that the legal exercise was played out as if the state media institutions were an organic part of the ruling party, the United People's Freedom Alliance (UPFA). That is, in bringing into sharp relief, perhaps inadvertently, the real nexus between the state media institutions and the political party that controls them, the affair demonstrated more forcefully than the most pungent academic or political criticism, the wholly unacceptable nature of Sri Lankan state media institutions. Even the fact that the Commissioner was exercising powers conferred by the Seventeenth Amendment (and the attendant enabling legislation, the Competent Authority (Powers and Functions) Act No. 3 of 2002) was not sufficient deterrence in the attempted justification for using state media institutions in the pursuit of party political interest.

## Conclusion

The fate of the Seventeenth Amendment should serve as an admonition to those who place too much faith in legal instruments to effect reform and change of political culture and practice in this part of the world. Formal democracy is underpinned by animating values drawn from deeply resonant but illiberal discourses such as nationalism, high tolerance of authoritarianism and cavalier attitudes to integrity and the rule of law. This results in and consolidates clientelism, patronage politics and illiberal forms of elitism that distort the promise of constitutional democracy. Indeed, there is evidence to suggest a strong linkage between voter expectations of elections as a periodic mechanism of patronage distribution, and candidate behaviour leading to abuse of public resources and property, and even violence. Nonetheless, the basic democratic ideal is sufficiently rooted in Sri Lankan society to warrant a more sanguine attitude to prospects for reform. The following areas would in that case merit closer exploration:

- Require candidates to declare their assets and liabilities before elections, ideally at the point of submission of nomination papers
- Require candidates and political parties to account for independently audited campaign expenditures during and after elections
- Place limits on election spending by candidates and by parties
- Ensure that the existing law regarding candidates with convictions or criminal cases pending against them, especially offences involving misuse of public property, are observed in a transparent manner
- Assign oversight over all state-owned and government-controlled media institutions to the Election Commission or a Competent Authority automatically at the commencement of the election campaign

## Effects of Money, Muscles and Official Influences on Elections: The Experience of Bangladesh

*Dr. Badiul Alam Majumdar<sup>51</sup>*

Democracy is rule by the consent of the people. Elections are the only means to attain that consent. In fact, it is the only non-violent and civilized means of transferring governmental powers. Thus, elections are prerequisites for a democratic polity. However, merely holding periodic elections does not establish democracy – elections must be free, fair and meaningful. Elections are free and fair only if they are not manipulated by money, muscle and official influences. Elections are meaningful only if free and fair elections lead to changes in the quality of elected representatives and consequently better governance. This note is intended to address the issue of the effects of money, muscle and official influences on elections in the Bangladesh context.

### Effects of money

Money influences elections in several important ways. One obvious and widely prevalent use of money is the buying of nominations from established political parties. This seedy act is known as *monomoyan banijya* or “nomination trade”. Candidates often pay huge sums of money to party

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<sup>51</sup> Global Vice President and Country Director, The Hunger Project-Bangladesh, Secretary, SHUJAN (Citizens for Good Governance) (2 December 2007)

bosses and sometimes to several leaders of the party. At times larger parties engage in bidding wars to form electoral alliances with smaller parties.

Obtaining nominations by paying bribes to party leaders has become widespread in Bangladesh in recent years. It is alleged that prior to the elections scheduled to be held in last January 22<sup>nd</sup>, Awami League nominations in 50 seats were sold for a minimum of Tk. 5 million to a maximum of Tk. 200 million, resulting in illegal transfers of huge sums of money. (*The Prothom Alo*, 14 January 2007) Through such nomination trade many corrupt businessmen and owners of black money have in the past become Members of Parliament (MPs), making this august institution a club of unsavory characters.

There are also serious allegations of illegal inter-party transfers of huge sums of money prior to the cancelled elections that were to be held last January. It is claimed that Awami League agreed to pay Tk 600-700 million, of which Tk. 35 million were paid as advance, to bring General Ershad's Jatiyo Party into the fold of the 14-party grand alliance. On the other hand, BNP allegedly offered to pay Tk. 500-600 million, of which Tk. 20 million were paid in advance, which had to be returned when the deal fell through. (*The Prothom Alo*, 15 January 2007)

Buying votes is an important use of money in elections. Candidates often pay cash and sometimes material items such as saris, lungis and other things for buying votes. Voters are almost always entertained with drinks and snacks and sometimes more. Widespread poverty and lack of awareness of voters makes such vote buying possible. Sometimes middlemen are used for this purpose. Buying votes is an illegal act and considered to be a "corrupt practice" under *The Representation of People Order, 1972* (Order) and is a punishable offence, punishment being rigorous imprisonment of 2-7 years and also fines.

Yet another use of money in elections is the buying of official influences. Sometimes Returning Officers, Polling Officers, and law enforcement personnel etc. are bribed. In the same vein, the services of hooligans and musclemen are also bought and weapons leased with money to influence election results.

Sometimes services of “dummy candidates” are bought with money. In recent elections, one or more dummy candidates run *incognito* in support of a major candidate and the polling agents of such candidates support the major candidates’ attempts to cast false votes. These agents also support their benefactors in cases of disputes in vote counting etc. Money is at times used to buy the polling agents of major opponents. This author recently heard of a very unique form of electoral bribery. In a notoriously rigged by-election during the latter part of the last government, a major opposition candidate, by his own admission, paid Tk. 10 million to a major political leader who was to support and manage his election. Hearing of this payment, the other major candidate, fielded by the 4-party alliance, apparently paid the same leader Tk. 8 million as the first installment of a Tk. 10 million deal. This caused the particular leader to play a neutral role on the day of the by-election.

Money is often used for campaign expenses in excess of the allowable limits, which is currently half a million taka. Money is also used for unallowable election expenses such as wall writings, colour posters, transporting voters, use of motorized vehicles for election campaigns. Excessive election expenses are possible because of general lack of enforcement of electoral laws by the Election Commission (EC). For example, of the 1939 candidates who contested the 8<sup>th</sup> Parliamentary elections in 2001, only 1473 submitted the election expense reports required by law. The remaining 466 candidates did not submit the report in violation of the section 44C of the law, although this is an “illegal practice” under section 74 of the 1972 *Order* punishable with a rigorous imprisonment of a minimum two years and

maximum seven years and fines. However, no action was taken against the lawmakers who became the lawbreakers.

More importantly, all those who complied with the requirements of the law and submitted the required statements indicated that they did not exceed the expense limit of Tk. 500,000. It is however common knowledge that every elected MP exceeded the expense limit and thus began their lawmaking career with a declaration which amounted to breaking the law of the land. Also, even though election expenses are, by tradition, counted from the date of declaration of the election schedule, many candidates spend huge sums of money prior to that date for showdowns as well as posters and portraits.

How much money parliamentary candidates, especially rich candidates spend in election campaigns can be ascertained from a study conducted by Transparency International-Bangladesh (TIB) during the three months prior to the election that was to be held on 22 January 2007. TIB monitored the election expenses of 122 candidates in 40 constituencies and found that as of January 3, 2007, the candidates spent a total of Tk. 185,500,000 or an average of Tk. 1,520,000. However, the candidates other than the two major political parties – Awami League and BNP – spent only minor amounts. One Awami League candidate alone spent Tk. 16,700,000 and a lone BNP candidate spent Tk. 19,400,000 during the study period. Much of these amounts were spent for showdowns, rallies, public meetings, setting up election camps, paying campaign workers, transportation costs, some which are not allowable election expenses.

It should be noted that the above figures are only for visible election expenses. There are also many invisible expenses such as payments for buying nominations and other bribes. In addition, they excluded the amounts spent prior to the three months of the study period. Furthermore, they did not include the possible expenses of the final 18 days prior to the election date, which would



have been substantial. Thus, TIB estimates give only a rough indication and not a full picture of the election expenses of parliamentary candidates.

It should be noted in this context that major political parties are also awash in cash and spend big money for their own operations, some of which are illegal. *The Prothom Alo* (February 9, 2007) reported that Awami League requires about Tk. 120 million for regular operations of the party each year. BNP, on the other hand, spends about Tk. 150 million annually. These huge sums of money are often extorted from corrupt businessmen, foreign sources or collected in exchange for official favours. For example, the former State Minister for Home during the last regime, who is now in jail, is reported to have alleged that BNP received Tk. 3 billion from three foreign countries prior to the 2001 elections. It may also be noted that some of Bangladesh's top political leaders are now in custody on charges of extortion.

## **Muscle Power**

The influence of muscle power on elections is a fact of life in many countries, including Bangladesh. Muscle power is normally used for the following ends: intimidating opposing candidates, their representatives and supporters; driving away the polling agents of opposing candidates on election day; threatening the poor and minority voters to prevent them from voting; snatching ballot boxes; stuffing ballot boxes; disrupting the law and order situation around the polling centres to slow down voting, or to chase away voters or stop voting altogether; capturing polling centres; disrupting the counting of votes or destroying ballot papers or result sheets; altering the polling results and the broadcasting of those results; and so on.

**Killings and injuries in election violence (July 15 to October 10, 2001)**

District	Killed	Injured	District	Killed	Injured
Feni	33	300	Jhenaidah	2	55
Chittagong	22	323	Netrokona	2	36
Barisal	7	374	Rajbari	2	22
Bhola	15	352	Natore	2	18
Dhaka	15	274	Noakhali	1	201
Bagerhat	15	199	Rajshahi	1	198
Sirajganj	8	352	Habiganj	1	50
Pabna	8	273	Tangail	1	37
Comilla	8	212	Maherpur	1	22
Mymensing	8	160	Gopalganj	1	18
Kustia	7	156	Faridpur	1	5
Munshiganj	6	162	Rangamati	1	3
Sylhet	6	18	Moulvi Bazar	1	-
Sariatpur	5	503	Naogaon	1	8
Khulna	5	10	Laxmipur	-	146
Narayanganj	4	307	Patuakhali	-	86
Jamalpur	4	203	Magura	-	78
Sunamganj	4	15	Sherpur	-	50
Gazipur	3	134	Manikganj	-	40
Chandpur	3	39	Panchagarh	-	24
Khagrachhari	3	7	Jhalakathi	-	22
Rangpur	2	620	B'baria	-	10
Satkhira	2	223	Pirojpur	-	7
Narsingdi	2	195	Madaripur	-	6
Jessore	2	75	Cox's Bazar	-	3
Bogra	2	55			

Source: "The CCHRB Election Observation Report, The Eighth Parliamentary Elections 2001"

## **Elections 2001”**

Muscle power is exercised both during the pre- and post-poll periods. Violence leading to death and injuries are often the outcome of the demonstration of raw muscle power. During the 8<sup>th</sup> Parliamentary elections terrorism and violence were used against opposing candidates and minorities even in the days following elections. The table above contains the reported cases of deaths and injuries during July 15 through October 10, 2001 (election date being 1 October 2001) and was pieced together by the Society for Environment and Human Development (SHED) from major newspaper reports. However, these figures do not tell the full story because many violent incidents were not reported.

Dr. Waresul Karim designated 58 out of 300 areas as terrorism prone constituencies based on their crime records at the time of the 8<sup>th</sup> Parliamentary elections and studied the election results of those constituencies. Eleven constituencies which had arguably been affected most by terrorism were designated the “Core Terrorism Prone (CPT) Areas.” Another 19 constituencies were classified as “Medium Terrorism Prone (MTP) Areas.” Still another 28 constituencies were categorized as “Broadly defined Terrorism Prone (BDTP) Areas.”

Area	No.	Seats won by AL			Seats won by BNP			Seats won by others		
		1991	1996	2001	1991	1996	2001	1991	1996	2001
Core terrorism prone areas	11	3	7	1	7	3	10	1	1	0
Medium terrorism prone areas	19	9	11	4	8	7	15	2	1	0
Broadly defined terrorism prone areas	28	8	20	2	16	7	24	5	1	2
All terrorism prone areas	58	20	38	7	31*	17	49	8	3	2

*\*Represent 4-party alliance seats; for BNP it was 30 seats.*

Election results show that Awami League won 3 seats in 1991, 7 seats in 1996 and only 1 seat 2001 in the 11 CPT areas. On the other hand, BNP won 7, 3 and 10 seats respectively in the same areas. In all 58 terrorism prone area seats, Awami League bagged 20, 38 and 7 seats respectively, while the BNP alliance won 31, 17 and 49 seats. Clearly, the 4-party alliance won more seats in 2001 in all terrorism prone areas. According to Dr. Karim, two factors affected the performance of Awami League candidates in 2001: the alliance arithmetic (i.e., formation of an alliance with Jamaat and two other parties) and the more unfavourable “violent” image of their candidates in those constituencies. Thus, while widespread violence and terrorism is a reality in the electoral politics of countries like Bangladesh, voters, given the chance, appear to have voted against candidates with such images.

## **Official Influences**

Neutrality of the government in power and all the relevant institutions including the Election Commission is a prerequisite for free, fair and acceptable elections. Undue official influences can, in fact, cause havoc on election outcomes. Bangladesh's past experiences show that such influences can work at every step of the election process and distort election results.

In Bangladesh, one of the sources of unwarranted official influences is the Election Commission (EC) and the lack of its independence. Although the EC was set up as an independent constitutional body in independent Bangladesh, it was brought under the President's secretariat during the Ershad regime as part of an administrative reorganization scheme. This has caused the chief executive of the Republic to make mischief in the functioning of the EC. The use of the EC for partisan ends has always been a problem in Bangladesh, but it was more so during the last government. For example, during the early part of the 4-party alliance government, the Secretary of the EC was totally partisan and he and some of his colleagues often pursued their partisan interests in defiance of the Election Commission. He was instrumental in hiring dozens of ruling party cadres as grassroots level election officers some of whom were later released by the reconstituted EC. The Chief Election Commissioner's request to transfer the Secretary was not also heeded by the government. This particular person, it may be noted, was later rewarded by the last government by elevation to the position of an Election Commissioner.

Appointments of Election Commissioners have also been a means to exert influence on elections. During the Awami League regime, at least one former government official who took a public position against the first BNP government was appointed an Election Commissioner. Furthermore, all the appointments of the 4-party alliance government were more or less partisan and some were nakedly so. One of them even sought a BNP nomination for the parliamentary election. They made a

mess of the preparation of the electoral roll, allegedly padding the numbers with the fake registration of over 10 million voters. The electoral roll issue became so controversial that it had to be litigated in the Supreme Court of Bangladesh and updated several times. It goes without saying that the manipulation of the electoral roll is an important means of influencing election results.

Another source of influencing electoral outcomes is by means of the delimitation of constituencies. Fortunately or unfortunately, parliamentary constituencies have never been delimited in Bangladesh. Official influences are also exerted in the appointment of Returning Officers, Assistant Returning Officers, Presiding Officers and Polling Officers.

Bangladesh has a system of an unelected non-party caretaker (CTG) government charged with the responsibility of aiding the EC for holding free and fair elections. Neutrality of the CTG is thus an essential precondition for fair elections as it can conceivably influence election results by manipulating the deployment of government officials and security personnel. The neutrality of the caretaker government, which assumed office after the expiry of the 8<sup>th</sup> Parliament was seriously questioned. The President, nominated by the 4-party alliance, became the Chief Adviser and made controversial appointments to his Council of Advisers and to the Election Commission. The partisan stance of the CTG became so controversial that it could not be sustained, and it was replaced on January 11, 2007, with army intervention, by a new interim government.

A naked case of official influence took place in the implementation of a historic court judgment on disclosures. In May 2005, the High Court Division of the Bangladesh Supreme Court passed a judgment requiring candidates in Parliamentary elections to disclose with their nomination papers with information about their education, income assets, loans, criminal records etc. in the form of affidavits. Breaching the normal

procedure, a third party, who completely misrepresented himself, was allowed to file an appeal, apparently in the public interest, against the judgment after it was already implemented in five by-elections. Later, on December 19, 2006, only two days before the filing of nomination papers for the elections scheduled for January 22<sup>nd</sup>, the vacation Judge of the Supreme Court, unilaterally, issued a stay on the judgment, although a 4-judge regular bench of the Appellate Division, headed by the Chief Justice, refused to do so on two earlier occasions. In unmatched haste the order was transmitted to the EC on the same day and the Commission instantaneously implemented it. Subsequently, the relevant bench of the Appellate Division accepted the appeal, overturning the entire High Court judgment in spite of the fact the appellant objected to the disclosure of only educational qualifications. After loud protests from opposing lawyers, the Court recalled its judgment in a few hours, staging an unprecedented drama. Needless to say, undue means, deception and fraud were committed at almost every step of the way of the appeal process of this important case under the influence of the government in power.

To conclude, in developed countries political corruption merely creates economic rent; taxpayers pay higher prices for goods and services but the political institutions remain largely unscathed, functional and effective. In developing countries however, corruption cripples the political institutions. It brings to power those who have no interest in the well-being of the nation and for whom elections and politics are a business. These elected politicians invest vast sums by buying nominations from political parties, muscle power to ensure election, and spend huge amounts to attract constituents. Consequently, once elected, they immediately seek payback – a significant return on their investments by plundering the country in every way possible. Hence, scarce funds needed to supply crucial public infrastructure, public education, etc., are lost to the politicians, and instead of going forward, countries like Bangladesh go backward. This creates a cycle where the country remains uneducated and undeveloped and where

people with huge amounts of money continue to manipulate the political situation. Sadly, this has been the situation in Bangladesh.

