

MINORITIES AND INCLUSIVE ELECTORAL PROCESSES IN SOUTH ASIA

CONSTITUTION **VOTERS** **DEMOCRACY** **POLITICAL** **AGE**
ELECTORAL **ELECTORATE** **MEMBERS** **JUDGES** **SYSTEMS**
VOTERS **ELECTION** **JUDGES** **SYSTEMS**
LAW **VOLUNTARY** **VOTING** **POPULATION** **DEMOCRACY**
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ACTION **INTERNATIONAL** **JURISDICTIONS** **ASSOCIATIONS** **EFFECTIVENESS** **CENTRAL JURISDICTION** **POLITICAL** **MANY** **LAW**



MINORITIES AND INCLUSIVE ELECTORAL PROCESSES IN SOUTH ASIA

*Country Reports of
Bangladesh,
India,
Pakistan,
Sri Lanka*



The views and opinions entailed in these papers are not essentially of the South Asians for Human Rights (SAHR) organisation.

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Abbreviations

AIWC	- All India Women's Conference
AV	- Alternative Vote
CAFFE	- Campaign for Free and Fair Elections
CMEV	- Centre for Monitoring Election Violence
CSO	- Civil Society Organisations
ECP	- Election Commission of Pakistan
FPTP	- First Past the Post
GN	- Grama Niladhari
HRCPP	- Human Rights Commission of Pakistan
IDPs	- Internally displaced persons
JHU	- Jathika Hela Urumaya
JVP	- Janatha Vimukti Perumuna
LTTE	- Liberation Tigers of Tamil Eelam
MPA	- Member Provincial Assembly
NCWI	- National Council of Women in India
NIC	- National Identity Cards
PA	- People's Alliance
PAFFREL	- People's Action for Free and Fair Election
PC	- Provincial Council
PR	- Proportional Representation

- SCs - Scheduled Castes
- STs - Scheduled Tribes
- SNTV - Single Non-Transferable Vote
- STV - Single Transferable Vote
- TRS - Two Round Systems
- UNP - United National Party
- WIA - Women's India Association

AN OVERVIEW¹

Introduction

This overview brings together major findings and crosscutting issues in the “country situation reports” from Bangladesh, India, Nepal, Pakistan and Sri Lanka respectively, which were commissioned by South Asians for Human Rights (SAHR) as part of its project on the minorities and inclusive electoral processes in South Asia.² The overall objective of this publication is to throw light on the challenges faced in ensuring that electoral processes in South Asia meaningfully include disadvantaged and hitherto excluded communities and social groups. In keeping with this objective, the country reports focus on the major axes of exclusion in South Asia such as gender, ethnicity, caste and religion but also refer to other less visible groups such as internally displaced persons, persons with disabilities, and migrant workers. This overview uses the term ‘political minorities’, underlining the shared trait of political exclusion and structural disadvantage, to refer to this large and otherwise heterogeneous population.

¹ This overview was drafted by Vijay K. Nagaraj (vijayknagaraj@gmail.com).

² This publication complements a previous SAHR report that looks into the conduct and governance of elections, including the role and functioning of election commissions in the region. See South Asians for Human Rights (SAHR): Report of the Regional Workshop of Experts on Inclusive Electoral Process, 2008.

The country reports focus, with varying degrees of emphasis, on levels of numerical representation of political minorities in national and provincial legislatures and local governments. This includes the question of quotas and reserved seats, and, the nature of the electoral systems. The concern with women's representation is another major crosscutting theme and reflects the enduring impact of entrenched patriarchy and socio-political exclusion (or problematic inclusion) of women across the region. The focus on caste, ethnicity and religion, another major common theme, speaks to some of the most salient lines of marginalisation and major socio-political conflicts, including violent contestation, across South Asian polities. This is not, however, to underplay in any way the seriousness of the discrimination suffered by persons with disabilities, the internally displaced or migrant workers and its link with their political invisibility. The axes of discrimination along sex, ethnicity, caste, religion, language, ability, etc. often intersect, usually with the effect of intensifying exclusion.

One concern that merits noting at the outset is the lack of systematic data with respect to electoral inclusion and representation. For instance, nomination papers for local government elections in Sri Lanka make no provision to record information regarding the sex of the candidate³ or as the India report points out; it was only in 2001 that the census accounted for disability. Indeed, the offices and websites of South Asian Parliaments and in some cases even electoral authorities do not provide comprehensive and timely disaggregated data on the social composition of legislative bodies, other than information on quotas where they exist. Unfortunately, though not surprisingly, the country reports too reflect these realities not only in terms of the gaps in data but also in their uneven emphasis on groups, processes and institutions given the

³ Chulani Kodikara, personal communication.

differences in context and persuasions of the authors. Therefore, this overview often complements the analysis, data and findings of the country reports by drawing on other literature and sources. However, the pressures of time and project design has limited the extent to which this was possible and thus the overview is far from extensive and limits itself to highlighting some key issues of wider regional relevance emerging from the country reports.

The overview is divided into three parts. Part 1 brings together some of the key overarching concerns reflected across the country reports. Part 2 focuses on the politics of electoral systems and the dynamics of legislated quotas using the social composition of Parliaments in select South Asian countries as a point of departure. Part 3 begins with a discussion on assessing the inclusivity of electoral systems and proceeds to canvass some important crosscutting recommendations that address key obstacles to inclusive electoral processes. The overview concludes by highlighting a broader set of issues related to democracy and governance that have a crucial bearing on the nature of electoral processes.

PART 1:

Electoral Inclusion amidst Geographies of Exclusion: Some Overarching Concerns

A sound starting point for this overview is a mapping of the political geography of electoral exclusion by highlighting some overarching concerns, drawing on the five country reports, some of which will be explored in detail in Part 2. South Asian polities are characterised by plurality and segmentation that is politically salient i.e. differences and hierarchies not only make for diversity but are also at the heart of social conflict and political contestation. In such a context, electoral exclusion, lack of representation and uneven political and civil rights in general maybe understood as resulting from two inter-linked sets of factors: firstly, a combination of institutional deficits, mal-governance and iniquitous distribution and secondly, deep-seated societal prejudices and institutional biases. These factors not only leave their imprint on the political aspirations and agendas of majoritarian/dominant groups and minority/subaltern groups but also impact, often adversely, electoral processes and outcomes.

A first set of concerns is *de jure* barriers to electoral inclusion, including with respect to the most basic form of participation, having the right to vote and the ability to exercise it freely. The Ahmadiyyas in Pakistan, for example, are effectively denied the right to vote unless they are prepared to denounce the founder of their sect i.e. surrender their right to hold certain religious beliefs, which is the only way they can procure a valid identity document or certificate allowing them to vote. On another note, the India report recalls the candidature rejection of a hearing-impaired person, at

the local government elections on grounds that the rules forbade someone with her disability from contesting elections.

A second set of concerns has to do with *de facto* barriers. For example, in India there have been numerous cases of Dalits being denied the right to vote freely or even being killed for contesting elections. The country report on Pakistan notes how women have been prevented from casting their vote by the diktat of powerful socio-political elite in Gilgit-Baltistan in 2009 and again in the Manshera National Assembly by-elections in 2010. Across the region people with disabilities, face significant electoral exclusion due to factors ranging from problems with physically accessing polling stations to institutional and societal prejudices.

It is worth noting, as the country reports indicate, that internally displaced persons and those living in conflict-affected areas in India, Sri Lanka and Pakistan, for example, are often subject to a combination of *de facto* as well as *de jure* exclusions by both State and non-State actors. In sum, groups and individuals most vulnerable to discrimination and stigma are most likely to encounter electoral exclusion.

A third significant overarching issue is the design and structure of electoral systems and processes. South Asia, if one were to include Afghanistan, Bhutan and the Maldives, reflects nearly every variant from across the spectrum of majority/plurality and proportional representation systems (discussed in detail further below). The diversity of electoral systems within and across countries reflects different decision formulas and representation objectives. However because they also shape electoral outcomes and political opportunity structures, electoral systems are another locus of contestation and conflicting interests that merit closer attention (see Part 2 below).

A fourth major set of concerns relates to the debates around numerical representation and related issues of affirmative action. Almost all country reports demonstrate that affirmative action policies (or lack thereof), especially quotas or reserved seats, are at the heart of most debates and controversies around political and electoral inclusion in South Asia and are examined in greater detail in Part 2 below. At the same time, there are also questions and debates around the ‘representative character’ and legitimacy of representatives elected or selected through affirmative action, as highlighted, for example, in the Pakistan country report with respect to Members of Parliament occupying seats reserved for women. A related concern is substantive representation; the question of ensuring that representation, including by affirmative action, goes beyond being merely formal and descriptive. For example, while the 1997 local government elections in Bangladesh introduced reserved seats for women, the elected women representatives had less power and authority, than representatives elected from unreserved seats.

A fifth set of concerns canvassed by the country reports with respect to inclusion and representation pertain to the power of socio-economic networks and the structure and functioning of political parties. Networks of patronage and the power of money and muscle distort electoral processes, which are only as robust as the extent to which their integrity is protected by the exercise of the rule of law and the creation of a level playing field. These concerns are equally valid with respect to the nature and functioning of political parties. Internal party governance, the extent of democratic decision-making and the nature of incentive structures have a significant influence on electoral inclusion. Moreover, the power to influence the selectorate (party leadership and bodies that make decisions on candidacy, for example) maybe acquired at a price that undermines accountability to the electorate. Given that these are the focus of a forthcoming SAHR publication, they are not examined separately in detail below.

PART 2:

Electoral Inclusion, Representation and Segmented South Asian Polities

2.1 Numerical Representation as Inclusion: The Social Composition of South Asian Parliaments

Numerical representation of political minorities is one key indicator of the degree of inclusiveness of electoral processes. Since comparing numerical representation over all three levels of government—national, provincial and local—across South Asia is beyond the scope of the data and time available for this paper, a comparative assessment of numerical representation of political minorities in national Parliaments is used. All the five South Asian countries, which were the focus of this study, have national Parliaments elected based on universal suffrage.⁴ A consideration of the social composition of the national Parliaments in the focal countries provides a useful avenue to consider the dynamics of numerical representation of some of the largest political minorities in the countries in question.

⁴ The exception is Nepal, whose 2008 Constituent Assembly cum Parliament was dissolved in May 2012.

Table 1: Social Composition (Women and Ethnic / Religious/ Linguistic Minorities) of Select South Asian Parliaments

Parliament/Election Year/Total No. of MPs	No. of Women MPs / (quotas, if any)	No. of MPs from Minority Groups/ (quotas, if any)
Bangladesh 2008: 350 members	67 (50 reserved seats filled through indirect election ⁵)	14 religious/ethnic minorities
Nepal 2008 constituent assembly/parliament: 601 members	197 ⁶ (a quota of 1/3 rd of total seats reserved for women)	Madhesi 195 (31.2%); Tribes/ Ind. Peoples 195 (37.8%); Dalit 51 (13.2%) and backward region 22 (4%) ⁷
India Lok Sabha: 543 members	59	75 [#] Scheduled Castes (84) and 41 [#] Scheduled Tribes (47)
Pakistan National Assembly 2008: 342 members	75 (60 reserved seats filled through indirect election ⁸)	10 non-Muslims (10 reserved seats filled by indirect elections)
Sri Lanka 2010: 225 members	13 ⁹	26 ¹⁰ Tamils and 18 Muslims

Sources: SAHR Country reports; Butenschön and Vollan 2011; Websites of the Election Commissions of India, Pakistan, and Nepal; IFES Election Guides.

⁵ The seats are allocated to parties in proportion to their overall share of the vote.

⁶ 161 through PR system; 30 through FPTP; and 6 nominated.

⁷ The electoral law recognised some candidates may represent more than one group, therefore sum total of the percentage of the candidates of all groups appears to be more than one hundred.

⁸ Women and non-Muslims are elected through proportional representation system of political parties' lists of candidates for such seats, which are allocated based on the total number of general seats won by each political party in the National Assembly through the First Past the Post system.

⁹ Includes nominees through indirect (national party-list system) election.

¹⁰ The number of Tamil and Muslim MPs in the Sri Lankan Parliament is from an enumeration based on information/personal profile given for each MP on the Parliament's website. Moreover, both figures may include nominees through indirect (national party-list system) election.

Note: a. Figures in brackets refer to any legislated quotas (either number of seats or a proportion/percentage of total seats in the Parliament). b. #These figures refer to the numbers in the previous Lok Sabha, data from the current Lok Sabha was not available to the author; the number of reserved seats in brackets however refer to the current Lok Sabha, which saw an increase proportionate to population, hence the difference between the number of reserved seats and the number of MPs.

Table 1 illustrates many diversities and commonalities across the countries. To begin with, there is clearly a significant deficit in the representation of women. The 2008 Nepal Parliament is an exception though the numbers of women elected are limited to the extent of the quota, in fact just under one-third. While women's representation has not been restricted to the extent of quotas in Bangladesh and Pakistan, it is not only very far from being proportionate to their population but quotas for women are actually filled not through direct elections but indirectly - political parties are allocated a proportion of the reserved seats based on the share of overall seats they win. This is also true of the non-Muslim/minority members in Pakistan's National Assembly. Notwithstanding this, it is important to underline that some women at least have successfully contested general seats.