Naive trumpeters of elections equate democracy with elections. However, we have seen in Bangladesh that elections are hardly a solution if political nominations can be bought, muscle power exercised and sacred political institutions like the EC manipulated to bring to power the most despicable and wealthy people. Election-only-democracy has thus turned into a farce in Bangladesh. In order for real democracy to take root in Bangladesh we must ensure that elections bring to power honest and clean people of modest means who reflect the public's interests. Currently, the system is stacked against such people. To facilitate their nomination political parties must themselves become democratic and select candidates on the basis of the size of their grassroots support rather than the size of their wallets. Election laws regarding campaign finance, muscle power and public disclosure of candidates' criminal records and wealth must be rigorously enforced. Furthermore, attempts to make non-partisan institutions like the EC partisan, must be strenuously opposed. This is a tall order and to achieve it will require an enormous amount of effort by the government and civil society activists. However, it must be remembered that what we are fighting for is something of priceless importance – real democracy, where government and elected officials are truly of the people, by the people, and for the people. Hence, no matter how daunting the obstacles are, it is something that we must relentlessly pursue with untiring dedication.



# **The Role of Civil Society in Participatory Elections Challenges & Strategies**

*Kingsley Rodrigo*

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## **Democratic Elections: Human Rights, Public Confidence and Fair Competition**

Elections are important milestones in democratic transitions. They provide an opportunity for examining how a range of institutions are functioning in a transitional setting and whether fundamental human rights are being protected and promoted. A critical gauge of this process is whether the population believes that they are free to exercise their rights to political expression, association, assembly and movement as part of the electoral process.

The examination of whether elections are genuine includes not only whether the election administration is acting impartially and effectively but whether political contestants have the opportunity to campaign freely for popular support. The examination must also include determining whether government resources are properly utilized in the electoral process, whether the military is neutral and acting as a professional body, whether the police and prosecutors are acting to maintain order and are protecting those seeking to exercise their civil and political rights, whether the judiciary is conducting itself impartially and effectively, whether the

news media are free to act as conveyors of accurate information and to act as watchdogs over government and political processes as well as whether they are providing access to political contestants and objective coverage of those contestants and events of national importance.

In effect, elections must be examined in the context of a country's broader transition toward democracy not taken out of context. A critical element in this process is building public confidence in elections. Unless the electorate feels that it is free to make political choices, is adequately informed to do so and its choices will be respected, an election process will not be truly meaningful. At the same time, political contestants must feel they have a fair chance of reaching and winning support of the voters – that there is a “level playing field” – in order to have the incentive to participate in the process and to respect the outcome of the elections. This too is crucial for the public to have confidence in the government that results from the elections. Thus, elections are inextricably linked to what precedes and what follows them.

## **CHALLENGES**

### **Internationally Recognized Fundamental Rights and Freedoms & Genuine Democratic Elections**

**A. Free and Fair Elections Require an Atmosphere of Respect for Human Rights and an Absence of Intimidation:** Elections provide a test of how a range of institutions are functioning in a country and how promotion and respect for human rights – particularly civil and political rights – are carried out in practice. Elections cannot take place in a vacuum; they must be viewed in a social, historical and political context. In order for elections to fairly reflect the will of the people, the population must perceive that they are free to exercise their rights, are adequately informed to do so, and have confidence that the electoral process will accurately reflect their choice.

**B. The Rights to Participate in Government:** The Universal Declaration of Human Rights, applicable to all Member States of the United Nations, Article 21 states:

“Everyone has the right to take part in the government of his [or her] country, directly or through freely chosen representatives.... The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equally suffrage and shall be held by secret vote or by equivalent voting procedures.

**C. Freedom of Opinion and Expression:** Article 19 of the Universal Declaration of Human Rights states:

“Everyone has the right to freedom of opinion and expression; this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

This, of course, includes the freedom of political contestants to form political opinions and to communicate these opinions to others as part of the electoral process. The freedom to seek and receive information relates to the electorate’s right to gather accurate information in order to exercise an informed choice between political contestants. The freedom of expression is central to the news media’s roles in the electoral process.

**D. Rights to Security of the Person and Due Process of Law.** None of the freedoms described above can be exercised meaningfully in the electoral context unless prospective voters, campaigners and political competitors are free from intimidation and violence. This includes freedom from threats of arbitrary detention, excessive use of force by governmental authorities, mistreatment while in governmental custody and extra-judicial killings.

Central to this is the right of prospective voters, campaigners and political contestants to equality before the law, equally protection of the law and due process of law.

## **I. Public Confidence in the Electoral Process Is Critical to Genuine Elections**

A consistent lesson in international electoral experience is that elections are not simply a technical process. Elections are part of a political process that, to be successful, requires public confidence. Sound electoral laws and procedures are necessary but not enough; the public, including the political contestants, must *believe* that the electoral process will be effectively and impartially implemented. Steps must, therefore, be taken to ensure that the electoral process is not only administratively correct, but is free from the perception of partisanship. It is, therefore, necessary for the government and its electoral administration to take measures beyond the minimum legal requirements to create an expectation that fairness will prevail.

### **Strategies**

Building public confidence in electoral processes must include:

- setting up an effective and impartial election apparatus that is open and transparent;
- involving the political contestants in all basic elements of the election process;
- opening the election process to the observation of citizens and civic organizations;

- convincing the electorate of the importance of the elections, that their personal safety and ballot secrecy will be secured and that the results of their voting will be respected; and
- ensuring that a trustworthy independent monitoring process will be in place.

**A. Transparency:** Transparency in electoral administration was a phrase not used frequently a decade ago. “Transparency” is a now byword in election vocabulary.

Transparency, in its electoral sense, has numerous aspects.

- 1) It applies to allowing political contestants to view all aspects of electoral preparations, from the drafting of election laws and selection of electoral administrators all the way through the tabulation of results and resolution of electoral complaints.
- 2) It also applies to allowing the public to witness the steps of the election process, usually through domestic nonpartisan election monitors and news media.
- 3) In many countries it even applies to allowing the international community to witness the steps of the election process, usually through impartial international election observers.

Transparency applies to a range of activities, including, among others:

- drafting or modifying electoral laws and regulations;
- selecting electoral administrators, from the highest bodies down to the polling sites;
- delimitation of election districts;
- qualification of parties and candidates;

- establishing criteria for voter eligibility;
- establishing the mechanism for voter qualification, such as a voter registry;
- training election officials;
- setting up and running computer systems;
- ballot and voting materials design, production and distribution;
- establishing polling sites;
- voting procedures;
- counting and tabulation procedures;
- complaint mechanisms;
- announcement of results; and
- seating winning contestants.

Transparency builds public confidence under the adage that if you are acting properly you have nothing to hide. Transparency at times adds extra time and requires expending resources, but the cost/benefit ratio of extra time and resources compared to enhanced public confidence almost always favors added transparency.

### **B. Participation of Political Contestants in All Basic Steps of the Election Process:**

The political contestants play a crucial role in developing public confidence in the electoral process. If the political contestants are involved in a meaningful way during the early stages of the electoral process, including in making decisions about electoral laws and regulations and in determining the method of selecting bodies for election administration, their composition

and powers, the political contestants will be more trustful of the actions of election administrators, which in turn will greatly affect public perceptions of the election process. Likewise, the involvement of political contestants in each step as the election process unfolds reinforces public confidence.

Involvement of political contestants can take various forms, including, among others:

- deciding fundamental issues concerning election law, regulation and composition of key electoral bodies through the legislative process or through “round-table” negotiations;
- including political party representatives as voting members of election bodies at all levels;
- including political party representatives as non-voting members or observers of election bodies at all levels;
- developing a process by which political contestants agree upon a code of conduct to regulate their behavior during the electoral process;
- establishing party liaison committees as adjuncts to electoral bodies at the national, regional and local levels to facilitate communication, conflict avoidance and informal dispute resolution.

More than one of these mechanisms can be employed simultaneously. At the same time, the public must be informed of these steps and of key decisions in the election process in order to enhance and reinforce confidence in the elections.

## **II. Participation of Citizen Groups in the Election Process is Central to Public Confidence.**

Another important recent development in international electoral trends is the widespread acceptance of the contribution of domestic nonpartisan election monitors. During the last year, for example, domestic nonpartisan monitors played important roles in elections in countries as diverse as South Africa, Mexico, the Former Yugoslav Republic of Macedonia, Ukraine and Nepal.

Election monitoring by impartial domestic NGOs adds significantly to public confidence in the election process. Nonpartisan domestic election monitoring also provides an excellent example of citizen participation in governmental processes and ensuring governmental accountability. This experience often enhances further citizen participation in government, which helps in the development of civil society.

Nonpartisan election monitoring is addressed in the Copenhagen Document of the Commission on Security and Cooperation in Europe (CSCE). It is also recognized in the recent United Nations publication, UN Professional Training Series No.2: "Human Rights and Elections," as helpful in securing public confidence in the electoral process.

## **III. Ensuring Due Process and Trustworthy Election Monitoring Are Central to Building Public Confidence.**

**A. Ensuring Due Process:** In addition to being impartial, the election bodies must be able to take independent and effective action to protect the integrity of the elections process. It is essential that the election system institutionalize guarantees of equal treatment and procedural due process in order to ensure a credible election. Such precautions help ensure the satisfaction of voters and political contestants in situations where they perceive, rightly or wrongly, that they have been unfairly treated.



Appropriate due process guarantees include legislative, regulatory and judicial procedures that provide notice, hearings and appeals and protection against arbitrary or biased rulings. These guarantees should be present in every aspect of the election process, including appointment of staff and election officers, accreditation of candidates, registration of voters, design and production of election materials, enforcement of election law and adjudication of violations, conduct of voting and counting, and announcement of final results.

**B. Trustworthy Election Monitoring:** As stressed above, allowing party representatives to be present at all steps of the election process is an important way to ensure fairness; and, allowing a similar presence of the nonpartisan domestic NGO monitors also is also an important way to ensure fairness.

**Parallel Vote Tabulations:** An important device in trustworthy election monitoring is independent, parallel vote tabulations. (PVTs, sometimes called “quick counts”). This exercise can be carried out by political parties, news media, nonpartisan domestic election monitors or international election observers. PVTs are important in deterring those who may seek to tamper with election results or in verifying official results for those who may be skeptical about the election process. A significant number of nonpartisan civic organizations have successfully conducted PVTs; Mexico provides a recent example. Church-related organizations also have played important roles in conducting independent PVTs; for example, in Panama’s 1989 elections the Catholic Church laity group conducted a PVT. PVTs also have been successfully conducted under the auspices of the UN and OAS.

PVTs are not exit polls but are done on the basis of an independent tabulation of actual election results. PVTs may be done on the basis of comprehensive tabulation of results or on the basis of random statistical

sampling. They provide an important foundation for independently verifying the accuracy of the official election results. In countries such as Mexico this year or the Philippines and Bulgaria in past elections, PVTs did much to raise public confidence in the electoral process. PVTs can easily be provided for by administrative rulings.

#### **IV. Voter and Civic Education Are Critical to Genuine Elections**

Critical to the principal that “the will of the people shall be the basis of the authority of government” and that “this will shall be expressed in periodic and genuine elections” is voter and civic education. “Will” to be genuinely expressed must be adequately informed in order to provide the basis for making a free choice.

Civic and voter education must cover the basics of why it is important to vote, the importance of the secrecy and security of the vote. Civic and voter education must also address how to distinguish between political contestants in order to make an informed choice. These more complicated elements of civic education should not be lost in informing voters about where, when and how to register and vote.

Additionally, the task of conducting civic and voter education provides roles for the government, election bodies, political contestants, mass media, and nongovernmental organizations alike. Carrying out these activities can raise the civic conscience of actors in each of these sectors. It can also serve to build the capacity of NGOs to carry out programs reinforcing civil society after elections.

## How good is Indian Electoral Democracy?

*Mr. J. M. Lyngdoh -  
former Chief Election Commissioner, India*

Given a sprawling landmass, a teeming population and an extravagantly pluralist society, a newly-independent India of nearly sixty years ago could hardly have been otherwise than a federal democracy. What is significant is that it selected a parliamentary form of government both at the Union and States levels, a decision on which it has never subsequently relented. So elections to parliament and the state legislatures have had to be, and in fact have been very many as well as regular and timely except in the occasional state briefly under president's rule, now increasingly a rarity. The hustings have smoothly and authoritatively transmitted the power of governance from one set of political parties to another, whatever be the persuasions of the individual parties concerned.

One might even add that elections have had a therapeutic effect, however ephemeral, on the Indian polity. In substantial areas in more than 10 % of the districts in the country, the writ of government no longer runs. Though under the effective control of non-statal entities usually hostile to the governments concerned, these areas are resumed by state forces at election time. Indian sovereignty, therefore comprehends the whole country only when there are elections.

Unlike in most democracies, there is no gradualism in the Indian suffrage. It has been maximal from the beginning. And there are no conditions,

barring minimum age and sanity, to universal adult suffrage in India. This roomy inclusiveness in the suffrage and its complement, the reservation of constituencies ---- reinforced by affirmation in admission to schools and colleges and government service ---- have provided the only opportunity in aeons of a rigidly hierarchical society, for the under-privileged to rise above their stations, as well as a running revision of the class and caste pyramid.

Indian elections are by and large fair. I have observed elections in UK, Australia and Sri Lanka, where conducting elections is just logistical management, and where elections therefore cannot but be fair. But how does one get fair results in India with all the propensity for cheating, mutual animosity and violence?

The most independent and powerful election commission in the world ensures this. The Indian Constitution has given the power of superintendence, direction and control of parliamentary and assembly elections to the Election Commission. Its independence is guaranteed by making it a permanent institution, and the Chief Election Commissioner removable only by impeachment in both houses of parliament. The Constitution also bars any interference by the courts once the electoral process has been set in motion. Election petitions to the High Courts are admissible only after elections are over. A unique mark of the Indian Election Commission's independence is that it fixes all election schedules without even consulting the government of India or those of the States. But a potent autonomous institution can still be hobbled by a shortage of funds or delegated financial authority. However Mr. Seshan, the then CEC literally imposed the same financial powers for the Election Commission as were applicable to the Supreme Court of the Government of India, and extorted from it whatever funds were required to run his institution.

The Election Commission has also over the years, discovered justifiable and lasting, though strictly extra-legal ways of exerting its authority. A

good example is the now ubiquitous code of conduct for candidates and political parties. It began as an innocuous and infantile set of dos and don'ts accepted by political parties in the rather bizarre setting of the Madras Police Commissioner's office. However it is evident that at election time parties are most unequal with the ruling one enjoying all the pelf and power. So the Election Commission simply trimmed the ruling party, to the extent possible, to the level of its competitors. The code as it stands prohibits from the day the elections are announced, till the results are declared, self-embellishing advertisements of the government paid out of the public exchequer, transfers of officers, new appointments and new projects. It also does not allow ministers to electioneer in the guise of official tours. As a mere citizen the minister cannot be met by local officialdom, use official transport or even government rest-house accommodation unless he is next in the queue. Monitoring of journeys by government aircraft is now so strict that governing politicians prefer hiring private helicopters.

The model code's potency is not confined to interdiction. In 1994 when the Election Commission expressed its unhappiness over a state governor's visiting his home-town in Madhya Pradesh to help his candidate son with his election the governor resigned. There are examples of by-elections cancelled by the Commission when the state governments concerned announced new schemes after the model code had come into operation.

Court rulings have only bolstered the Commission's effectiveness. In a general election for the whole country some five million or more polling personnel alone are required and can obviously be provided only by the state governments. So impartial observers have to be appointed to oversee their work. As for policemen, five hundred thousand, in gross terms, were required just for the October 2005 elections in Bihar. Mr. Seshan realized serious elections were not possible without observers and substantial police forces. But when he put in his demands the Union and State governments kept coyly passing the buck. So he refused to conduct any more elections

until his demands were met. The Supreme Court cleared this constitutional impasse by directing the Government of India to meet the demands. The problem has not recurred.

Though a latecomer, civil society is playing an increasingly crucial role in improving the quality of elections. Through the Supreme Court it has added some mandatory queries to those of the Election Commission in the affidavit required to be filed by each candidate. He has to detail the criminal cases he is embroiled in, including past convictions, if any, his and his dependents' financial assets and liabilities, with emphasis on what they owe public institutions, as well as his educational qualifications. How deeply it has bitten into the flesh and ego of the politician is indicated by the speed with which all political parties came together and got the government to pass an ordinance exempting candidates from such disclosures. Which ordinance was promptly nullified by the Supreme Court. The number of very dedicated groups collecting the affidavits, analyzing them and circulating them to the voter well before the date of voting, is growing.

Civil society has also been scrutinizing manipulated electoral rolls at village and ward level in collaboration with the public.

The media has been equally supportive of good elections. Perhaps there is no media more free than the Indian one today, very actively which exposes candidates and political parties during elections. Since crimes are suppressed or simply not taken cognizance of by the police, television channels have been undertaking sting operations on ministers and even chief ministers. The print media has been concentrating on new appointments, mass transfers of officers and newly sanctioned projects immediately before or during the operation of the model code of conduct. Nearer elections, the coverage has focused on bribing voters, excessive expenditure, criminally liable communal hate campaigns and so on.

The Indian voter himself is not as easily manipulable as in the past. Even when he takes freebies from political parties he no longer considers them as bribes but as gifts, and so he decides to vote without reference to them. I have referred to elections as offering a social and economic ladder to the under-privileged. It is they more than others who grasp the opportunity and participate enthusiastically in elections. They also have a better sense of the value of their votes and the purposes they can serve than the middle class, who have been abstaining from voting.

The response to good elections is very positive in the rural areas ---- in correcting electoral rolls and ID cards, or finding ideal locations for polling stations, or maximizing the effect of police forces deployed to guard polling booths, prevent mischief by candidates, political parties and their surrogates, and free access to polling booths for under-privileged voters.

But intrinsically there is much inequality within Indian electoral democracy. For example there are the areas out of the governments' authority and jurisdiction alluded to which are mostly isolated, thinly-populated, and therefore marginal areas in the arithmetic of electoral politics.