India and Sri Lanka are the only two countries without parliamentary quotas for women. In India, a bill granting a quota for women in Parliament has been the subject of debate for sometime now, with one of the main sticking points being demands for a quota within the quota for women from SC/ST and backward caste communities. Again with the exception of Sri Lanka, caste, ethnicity (especially indigenous people/tribal communities), religion and geography (backward region), are amongst the grounds for quotas in other countries, which the most salient axes of social and political exclusion in South Asia.

As the Bangladesh report points out the present Parliament has the highest number of MPs from religious and ethnic minorities, 14, all of whom, in the absence of any quotas, have won from general seats, some from constituencies that have a majority or very large concentration of minorities. A combination of quotas and a hybrid electoral system (explained further below) gave Nepal's 2008 Parliament, also a Constituent Assembly, a numerically diverse and representative membership but as we shall see not without its own exclusions.

Sri Lanka's Parliament elected through a PR system has ensured near proportionate representation to Muslims and Tamils. In fact, as one observer pointed out recently, in terms of representation of religious and ethno-linguistic minorities the present ruling coalition is arguably the most inclusive government in South Asia. However, Sri Lanka also illustrates like no other country the severe limitations of using numerical representation as a measure of inclusiveness. Despite representation in Parliament that is proportional to their population and sharing power, minority rights appear far from secure in a State that is both *de jure* and *de facto* significantly tilted towards the Sinhala-Buddhist majority.¹¹

In India, quotas in the form of reserved seats guarantee representation for the SC and ST communities in proportion to their population but it has almost acted as a *de facto* ceiling with SC/ST MPs seldom coming through from non-reserved seats. Nevertheless, the importance of reserved seats is underlined by the case of Muslims in India. Even though Muslims constitute more than

¹¹ See, for example, No war, no peace: the denial of minority rights and justice in Sri Lanka, Minority Rights Group, 2011. Since this report other developments, most notably an attack led by Buddhist monks on a mosque on Dambulla, have prompted further concern; see, for example, Religious tolerance under scrutiny in Sri Lanka, Nirmal R. Dewasiri, Economic and Political Weekly, Vol. XLVII No. 22, 2012.

13 per cent of India's population and the 'Muslim vote' is believed to wield significant electoral influence in a many parliamentary constituencies, they have generally accounted for very few seats in Parliament. In fact, in the 2009 Lok Sabha elections in India, the percentage of Muslim candidates was far below the proportion of Muslims,¹² and they accounted eventually for just 28 out of 543 elected MPs, or less than 6 per cent.¹³

However, Table 1 cannot be clearly understood without further exploring two vital inter-related factors that shape the realities of representation and inclusion. The first is electoral systems and the second is the use of quotas or reserved seats within the electoral processes, both of which are explored in detail in the sections that follow.

2.2 Politics of Electoral Systems in South Asia

Electoral systems are recognised as having a wide range of impacts; they shape party dynamics, influence political preferences, voting behaviour, electoral outcomes and political representation (Nohlen 1996: 22). Moreover, the extent to which electoral competition generates collaboration or conflict has significant bearing not just on electoral outcomes but also on wider political institutions and social relations. Given that electoral systems are important instruments for political engineering, it should come as no surprise that South Asia reflects a rich diversity in this regard. In fact, if one were to include the Afghanistan, Bhutan and Maldives in the analysis, the

¹² See Looking for the Muslim MP, Christophe Jaffrelot, *The Indian Express*, May 16, 2009.

¹³ http://www.ummid.com/news/May/18.05.2009/muslim_mps_in_new_parliament.htm retrieved August 26, 2012.

region contains almost every significant type of electoral system (Table 1).

Table 2: Diversity in Electoral Systems in South Asia

Electoral System/ Country & Electoral Level	Brief Description
First Past the Post (FPTP) <ul style="list-style-type: none"> • Bangladesh Parliament • Bhutan National Council • India Parliamentary, State and Local elections • Maldives Peoples Council • Pakistan National Assembly 	The simplest form of plurality/majority electoral system. The winning candidate is the one who gains more votes than any other candidate, even if this is not an absolute majority of valid votes. The system uses single-member districts and each voter votes for candidates rather than political parties.
Two Round System (TRS) <ul style="list-style-type: none"> • Maldives Presidential Elections 	A plurality/ majority system in which a second election is held if no candidate or party achieves a given level of votes, most commonly an absolute majority (50 per cent plus one), in the first election round. ¹⁴

¹⁴ It may take a majority-plurality form—more than two candidates contest the second round and the one who wins the highest number of votes in the second round is elected, regardless of whether they have won an absolute majority—or a majority run-off form—only the top two candidates in the first round contest the second round.

Electoral System/ Country & Electoral Level	Brief Description
<p>List Proportional Representation (PR)</p> <ul style="list-style-type: none"> Sri Lanka Parliament, Provincial and local governments (open list PR) 	<p>Each party or grouping presents a list of candidates for a multimember electoral district, the voters vote for a party, and parties receive seats in proportion to their overall share of the vote. In some ('closed' list) systems the winning candidates are taken from the lists in order of their position on the lists. If the lists are 'open' or 'free' the voters can influence the order of the candidates by marking individual preferences.</p>
<p>Mixed Member Proportional (MMP)</p>	<p>Voters elect representatives through two different systems—one List PR system and (usually) one plurality/majority system—and the List PR system compensates for the disproportionality in the results from the plurality/majority system.</p>
<p>Parallel System</p> <ul style="list-style-type: none"> Nepal Constituent Assembly Elections (2008): FPTP and closed List PR 	<p>Voters elect representatives through two different systems—one List PR system and (usually) one plurality/majority system—but no account is taken of the seats allocated under the first system in calculating the results in the second system.</p>
<p>Single Non-Transferable Vote (SNTV)</p> <ul style="list-style-type: none"> Afghanistan Bhutan National Assembly 	<p>Voters have one vote but there is more than one representative elected for each constituency. Candidates with the highest vote totals take the seats.</p>
<p>Single Transferable Vote (STV)</p> <ul style="list-style-type: none"> Pakistan National Senate (indirect—by members of Provincial Assemblies) 	<p>Voters exercise preference in multi-member constituencies by ranking candidates on the ballot paper. In order to win a seat, candidates must surpass a quota of first- preference votes. Voters' preferences are re-allocated to the following candidates on lists after an unsuccessful candidate is excluded or if an elected candidate has a surplus of votes.</p>

Electoral System/ Country & Electoral Level	Brief Description
Alternative Vote (AV) <ul style="list-style-type: none"> • Sri Lanka Presidential Elections 	Voters exercise preference in single-member districts by ranking the order of candidates using numbers. If no candidate achieves an absolute majority (i.e. 50% + 1), votes are re-allocated until one of the candidates collects over 50% of the cast votes.
Block Vote (BV)	Voters have as many votes as many candidates to be elected. So, if four candidates are to be elected, each voter has four votes and the candidates with the highest vote totals win the seats.

Source: *International IDEA, 2008; SAHR Country Reports.*

The wide-range in the nature of impacts of the electoral systems means that they are designed with varying goals in mind. For example, ensuring the widest possible representation was a vital goal in the context of Nepal's 2008 elections to the Parliament, which also functioned as a Constituent Assembly. To this end, a mixed or hybrid system was chosen, which saw 240 members elected by majority/plurality vote in FPTP single-member constituencies and a further 335 members being elected through a closed-list PR system, in addition to 26 nominated members.¹⁵ The result was a balancing of the broadly inclusive thrust of the PR system while retaining the scope for ethnic/communal electoral mobilisation and geographic representation that FPTP entails. It is however important to underline that legislated quotas were also an important aspect of the 2008 electoral arrangement in Nepal (discussed further below).

¹⁵ The proportional representation tier contains one, nationwide district. Candidates may run in only one tier. IFES elections guide.

It is generally believed that the PR system, which entails the eventual aggregation of every vote, encourages candidates and parties to appeal to voters beyond their own specific constituency, ethnic or ideological. The List PR system is widely considered most desirable in terms of furthering minority participation in the electoral process not only because of the high value of votes but also because it can encourage parties to nominate minority candidates to contest even from areas where minorities may not be present in significant numbers. As the Sri Lanka report outlines, these were precisely some of the reasons advanced for the introduction of the PR system in 1978. However, even though the PR system did lead to an increase in the presence of minorities in Parliament (though not women) it was not before the threshold (the minimum percentage or share of votes needed to be eligible for a seat) for representation was reduced from 12.5% to 5% of votes cast, specifically on the demand of some minority parties. However, this also had the effect of rendering electorally salient more extreme majoritarian political forces such as the Jathika Hela Urumaya (JHU) leading, ironically, to an exacerbation of ethnic politics. In short, the PR system may have led to the growth of more “communal political parties”. Moreover, as the Sri Lanka country paper notes, significantly larger electoral districts under the PR system mean that candidates with greater resources and larger patronage networks are more attractive to parties. This may not only tilt the scales in favour of richer candidates but also precipitate corruption and other malpractices. These concerns have prompted calls for a shift to a mixed system.

Mixed systems however can also create problems of legitimacy, especially when any quotas within the system are filled only by indirect elections. As the Pakistan country paper demonstrates women members of the National Assembly have to deal with the perception that they are, somehow ‘less legitimate’ because they

are not elected by popular vote but indirectly through nomination on party lists. More generally, the prominence that party lists gain in some PR systems, as in Sri Lanka, can make political parties very dominant at the expense of the candidate. In an atmosphere where internal party democracy is already often weak, this can have the effect of rendering party patronage networks overly powerful, distorting selection, incentives and accountability to citizens, a concern echoed across all the country reports. However, while this can also be a problem in FPTP, the PR system as institutionalised in Sri Lanka has rendered it relatively more difficult for independent candidates to secure representation.

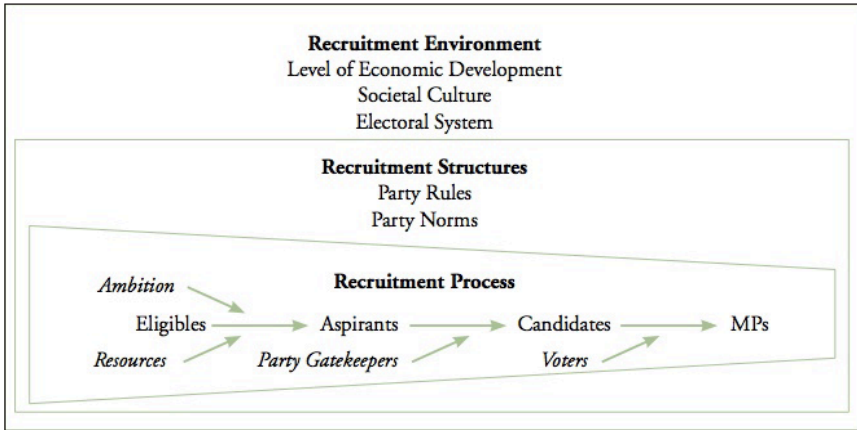
India is often cited as a reasonably successful case of ensuring social inclusion by combining FPTP with a system of reserved seats at least in the case of Scheduled Castes (SCs) and Scheduled Tribes (STs) as well as women in the case of local government bodies. However, the numerical representation of SCs and STs guaranteed by reserved seats in the Indian Parliament and State Legislature does not necessarily translate into substantive representation. As Thorat and Senapati (2007) point out, the system of reserved seats in India works in such a way that a SC legislator may be elected through a reserved constituency but one made up overwhelmingly of non-SCs, “thus a SC legislative candidate suffers from the limitation of not being able to represent fully the interests of SC/STs, who themselves happen to be a minority in most of the reserved constituencies.” (Ibid: 14-15) Indeed, a relatively large concentration of political minorities in India, such as Muslims, backward castes and SC/STs across a significant number of electoral districts has been crucial in giving these communities a degree of influence on electoral outcomes especially (though not only) with regional and sub-regional parties who compete for crucial marginal votes. However, as discussed previously with respect to the case of Muslims in India, a political minority’s electoral influence need

not translate into numerical representation, which brings us to the importance of quotas.

2.3 Legislated Quotas

Quotas and reservations are amongst the most significant and sometimes most controversial aspect of electoral processes. In general, quotas may be legislated or voluntary and may be in the form of quotas in legislative bodies or within political parties. Quotas are thus designed to work at various points in the recruitment process. While candidate quotas aim to enhance the possibility of moving from aspirant to candidate, reserved seats affect the step from being a candidate to actually securing a seat and becoming an elected representative (Matland 2006). As illustrated below in Figure 1 (using parliamentary elections as an example), the operation of quotas and their influence on the recruitment process has to be situated within an account of the structures of recruitment, which involves both the legal rules governing the recruitment of candidates by political parties (party rules) and the norms and cultures within political parties operate (party norms). However, recruitment structures are also influenced by the broader environment, especially factors such as socio-cultural norms and prevailing political culture, the electoral system, the wider legal framework, etc. broadly outlined in Part 1 above.

Figure 1: Legislative Recruitment System



Source: Matland and Montgomery (2003: 21) in Matland 2007.

The five focal countries all have some form of legislated quotas (see Table 3). Most quotas are in the form of reserved seats, in India, Bangladesh and Pakistan, at various tiers of government. Nepal (2008 parliament) had candidate quotas for women and other minority/disadvantaged groups while the youth quota at the local government level in Sri Lanka is also a candidate quota.