What makes them even more unequal is that they are richly endowed with forests, minerals, rivers, and are exploited by and for the rest of the country. Local people, mostly tribals, have limited rights in the forests, and are displaced without compensation or rehabilitation for irrigation projects, forest-based industries and mining. The consequential disaffection in relation to the government has attracted police forces in strength, and ---- in addition to the rapacity of the forest and mining officers, contractors, and private industrial enterprises ---- the local inhabitants have to encounter police action, state terrorism, and in one state, state-sponsored civil war. From the voter's point of view however, elections in an area lost to the government can at best be ambivalent, and at worst , farcical.

There is also inequality among voters. Apart from those inhabiting areas outside the control of governments, there are voters either not on the electoral roll, or not able to exercise their vote while migrating in search of a livelihood, or those who are arbitrarily turfed out of their homes, and those who are able to exercise their voting rights only when they are recognized to be residents in specified localities. People falling in one or more of these categories would be migrant labourers, slum-dwellers, vagrants and members of notified tribes. Even government servants on transfer or retiring elsewhere than where they last worked and have not been able to get themselves on the rolls in their new place of residence or a new set of ID cards would fall into this category. Though decreasing in number, intimidated under-privileged voters not able to exercise their vote can still be found in pockets of the country, particularly in north India.

Voters are also unequally represented in terms of sex and religion. Electoral politics is still a man's game ---- 33% reservation for women representatives continues to be mooted without being resolved. And without the separate constituencies of the pre-partition days, Muslims who are the biggest minority, continue to be considerably under-represented.

The greatest inequality is within political parties. The constitution of one of them provided for a lifetime president. When it was pointed out that this was not allowed, the post of "operating president" was created. One of the biggest parties has been identified with just one family, and this kind of concentration of power has been enthusiastically mimicked by many other parties. Leaders are supposed to be elected by the rank and file in the party, and in deference to the directions from the Election Commission, are now shown to have been so selected. However with the exception of the parties on the left, it is the oligarchical families that determine not only who shall be leaders, but also candidates. It is the kith and kin of those families, their close friends and the outrageously big moneybags who have made their



fortunes in crime who are nominated as candidates, leaving no room for the common party members, no matter how talented.

The extent to which leaders of many of these parties consider their organizations as personal property is exemplified by their cheerful dismissal of each other on trumped-up charges, fictitious events and bogus records. They then request the Election Commission for a formal determination of which group constitutes the party and ought to inherit the party symbol.

The most noxious aspect of Indian electoral democracy is what is called vote-bank politics. At elections, political parties and candidates fraction constituencies according to caste, religion, insider versus outsider and so on, select their own sub-constituencies, work up the sub-constituencies against each other to the extent of creating communal riots if necessary, to manipulate the solidarity of their chosen adherents and obtain their votes. So a candidate with just 30% of the votes polled and 15% of the electorate, can win an election. Hence, he only looks after the interests of this 15%, and ignores the remaining 85%. In effect, elections in India have subverted the unity and harmony of a pluralist society synergetically and creatively structured since the days of the Mughal emperor, Akbar. So much so that Mahatma Gandhi's idealized village community, or what's left of it, has become several mutually antagonistic communities incapable of coming together either at festival time or flood or drought time, thus accelerating the socially atomizing effects of the market system.

Everyone talks about free and fair elections as though the two were inseparable and indistinguishable. I need to emphasize here that while the Election Commission ensures the elections are fair, it is only society as a whole which can guarantee free elections. Elections in Australia are free. Voting is compulsory and election day is a national festival in which every house undergoes spring cleaning as it were, and every family, grandparents, babies and pet dogs included, visit the polling station, picnics in the open

and leisurely goes home. By contrast in India, the Election Commission has to perform the supreme act of governance in conducting an election. This is just to prevent the excesses of political parties and candidates who constitute the most powerful and unruly elements of society. And so the use of more than a million police and para-military personnel (in gross terms) for just two elections in Bihar in October 2005 and UP in 2006. Without these forces, the elections would have been just chaos and mayhem. In short, elections in India are fair but not really free.

The favourite occupation of governments in power is fudging the electoral rolls. Rolls are routinely revised once a year, when poorly paid and disgruntled school teachers ---- at the expense of regular classes to pupils already under-taught ---- are sent to do a door-to-door verification of voters. Many of them are the kind who do not even attend school regularly and so do not balk at sitting under a tree and collecting details of voters in the locality from third parties. Superimposed over this is the practice of purging local officials, replacing them with partisan counterparts, and then doctoring the electoral rolls. Names of voters in localities loyal to the opposition are summarily removed and fictitious names are put in their places. All done easily and sophisticatedly with the computer. So months before an election the Commission has to do a thorough verification of the rolls through another set of state government officials. (In the Andhra Pradesh elections of 2004 more than five million bogus voters' names were removed.)

But the real problems in Indian electoral democracy are criminals, money power and defections. A sizable number of the candidates happen to be criminals. What is the law regarding the exclusion of criminals? To disqualify a person from candidature he/she has to be convicted of the offences mentioned in Section 8 of the Representation of the People Act. There are three classifications of offences. Under the first which includes rape and murder and enmity between different sets of people, a conviction is enough. In the second category which relates to hoarding or profiteering,

adulteration of food or drugs, and dowry, a conviction and a sentence of imprisonment of not less than six months is necessary. In the third category which relates to other offences, the accused has to be convicted and sentenced to imprisonment for not less than two years.

However the disqualification does not apply to someone who is already a sitting member of parliament or a state legislature. He is allowed three months from the date of conviction to file an appeal or revision petition, and the disqualification will not operate until the petition has been finally disposed of and has gone against him. Strangely he continues to get the benefit even if he ceases to be a member of a House in the meantime.

Since convictions are rare, and in any case no longer effective against resigning, cricketers, Siddhu-like gentlemen representatives courtesy an order of the Supreme Court, the only help to the voter is the affidavit the candidate has to file on his involvement in criminal cases past and present.

The Election Commission has declared separate expenditure limits per candidate for parliamentary and state legislature constituencies and the election law says that any candidate exceeding the expenditure limit has committed a corrupt practice. However, the law was rendered ineffective twenty years ago by an amendment which allowed the candidate to attribute most of the expenditure to his friends or the party. More recently there was another amendment which pretends to restore the law but in fact justifies even heavier expenditure. It allows the travel expenses of 40 national leaders per candidate of a national or regional party to be excluded from his expenses. For other registered parties the number of leaders allowed is 20. Where does the money come from? Doesn't the expenditure on helicoptering these national leaders alone run into crores? The amendment was intended to be permissive and this is confirmed by

recent instructions of the Revenue department which allows donors total tax exemption on their donations to political parties

There is no sanctity to elections if representatives are allowed to defect. To put an obstacle to wholesale defections an amendment was made in the law some twenty years ago. By this amendment only one third or more of the members of the legislature group of a political party could leave the party to form a separate group or “split” in the party. And if two thirds of the members of such a group switched loyalty to another party, they were allowed to merge with such a party. By a recent amendment, the desertion of one third or more members of the legislature group of a political party to form a separate group of the party is no longer recognized. But two thirds of a legislature group of a political party can merge with another party. The implication is that you can split only to merge with another party, not remain as a split independent group.

The deficiencies in Indian electoral democracy barring most of the ones on inequality, would be removed if just two recommendations for electoral reforms were accepted. The first is the retention of the first-past-the-post system for fifty percent of the seats in parliament and the legislatures but require every winning candidate to secure at least fifty percent of the votes polled. The second is shift to proportional representation for the remaining seats in parliament and the legislatures. Fifty percent of the votes polled would mean the end of vote-bank and money politics, more responsible political parties and the fielding of better candidates with a wider appeal and the interests of the whole community at heart. Proportional representation would secure representation for parties even with small percentages of the votes polled, and the voicing of every important opinion on public issues.

## Annexure 2

## PAKISTAN Background Paper

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### 1. Executive Summary

Elections for the National Assembly (the lower house) and four provincial legislatures of Pakistan are due towards the end of this year after the completion of the tenure of these representative bodies for the first time since 1977.

The transparency and fairness of elections in Pakistan have, for most of the country's history, been questioned on a variety of grounds. The first general elections that the military regime, headed by Gen Pervez Musharraf,

conducted in October 2002 produced a hung parliament. The regime subsequently manipulated defections to ensure the majority of the ruling party (PML-Quaid-i-Azam) with the help of other parties, including the Mutthida Qaumi Movement, the urban Sindh-based ethnic organization. Another group in the coalition was that of a 20-member faction defecting from the mainstream Pakistan People's Party which gave itself the title of PPP (Patriots).

The major controversy in the elections is about the presidential elections. Gen Musharraf intends to get himself re-elected for another five-year term in the Presidency while retaining his army uniform which election is not in accordance with the 1973 Constitution of Pakistan which bars the president to hold an office of profit.

The preparation of electoral rolls has also not been above board because the Election Commission of Pakistan accepted only new computerized national identity cards as a condition for registration of voters whose age has been lowered from 21 to 18 years according to the 2002 law.

Political parties have been agitating against these flaws and have even threatened to resign from assemblies en bloc. However, political parties are weak and some of them are serving their vested interests at the cost of the national cause and even compromising on constitutional dictates.

Gen Pervez Musharraf, whose intelligence agencies have helped the religious parties not only win a record number of seats in the National Assembly but also form their government in the sensitive Frontier Province and share a coalition government with the ruling party in another province bordering Afghanistan (Balochistan), has now taken a stance diametrically opposite to the 2002 position. His new pragmatism seeks partnership with the liberal and progress forces under his slogan of 'enlightened moderation'.

Gen Musharraf has time and again pleaded with the electorate to reject forces of obscurantism and vote for progressive and moderate people.

The report is elaborative and discusses all the essential aspects of the next elections in separate writes-up. Most of the reference for various articles has been taken from the reports compiled by the Election Commission of Pakistan after every election, particularly since 1988. Some references have also been drawn from a report compiled by the Human Rights Commission of Pakistan. Besides, a report on the pre-poll scenario by the NDI has also been added to the report.

## **2. Elections in Pakistan: A Brief History**

In 1947, when Pakistan gained independence, a limited elective principle was in practice for more than 60 years. The British rulers of united India introduced the principle of representation for the first time in 1892. Under this system, the non-official members of the provincial legislatures elected some of the members of the Central Legislature. Moreover, the Local-Self Government Boards, Chambers of Commerce and Universities elected a relatively larger portion of the members in the Provincial Legislatures.

The Government of India Act 1909, for the first time introduced a system of indirect election for the law-making assemblies. The total membership of the Central Assembly was fixed at 68 of whom 27 were elected under the separate electorate system.

The Government of India Act 1919, created a bicameral legislature at the center. This law introduced direct elections for the upper house at the center and for the Provincial Legislatures. The lower house at the center was to be elected indirectly by the provincial legislatures.

In 1920, the total membership of the Legislative Assembly in the center was 145 out of which 104 members were elected. The total electorate was 909,874. In 1931, the number of the electorate went up to 1,142,948. In the Provincial Legislative Councils (1931), the total membership was 823 out of which 640 were elected. The total electorate was 6,375,000.

Elections were held in 1937 under the Government of India Act, 1935. Under this law, the total number of seats in all the Provincial Assemblies had risen to 1851, which were elective by an electorate of 41 million. These elections have a special significance for Pakistan's electoral and political history. The people who were elected through these elections in the areas, which later became Pakistan, continued to hold sway over the country's politics until their death. Later, their sons, scions and relatives maintained their grip on politics. The families of these people are popularly known as the 'political families' of Pakistan and almost all are from a feudal background.

In the elections of 1945-46, nearly 15 per cent of the population was entitled to vote on the qualifications of literacy, property, income and combatant status.

## **2.1 Pot-Independence Political Scenario**

The hallmarks of the post-Pakistan political scenario were palatial intrigues, the establishment of a strong center in flagrant violation of the federal status of the state and rise of the clergy's interference in political affairs. The weakening of political structure encouraged the interference of the armed forces in politics.

The first direct elections held in the country after independence were to the provincial Assembly of the Punjab between March 10 and 20, 1951. The only redeeming factor of these elections was that adult



franchise was introduced for the first time. The elections were held for 197 seats. As many as 939 candidates contested the election for 189 seats, while the remaining seats were filled unopposed. Seven political parties were in the race. The election was held on adult franchise basis with about a million voters. The turnout remained low. In Lahore, the turnout was 30 per cent of the listed voters and in rural areas of Punjab it was much lower. The Electoral reforms Commission observed that the elections in Pakistan were not entirely free and fair.

On December 8 1951, elections were held on the basis of adult franchise to the Provincial legislature of the North West Frontier Province. The elections were massively rigged. Similarly, in May 1953 elections to the provincial legislature of Sindh were held and were also massively rigged. In April 1954, elections were held for the East Pakistan Legislative Assembly, which marked the fall of the Pakistan Muslim League in East Pakistan and heralded the rise of Bengali nationalism. The rigging of the provincial elections and the formation of the governments of the choice of the country's military and civil establishment gave birth for the first time to manipulation and the rejection of the popular verdict.

## **2.2 First Martial Law**

In October 1958, Army Chief Gen Ayub Khan imposed martial law in the country. He introduced an indirect method of elections through the Basic Democracy (BD) system. According to this system, the voters elected 80,000 representatives at local area level, called Basic Democrats. This number was later increased to 12,000, who formed the electorate for the election of members of the national and provincial assemblies. Each of 80,000 BD constituencies consisted of 200-600 voters.

The first elections for the BD members were held during the end of December 1959 and early 1960. In West Pakistan (today's Pakistan), the turnout was 75 per cent and in the East Pakistan (now Bangladesh) about half of the registered voters cast votes. In Karachi, the turnout remained low - only 35 per cent.

In March 1962, Gen Ayub Khan announced a constitution for the country and elections were held. The political parties were banned. A total of 595 contestants were in the field for 150 National Assembly seats and 1,862 candidates for 300 Provincial Assembly seats. An average of 500 BD members were to elect an MNA and nearly 250 members were to determine each Provincial Assembly seat. The turnout was high: 98.96 per cent in the NA elections and 97.8 per cent in the PA elections. The first session of the NA was held on June 8 1962.

In October-November 1964, another election was held to elect the BD members and political parties were allowed to contest. The elected BD members formed an Electoral College to elect the President of Pakistan in the presidential election in January 1965. Ayub Khan was the candidate for presidency from the platform of the Pakistan Muslim League (Convention), a group within the party from which he created a party of his loyalists in December 1963. Ayub was the president of the party as well. Miss Fatima Jinnah, the sister of the father of the nation, Quaid-i-Azam Muhammad Ali Jinnah, was the joint candidate of all the opposition parties who had grouped in the alliance called the Combined Opposition Parties (COP). Ayub Khan won the elections by securing 49,951 (63.3 per cent) of 79,700 votes cast. Miss Jinnah polled only 28,691 votes (36.36 per cent) of the total votes cast.

On March 21 1965, elections to the National Assembly were held under the BD system on a party-basis. The PML (Convention) secured 120 seats and the opposition collectively bagged 16 (COP 10 and

NDF 5). The rest of those elected were independents. Afterwards, the provincial assembly elections were held. In West Pakistan, the PML (Convention) won 96 seats, independents 49 seats and the Jamaat-i-Islami one. In East Pakistan, the PML failed to secure an absolute majority. It secured only 66 seats while independents won 58 and opposition parties 23.

### 2.3 1970 Elections

In March 1969, following agitation Gen Ayub Khan resigned transferring power to the Army Chief Gen Yahya Khan who imposed second martial law. In December 1970, Gen Yahya held the first ever general elections on the basis of adult franchise. Over 1500 candidates and 25 parties contested for 300. None of these parties contested throughout the country. The two parties, the Awami League and the Pakistan People's Party, which emerged as the leading political parties, concentrated on East and West Pakistan respectively. The Awami League contested only eight NA seats in the West Wing and the People's Party did not set up any candidate in the East Wing.

There was a high level of participation in the 1970 elections which so far remain the only election which is generally believed to have been free, fair and transparent. The 1970 elections turnout has also been the highest so far because two major contestant parties – the Awami League in East Pakistan and the Pakistan People's Party in the West Wing –engaged in a massive electioneering and thus deeply polarized the political atmosphere. The voting in the election was as high as 63.4 per cent - 60 per cent in Sindh, 68.7 per cent in Punjab, 48.1 per cent in NWFP, 40.5 per cent in Balochistan 57.6 per cent in East Pakistan. Eighty-seven per cent (241) of the total seats (300) were won by two parties, the AL and the PPP. Eight other parties had only 59 seats amongst themselves. Not a single party won seats from all four

provinces of Pakistan. Nor did any party win seats from both East and West Pakistan. Though the Awami League won no seats in West Pakistan it had a majority in the NA by virtue of its tremendous victory in East Pakistan. Similarly, the PPP had no seats in East Pakistan and Balochistan and only one seat from the NWFP. Yet, it was the second largest party in the assembly by virtue of its overwhelming victory in the two provinces, Punjab and Sindh.

Gen Yahya Khan however did not transfer power to the single largest party, Awami League. A long and bloody civil war followed, and East Pakistan gained its independence and became Bangladesh in December 1971. Soon after dismemberment of the country, Zulfikar Ali Bhutto assumed power first as martial law administrator and president and later as elected Prime Minister of Pakistan under the newly adopted 1973 Constitution.

## **2.4 Senate**

The Constitution, which provided for a bicameral legislature, also paved the way for the creation of the Senate for the first time in the country's history. The upper house of parliament was established in 1975 when the National Assembly adopted the Senate (Election) Act the same year. Separate laws to elect members from the Federally Administered Tribal Areas (FATA) and Islamabad were also passed the same year and rules on Senate elections were enacted by the National Assembly.