Table 3: Legislated Quotas in South Asia

Country	Women	Marginal Caste and Religious/Ethnic Minorities	Other
Bangladesh	50 seats in Parliament (indirect election); 3 women members in each Union Parishad (village council) ¹⁶ and Vice-chairperson elected from a reserved seat in Upzila Parishad (sub-district council)		
India	33% in local government (by rotation) but in many states it is 50% both for rural and urban local bodies.	Quota for Scheduled Castes (SCs) and for Scheduled Tribes (STs) in Parliament (84 and 49 seats respectively ¹⁷); State assemblies; and local government in proportion to their population.	2 nominated seats for Anglo-Indians in the <i>Lok Sabha</i> ; 12 eminent persons nominated to the <i>Rajya Sabha</i> .
Nepal (2008 Parliament)	A minimum of one-third of the total number of candidates nominated across FPTP and List PR.	<i>Dalits</i> : 13.2%, Tribes/Ind. People: 37.8%, and <i>Madhesis</i> : 31.2%.	Backward region: 4%

¹⁶ A Union Parishad consists of 5-15 villages with an average combined population of 24,500. UP consists of one chairperson, nine members in general seats, and three women members in reserved seats, for a total of 13 persons. This means that the percentage of women will be at least 23 percent. (Subservient Subalterns: Women in Local Government in Bangladesh, Bushra H. Chowdhury, available at <http://law.anu.edu.au/COAST/events/APSA/papers/114.pdf> retrieved 6 August 2012).

¹⁷ The seats reserved until the last elections were 79 and 41 for SCs and STs respectively.

Country	Women	Marginal Caste and Religious/Ethnic Minorities	Other
Pakistan	60 seats in National Assembly (indirect election); fixed no. of seats in Provincial Assemblies; and 33% in local government	10 seats in National Assembly for religious minorities (non-Muslims)	
Sri Lanka			40% youth quota in party lists at local government level.

Sources: SAHR Country reports; Election Commission of India; Election Commission of Pakistan; Election Commission of Nepal; IFES Election Guides.

Legislated Quotas (LQs) as a form of affirmative action to enhance representation of minorities in legislatures and public administration are widely accepted across the world. However the extent of inclusivity actually depends, among other things, on the manner and ‘precision’ with which categories used for quotas are defined. This is both a politically contested and sociologically challenging task, especially in societies such as in South Asia, which are segmented in complex ways with syncretic identity structures. Moreover, when such definitions assume a statutory nature, including as a result of strategic essentialism advocated by minority groups themselves, they can ossify fluid and complex social and ethnic boundaries (Middleton and Shneiderman 2008). On the other hand, using very broad categories as in Nepal resulted in some dominant communities profiting disproportionality and being over-represented in the CA, while marginalised groups within the Madhesi and *janajati* categories were grossly under-

represented (International Crisis Group 2011: 24). In the case of ethnic minorities, research appears to indicate that there are other distinct factors that impact their levels of political representation. While these include, more generally, historical, demographic and communal factors (Reynolds 2006: 4), the size of the minority population, extent of political integration, the degree of geographic concentration, level of political cohesiveness, as well as public policies with respect to diversity are also very important (Bird 2003: 25).

It is evident that Nepal and Sri Lanka are the two opposite ends of the spectrum in terms of quotas. In terms of its lack of quotas for women at any level of government, Sri Lanka is an exception in the region. It also has the lowest level of representation of women from local government (around 2%) to Parliament (less than 6%), even though it has produced two women heads of State (who, like in the case of other women heads of State in South Asia, 'inherited' it from their families). On the other hand, Sri Lanka leads the sub-region in terms of its indicators for women's literacy, maternal health, longevity, etc. This underlines, firstly, that social or human development outcomes do not necessarily automatically translate into political representation and inclusion. Secondly, it points to the importance of blending electoral system design with affirmative action like quotas in enhancing access to political representation. The absence of quotas appears to be a major reason as to why the PR system, one generally believed to be helpful in advancing representation of women, appears not to have done so in Sri Lanka.

As the Bangladesh and India country reports point out, quotas for women in local government have resulted in thousands of women entering the political arena in both countries, yet their numbers in Parliament remain very low. More than 100 countries have adopted some form of reservation or quotas for women in their political

system; of the 29 countries that have reached or exceeded the target of 30 per cent women in parliament, at least 24 have quotas.¹⁸ Yet as several research studies show (Hassim 2009, Bird 2006) the impacts of quotas on increased representation of women are far from even. Factors such as the strength of women's organisations within and outside political parties, the level of social and political consensus on inclusion and other vectors outlined in Part 1 are critical in shaping the terrain of inclusion, including the meaningfulness of quotas themselves.

In considering quotas, it is vital to account for the context in which they come into being. Sri Lanka's youth quota, for example, was not the result of a specific organised demand but flowed from the recommendation of a Presidential Commission that investigated the causes of an insurrection led by the Janatha Vimukti Perumuna (JVP), which was seen, at least in part, as a fall-out of youth being marginalised from the political process. However, political opinion, not to mention the Sri Lankan Supreme Court, has disagreed with the view that quotas for women are necessary or justified.¹⁹

Another important factor with regard to the quotas is perceptions of loss and gain when quotas are introduced. For example, in Bangladesh - the increase in the number of seats for women in Parliament went along with an increase in the total number of seats. In India - India the reservation of 33% of seats in local

¹⁸ Figures from Kruks, Sonia [Retrieving Experience: Subjectivity and Recognition in Feminist Politics, Cornell University Press, Ithaca, 2001] and Majumdar, Rozana ['South Asian Women Parliamentarians Take the Lead', Asia - Weekly Insight and Analysis from the Asia Foundation] respectively as cited in Wickramasinge, Maithree and Kodikara, Chulani: 52 % by 2.3 % Representation in Politics: Women & Gender in the Sri Lankan Republic, in Asanga Welikala (ed.) The Sri Lankan Republic at 40: Reflections on Constitutional History, Theory and Practice, forthcoming.

¹⁹ Where are the Women in Local Government, Chulani Kodikara, Open Democracy, 7 March 2011. Available at <http://www.opendemocracy.net/5050/chulani-kodikara/sri-lanka-where-are-women-in-local-government>.

governments for SCs/STs and women respectively was introduced along with an entirely new tier and system of local government put in place by the 73rd Constitutional amendment. Arguably, quotas are perhaps more acceptable or at least may meet with less resistance when they are less likely to displace incumbents (Hassim 2009:9) and/or when there is an entirely new system being institutionalised.

Be it in the context of women or minorities, quotas are best viewed as “the starting point for deeper democratisation” rather than the end result of democratic struggles (Hassim 2009: 25). Therefore, the argument over quotas (see Table 4 for a summary of arguments for and against) needs to be situated in relation to democratisation as a whole rather than numerical or descriptive representation alone.