The House has equal representation of provinces in addition to members being elected from the Federally Administered Tribal Areas (FATA) and the Islamabad Capital Territory. The law provided for a membership of 66. Fourteen members were to be from each of the four provinces, two from Islamabad and eight from FATA. The mode of election was single transferable vote under the system of proportional representation.

In 1988, the total membership of the Senate rose to 87. For this the act was amended to provide for another 20 members from provinces from special quota for technocrats and religious scholars. Simultaneously, the membership from Islamabad was raised to three. Another amendment to the law was made under the Election Order of 2002 under which the membership of the Senate was raised to 100. The composition of these seats is categorized in general seats, seats reserved for women and seats reserved for minorities. Their number for each of the four provinces is 22 of which 14 are general and four each are special seats for women and technocrats/professionals/Ulema (religious scholars). The FATA has eight seats in the Senate. For the Federal Capital Territory the number of seats is four of which one is reserved for a woman and another for minorities. Two are general seats.

Fifty per cent of the Senate members retire after every three years and the assemblies elect the remaining members anew. The Senate is headed by a chair-person and provides for a leader of the house and the leader of the opposition. Thus the upper house has continuity and is never dissolved. At present, Mohammad Ahmadmian Soomro is the chairperson, the ruling party's Wasim Sajjad the leader of the house and the PPP's Mian Raza Rabbani the leader of the opposition.

## 2.5 1977 Elections

After four years, on March 7 and 10 1977, the general elections to provincial and national assemblies were held. On January 11 1977, all major and some minor opposition parties, mostly religious, cobbled together an electoral alliance, the Pakistan National Alliance (PNA), to contest elections against Bhutto's PPP. The official turnout figure was 63 per cent – if 19 uncontested seats were discounted, the turnout was 80 per cent. The PPP won 58.1 per cent of all the votes that were cast, and 136 of the 173 contested NA seats. The PNA won only 35.1

per cent of the vote and 36 seats. PPP had already won 19 NA seats unopposed including the home seat of Zulfikar Ali Bhutto in Larkana and all the sitting chief ministers of the four provinces. The PNA leveled allegations of massive rigging in the polling and boycotted provincial elections. Protests followed and on 5 July 1977 Gen Ziaul Haq imposed the third martial law which proved to be the darkest period of the country's history and saw the execution of the elected prime minister and extreme form of repression.

On December 19 1984, General Ziaul Haq held a presidential referendum of a dubious nature for his own election as president in which he was the only candidate. The question on ballot papers was whether the voter supported Islamisation process or not. A yes vote meant a vote for Ziaul Haq. The Election Commission of Pakistan announced a turnout of almost 60 per cent whereas the opposition parties and the independent observers claimed a low turnout of 5-10 per cent.

In February 1985, Gen Ziaul Haq held non-party elections in a bid to depoliticise the country to weaken an already fragile political process and ensure a perpetual role for the armed forces in the country's governance. He succeeded in his design when opposition parties under the umbrella of the Movement for Restoration of Democracy (MRD), boycotted the polls. There were 3,35,89,996 registered voters in the country. Of these 1,72,50,486 cast their votes. Thus, turnout was 52.93 per cent and considered relatively fair. Muhammad Khan Junejo was appointed Prime Minister and later formed a new faction of the Pakistan Muslim League within the house. On December 30 1985, the 1973 Constitution was restored with massive amendments.

On 29 May 1988, President Gen Ziaul Haq dismissed the government of Mr Junejo and all assemblies by using his powers under Article 58(2-

b) of the Constitution. On August 17, Gen Zia died in a plane crash. Senate Chairman Ghulam Ishaq Khan became caretaker President.

## 2.6 Post-Zia Era

General elections were held to the National Assembly on November 16 1988 and Provincial Assemblies on November 19 1988. There were a total of 47,961,670 registered voters. The turnout was low, i.e. 42 per cent because of the mandatory National Identity Card condition for voters. The PPP, led by Ms Benazir Bhutto, won 93 of 207 NA seats (38.5 per cent votes) and the Islami Jamhooir Ittehad (IJI), a conglomerate of several parties, which included Nawaz Sharif's Muslim League, won 55 National Assembly seats (30.2 per cent votes.) On December 2 1988 Ms Bhutto took the oath as Prime Minister. Later, on December 12 1988 the parliament and four provincial assemblies elected Ishaq Khan as President for five years.

On August 6 1990, President Ishaq Khan dismissed the Bhutto government along with the National Assembly and four Provincial Assemblies. On October 24, general elections were held to the National Assembly. There were a total of 48,648,960 registered voters and turnout was 45 per cent. The Islami Jamhooiri Ittehad won 105 NA seats (37.3 per cent votes) and the PPP-led coalition Pakistan Democratic Alliance (PDA) won 45 NA seats (36.9 per cent votes.) The PPP alleged the elections were rigged. Former Punjab Chief Minister Nawaz Sharif took the oath as Prime Minister of Pakistan.

On April 18 1993, President Ishaq Khan dismissed the government of Nawaz Sharif along with the National Assembly. The Supreme Court restored his government but the power struggle led to resignation of both the President and the Prime Minister on 18 July 1993. Senate Chairman Wasim Sajjad took over as acting President.

On October 6 and 9 1993, general elections were held to the National Assembly and four Provincial Assemblies respectively. These elections were considered relatively free and fair. There were a total of 52,297,568 total registered voters (including Muslim and non-Muslim). A total of 200,20,538 valid votes were polled out of 4,96,48,821 registered Muslim votes, i.e. 40.32 per cent. The PML(Nawaz) won 73 NA seats (39.9 per cent votes), the PPP won 86 seats (37.9 per cent votes) and the PML(J) 6 seats (3.9 per cent votes.) On October 17 Ms Bhutto again became Prime Minister of the country. This was the first time in Pakistan parliamentary history that nomination papers were filed for the election of Prime Minister. Later, on November 13 1993 Sardar Farooq Ahmad Khan Leghari, a central PPP leader, was elected as president of the country.

On November 5 1996, President Leghari dismissed the Bhutto government along with the National Assembly and four provincial assemblies. On February 3 1997, general elections were held for the National Assembly and four provincial assemblies simultaneously. A total of 19,506,855 voters polled their votes out of 54,189,534 registered voters for 204 Muslim constituencies, i.e. a turnout of 35.99 per cent. The PML(N) won 135 of 204 contested seats (45.9 per cent votes), the PPP won 18 NA seats (21.8 per cent votes). The losing party made allegations of rigging in the results. PML(N)'s Nawaz Sharif was again sworn in as Prime Minister. On October 12 1999, Chief of Army Staff Gen Pervez Musharraf overthrew his government and took over as Chief Executive of the country.

On April 30, Gen Musharraf held a presidential referendum to extend his tenure as president for the next five years. He was the only candidate. According to the Election Commission of Pakistan, 55 per cent voters voted and 98 per cent of them elected Gen Musharraf as President. The opposition and independent monitors alleged that the



turnout was extremely low and massive bogus voting was carried out in Gen Musharraf's favour.

## 2.7 2002 Elections

Gen Musharraf's regime first held local government elections in 2001 and then general elections in October 2002. Laws for these elections were reformed as to make sweeping changes in the quality of representation. Election laws were amended to provide for a joint electorate after 17 years and Muslim and no-Muslim voters were combined in electoral rolls. Besides, the voting age was lowered from 21 to 18 years for the first time in the country's history. The amended law also made it mandatory for all candidates to the national and provincial assemblies to at least be a graduate, hold a bachelor degree or a degree recognized as equivalent by the University Grants Commission, since renamed as the Higher Education Commission. Similarly, the new law increased to one-third the number of women's representation in legislatures at all tiers of representation. The provision, about 33 per cent representation of women, was made in the local government where women were given a chance to be elected to councils at district and sub-district levels.

The 2002 elections to the national and four provincial assemblies were held on October 12 and the number of voters registered was 7,19,13,850 (71.9 million). Of them 2,99,72,353 cast their vote constituting a percentage of 41.68. Seventeen political parties and alliances took part in the election for a 342-member National Assembly. Of them the Pakistan Muslim League (Quaid-i-Azam Group), popularly known as PML-Q, was brought into being under the direct supervision and instructions of Gen Pervez Musharraf. The third major political force was the six-party coalition of religious parties named as the Muttahida Majlis-i-Amal (United Action Committee).

## 2.8 Hung Parliament

The results showed the obvious; a hung parliament came into being with no party, even the 'king's party' failed to emerge the single largest group. The PML-Q won 118 seats in the lower house with a tally of 26.63 per cent of the polled votes. The PPP (P) was the next with 80 seats, yet its tally of polled votes was higher than that of the 'king's party' – 28.42 per cent. The religious alliance got 59 seats with a tally of 12.28 of the polled votes. Another significant party was the Muslim League's Nawaz Sharif faction (PML-N) which won 18 seats in the National Assembly and 12.71 per cent of the polled votes. The urban Sindh-based Muttahida Qaumi Movement, which emerged on the political scene in 1985 in the name of refugees from India and which had been taking part in elections since 1988 and also winning a sizeable number of sets in the National and Sindh Assemblies, won 17 seats in the national legislature with a tally of 3.55 per cent of the polled votes. As many as 17 candidates who contested independent of party affiliation were also returned to the National Assembly with a percentage of 10.98 of the polled votes. No issues were raised with regard to the conduct of the election or election rigging.

## 2.9 Manipulation

Later political wrangling illustrated that the Musharraf regime was placing pressure on the PPP (P) causing it to split by causing defections and creating the 'Patriots' group which has a membership of 21 in the NA to reduce its strength in the National Assembly from 80 to 57. Similar defections from the PPP took place in the Sindh provincial legislature.

*(Source: Human Rights Commission of Pakistan, Election Commission of Pakistan reports and other books on electoral history and legal framework).*

### 3 Political Parties

The electorate in Pakistan has essentially been polarized between the Bhutto and anti-Bhutto vote for at least three decades. Historically speaking this is a divide between secular Pakistan People's Party on one side and almost all other political organizations including religious parties and organizations with a strong religious leaning on the other side. They also included classes with no political commitment; which have been changing political sides and switching their political loyalty.

The military regime suppressed the PPP resistance by way of sheer repression and depoliticised the country by holding the first (maybe the last) non-party elections in 1985. The use of party symbols was banned and the political identity of candidates was suppressed because Gen Zia feared that the PPP would emerge victorious in party-based elections. This election saw the emergence of Mr Nawaz Sharif to the political sphere and he soon assumed the role of the most dominant political force, primarily with the active support of the country's military establishment. Benazir Bhutto, sent on exile by the Zia regime, also returned home on April 10, 1986. Her return largely owed to the quasi-civilian government headed by Mohammad Khan Junejo whom Zia promoted after forming the Pakistan Muslim League in the assembly. Junejo was nominated as the party president and also the prime minister.

#### 3.1 Benazir In Power

When Zia died in a plane crash in August 1988, Senate chairperson Ghulam Ishaq Khan took over as acting president and called for elections. It is generally alleged that the then chief of the army staff Gen Mirza Aslam Baig and a former director-general of the Inter-Services Intelligence (ISI) Gen Hameed Gul went on record that the establishment got the IDA come into being and also funded its formation. (It is said that Rs140 million was given for the purpose).

Benazir Bhutto, who had returned to the country in April 1988 from exile managed to steer the PPP to victory securing 93 seats in the National Assembly and became the prime minister. But her party lost in the largest province, Punjab, where Nawaz Sharif formed the government as chief minister. The PPP also ruled Sindh, the province of the Bhuttos. However, the Benazir government had a limited playing field and all the major policy decisions about her government came from the army's General Headquarters (GHQ).

Benazir's government and assemblies were dismissed in 1990 by Ghulam Ishaq Khan who had taken over as the president after Zia's death. New elections were called in 1990 at which point the PPP had joined an alliance, the People's Democratic Alliance, which was once again the main contestant against the right-wing IDA. The IDA won an absolute majority and formed the government at the centre and in the provinces, including Sindh, the Bhutto stronghold. Nawaz Sharif became the prime minister for the first time. Later, the PDA, which alleged massive election rigging, started a movement which culminated in the dissolution of the Sharif National Assembly in April 1993 and President Ishaq Khan called for new elections in October 1993. A caretaker government was set up with Sardar Balakh Sher Mazari as the prime minister.

By this time, the PPP and the PML of Nawaz Sharif had moved away from their alliances. The election result showed the PPP emerging as a single largest party with 85 seats in the NA. The PML (Nawaz) bagged 73 seats. Once again it was a split mandate. However, Benazir Bhutto's PPP formed the government with the support of the PML faction of Mohammad Khan Junejo and the right wing Jamiat Ulema-i-Islam to become the prime minister for the second time. Nawaz Sharif this time chose to leave provincial politics and enter the national scene and was an obvious choice as the leader of the opposition in the national

assembly. Benazir appointed her trusted lieutenant Farooq Laghari as the president thinking that he would protect her government. However, the situation started worsening in 1996 and President Laghari dissolved the national assembly in November.

A caretaker government was set up with Malik Meraj Khalid, a former NA speaker in the PPP government of 1988, as prime minister. Elections were held in February 1997 and the PML (Nawaz) swept the polls. This party won absolute majority with 137 seats in the National Assembly. The PPP's share was only 18 seats.

### **3.2 Heavy Mandate**

The 'heavy mandate' government of Nawaz Sharif was overthrown by Gen Pervez Musharraf on Oct 12, 1999 and the military regime imposed emergency. The regime took time to consolidate. The first election the military government organized was to the local councils which was held in 2001. General elections were held in October 2002. Prior to the elections the regime raised a 'king's party' – the Pakistan Muslim League (Quaid-i-Azam). Once again the official party was pitted against the Bhuttos PPP as main contestants. The PML (Q) won 118 seats in the National Assembly and the PPP 80. Six religious parties which formed an alliance by the name of the Muttahida Majlis-i-Amal (MMA) were placed third in the election securing 59 seats.

The Musharraf regime manipulated the PPP's strength in the National Assembly by causing defections and about 20 MPs pulled out of the PPP to form the PPP Patriot group in support of the regime and were rewarded with ministries. Further, the government ignored the PPP for the appointment of the leader of the opposition in the National Assembly. The position was given to MMA's Maulana Fazalur Rehman.

## **4 Present Political Scenario**

Political parties of Pakistan have grown weak and also lost credibility in the eyes of the people. This is mainly due to frequent military interventions which have prevented the growth of a political culture. Military regimes have also maligned political parties and many believe their malicious propaganda against the country's political system. The main opposition alliances, the MMA and the Alliance for the Restoration of Democracy (ARD), comprising mainly the PPP and the PML-Nawaz, are indulged in intense infighting. The PML-N has objected to the PPP's overtures to Musharraf and the MMA components are worried about the soft corner shown by the Jamiat Ulema-i-Islam in bailing out Musharraf. This is the party whose chief Maulana Fazlur Rehman was appointed as the leader of the opposition in the National Assembly instead of the PPP parliamentary party president Makhdoom Amin Faheem.

### **4.1 APDM**

The formation of the All Parties Democratic Movement (APDM) as a coalition of 30 parties met in London in the first week of July. The major party, PPP, is not part of it and has pleaded for the strengthening of the ARD. Benazir Bhutto's party is also negotiating with Gen Musharraf for what is being termed as "a deal". As a result, the political scene is being driven by mostly extraneous considerations and the APDM has so far remained a non-starter.

### **4.2 Judiciary**

The president may be elected by the prescribed electoral college if he opts to seek his re-election from the existing assemblies while in uniform. However, the Supreme Court, which many believe has gained some independence, may ultimately adjudicate the constitutional vires of the presidential election. Political parties have so far, instead of

resolving the political issues themselves have shown dependence on the rejuvenated apex court of the country. Recently the superior judiciary along with lawyers has in an unprecedented move launched protests after the Chief Justice of Pakistan, Iftikhar Mohammad Chaudhry, was made 'non-functional' by President Musharraf on Sept 9. The president sent a reference against the CJP to the Supreme Judicial Council charging him with misusing his authority. The apex court, however, dismissed the presidential reference giving the highest court of Pakistan a new lease of life.

#### **4.3 West**

The world in general and the United States in particular are showing a keen interest in the elections. The west is concerned about a possible re-emergence of religious extremism in the wake of an unprecedented capture of 59 seats in the National Assembly by the religious alliance, which also holds the North-Western Frontier Province, bordering Afghanistan, under its political sway by governing the 'sensitive' province. The Jamiat Ulema-i-Islam has so far been a religious party which seized the maximum number of seats in the lower house of the bicameral legislature.

### **5 Legal Framework**

There are a host of constitutional provisions and laws relating to elections which require transparency. Implementation however is minimal. For example, Article 63-A of the Constitution provides for the unseating of a member who defects his or her parliamentary party to another party. The provision has not deterred members very often switching their loyalty. This provision of the basic law is very seldom invoked particularly when an opposition member defects to the ruling party.

## 5.1 Disqualification

This provision of the basic law needs to be explained in detail:

Article 63-A. Disqualification on the ground of defection etc:

- (1) If a member of a parliamentary party defects, he may, by means of a notice in writing addressed to him by the head of the political party, or such person authorized in thus behalf, called upon to show cause, within not more than seven days of such a notice, as to why a declaration under clause 92, should not be made against him/her. If a notice is issued under this clause, the presiding officer of the house concerned (the speaker of the National Assembly, the chairperson of the Senate or the speaker of a provincial assembly) shall be informed accordingly.

Explanation: A member of a house shall be deemed to have defected from a political party if he/she, having been elected as such, as a candidate or nominee of a political party, or under a symbol (for election) of a political party or having been elected otherwise than a candidate or nominee of a political party after such election by means of a declaration in writing,

- (a) commits breach of party discipline which means a violation of the party constitution, code of conduct and declared policies;  
or
- (b) votes contrary to any direction issued by the parliamentary party to which he/she belongs, or
- (c) abstains from voting in the house against the party policy in relation to any bill.