Table 4: Advantages and Disadvantages of Legislated Quotas for Minority Representation

Arguments for	Arguments Against
LQs compensate for structural and already existing discrimination	LQs discriminate against the majority
LQs give voters a chance to elect candidates for a more diverse pool	LQs reduce freedom of choice of voters
Greater representation can increase minority support for the political system and increase political and social stability	Difficult to secure politically or legally and can breed (majoritarian) resentment and result in social backlash and instability
Quotas are the most effective ways of achieving a more balanced representation	LQs can become a ceiling on minority participation rather than a lower floor or even ghettoisation.

Arguments for	Arguments Against
LQs can circumvent conservative party leadership by encouraging other sections of minorities to enter politics	LQs can result in entrenching of traditional minority elite
LQs can lead to political parties being forced to find suitable candidates	Persons elected through LQs are seen as less deserving

Source: ACE Electoral Knowledge Network, *Advantages and Disadvantages of Legislated Quotas for Minority Representation* at <http://aceproject.org/ace-en/topics/pc/pca/pca03/pca03b/pca03b> retrieved Aug 5th 2012.

Part 3:

Towards Inclusive Electoral Processes in South Asia

3.1 Assessing Inclusivity

As must be evident by now, there are a range of concerns and issues across South Asia to merit a thorough multi-dimensional inclusivity audit of electoral systems. To begin with, such an audit must take into account the fact that representation has several dimensions and the mere presence of some minority or women legislators, important as it is, is not the end. An inclusive electoral process must be assessed whether it ensures representation of political minorities on formal, descriptive and substantive terms (Pitkin in Eelbode n.d.: 2)²⁰. While the first refers to the extent which the rules and architecture of the electoral processes are inclusive, the descriptive goal refers to the extent to which elected representatives actually share the identity of minorities and disadvantaged groups. Substantive goes a step beyond and takes into account the extent to which representatives advance the political interests and goals of political minorities in addition to representing them descriptively.

Secondly, electoral systems (see Annexure 1 for a brief comparison of the advantages and disadvantages of different systems) must be assessed with respect to the advantages and relevance of different decision formulae (majority victory, proportional representation, etc.) and representation objectives (formation of clear parliamentary

²⁰ Floor Eelbode, Political representation of ethnic minorities: A framework for a comparative analysis of ethnic minority representation, undated, available on file.

majorities, have legislatures reflect the structure of the electorate, etc.)²¹. This exercise should also account for different levels of governance - national, sub-national and local. For example, as pointed out in the Sri Lanka country report, a former Election Commissioner and Civil Society Groups have already recommended such a review. This includes a call for moving to a mixture of the FPTP and PR systems at both national and provincial levels and a more direct system for local authorities with smaller districts, perhaps at the ward level.

A third major dimension of an inclusivity audit must be a consideration of effective affirmative action measures, especially quotas and reservations. This includes looking at the need for quotas where they do not exist and reviewing the representational outcomes of those that do exist. There is also a need to look at affirmative actions that push political parties towards inclusivity. Perhaps the only case of quotas being specified within party leadership structures is in Bangladesh. A 2009 amendment to *The Representation of the People Order, 1971* makes that by 2020, registration of political parties by the Election Commission subject to the condition that, they have at least 33% representation of women in all their committees, including the Central Committee.

With regard to steps two and three above, a number of specific questions maybe raised to assess the inclusivity of electoral systems. Nohlen (1996) offers four key dimensions helpful to assessing the functioning of electoral systems in segmented societies:²²

²¹ Based on Nohlen 1996: 37.

²² Adapted from Nohlen 1996: 108.

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- **Legitimacy:** is the electoral system widely accepted as the proper means of establishing a representative government? Do losing minority groups or parties accept the results?
 - **Political Integration:** Does the electoral system tend to increase or reduce polarisation? Is it successful in channeling political conflicts towards peaceful settlement?
 - **Representation:** Does it permit adequate representation of minority groups? Does the vote share correspond with share of seats? Can a government elected through the system be representative of different groups especially minorities? Does it promote consociational government so minorities can take part in decision-making?
 - **Political Parties and Opposition:** Does the system promote the formation of parties along ethnic lines? To what extent does the system promote cross-ethnic parties? Can the system avoid exaggerated majorities so that political opposition can play an effective role?
 - In a context where elections are free and minorities are not faced with any legal obstacles to participate in any stage of the electoral process, to the above list we may add a set of three questions, drawn from the analysis of the Minority Rights Group, to help us ascertain if an electoral system is minority-friendly:
 - Do minority groups chiefly vote for parties that articulate a ‘minority platform’ and are their representatives in Parliament predominantly members of such parties, or do minority voters spread their votes across large and small parties with

multi-ethnic appeal and can MPs from minority groups be found in a variety of parliamentary caucuses?

- Are voters from the minority concentrated in certain geographical districts and provinces, or are they scattered and intermingled with majority voters and members of other minority groups?
- Regardless of their numbers, do minority voters constitute a ‘tipping point’ in that their votes can make the difference between non-minority parties winning national government or their candidates winning locally” (Reynolds 2006: 26).

In terms of choice of electoral systems Reynolds points out that in cases where minorities constitute a ‘tipping point’, a FPTP, TRS or AV system may serve them best. On the other hand, where minorities are too small or geographically dispersed a PR system with overall proportionality maybe more conducive to minority representation (Reynolds 2006:27).

Fourthly, one may list a number of other issues raised in the country reports, which have a bearing on inclusivity. These include:

- a Strengthening voter enrolment and registration with a special focus to ensure inclusion of women, minorities and less visible groups such as people with disabilities, the internally displaced, migrant workers etc.
- b Systematic investment in voter education and awareness programmes under the aegis of an independent and autonomous election commission or authority.

- c Revisiting the size of constituencies and electoral districts to ensure it works in favour of inclusivity, especially at the level of local government authorities.
- d Ensuring systematic data collection on the participation of women and disadvantaged groups both as voters and candidates - at local, sub-national and national levels.
- e Identifying and addressing *de jure* obstacles to the exercise of free franchise and ensure positive State intervention to address *de facto* barriers, especially to the participation of women, persons with disabilities, the displaced, etc. in different stages of the electoral process.

Finally yet importantly, it merits stressing that inclusion and accountability are inherently connected. Robust and independent institutions that can safeguard the integrity of the electoral process are vital. The series of recommendations relating to strengthening of election commissions and authorities emerging from a previous SAHR study (SAHR 2008) is particularly significant in this context. However, accountability in a democratic polity cannot be limited to upward institutional accountability; in reality, all South Asian polities face a significant deficit in downward and social accountability. Therefore, measures such as the right to recall and mechanisms of direct democracy like citizen-initiated referendums and initiatives assume great relevance.²³ Such measures are in place in several countries and notwithstanding the many possible difficulties and concerns in adapting them to South Asia there is a strong case, especially for civil society actors, to build broader public

²³ See, for example, Initiatives and Referendums: The Next Step in Indian Democracy, Prashant Bhushan and Atishi Marlena, Economic and Political Weekly, Vol. - XLVII No. 34, 2012.

opinion in favour of measures to enhance downward accountability within the electoral process.

3.2 Conclusion

Generalisations across and even within countries as diverse as in South Asia are fraught with the risk of being simplistic. The fact is that “there are few common explanations for the under-representation of historically marginalised groups” (Bird 2003: 25). Therefore, it follows that the effectiveness of any intervention towards enhancing inclusivity, such as affirmative action strategies like quotas, for example, depends “on a number of mediating factors” (Bird 2003: 24) because electoral processes and their outcomes, especially in terms of inclusivity, are constantly vulnerable to distortion by existing structural barriers and cleavages.

On such significant cleavage in South Asia, which merits far greater attention in debates around inclusive electoral process are class and the economic status. This is often accompanied by other vulnerabilities like illiteracy, stigmatisation, lack of social opportunity and political capital, etc., which either create exclusion or patronage-based path-dependency that reinforce existing power relations. This does not suggest that the persons living in poverty are not active political agents but that the nature of electoral competition engendered by a significant accountability deficit, lack of internal democracy within political parties, the arbitrary use of power and the influence of ‘money and muscle’ all tend to severely limit the forms and modes of inclusion.

Political inclusion is not just a function of the formal electoral process because democracy is much more than just periodic authorization through elections. Social inclusion and meaningful

political representation in South Asia ultimately also depends on the continued strengthening of non-electoral and non-party political spaces, actors and processes such as progressive social movements, other civil society organisations and an independent media. This is particularly important in a context where demands for equality and inclusion may themselves mask underlying undemocratic tendencies or be fuelled by ethnic or religious exclusivity and fundamentalism - a major challenge for all of South Asia.

Demands for inclusion “are not only demands for more democratic representational outcomes; they have the potential effect of democratizing the system as a whole” (Hassim 2009: 24). However, such a system-wide change implies that inclusion must permeate the institutional soil within which the electoral process and the State itself are seeded. It is precisely this, that has led to the recognition that public policies on social diversity. This includes secularism; other State interventions that advance rights of disadvantaged groups in areas like health, education, and employment; effective equality provisions, anti-discrimination measures and rule of law; and meaningful decentralisation (International IDEA 2001: 36-40) and all these have a major impact on shaping socially inclusive democracies and electoral systems.

Annexure 1: Table Comparing Electoral Systems

Electoral System	Advantages	Disadvantages
First Past the Post (FPTP)	<ul style="list-style-type: none"> • Strong geographic representation • Makes accountability easier to enforce • Simple to understand • Encourages a coherent opposition • Excludes extremist parties • Allows voters to choose between candidates • Strong legislative support for president more likely in presidential systems • Majority governments more likely in parliamentary systems 	<ul style="list-style-type: none"> • Can exclude minority parties and minorities • High likelihood of excluding women • Many wasted votes • Often need for by-elections • Requires boundary delimitation • May lead to gerrymandering • Difficult to arrange absentee voting
Two Round System (TRS)	<ul style="list-style-type: none"> • Gives voters a second chance to make a choice • Less vote-splitting than many other plurality-majority systems • Simple to understand • Strong geographic representation 	<ul style="list-style-type: none"> • Requires boundary delimitation • Requires costly and administratively challenging second round • Often need for by-elections • Long time-period between election and declaration of results • Disproportionality. • May fragment party systems • May be destabilizing for deeply divided societies

Electoral System	Advantages	Disadvantages
List Proportional Representation (List PR)	<ul style="list-style-type: none"> • Proportionality • Inclusiveness • Minority Representation • Few wasted votes • Easier for women to be elected • No (or less) need to draw boundaries • No need to hold by-elections • Facilitates absentee voting • Restricts growth of single-party regions • Higher voter turnout likely 	<ul style="list-style-type: none"> • Weak geographic representation • Accountability issues • Weaker legislative support for president more likely in presidential systems • Coalition or minority governments more likely in parliamentary systems • Much power given to political parties • Can lead to inclusion of extremist parties in legislature • Inability to throw a party out of power
Mixed Member Proportional	<ul style="list-style-type: none"> • Proportionality • Inclusiveness • Geographic Representation • Accountability • Few wasted votes • May be easier to agree on than other alternatives 	<ul style="list-style-type: none"> • Complicated system • Requires boundary delimitation • Often need for by-elections • Can create two classes of representatives • Strategic voting • More difficult to arrange absentee voting than with List PR

Electoral System	Advantages	Disadvantages
Parallel System	<ul style="list-style-type: none"> • Inclusiveness • Representation of minorities • Less party fragmentation than pure List • PR • May be easier to agree on than other alternatives • Accountability • Few wasted votes 	<ul style="list-style-type: none"> • Complicated system • Requires boundary delimitation • Often a need for by-elections • Can create two classes of representatives • Strategic voting • More difficult to arrange absentee voting than with List PR • Does not guarantee overall proportionality
Single Non-Transferable Vote (SNTV)	<ul style="list-style-type: none"> • Better minority representation than majority-plurality systems • Larger the number of seats in the constituency, the more proportional the system becomes. 	<ul style="list-style-type: none"> • Small parties whose votes are widely dispersed may not win any seats, while larger parties can receive a substantial seat bonus • Proportionality not guaranteed
Single Transferable Vote (STV)	<ul style="list-style-type: none"> • Allows a voter to choose between parties and between candidates within party lists • Can result in a fair degree of proportionality related to the geographical link between voter and representative too 	<ul style="list-style-type: none"> • Very complex and sophisticated in terms of counting • Requires higher degree of awareness and knowledge amongst voters • Does not necessarily modulate appeals on grounds of ethnicity/identity

Electoral System	Advantages	Disadvantages
Alternative Vote (AV)	<ul style="list-style-type: none"> • Enables votes of several candidates to be accumulated, so diverse but related interests can be combined to win representation. • Value of vote is high as second and later preferences can impact the election.²² Australia and Fiji use the Alternative Vote system. 	<ul style="list-style-type: none"> • Complex system and requires a reasonable degree of awareness to be used effectively • Can produce disproportionate results because it operates in single-member districts

Source: *International IDEA: Electoral System Design: The New International IDEA Handbook*, International Institute for Democracy and Electoral Assistance, 2008.

References

Bird, Karen: *The Political Representation of Women and Ethnic Minorities in Established Democracies: A Framework for Comparative Research*, Working Paper presented for the Academy of Migration Studies in Denmark (AMID), Aalborg University, 2003.

Butenschøn, Nils A. and Vollan, Kåre: *Electoral Quotas and the Challenges of Democratic Transition in Conflict-Ridden Societies*, A NORDEM Special Report, Norwegian Centre for Human Rights, 2011.