- (2) Where action is proposed to take under the Explanation clause, (1) sub-clause (a), the disciplinary committee of a party, on a reference by the head of the party, shall decide the matter, after giving an opportunity to of a personal hearing to he member concerned within seven days.

In the event the decision is against the member, he/she can file an appeal, within seven days, before the head of the party, whose decision thereon shall be final. In cases covered by the explanation of the member and determining whether or not that member has defected.

- (3) The presiding officer of the house shall be intimated the decision by the head of the political party in addition to an intimation which shall be sent to the member concerned. The presiding officer shall, within two days, transmit the decision to the Chief Election Commissioner. The Chief Election Commissioner shall give effect to such decision, within seven days from the date of the receipt of such intimation, by declaring the seat vacant and announcing the schedule of the by-election.
- (4) (Sub-article (4) is not being reproduced as it relates only to the definition of presiding officers of different houses).
- (5) Notwithstanding anything contained in the Constitution, no court, including the Supreme Court and High Court shall entertain any legal proceedings, exercise any jurisdiction, or make any order in relation to any action under this Article.

Going by the law, change of political loyalty entails the minimum penalty of dismemberment. The law however remains confined to the statute book. For example, when some 20 of PPP MNAs

defected to form PPP (Patriots) soon after the establishment of the 2002 National Assembly, it was generally believed that the defection was caused by the Musharraf regime which was finding it difficult to form the government. The PPP filed references to the presiding officer (Speaker) who failed to send them to the Election Commission of Pakistan (ECP) although he was under a constitutional obligation to do so as a 'post office'. The PPP (Patriots) were later given lucrative government ministries which meant that the regime itself promoted the defection culture. Very recently, the government filed reference against Pakistan Tehrik-i-Insaaf chairperson Imran Khan and the speaker took no time in sending it to the ECP. At the same time, the opposition sent a reference to the speaker against federal minister Sher Afgan Niazi. The speaker has still taken no action on the basis that he would send it to the ECP after an inquiry into the allegations.

### **5.1 Constitution**

The election of the president is provided in Article 41{3}. According to this section the electoral college consists of members of both houses of parliament and provisional assemblies. Article 43{2} states that the president shall not be a candidate for the membership of parliament or provisional assemblies. Article 44 provides that the president shall hold the office for the term of five years and shall not hold that office for more than two consecutive terms. Article 47 provides for the removal or impeachment of president by a two-third majority of members in a joint sitting of both houses of the parliament.

Article 51 provides for the composition of the National Assembly and Article 52 says that the lower house of parliament shall have a term of five years. Article 59 spells out the composition of the Senate.

Article 62 enumerates eight qualifications for the membership of the parliament and Article 63 spells out 14 conditions for disqualification of a member of parliament. Article 63-A speaks of disqualification of a member on the ground of defection from one party to another.

Article 106 deals with election to the four provisional assemblies and their membership. Similarly, qualification and disqualification for membership of provisional assemblies have been spelled out in Article 113 and are the same as those provided for members of the National Assembly and the Senate.

Part VIII of the Constitution speaks of the appointment of the Chief Election Commissioner (CEC), essentially a sitting or a retired Supreme Court judge as provided under Article 213. Article 218 provides for the composition of the election commission for each general election to the National Assembly and provisional assemblies.

As for the constitution of the election commission, it comprised three members in the past. They were: the chief election commissioner and two members from provincial high courts. Article 218 was later amended to upgrade the commission to a Chief Election Commissioner and four serving judges of the four provincial high courts.

Article 222 spells out a number of laws enacted for the purpose of allocation of the seats in the assembly, delimitation of constituencies, the preparation of electoral rolls, the conduct of election and adjudication of election petitions and matters relating to corrupt practices and other election related offences. Article 223 provides that no person shall, at the same time, hold the membership of more than one house of parliament and provisional assembly. Article 225 provides that election to a house or a provisional assembly shall not be called into question except by an election petition presented to a tribunal constituted under

an act of parliament. And lastly, Article 226 provides that all elections shall be by a secret ballot.

Neither the CEC nor the commission members are expected to work independently because Article 213 provides that they shall be appointed by the President of Pakistan “in his discretion”.

Article 215 says that the term of the CEC office shall be three years and shall be removed from office only on a presidential reference, containing allegations, to the Supreme Judicial Council like all other judges.

The Commission is not independent as it does not enjoy financial autonomy. The CEC is also barred from holding an office of profit or occupy another position carrying salary. The CEC is empowered to make rules but only with the approval of the president.

## **5.2 Other Laws**

Election laws are enacted under Article 222 of the 1973 Constitution. When fresh elections to vacant seats in the Senate are to be filled, amended laws are promulgated under the order of the president, chief executive and the chief martial law administrator if the country is under military rule. For example, 22 election laws and rules were made public before the 1985 elections and they included four Martial Law Regulations issued by CMLA-President Gen Ziaul Haq. As for the 2002 elections, seven such laws and orders were enacted. The number of these laws remains the same for the forthcoming elections.

Chronologically speaking, the Political Parties Act of 1962 is the first election law and it was amended in 2002. The main feature of the law is that every political party shall have to get it registered with the

Election Commission of Pakistan to contest the election. For this it has to submit its constitution and manifesto and periodic intra-party elections along with an annual statement of audited accounts.

### **5.3 Legal Framework Order**

The Chief Executive's order on the conduct of general elections was born out of the Legal Framework Order (LFO) promulgated by the President/Chief Executive and came to be known as the Chief Executive's Order number 7 of 2002. The LFO and later the Chief Executive's Order introduced sweeping electoral reforms which dispensed with the practice of separate electorates. For the first time in 17 years the Election Commission of Pakistan was entrusted to prepare a joint voters lists of Muslim and non-Muslim citizens. The law also raised the representation of women to a little less than one-third of general seats in the national and provincial assemblies as against the previous practice of allocating eight to 10 seats to women as a special quota.

The law also lowered the voting age from 21 to 18 years and the Electoral Rolls Act of 1974 was amended accordingly. Another important provision of this order was that a person, desiring to contest any election, was required to be at least a graduate, a bachelor degree, or any other degree recognized or equivalent by the University Grants Commission (now renamed as Higher Education Commission). The law also enumerated qualifications and disqualifications for membership. All the election laws were accordingly amended between January and August 2002.

The LFO contains at least five enactments which ordained all electoral reforms as mentioned above. One of them allowed persons possessing a degree of graduation to contest for legislatures. The second related

to regulating political parties and the third placed a bar on a person being elected as prime minister or chief minister of a province for the third time. The fourth law, related to the Ahmadis (Qadianis) whose status as non-Muslims was not changed. Such persons, who have virtually abstained from all elections since 1977 after being declared as members of a religious minority, were required by the law to submit an affidavit before the returning officer about his faith. If someone objects to his/her candidature on the plea of religion, he would have to sign a declaration that he was not a Qadiani. If the candidate does not do so, the nomination papers would be rejected and the candidate declared a non-Muslim.

### **5.3.1 Political Parties Order, 2000**

In the case of political parties, the LFO's provision was translated into the Political Parties Order, 2002. The law provides that political parties shall not indulge in activities prejudicial to the Constitution's fundamental principles; shall not undermine the sovereignty and integrity of Pakistan and indulge in terrorist activities; shall not promote sectarian, provincial and regional hatred; shall not bear the name as a militant group and identify itself to an armed group; shall not impart military training to its members or other persons; and shall not receive funds from abroad.

Besides, the law also obliged political parties to hold regular intra-party elections at least once a year and submit a certificate in this regard to the ECP. They are also obliged to submit an annual statement of audited funds (income and expenditure) along with source of funds and assets and liabilities. Submission of the party constitution and manifesto is also mandatory under the law. The ECP, according to the law, shall not allow any such

party to contest election and shall not allot election symbol if they fail to submit such a certificate and statement of accounts.

The law also provides that no office-bearer shall hold a public office if he or she has already been holding a party office, the same shall be relinquished upon entering a public office. The same law also places a bar on the members of a political party holding a party office if convicted by a court of law. Such a person shall not be eligible to contest elections for the national or a provincial legislature for a period of four years from the period of his conviction and ultimately being disqualified to participate in the election for a legislative body or an elective office.

### **5.3.2 Qualification to Hold Public Office Order, 2002**

This law, also part of the LFO, says that a person who has, at any time, held the office of the prime minister or that of the chief minister of a province or a combination of such for two terms, irrespective of whether any one of the two or both the terms of office were completed or not, shall not be qualified to hold the office of the prime minister or that of a chief minister.

## **6 Registration of Political Parties**

Political Parties Act, 1962, provides for the registration of political parties with the Election Commission of Pakistan (ECP) under the amendments to the law made in 1963, 1975, 1976, 1977, 1978, 1979, 1985 and 1988 through presidential ordinances.

The parties are required to submit to the ECP, besides audited accounts, application for their registration along with their foundation documents or the party constitution. As many as 53 political parties applied to the ECP

in 1988 and 28 of them were allowed to register. When the process was in progress, Ms Benazir Bhutto moved the Supreme Court in a constitutional petition against the registration requirement. The apex court accepted her petition and declared the provisions of the law on registration as unlawful. But court retained the provisions relating to the submission of audited accounts.

The ECP subsequently allotted symbols to 32 Muslim and six non-Muslim parties under the Allocation of Symbols Order, 1993, allowing them to contest the 1988 elections. The number of political parties came down to 30 Muslim parties which were allotted symbols for the 1990 elections. In the case non-Muslim parties this number rose to 15. In 1993, the parties to whom symbols were allotted went up to 52 Muslim. 12 non-Muslim parties were allowed to contest the parliamentary elections and included the six-party alliance of the Islamic Democratic Unity (Islami Jamhoori Ittehad) which included the PML on Nawaz Sharif and religious parties like the Jamaat-i-Islami and the Jamiat Ulema-i-Islam.

The ECP allotted symbols for 64 Muslim parties and alliances and 15 non-Muslim parties for the 1997 elections. While the Islamic Democratic Unity maintained its alliance, the PPP also joined the alliance of Peoples Democratic Alliance.

As for the 2002 parliamentary elections, a record number of political parties participated in the exercise. No less than 131 political parties applied to the ECP to be allowed to take part in the elections. The Commission, in its meeting on August 13, 2002, accepted the request of 71 and rejected the plea of the remaining 60 parties as they had failed to submit documents such as the party Constitution and statement of audited accounts. Later, 23 of the parties whose applications were rejected submitted their documents and were allowed to participate in the elections.



The ECP ultimately allotted election symbols to 78 political parties. Later, the Commission withdrew the symbols of five parties who were allotted symbols on the commitment that they would submit their documents. They however failed to keep their promise.

The political parties taking part in the October 2002 elections also had a sword hanging over their head in the form of a provision in the Political Parties Order, 2002, which said that no person convicted by a court of competent jurisdiction for a criminal offence, like corruption, could hold office in any party. Ms Benazir Bhutto was convicted by an accountability bench of the Lahore High Court in a reference against her by the Nawaz Sharif government in 1998. Although an appeal against the conviction was filed in the Supreme Court, it was yet to be decided. Her Pakistan People's Party therefore added the word "Parliamentarians" to become eligible for the elections. As such, it is the PPP (Parliamentarians) that was allotted the election symbol as the party does no longer exist in the ECP record as the PPP.

## **7 Election Commission of Pakistan**

Part VIII of the Constitution speaks of the appointment of the Chief Election Commissioner (CEC), essentially a sitting or a retired Supreme Court judge as provided under Article 213. Article 218 provides for the composition of the election commission for each general election to the National Assembly and provisional assemblies as well the Senate.

As for the Constitution of the Election Commission, it comprised three members in the past. They were: the chief election commissioner and two members from provincial high courts. Article 218 was later amended to upgrade the Commission to a Chief Election Commissioner and four serving judges of the four provincial high courts.

Article 222 spells out a number of laws enacted for the purpose of allocation of the seats in the assembly, delimitation of constituencies, the preparation of electoral rolls, the conduct of election, adjudication of election petitions and matters relating to corrupt practices and other election related offences. Article 223 provides that no person shall, at the same time, hold the membership of more than one house of parliament and provisional assembly. Article 225 provides that election to a house or a provisional assembly shall not be called in question except by an election petition presented to a tribunal constituted under an act of parliament. And lastly, Article 226 provides that all elections shall be by a secret ballot.

Neither the CEC nor the Commission members are expected to work independently because Article 213 provides that he shall be appointed by the President of Pakistan “in his discretion”.

Article 215 says that the term of office of the CEC shall be three years. He shall not be removed from the office by an executive order; he can be removed only on a presidential reference, containing allegations, to the Supreme Judicial Council like all other judges. The commission is not independent as it does not enjoy financial autonomy and has to depend on the release of government funds. The CEC is also barred from holding an office of profit or occupying another salaried position. The CEC is also empowered to make rules but only with the approval of the president.

Article 213 {2} of the 1973 Constitution provides for the constitution of an election commission to hold parliamentary elections. According to the Constitution, the Commission shall comprise a Chief Election Commissioner and four members, each of whom shall be a judge of the high court of provinces and appointed by the president after consultation with the chief justices of the high courts and the chief election commissioner. The Commission, according to the law, shall have power to issue such directions or orders as may be necessary for the performance of the

functions and the duties including an order for the purpose of securing the attendance of any person or the discovery or production of any document. The commissioner shall be also charged with the duty of organizing and conducting elections to fill casual vacancies in any of the houses of parliament or provincial assembly. The CEC shall also be responsible for appointing election tribunals to take up and decide election petitions filed after the completion of a general election or a by-election.

### **7.1 Lacks Autonomy**

Governments have always had control over the commission with the CEC always being appointed from amongst judges who are prone to give weight to the government view. The appointment of Justice Irshad Hasan Khan, who conducted the 2002 elections, may be taken as an example. He was the Chief Justice of Pakistan when, as head of a larger bench of the Supreme Court, he legitimized on certain conditions the military take-over of Oct 12, 1999 in a constitutional petition and validated all actions taken by the Musharraf regime subsequently. Upon his retirement, Justice Irshad was appointed as the CEC in 2001 and many believed he was 'rewarded' by Gen Musharraf for his verdict in the petition. Irshad's first assignment was to supervise the local elections in 2001. He later conducted the Oct 2002 parliamentary elections. He has since been replaced by Justice Qazi Mohammad Farooq, a retired judge of the Supreme Court, who is to conduct the coming parliamentary elections if not relieved due to the demand of opposition political parties for the reconstitution of the election commission.

## 8 Electoral Rolls

A major anomaly in the forthcoming general elections, proposed to be held in November 2007, is the preparation of electoral rolls by the Election Commission of Pakistan (ECP). The commission is obliged under Article 219 of the 1973 Constitution to prepare the rolls for the election to the national and provincial assemblies. It goes without saying that correct and complete enrolment of all eligible voters is the *sine qua non* for the holding of free, fair and transparent elections. The method of preparing such rolls has been provided by the Electoral Rolls Act, 1974 and rules framed under the law (Electoral Rolls Rules of 1974) which was amended on September 27, 2000, with the purpose of holding the local councils elections followed by the general elections in October 2002. These laws also provide for revision of electoral rolls every year.

The amended law provides that electoral rolls would be so prepared as to mention the new computerized national identity card number of all eligible voters against their names. The production of this identity card for the purpose of casting the vote was also made mandatory by law. These cards are prepared by the National Database and Regulatory Authority (NADRA) which had a very weak liaison with the ECP for the preparation of the rolls. When these were amended the government of Pakistan entrusted the NADRA with the preparation of fresh electoral rolls for the local council elections (2001) and the general elections (2002). The rolls prepared by the NADRA showed the number of voters as 71.86 million.

A civil society organization, the Pakistan Institute of Legislative Development and Transparency (PILDAT), says in a report that the ECP initiated the process for preparing the fresh electoral rolls on April 15, 2006 with door-to-door enumeration instead of using the NADRA database as a basis. The USAID provided around US\$ 9.5 million (about Rs560 million) for the project. The project was contracted out to Kalsoft, which

is a joint venture of three Pakistani companies including the TCS. Some political parties in the opposition allege that the Pakistani contractors of the project were closely related to the ruling party in two major provinces of Pakistan – Punjab and Sindh.

The Election Commission of Pakistan displayed the draft electoral rolls at 45,403 centers, mostly situated in government schools and colleges, across the country from June 12 to July 03 for the purpose of “public information, inviting claims and objections and applications for corrections”. This period was extended till July 18.

The draft electoral rolls showed the number of registered voters as 5, 210, 242, 8. As a result, 19, 750, 852 (19.75 million) votes were not registered in the new rolls. According to the PILDAT report, the deficit actually comes to around 30 million or 36 per cent in view of the historical rate of population growth of 2.7% a year.

The same report says that there is a drastic reduction in women voters in North Western Frontier Province, which is as high as 45 per cent compared to the 2002 rolls. Similarly, women voters were registered 41 per cent less in Sindh, 37 per cent in Punjab and 19 per cent in Islamabad Capital Territory. In contrast, there is a marked increase of 144 per cent women voters in the most thinly populated province of Balochistan compared to the electoral rolls of 2002. Similarly, men voters were registered 14 per cent more in the same province.

The ECP has not been able to give satisfactory answers to the objections as raised by opposition political parties, particularly the PPP, except for pleading that the NADRA prepared faulty electoral rolls in 2002. According to the ECP, the NADRA did not remove double entries and also failed to update the rolls according to its own database. The ECP says that the NADRA rolls of 2002 showed an excess of 3.4 million voters. It

also pleads that the law envisages only the election commission to prepare and revise electoral rolls and the NADRA should not have engaged in the exercise.

The NADRA accepts that it has issued around 54 million new identity cards since 2002 and another 20 million ID cards were in the process of being issued. The NADRA also claims that its database is more comprehensive than the latest draft electoral rolls. The Election Commission of Pakistan has stated that it will ensure that each and every eligible voter appears in the new electoral rolls which will be given final shape in September 2007. For this, the commission is prepared to collect additional sources of information than its own database which is not as comprehensive as that of the NADRA. The ECP says it is developing its own database before the schedule for the new election is announced. The process of the registration of new voters will continue and every eligible voter will be entitled to enroll until the registration process is closed with the announcement the election schedule.

Pakistan People's Party chairperson Benazir Bhutto challenged the flawed electoral rolls in the Supreme Court of Pakistan on the basis the ECP had deleted around 22 million voters and not all eligible voters were enrolled. The country's apex court accepted her plea and issued instructions to the ECP on July 26 to correct and update the rolls to ensure that no eligible voter was left out. The court observed that the condition on new computerized identity cards was unconstitutional and the ECP should accept any other proof of age to enroll voters.

The ECP subsequently started work on enrolling the remaining 30 per cent voters and the task, which was mainly based on comparing the 2002 rolls with the draft rolls for 2007 to register the remaining voters, has since been completed. The ECP says that it is now in a position to finalize the electoral rolls by October.

## 9 President

Shortly after the military take-over on October 12, 1999, Gen Pervez Musharraf assumed the office of the Chief Executive. On Oct 14, the Chief of Army Staff issued proclamation of emergency. The order of emergency held the constitution in abeyance and allowed the President (Mohammad Rafiq Tarar) to continue in office. The National and Provincial assemblies were suspended, the Chairman and Deputy Chairman of the Senate, speakers and deputy speakers of the National Assembly and provincial assemblies were suspended and the Prime Minister (Nawaz Sharif) and his cabinet ceased to hold office.

The Chief Executive also promulgated the Provisional Constitutional Order on Oct 14, 1999, in place of the 1973 Constitution. Several people filed court petitions challenging his assumption of power. However, Musharraf issued The Oath of Judges Order 2000 which required judges to take a fresh oath of office swearing allegiance to military rule. Judges were required to swear that they would make no decisions against military rule. Many judges refused and resigned in protest. Subsequently on May 12, 2000, the Supreme Court of Pakistan, now filled with judges of the General's pleasing who had taken oath not to take any decisions against the Military Junta, ordered Musharraf to hold general elections by October 12, 2002.

President Rafiq Tarar, appointed by Nawaz Sharif, remained in office until June 2001. Musharraf formally appointed himself President on June 20, 2001, just days before his scheduled visit to Agra for talks with India. In this regard, two orders were issued on June 20, 2001. In the first order, President Rafiq Tarar was removed and in the second order the Chief Executive appointed himself as the President for a term of five years.

## 9.1 Referendum

In an attempt to legitimize his presidency and assure its continuance after the approaching restoration of democracy, Musharraf held a referendum on April 30, 2002 to extend his presidential term to five years after the October elections. The referendum was boycotted by a majority of Pakistani political groupings, which later complained that the elections were heavily rigged, and voter turnout was 30% or below by most estimates. A few weeks later, Musharraf went on TV and apologized to the nation for “irregularities” in the referendum.

General elections were held in October 2002 and a plurality of the seats in the Parliament (called *Majlis-i-Shoora*) was won by the PML-Q, a pro-Musharraf party. However, parties opposed to Musharraf effectively paralysed the National Assembly for over a year.

## 9.2 17<sup>th</sup> Amendment

The deadlock ended in December 2003, when Musharraf made a deal with the *Muttahida Majlis-i-Amal* (MMA), a coalition of six Islamic parties, agreeing to leave the army post by December 31, 2004. He subsequently refused to keep his promise. With the party’s support, pro-Musharraf legislators were able to muster the two-third supermajority required to pass the Seventeenth Amendment, which retroactively legalized Musharraf’s 1999 coup and many of his decrees.

In an interview in March 2007, Musharraf said that he intended to stay in the office for another five years. The leader of the pro-Musharraf party has also said that Musharraf would be re-elected from the current assemblies.

In a vote of confidence on January 1, 2004, Musharraf won 658 out of 1,170 votes in the Electoral College of Pakistan, and according to



Article 41(8) of the Constitution, was “deemed to be elected” to the office of President until October 2007. This electoral college, according to article 41 (3) of the Constitution, comprises members of the National Assembly and provincial assemblies.

### **9.3 Dual Office Controversy**

Article 41 (1) of the Constitution provides, “The president shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services”. Article 250 provides for the salaries allowances and privileges of, among others, the president.

By virtue of holding the office of the Chief of Army Staff, Gen Musharraf could not have been elected president. Since the constitution has not been amended, Musharraf can not seek re-election for another five-year term in the Presidency from the existing assemblies by an executive order. Any such attempt would be unconstitutional.

### **9.4 Paramount Controversy**

The ruling coalition has shown its determination to get Musharraf elected from the same assemblies. The opposition parties, threatening a mass movement, say they will not accept Musharraf in uniform. Even the Pakistan People’s Party, supposed to have been engaged in a dialogue with the Musharraf regime over his election, has reacted like other opposition parties.

Recent reports suggest that Gen Musharraf has conceded on the uniform issue and has indicated that he may defer his re-election till the new assemblies are formed after the parliamentary elections. His talks with PPP chairperson Benazir Bhutto progressed well before

the ruling Muslim League (Quaid-i-Azam) and its coalition partners, particularly the Muttahida Qaumi Movement, showed reservations over Benazir's demand of that local governments be suspended for three months because they provide political strength to the PML-Q in Punjab and North Western Frontier Province and the MQM in urban Sindh and if they remained functional during the elections, the ruling party would misuse them. At one stage it seemed as if Benazir-Musharraf parleys had broken down, but newspaper reports suggest that the parties are re-engaging themselves in dialogue.

Another report suggests that an agreement between the PPP and Musharraf has almost been concluded and its broad lines are: (1) Musharraf will quit as army chief and cast his uniform; (2) Musharraf will wait for the new assemblies to be in place to seek re-election as president; (3) local governments will not be dissolved; (4) parliamentary elections will be held within the period stipulated by the Constitution; (5) elections will be held by a caretaker government of national consensus which will set up in due course of time; (6) no member of the caretaker cabinet in the centre and provinces will contest election; (7) the judiciary will supervise elections; and (8) power will be transferred to the elected parliament.

The details available from the news reports also suggest that the 'agreement' also envisages that Musharraf will contest for the Presidency after the election process is completed and a new electoral college comes into being; in that event the PPP will support Musharraf's re-election.

## 10 Allocation of Seats

Article 51 of the 1973 Constitution provides 207 seats for Muslims 20 seats for women and 10 for non-Muslims. Their allocation in 1988 elections, based on the separate electorate, to provinces and other areas is as follows:

The Federal Capital has 1 Muslim seat, Federally Administered Tribal Areas (FATA) 8, Punjab 115, Sindh 46, NWFP 26 and Balochistan 11. As for the seats reserved for women, Punjab has a quota of 12 seats, Sindh 4, NWFP and Balochistan 2 each. Besides, there are 10 seats reserved for non-Muslim. The share of Christians in the National Assembly is 4 seats, Hindus and persons belonging to the Scheduled Castes 4, Sikh, Buddhist, Parsis and other non-Muslim communities have a share of 1 seat and the Qadiani groups 1.

As for provincial assemblies the composition is:

Punjab has a total of 260 seats which include 12 women, 5 Christians and 1 each for Hindus, Sikhs and Qadianis.

Sindh has a total of 114 seats. Of them 9 are reserved for women, 5 for Hindus etc, 2 for Christians and 1 each for Sikhs and Qadianis.

NWFP has a total of 87 seats which include 4 seats reserved for women and 1 each for Christians, Sikhs etc and Qadianis.

Balochistan has a total of 45 seats. 2 of them are reserved for women and 1 each for Christians, Hindus etc and Sikhs etc.

The elections in 1990, 1993 and 1997 were also held on the basis of separate electorate. The composition of the National Assembly and provincial legislatures did not change.

### **10.1 Senate**

The 2002 law provides for 100 seats in the Senate. As there is equal representation of provinces in the upper house of parliament, each of the four provinces has an allocation of 22 seats. Of them 14 are general seats, four reserved for women and another four for technocrats/professionals/Ulema (religious scholars). The federal capital territory has two general seats and one reserved seat each for women and technocrats/professionals/Ulema. The Federally Administrated Tribal Areas have eight general seats and no reserved seats in the Senate.

### **10.2 2002 Changes**

The elections for 2002 were held on the basis of a joint electorate for the first time since 1977. The composition of assemblies also changed for this election when the representation of women in particular increased. The number of seats reserved for minorities remained the same. Total seats for National Assembly in 2002 elections were raised to 342 and they included 60 seats for women. The number of seats reserved for women in the National Assembly was raised with an additional quota of provinces- 35 in Punjab, 14 in Sindh, 8 in NWFP and 3 in Balochistan. The representation of the FATA was raised to 12 and that of the Federal Capital to 2.

As for provincial assemblies, the share of Punjab was raised to 371 seats. Of them 66 went to women and 8 to non-Muslims. The seats in Sindh were increased to 168. The share of women was 29 and that of non-Muslims 9. Seats in NWFP assembly went up to 124, of whom 22 were women and 3 non-Muslims. In Balochistan assembly total seats were increased to 65. Of them 11 were women and 3 non-Muslims.

### 10.3 Women

The enhancement of women's representation in assemblies needs a special mention. Special seats for women were allocated for the first time in the 1962 Constitution. Three seats from East Pakistan (now Bangladesh) and three from West Pakistan were reserved. The Legal Framework Order of 1970 increased this number to 13; seven from East Pakistan and six from West Pakistan. The 1973 Constitution allotted 10 seats for women in the National Assembly. This special quota was reserved for women till 2001 when, for the first time, 33 per cent seats were allocated for women in local council elections under provincial local government laws. The same quota was extended to assemblies when elections were held in Oct 2002. At present 35 seats in the National Assembly are reserved for Punjab, 14 for Sindh, eight for NWFP and three for Balochistan. The special quota in provincial assemblies is 66, 29, 22 and 11, respectively. The same quotas have been maintained for elections this year.

As for non-Muslim minorities, 10 special seats were reserved for them under the Government of India Act, 1935, which Pakistan adopted as the interim constitution. But the first constitution, adopted in 1956, and the second in 1962 gave the minorities no additional quota because of the joint election system. When non-party elections were held in 1985 on the separate electorate basis, non-Muslim minorities were allotted a quota of 10 seats in the National Assembly. The Chief Executive's order of 2002 has not only restored a system of joint electorate but also given the minorities an additional quota of 10 seats in the National Assembly and 23 in provincial assemblies.

As for the composition of the National Assembly, this order says that it will comprise 342 seats that will include women and non-Muslims. According to the law, Balochistan shall have a representation of 14 general and three women seats in the National Assembly, the Federally

Administered Tribal Areas (FATA) 12, the federal capital 2, the North West Frontier Province 35 general and 8 women, Punjab 148 general and 35 women, and Sindh 60 general and 14 women seats in National Assembly. Besides, there shall be four Christians and the same number of Hindus and other scheduled castes in the National Legislature. Similarly, Sikhs, Budhists and Parsis and others shall have one seat in the NA and Qadianis also one.

All non-Muslim minorities, except Ahmadis (Qadianis) who have not accepted the constitutional amendment which declared them as non-Muslims, actively take part in elections. Ahamdis do not get registered as voters because they are barred from declaring themselves as Muslim citizens of Pakistan. As such, they have not taken part in elections for more than three decades.

## **11 NDI Report**

The National Democratic Institute (NDI) for International Affairs visited Pakistan between May 13 and May 17, 2007, to assess the political environment and the framework for the upcoming elections for the national and provincial assemblies, expected in late 2007 or early next year.

The delegation included: David Collette (Canada), former Minister of National Defence, Minister of Veterans Affairs and Minister of Transport; Peter Manikas (United States), NDI Senior Associate and Director of Asia Programs; Tioulong Saumura (Cambodia), Member of the National Assembly and member of the Steering Committee of the Sam Rainsy Party; Teresita Schaffer (United States), Director of South Asia Programs at the Center for Strategic and International Studies and former Ambassador to Sri Lanka; and Tony Worthington (United Kingdom), former Member of Parliament from the Labor Party. Sheila Fruman, director of NDI's Pakistan programs was the delegation's chief consultant. The delegation

was also assisted by Program Officer Irtaza Abbas, Senior Program Officer Jumana Dalal and Executive Coordinator Mailis Orban.

Members of the delegation met with electoral and government officials, a broad spectrum of political party leaders and leaders from civic and human rights associations, as well as representatives of the news media and international organizations. The delegation offers its findings and observations in the spirit of international cooperation and recognizes that it is the people of Pakistan who will ultimately determine the meaningfulness of the upcoming elections.

### **11.1. Summary of Finding and Observations**

The upcoming parliamentary elections are important not only for the people of Pakistan, but also for the international community. Pakistan is a nuclear power and an essential ally in the fight against terrorism. If the upcoming elections meet international standards and have the confidence of the people of Pakistan, they can provide the basis for returning power to civilian hands and the newly elected government can negotiate the proper role of the military in the nation's life. If the elections are tainted, they could lead to the strengthening of extremist elements, which can fill the void left by the marginalization of the more moderate parties. Such elections could also further consolidate the role of the military in governing the nation.

For more than half of its life as an independent nation, Pakistan has been under military rule. Even when the government was led by civilian authorities, the military played a behind-the-scene role in the nation's life that went well beyond its military responsibilities. In 1999, General Pervez Musharraf deposed the elected government of Nawaz Sharif, promising to lay the foundations of "true democracy." Much remains to be done, however, to attain that goal.

President Musharraf announced his intention to step down as Army Chief by December 31, 2004, but has continued in both roles. Serving in both positions blurs the distinction between military and civilian authority that is fundamental to a democratic system. He has also expressed his intention to be re-elected as President by the legislative assemblies that will complete their term on November 15. This decision is controversial within Pakistan and could diminish public confidence in the upcoming elections.

The government has made progress in recent years in enhancing the participation of women in the political process. The role of women in governance has been increased by reserving seats for them in local and national legislatures. The Hudood Ordinance, which regulates some cultural and family matters, was amended by the Protection of Women Act, providing women with greater freedom and more equal treatment under the law. These reforms are important advances; however, serious problems persist and much more needs to be done to fulfill the President's stated goal of building sustainable democratic institutions.

The Election Commission, whose members are appointed by the government, is widely viewed as lacking independence. The delegation identified three areas in election administration that gives rise to particularly serious concerns: the preparation of voter lists; the procedures for aggregating voters from different polling stations; and the lack of timely adjudication and remedy of election disputes.

The government has also been accused of interfering with the judiciary, compromising its independence and the rule of law. There is still time to take steps to rectify many of the problems this delegation has identified, but concerted efforts are needed if the process is to meet



international standards. Our specific recommendations appear at the end of this statement.

### **11.2. Political Environment**

Two issues cast a shadow over the upcoming elections: the president's status as Army Chief and his intention to seek re-election under the current legislative assemblies.

In exchange for parliamentary approval of certain constitutional and legal changes President Musharraf initially made by decree, the President expressed his intention to step down as Army Chief by the end of 2004. However, he has continued to retain both posts. Serving in both roles undermines the fundamental premise of a democratic society that the military should operate under civilian control. This delegation believes that if Pakistan is to return to a democratic path, its political leadership must be civilian and the military returned to its role of defending the nation.

Controversy also surrounds the issue of whether the President will seek re-election by the outgoing legislative assemblies. These assemblies were produced through elections in 2002 that international and domestic election observers found to be seriously flawed. In the past, presidents have been selected by newly-elected assemblies. President Musharraf's dual status as President and Army Chief and a decision to hold the presidential election under the current assemblies are likely to further erode public confidence in the upcoming legislative elections.

President Musharraf's stated justifications for taking power in 1999 included corruption on the part of the political parties and a desire to establish true democracy. The record of accomplishment of party-led governments has not been impressive. There has been widespread

dissatisfaction with the performance of political parties which have been criticized for corrupt practices and for failing to fulfill their promises to improve the conditions of ordinary Pakistanis, many of whom live in deep-seated poverty. The delegation notes, however, that the parties in Pakistan have been subject to manipulation by the government since the founding of the nation. Even the civilian-led governments from 1988-1999 were constrained by the military, which reserved the right to make decisions involving Pakistan's nuclear program and other issues concerning foreign policy. Since 1977, no civilian government has been allowed to complete its full term. Parties in Pakistan have had little opportunity to evolve into modern political organizations. A democratic transition would be impossible without the full participation of political parties. Despite legitimate criticisms of the parties, they are a critical component of democratic governance.

While the parties can often engage in open political activity, and frequently do so vigorously, laws banning rallies and meetings are sometimes unpredictably and inconsistently applied. Opposition parties complain that they have been effectively weakened by selectively applied laws and intimidation. They have expressed concern that the void left by Pakistan's moderate parties are being filled by extremist parties that have historically fared poorly in Pakistan's elections. The delegation also notes that Muttahida Majlis-e-Amal (MMA), a coalition of six religious parties, was appointed as the official opposition in the National Assembly, even though the Pakistan Peoples Party (PPP) had more seats and popular votes in parliament. This is contrary to normal parliamentary practice and further serves to marginalize the parties that have led past governments.

Political participation is hindered by a law passed in 2002 that requires that candidates for the national and provincial assemblies hold a Bachelor's Degree or its equivalent. This prevents 90% of the

population from standing for office. The law is also applied in a fashion that seems to favor particular parties and candidates. Madrassah (seminary) certificates, for example, can be substituted for university degrees, providing an advantage to the religious parties.

### **11.3. Legal Framework and Rule of Law**

The legal framework for the election is governed by Pakistan's constitution, presidential decrees, the Code of Criminal Procedure, the Frontier Crimes Regulation Act (FCRA), the Political Party Law and other laws and regulations.

The constitution permits the president to establish a caretaker cabinet to oversee the election period. The delegation understands that the government is considering doing so. We urge the President to establish a care-taker government in consultation with political parties and civil society. Pakistan's constitutional provisions on a care-taker government appear to involve replacing only the prime minister and cabinet ministers. The president's powers would not be affected, limiting the impact of such an action.

In 2002, the Legal Framework Order (LFO) was issued granting the president sweeping powers. These included the right to amend the constitution unilaterally, to issue orders that could not be challenged in court and to dismiss legislative assemblies. The LFO also established a National Security Council, dominated by the military, to oversee parliament. Many provisions of the LFO have been incorporated into the constitution or enacted as legislation.

Leaders of both of the parties that previously led the government, Benazir Bhutto of the Pakistan Peoples Party (PPP) and Nawaz Sharif, of the Pakistan Muslim League-Nawaz (PML-N), have been

charged with criminal offenses and currently live in exile. While NDI cannot judge the merit of these charges, many in Pakistan believe that they are politically motivated. After the 1999 coup, the political party law was amended to prevent anyone from being prime minister for more than two terms, barring the two party leaders from again serving in that office. This law is inconsistent with customary practice in parliamentary systems throughout the world. Many Pakistanis will not view the upcoming national elections as credible without the participation of the leaders of two major political parties.

The FCRA prohibits political parties from campaigning or operating an office in the Federally Administered Tribal Areas (FATA). In addition, candidates from FATA may not register by political party or hold rallies. The delegation was told by secular and religious parties that permitting political activity by all political parties in FATA may help to normalize the political situation in the tribal areas.

The delegation notes that confidence in the judiciary is critical for the upcoming elections. Four of the five members of the Election Commission are drawn directly from provincial high courts. Returning officers, who compile and report the election results, are also drawn from the judicial system. Election Tribunals, which handle election complaints, are staffed by judges. Grievances in election cases are also heard by the high courts and the Supreme Court.

As the election approaches, more attention should be given to the role of the legislature in overseeing the electoral process. There has been little progress in setting up cross-party committee structures that would help to strengthen institutions such as the electoral commission. Legislators have a common interest in creating confidence in an open, democratic framework. We urge the National Assembly and Senate

to establish a Committee of Inquiry to make recommendations for improvements in the conduct of elections.

#### **11.4. Media**

While the government directly owns Pakistan Television and Radio Pakistan, the only nationally controlled broadcasters, private television stations abound. Numerous Urdu and English dailies and weeklies, several local and international radio and television stations, as well as internet-based media operate independently. Newspapers and electronic media are able to carry out criticisms of the government and cover opposition activities, and regularly do so. Pakistani law provides for freedom of speech and of the press, and citizens are generally free to discuss public issues and criticize the government.

#### **11.5. Election Commission**

Under Pakistan's constitution, the Election Commission of Pakistan (ECP) comprises five persons: the Chief Election Commissioner and four members, one from each of the provinces. Because, the CEC and other ECP members are appointed by the President, many opposition parties and members of civil society question their independence and ability to fairly administer the upcoming elections. Broad public confidence in the ECP is integral to public acceptance of the results of the upcoming election. In the long term, ensuring the independence of the ECP may require constitutional changes. However, in the shorter term, public confidence in the ECP would be enhanced through regular consultations with the political parties and civil society. The delegation also believes the President should consult widely with political parties and civil society before filling the two vacancies on the ECP that currently exist.

The delegation identified three broad categories of problems with elections procedures: the voters list; opportunities for manipulation at certain stages of the counting procedures; and, in the event election disputes are referred to the judiciary, the lack of timely opportunity for redress.

The delegation notes that the voter registration process is a particular area of concern. These issues include a lack of training for door-to-door enumerators and unclear requirements for registration coupled with insufficient public notification and voter education. Political parties expressed concern about the preparation of the preliminary voters list.

There is inadequate information provided by the ECP on the registration process. The timetable and requirements for registration have changed on several occasions since they were first announced, and parties, voters, and the public at large have received little information about the need to register, how to register or eligibility requirements. Insufficient information is publicly available on how voters may be able to register or appeal to the ECP should they find the voters list in error. Initially expected to be completed and displayed in January, the voters list is considerably behind schedule. This is of considerable importance; one election expert told the delegation that up to 10 million persons should be added to the list.

Political parties expressed an urgent need to review the process for adjudicating electoral complaints. In past elections, there have been long delays in resolving such complaints. The delegation was told that some cases filed in connection with the 2002 elections still remain to be adjudicated.

### **11.6. Suggestions and Recommendations**

Many of the themes developed in the report -- the need to strengthen political parties, permit free political activity, establish accountable and democratic institutions and define the proper role of the military -- are hardly new in Pakistan. NDI began identifying these issues almost 20 years ago when it first observed elections in Pakistan in 1988.

Pakistan stands at a critical juncture and the stakes are very high. If the upcoming elections are considered credible by the people of Pakistan, they could return the nation to the path toward democracy. A new, democratically-elected legislature could prepare the way for the return to civilian rule. Tainted elections that are not considered to reflect the will of the people could lead to disillusionment and instability. The delegation hopes that the government and those involved in the election will do everything needed to ensure that the elections are a success.

The delegation offers the following recommendations in the spirit of international co-operation and with the hope that they will be helpful in promoting fair and credible elections:

#### ***Contextual Issues***

- the President should resolve as soon as possible the issue of holding both the posts of Chief of Army and President; holding both posts blurs the distinction between military and civilian authority that is fundamental to a democratic system; and
- the issue of whether the president will be elected by the current assemblies should immediately be referred to the courts for resolution.

## ***Legal Framework***

- the President should use the authority in the Constitution to establish a neutral care-taker Cabinet in consultation with political parties and civil society;
- the law preventing anyone from serving as prime minister for more than two terms should be repealed;
- the independence of the judiciary should be inviolate and the government should facilitate efforts of the Bar Council to ensure that its independence is not breached;
- the President should fill the two current vacancies on the ECP through a process of full consultation with the political parties and civil society;
- the parliament should establish a cross-party Committee of Inquiry to make recommendations concerning the conduct of elections. These recommendations should include provisions for long term parliamentary scrutiny of the electoral process;
- criminal laws should not be used to impede political activity and no law designed to protect public order should be selectively applied;
- the government should review the ban on political parties operating in FATA and work with tribal leaders and political parties to normalize the political situation in the tribal areas;
- the government should use its full authority to enforce the right of women to vote in all areas of the country;



- the government should cooperate with judicial inquiries investigating the killing and abduction of journalists and political party workers; and
- the government should issue and publicize orders to security forces, including intelligence services, that they must be politically neutral and not interfere in the political process in any way.

### ***Electoral Framework***

The Election Commission should:

- develop a formal process of regular and timely consultations with the political parties and civil society sharing views on election procedures and policies;
- establish a timeline and clear requirements for the voter registration process, and make it public and widely available;
- make copies of the voters list available to political parties, on compact disk if possible, and extend the display period to permit as many eligible voters to register as possible;
- ensure adequate training for election day workers;
- require polling officials at each polling station to post the results in a manner that is visible to the public immediately after the count at each station is concluded; and
- revise the procedures for handling electoral disputes to ensure timely adjudication and if necessary, timely redress.

### **Total & Polled Votes in National Assembly**

<b>Year</b>	<b>No. of Voters</b>	<b>Votes Polled</b>	<b>Percentage</b>
1985	3,43,96,661	1,84,67,567	53.69
1988	4,80,61,670	1,99,03,172	43.07
1990	4,86,48,960	2,21,15,817	45.46
1993	5,23,26,021	2,10,97,851	40.32
1997	5,66,15,667	1,95,06,855	35.99
2002	7,19,13,850	2,99,72,353	41.68

## Annexure – ii

## National Assembly

## Party Position in 1988 Elections

Party/ Alliance	Candi- dates	Seats Won	Votes Polled	%	Remarks
Pakistan People's Party	179	93	75, 46, 561	38.52	
Islamic Democratic Alliance	165	54	59, 08, 742	30.16	This alliance comprised Muslim League, Jamaat-i-Islami, etc
Jamiat Ulema-i-Is- lam	38	7	360, 526	1.84	This religious party is confined to NWFP
Pakistan People's Alliance	83	3	859, 713	4.39	Comprising religious groups
Awami National Party	25	2	409, 555	2.09	Confined to NWFP
Balochistan National Alliance	6	2	71, 058	0.36	Confined to Balochistan
Independents	590	40	38, 19, 761	19.50	The third largest group that was in a bargaining position

- \* The National People's Party, the Pakistan Democratic Party and the Jamiat Ulema-i-Pakistan won one seat each in the NA.
- \* The above position relates to only general seats and not seats reserved for women and minorities.

## National Assembly

### Party Position in 1990 Elections

Party/Alliance	Candidates	Seats Won	%	Remarks
Islamic Democratic Alliance	154	106	37.37	This alliance comprised PML (Nawaz), Jamaat-i-Islami, etc
People's Democratic Alliance	182	44	36.83	This alliance comprised PPP and other smaller parties
Haq Parast Group	24	15	5.54	The refugees' party MQM contested election under this group
Jamiat Ulema-i-Islam	54	6	2.94	This religious party is confined to NWFP
Awami National Party	18	6	1.68	Confined to NWFP
Jamiat Ulema-i-Pakistan	44	3	1.47	
Jamhoori Watan Party	6	2	0.61	Confined to Balochistan
Pakistan National Party	10	2	0.60	
Independents	716	22	10.30	Again the third largest group

\* The above position relates to only general seats and not seats reserved for women and minorities.

## National Assembly

### Party Position in 1993 Elections

Party/Alliance	Candidates	Seats Won	%	Remarks
Pakistan People's Party	166	85	37.86	
Pakistan Muslim League (Nawaz)	173	73	39.86	Nawaz Sharif's party left the IDA alliance to contest independently
Pakistan Muslim League (Junejo)	18	6	3.91	Junejo was the PML chief and the party was hijacked by Nawaz Sharif after 1988. Still, one group contested in Junejo's name
Islamic Democratic Front	51	4	2.40	This comprised Jamaat-i-Islami, JUI, etc
Pakistan Islamic Front	104	3	3.22	This was an alliance of about 26 smaller religious parties
Awami National Party	17	3	1.67	
Pakhtoonkhwa Milli Awami (People's) Party	6	3	0.49	Confined to Balochistan
Independents	750	15	7.40	Once again, the third largest group

- \* Another religious parties alliance – Muttahida Deeni Mahaz (United religious front) fielded 35 candidates and won two seats. Balochistan-based Jamhoori Watan Party also won two seats. Balochistan National Movement (Mengal group), Balochistan National Movement (Hayee group), National Democratic Alliance, National People's Party, Pakhtoonkhwa Qaumi Party also won one seat each in the NA.

## National Assembly

### Party Position in 1997 Elections

Party/Alliance	Candi- dates	Seats Won	%	Remarks
Pakistan Muslim League (Nawaz)	178	137	45.95	
Pakistan People's Party	163	18	21.90	
Haq Parast Group	51	12	3.97	
Awami National Party	20	10	1.99	
Balochistan National Party	8	3	0.65	
Jamiat Ulema-i-Islam	35	2	1.71	
Jamhoori Watan Party	9	2	0.34	
Independents	896	21	13.93	This time they emerged as the second largest group even ahead of PPP.

- \* National People's Party fielded four candidates and won one seat in the National Assembly.
- \* One seat was bagged by a splinter group of Pakistan People's Party formed in the name of Shaheed (martyr) Zulfikar Ali Bhutto headed by the widow of Mir Murtaza Bhutto, the brother of Benazir Bhutto.

## National Assembly

### Party Position in 2002 Elections

Party/Alliance	Candidates	Seats Won	%	Remarks
Pakistan Muslim League (Quaid-i-Azam)	NA	118	26.63	This party was formed with the blessings of President Musharraf.
Pakistan People's Party	NA	80	28.42	Vote polled are higher than the largest party
Muttahida Majlis-i-Amal	NA	59	12.28	This alliance comprises six religious parties
Pakistan Muslim League (Nawaz)	NA	18	12.71	This party remained loyal to Nawaz Sharif
Muttahida Qaumi Movement	NA	17	3.55	The urban Sindh-based refugees party
National Alliance	NA	16	0.49	
Pakistan Muslim League (Functional)	NA	5	1.23	This PML group is headed by Sindh leader Pir Pagara
Pakistan Muslim League (Junejo)	NA	3	0.93	
Pakistan People's Party (Sherpao group)	NA	2	0.48	This group came out of PPP when its head Aftab Sherpao, a former chief minister of NWFP, was sacked from the party
Independents	NA	17	10.98	

- \* One seat each was bagged by Balochistan-based Balochistan National Party, Jamhoori Watan Party and Pakhtoonkhwa Milli Awami Party, the splinter group of Muslim League headed by Ejazul Haq, the son of military dictator Ziaul Haq, Pakistan Tehrik-i-Insaaf of Imran Khan, Pakistan Awami Tehrik and NWFP-based Pakhtoonkhwa Qaumi Party.
- \* The data about the number of candidates fielded by different parties could not be ascertained.
- \* At least 20 legislators defected the PPP and formed the PPP Patriot Group in the National Assembly as well as Provincial Assemblies. This group was headed by Rao Sikandar Iqbal, announced the support of official PML group. Five of the Patriot MNAs were inducted into the federal cabinet.

### **Legal Framework for 2007 Elections**

Seven laws are in the field along with rules made their under for the holding of the general elections in the year 2007. These laws and rules were enacted for the elections held in Oct 2002. The laws are as follows:

- The Election Commission Order, 2002 was issued on January 14 the same year for the re-constitution the Election Commission of Pakistan. This law is issued before every general election.
- The Conduct of General Elections Order 2002, issued on January 27. This deals with the electoral reforms like lowering of the age of voters, increase in the representation of women and educational qualification for members of parliament and Provincial Assemblies.



- The Representation of People Act, 1976, issued on January 4, 1977. This law provides for a comprehensive plan for holding of elections starting from electoral rolls to the announcement of results.
- The Political Parties Order, 2002, issued on June 28. This law provides for the formation, election and other matters within a political party, its registration with the Election Commission of Pakistan and a code of conduct for them.
- The Allocation of Symbols Order, 2002, issued on August 5, 2002. This law provides for the modalities about the allocation of election symbols to parties and independent candidates.
- The Political Parties Rules, 2002, issued on July 23, 2002. These rules were framed for the smooth functioning of the parent law.
- The Representation of People (Conduct of Election) Rules, 1977, issued on January 9, 1977. These are the rules for the regulation of the parent law.

## AGENDA

### Regional Workshop of Experts on Inclusive Electoral Process

5-7 December 2007, Katmandu, Nepal

DAY 1 – Wednesday, 5<sup>th</sup> December

9.00	Registration
9.15-9.45	<ul style="list-style-type: none"> <li>• Welcome Address : Dr. Devendra Raj Panday</li> <li>• SAHR expectations from the Workshop: Dr. Hameeda Hossain</li> <li>• Key Note Address: 'Challenges to free and fair elections in South Asia' – Ms. Asma Jahangir.</li> <li>• Presentation: Mr. Bhoj Raj Pokhrel, Chief Election Commissioner of Nepal</li> </ul>
9.45-10.00	<p>Presentation of Background paper</p> <p>Ms. Ambika Satkunanathan</p>

10.00 – 10.15 - TEA

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<b>Electoral Reforms as part of State reforms</b>	
10.15-10.30	<p>Analysis of current reform process in Bangladesh, Pakistan and Nepal: Outcome, constraints and way forward.</p> <p>Speaker : Prof. Mishra (<i>Nepal</i>)</p>
10.30 -10.50 (10 minutes per panelist)	<p>Panelists : Dr. Md Rafiqul Islam (<i>Bangladesh</i>) Mrs. Musarrat Hilali (<i>Pakistan</i>)</p> <p>Facilitator : Dr. Panday</p> <p>Rapporteur : Ms. Ambika Satkunanathan (<i>Sri Lanka</i>) (10.15-12.30)</p>
10.50-12.30	Discussion

12.30 - 1.30 - LUNCH

<b>Independence and effectiveness of Election holding Authority</b>	
1.30 -1.45 (A)	Lessons from India – Role of the judiciary in safeguarding the independence and effectiveness of the election commission.
1.45 – 2.15	Discussion
2.15 -2.25 (B)	Accountability in voter registration, counting of results and announcement of results: Experiences from Bangladesh

2.25 – 3.00	Discussion – observations/comments from other South Asian countries
	Speaker (A) : Mr.Mendiratta ( <i>India</i> ) Speaker (B) : Ms. Sharmeen Murshid ( <i>Bangladesh</i> ) Facilitator (A,B) : Mr. Salman Raja Rapporteur (A,B): Dinesh Tripathi
3.00-3.15 - TEA	
<b>How to increase political participation and representation of marginalized groups: Impact and lessons learnt</b>	
3.15 -4.30	Group Work
Group 1	Quotas for women and quotas for backward castes and scheduled tribes Lead person : To be decided at the workshop Rapporteur : to be decided at the workshop
Group 2	Under representation of social and ethnic groups Lead person : Ms. Ananda Aditya ( <i>Nepal</i> ) Rapporteur : to be decided at the workshop
Group 3	Migrant workers/Expatriates Lead person : Mrs. Nimalka Fernando ( <i>Sri Lanka</i> ) Rapporteur : to be decided at the workshop
4.30 – 5.00	Presentation of strategies/action points – by the Rapporteurs

**DAY 2 – Thursday 6<sup>th</sup> December**

<b>Election process and political parties</b>	
8.45 – 9.00 (A)	Transparency and accountability of the nomination process
9.00 – 9.30	Discussion
9.30 - 9.45 (B)	Political party funding/unethical campaigns
9.45 – 10.15	Discussion
	Speaker (A) : Mr. Trilochan Sastry – ( <i>India</i> ) Speaker (B) : Mr. Mehboob – ( <i>Pakistan</i> ) Facilitator (A,B) : Mr. Keshab Mathema Rapporteur (A,B): Ms. Ambika Satkunanathan
<i>10.15 -10.30 - TEA</i>	
<b>Corruption and criminal practices</b>	
10.30 – 10.45 (A)	Abuse of public resources and public media and its influence/impact on voting patterns and election outcome
10.45 -11.00 (B)	Use of money arms and official influence in elections
11.00 – 12.30	Discussion
	Speaker (A) : Mr. A. Welikala ( <i>Sri Lanka</i> ) Speaker (B) : Mr. B.A. Majumdar ( <i>Bangladesh</i> ) Facilitator (A,B) : Mr. Ratnavel ( <i>Sri Lanka</i> ) Rapporteur (A,B): Mrs. Pramila Rai
<i>12.30-1.30 - LUNCH</i>	

<b>The role of civil societies in participatory election</b>	
1.30 – 1.45	Challenges and strategies Speaker– Mr. Kingsley Rodrigo – ( <i>Sri Lanka</i> )
1.45 -2.15 (Panelists)	Panelists : Mr. Shyam Shrestha – ( <i>Nepal</i> ) Ms. Asma Shirazi – ( <i>Pakistan</i> ) Mr. Maksud – ( <i>Bangladesh</i> )
2.15-3.00	Discussion
3.00 -3.15 - TEA	
3.15-5.00	Role of regional monitors and SAHR's role in monitoring elections in South Asia – Open Discussion Facilitator – Ms. Asma Jahangir

### DAY 3 – Friday 7th December

<b>Modern Technology and voting rights – South Asian initiatives</b>	
8.45 – 9.15	Structural and institutional changes – experience from India Speaker : Mr. Lyngdoh (India)
9.15- 10.00	Discussion on initiatives by other South Asian countries
	Facilitator : To be decided (8.45-10.00)
10.00 -10.15 - TEA	
10.15 – 11.30	Identifying Bench marks Facilitator : to be decided

**Annexure 4****List of Participants****Afghanistan**

Abdul Rahman Hotaki

*Director, Afghan Organisation of Human Rights & Environmental Protection*

**Bangladesh**

Ms. Sharmeen S. Murshid

*Sociologist, founder member SHUJAN (Citizens for good governance)*

Mr. Badiul Alam Majumdar

*Secretary, SHUJAN (Citizens for good governance)*

Mr. Syed Abul Maksud

*Journalist*

Mr. Rafiqul Islam

*Joint Secretary of the Government of Bangladesh*

Hameeda Hossain

*Chairperson, SAHR & Founder Member, Aino Salish Kendra*

**Bhutan**

Mr. Thinley Penjore,

*President, Druk National Congress (Democratic)*

Mr. Balaram Poudyal,

*President, Bhutan Peoples' Party*

## **India**

Prof. Trilochan Sastry

*Chairman, Association for Democratic Reforms (ADR)*

Mr. J.M. Lyngdoh

*Former Chief Election Commissioner, India*

Mr. S.K. Mendiratta

*Legal Advisor to the Election Commission of India*

Kamla Bhasin

*Human Rights Activist & Scholar*

Dr. Bishnu Mohapatra

*Program Officer, Local - Global Governance, The Ford Foundation*

## **Nepal**

Dr. Birendra Prasad Mishra,

*Former Election Commissioner, EP Expert*

Shyam Shrestha,

*Civil Society Activist, EP Expert*

Ananda Aditya,

*Academician, EP Expert*

Dr. Devendra Raj Panday,

*Human Rights Activist & Chairperson Self-Reliance Development Centre, Nepal*

Mr. Vijay Singh,

*Lawyer, Human Rights Activist*

Mrs. Mohammadi Siddiqui,

*SAHR Bureau Member*



**Pakistan**

Ms. Musarrat Hilali

*Lawyer & Former Vice Chairperson of the Human Rights Commission of Pakistan*

Ms. Asma Shirazi

*Reporter Geo TV Pakistan*

Mr. Mehboob Ahmad Khan

*Lawyer*

Kamran Arif

*Advocate and Human Rights activist*

Salima Hashmi

*Dean, Beaconhouse Pakistan national University, Lahore*

Salman Raja

*Lawyer & Human Rights Activist*

I.A Rehman

*Director, Human Rights Commission of Pakistan*

## **Sri Lanka**

Mr. W.K.P. Kingsley Rodrigo

*Chairman, People's Action for Free & Fair Elections (PAFRREL)*

Mr. Asanga Welikala

*Senior Research Associate, Centre for Policy Alternatives (CPA)*

Mrs. Nimalka Fernando

*President of the International Movement against all forms of Discrimination and Racism (IMADR)*

Shiranthi Jayatilaka

*Executive Director, SAHR*

S Ratnavel

*Lawyer & Human Rights Activist*

Shreen Saroor

*Human Rights Activist*

Ambika Satkunanathan

*Researcher, Board Member, Neelan Tiruchelvam Trust*

Sithie Tiruchelvam

*Chairperson, Neelan Tiruchelvam Trust*

## Expert Profiles

### BANGLADESH

#### **Ms. Sharmeen S. Murshid**

Ms. Murshid is a sociologist specializing in social development, participatory action research and communication for governance, democracy and development. She is the holder of awards and fellowships such as the Nari Muktijodha (woman freedom fighter) award from Nari Samaj Dhaka, FISAA fellowship in South Asian Alternatives. She has excelled in the fields of democracy and governance through action research on right to fair elections, right to safe water, protection of human rights of vulnerable communities and research for social change. She provided consultation for over 100 participatory capacity building events facilitated for UN agencies, UNICEF Ethiopia, and Ministry of Education UNICEF Bhutan. She is an executive member of the Center for Alternatives and BIAN, Bangladesh. A core group member of FOWSIA, Forum on Women in Security and International Affairs, she was also a founder member of SHUJAN, citizens for good governance.

#### **Mr. Badiul Alam Majumdar**

Mr. Majumdar, PhD, has been the Global Vice President and the Country Director of the Hunger Project, Bangladesh Office, from 1993 to present. He is also the Secretary of SHUJAN, citizens for good governance, which is a citizen's initiative for political reforms. He has also been a member of the Committee to Revitalize and Strengthen the Local Government which is a committee set up by the current interim government. He has consulting experience with the UN Economic Commission for Asia and the Pacific (UN ESCAP)

and the Asia Foundation. Mr. Majumdar has written a number of articles, books and reports on various social issues, development and the economy.

### **Mr. Syed Abul Maksud**

Mr. Maksud began working journalism with the Bangladesh Press International (BPI) which is a government owned news agency. He has worked as the News Editor and Deputy Chief News Editor at the BPI. Mr. Maksud is the recipient of the Bangla Academy Prize, the highest literary award in the country. With some eminent members of the civil society, he launched a movement for free and fair elections and electoral reforms since 2002. He has organized innumerable rallies, seminars, round-table discussions, human chains and public meetings across the country to mobilize public opinion in favour of inclusive electoral process and reforming present electoral system. Mr. Maksud got members of the public including youth and students involved in the movement for free and fair election to the local government and national parliament. He writes articles in the national dailies on electoral reforms.

### **Mr. Rafiqul Islam**

Mr. Islam, PhD, currently works as the Joint Secretary of the Government of Bangladesh. After joining the administrative service in 1984 he has held the post of Upazila Nirbahi Officer (UNO) who is responsible as the head of the Local Government Unit. He has also been the Deputy Secretary and the Director of the NGO Affairs Bureau engaging in policy formulation, coordination and execution. Mr. Islam was the Joint Secretary of the Election Commission Secretariat and was also the Project Director of the Pilot Project for preparation of Electoral Roll with photograph and issuance of national identity card.

He was also the National Project Coordinator of the project “Support to the Electoral Process in Bangladesh (SEPBB)” providing hardware and software development support.

## **BHUTAN**

### **Mr. Thinley Penjore**

Mr. Penjore began his active political career as a member of the Druk National Congress in Bhutan. He was the President of the Druk National Congress and has subsequently held the position of Vice Chairman of the Bhutanese Movement Steering Committee (BMSC.) He left Bhutan in 1997, lived in exile for 10 years. As an active member of the political movement he was part of the first ever peaceful agitation staged in 1997 in East Bhutan involving indigenous people demanding democracy and human rights in Bhutan. He has also led a peace march, “National Political Harmonization” and both these campaigns involved heavy torture and harassment including deaths of about 6 activists. Mr. Penjore has also been the Secretary General of Bhutan Chamber of Commerce and Industries (BCCI) as well as the Deputy Registrar in the High Court. He was also responsible as Acting Chairman in the United Front for Democracy (UFD) Bhutan.

## **INDIA**

### **Prof. Trilochan Sastry**

PhD Massachusetts Institute of Technology, MBA IIM Ahmedabad, BTech IIT Delhi. Mr. Sastry has worked as a professor in globally renowned universities and institutes such as the Indian Institute of Management (Bangalore and Ahmedabad), International University of Japan and Indian School of Business. He was also a visiting scholar

at the Massachusetts Institute of Technology and Hong Kong University of Science and Technology. He is the holder of the award for 'outstanding contribution to national development' from IIT, Delhi. He works for the Corporative Development Foundation, a Hyderabad based organization promoting corporatives in rural areas, as a Managing Trustee. Mr. Sastry's social service was highlighted as the Chairman and founder of the Association for Democratic Reforms (ADR) that filed and won public interest litigation (PIL) on criminalization of politics in the Supreme Court. As a result of this initiative candidates have to now declare financial, criminal and educational background while filing nomination papers at the time of elections.

### **Mr. J.M. Lyngdoh**

Mr. Lyngdoh is a graduate of the National Defence Collage and a Senior Executive Fellow of many universities including the Harvard University. He has obtained the Ramon Magsaysay award for government service. He is the author of the book "Chronicle of an impossible election"- Jammu Kashmir elections of 2002 and the Election Commission of India. Mr. Lyngdoh was appointed as the Election Commissioner in 1997 and then subsequently Chief Election Commissioner in 2001. He retired from service as Chief Election Commissioner in 2004. He is presently the Chairman of the Foundation for Advanced Management of Elections.

### **Mr. S.K. Mendiratta**

Mr. Mendiratta is the Legal Advisor to the Election Commission of India and Delimitation Commission of India. He has served the Election Commission of India for more than 42 years in various capacities, including Director (Law) and Principal Secretary. In 2004, he was appointed by the United Nations as an International

Commissioner for the Afghan-UN Joint Electoral Management Body, which conducted the first ever Presidential election in Afghanistan, under the aegis of the United Nations. Earlier, he also worked as technical advisor in electoral laws and procedures in South Africa, Nigeria, Malawi, Sweden, South Korea and Bhutan under the Commonwealth Secretariat, IFES, IDEA, NDI and UNDP. In June 2007, he was appointed by the United Nations as Senior Technical Advisor for the orientation workshop conducted in New Delhi for the newly appointed Election Commissioners of the Independent High Electoral Commission of Iraq. Mr. Mendiratta co-authored the first edition of the book *How India Votes - Election Laws, Practice and Procedure*, and revised the second edition of that book which was published by Lexis Nexis Butterworths in January 2007. He also authored volume 16 of the Halsbury's Laws of India, covering election laws.

## NEPAL

### **Mr. Shyam Shrestha**

As a journalist and a civil society activist, Mr. Shrestha has worked tirelessly for more than 3 decades to bring down autocratic monarchy in Nepal, to uphold people's rights and to promote peace negotiations between Maoists and the Nepal Government. He was a member of the Teacher's Movement of Nepal which achieved the teacher's right to organize in 1979 for the first time in the history of Nepal. He led the Communist Party of Nepal (Fourth Congress) for 12 years and has worked as the Secretary and Coordinator of Civic Solidarity for Peace to promote peace negotiations. As the Secretary of the Movement for Protecting Democratic Rights he contributed in compelling the Government to repeal regulations that curtailed civic rights.

### **Prof. Birendra P. Mishra**

Prof. Birendra Prasad Mishra, Ph.D, was the coordinator for National Peace Monitoring Committee for Ceasefire Code of Conduct from July 2006 to the signing of the Comprehensive Peace Accord by the Maoists and the Prime Minister in November 2006. Prof. Mishra, a retired professor of Philosophy, is a writer as well as an elections expert. An Election Commissioner from 1994 to 2000, he oversaw two parliamentary elections and one local bodies election. He was also an international observer for parliamentary elections in India , Pakistan , the UK and the Australian Referendum of 1999. He is a frequent contributor to newspapers and magazines on electoral and contemporary issues

### **Mr. Anand Aditya**

Mr. Aditya, an M.A. from Kansas State University (1979) held a Graduate Fellowship at Columbia University in 1979-80 and was an Asia Foundation Fellow at the University of Illinois, Urbana-Champaign in 1989 for studies on the Afghan War. For nearly two decades, he was associated with Tribhuvan University in the Central Department of Political Science (1975-94). A Co-Editor of *Democracy and Empowerment in South Asia* with Devendra Raj Panday (1995) and *Comparative Electoral Processes in South Asia* (1999), he edited *Nepal Human Development Report* (1998) and (2001), as also *The Political Economy of Small States* (NEFAS, 1998). He has, moreover, worked as a consultant with a number of NGOs and INGOs and has been contributing papers in the areas of conflict development, education, tourism, elections and South Asia. He has also coordinated *the Mass Media and Democratization* project and edited the volume published on that theme (1996, IIDS.)



## PAKISTAN

### **Ms. Musarrat Hilali**

As a practicing lawyer of the Supreme Court of Pakistan, Ms. Hilali has held top positions at the High Court Bar Association and the Supreme Court Bar Association of Pakistan. She has also been a council member and the vice chairperson of the Human Rights Commission of Pakistan.

### **Ms. Asma Shirazi**

Ms. Shirazi, MA Political Science, is a reporter at Geo TV in Pakistan. She has been the host of many popular shows such as the “Parliament Gallery”, which was banned by the Pakistani Government, and “Parliament Cafeteria.” She has also done special coverage of General Elections 2002 and live telephonic beepers during elections and political deadlock. Ms. Shirazi perhaps is the only female correspondent in South Asia to cover on field the Lebanon/Israel war. She was officially declared the best debater of Pakistan for 1999-2000.

### **Mr. Mehboob Ahmad Khan**

Mr. Khan, a lawyer is a founder member of SAHR. He has held the post of Legal Officer in the Human Rights Commission of Pakistan and has also been the Provincial Coordinator of HRCP core groups in Punjab. He has experience in monitoring general and local bodies elections in Pakistan held after 1990. Mr. Khan organized the monitoring of the general elections in Kashmir in 2006. He was also a board member of “War Against Rape”.

## **SRI LANKA**

### **Mr. W.K.P. Kingsley Rodrigo**

Mr. Rodrigo (Attorney-at-Law) started his career in People's Action for Free and Fair Elections (PAFFREL) in 1994 as its Executive Director. In 2003 he became the Chairman of the same organization which is responsible for upholding basic democratic rights of people and promoting efforts to prevent election violence. For more than a decade he has been the Program Director of the National Conference on Religion and Peace (NCRP.) Currently he is the General Secretary of the Asian Network for Free and Fair Elections (ANFREL) and also for the National Peace Council. He is a member of the National Commission on Proliferation of Small Arms and Light Weapons as well as the National Advisory Council to the President on Curbing Crime. He holds the post of Chairperson in the Steering Committee of South Asian Small Arms (SASA) Network, Sri Lanka chapter, from 2004 up to date.

### **Mr. Asanga Welikala**

Mr. Asanga Welikala (LLB, LLM) is senior research associate at the Legal and Constitutional Unit of the Center for Policy Alternatives (CPA), Sri Lanka. The study of electoral systems is one of his major research areas. He has been a member of the Office of Constitutional Support of the United Nations Assistance Mission for Iraq in 2005-2006. He has also held consultancies for the Asia Foundation, DfID, UNDP and other international non-governmental organizations on a variety of constitutional and legal reform issues in Sri Lanka, South and South East Asia region, Indonesia, Maldives, Thailand and Nepal.

**Mrs. Nimalka Fernando**

Mrs. Fernando is an attorney-at-law and women's rights activist from Sri Lanka. She is a member of the Democratic People's Movement in Sri Lanka, which is a coalition of people's movements, NGOs and trade unions initiating action and dialogue for alternative development paradigms. She is President of the International Movement Against All Forms of Discrimination and Racism (IMADR) and the Women's Forum for Peace in Sri Lanka. Mrs. Fernando is a founding member of Asian Regional Exchange for New Alternatives or ARENA and was a member of the ARENA Executive Board 1994 – 1997.





South Asians for Human Rights (SAHR) is a democratic regional network with a large membership base of people committed to addressing human rights issues at both national and regional levels. SAHR seeks to contribute to the realisation of South Asian peoples' right to participatory democracy, good governance and justice by strengthening regional response, including regional instruments, monitoring human rights violations, reviewing laws, policies and practices that have an adverse impact on human rights and conducting campaigns and programmes on issues of major concern in the region.

SAHR comprises both institutional and individual members. An elected bureau works as the organization's executive body while an elected membership committee oversees enrolment of members.

The SAHR Chairperson and Co-chairperson are Mr I.K. Gujral, former Prime Minister of India, and Dr Hameeda Hossain of Bangladesh respectively. The Secretariat is in Colombo, Sri Lanka. Chapter offices are located in Colombo, Dhaka, Kabul, Kathmandu, Lahore and New Delhi.



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