Hassim, Shireen: *Rethinking Gender Politics in a Liberal Age: Institutions, Constituencies and Equality in Comparative Perspective*, UNRISD, 2009.

International Crisis Group: *Nepal: Identity Politics and Federalism*, Crisis Group Asia Report N° 199, 13 January 2011.

International IDEA: *Electoral System Design: The New International IDEA Handbook*, International Institute for Democracy and Electoral Assistance, 2008.

International IDEA: *Democracy for All? Minority Rights and Minorities' Participation and Representation in Democratic Politics*, The International IDEA Democracy Forum, Background Note, November 2011.

Eelbode, Floor: *Political representation of ethnic minorities: A framework for a comparative analysis of ethnic minority representation*, undated available on file.

Matland, Richard: *Electoral Quotas: Frequency and Effectiveness* in Drude Dahlerup (ed.), *Women, Quotas and Politics*, Routledge, 2006.

Middleton, Townsend and Shneiderman, Sara: *Reservations, Federalism and the Politics of Recognition in Nepal*, *Economic & Political Weekly*, May 10, 2008, pp. 39-45

Nohlen, Dieter: *Elections and Electoral Systems*, Macmillan India Limited, 1996.

Thorat, Sukhadeo and Senapati, Chittaranjan: *Reservation in Employment, Education and Legislature — Status and Emerging Issues*, Working Paper Series II, No. 5, 2007, Institute for Dalit Studies.

Reynolds, Andrew: *Electoral systems and the protection and participation of minorities*, Minority Rights Group, 2006.

South Asians for Human Rights (SAHR): *Report of the Regional Workshop of Experts on Inclusive Electoral Process*, 2008.



BANGLADESH

Situation Report

Conceptualised, implemented and funded by South Asians for Human Rights; Researched and written by Dr. Badiul Alam Majumdar.

1. Introduction

Winston Churchill once said: “Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.”

Representative democracy, as is practiced today, is not the ideal system because more often than not it has many ‘deficits’. Such deficits include, among others: lack of effective citizen participation, lack of transparency and accountability of elected representatives, and lack of inclusiveness of vulnerable and disadvantaged groups. This report examines the electoral laws, processes and practices of Bangladesh to determine their inclusiveness character, or lack thereof, especially with regard to women, minorities and disadvantaged groups.

The report begins by identifying minorities and other disadvantaged groups. It then reviews the electoral laws, processes and practices to determine whether they actually uphold or trample the rights of

such groups with respect to elections. It specifically examines *The Representation of People Order, 1972*, as amended in 2009, and the other relevant local government statutes to identify the provisions intended to include minorities and vulnerable groups. The report particularly focuses on the status of women, ethnic and religious minorities, and other marginalised groups, including nationals living abroad and physically disabled persons, in the electoral process and practices.

The report also lists the Organisations and entities that raise their voices for and against the inclusion of minorities and vulnerable groups in the electoral process. It further identifies Organisations that promote reforms to achieve inclusions of such groups and the successes, if any, achieved. In a nutshell, the report is intended to give a strong working knowledge of the status of women and minorities with respect to electoral processes and practices in Bangladesh in order to help design future interventions.

2. Minorities and Disadvantaged Groups

In Bangladesh, the census is held every 10 years, detailed information from the latest census, completed only a few months ago, is not yet available. However, data for the distribution of population for the year 2004 is available from the Bangladesh Bureau of Statistics (BBS).

According to the preliminary statistics available from the 2011 Population Census, Bangladesh currently has a population of over 142 million, of which 71.3 million are male and 71.1 million are female. Thus, women constitute roughly half of Bangladesh's population.

Bangladesh is a predominantly Muslim country and the population data, updated by BSS for 2004, shows that 89.52 percent of the country's population is Muslim, and the remaining 10.48 percent

consist of religious and ethnic minorities. Of the religious minorities, the Hindus are the largest group with 9.58 percent of the population. The Buddhists are the third largest group with 0.46 percent and Christians the fourth largest group with only 0.26 percent of the population. Nearly 600,000 Christians live in Bangladesh. However, the Muslims and the Hindus account for about 99 percent of Bangladesh's population.

There are also several small factions within the Muslim population – the Biharis, the Ahmadiyyas, Ismailis, Shias, Memons etc. While the Bihari population numbers about 800,000, the Ahmadiyyas are only about 100,000. It may be noted that the former mostly migrated from Bihar to Pakistan after partition, except those employed by the British, whereas the Ahmadiyyas are mostly local Bengalis. Other factions are relatively small.

Table 5: Distribution of Population of Bangladesh

Population	2004	2011 Census
Total	136.7 million	142.3 million
Bengalis	98%	NA
Adivashis, Biharis and others	02%	NA
Male	70.1 million	71.3 million
Female	66.6 million (sex ratio 100:105.2)	71.1 million (100.0:100.0)
Muslims	89.52%	
Hindus	9.58%	
Buddhist	0.46%	
Christian	0.26%	
Others	0.17%	

Source: www.bbs.gov.bd/WebTestApplication/userfiles/Image/SubjectMatterDataIndex/datasheet.xls

Relative to the total population, Bangladesh has a fairly small Adivashi or indigenous population. By some estimates, more than 2 million Adivashis live in several districts of Bangladesh. However, about a third of them live in three districts – Khagrachori, Bandarban and Rangamati – of Chittagong Hill Tracts. Other districts with a concentration of Adivashi population are: Sylhet (19 percent), Rajshahi (11 percent), Dinajpur (6 percent), Mymensingh (6.8 percent). In addition, 10,000–50,000 Adivashis live in Rangpur, Bogra, Natore, Khulna, Tangail, Jamalpur, Sherpur, Netrokona, Sunamganj and Chittagong districts.²⁴

The Adivashis of Bangladesh belong to mainly three religions, Buddhist (43.7 percent), Hindu (24.1 percent), and Christian (13.2 percent) while 19 percent profess other faiths. Although the official census estimates put the number of ethnic communities in 1991 as 27, according to Philip Gain, the ethnic communities themselves estimate the number of communities to be more than 45.²⁵ Muhammad Rafi, on the other hand, identified 73 small ethnic groups.²⁶ However, Gain estimates the number of ethnic groups living in the plains and in hill-areas to number around 90.²⁷

Based on the research by Philip Gain, Adivashis living in Chittagong Hill Tracts include: 1. Bawm, 2. Chakma, 3. Marma, 4. Tripura, 5. Chak, 6. Khyang, 7. Lushai, 8. Pangkho/Panghu, 9. Tanchangya, 10. Mru, and 11. Khumi. Those living in Northwestern region include: 12. Paharia, 13. Bongshi/Rajbangshi, 14. Santal, 15. Oraon, 16. Mahato, 17. Buna, 18. and Munda. Those living in North-central

²⁴ Bangladesh Asiatic Society, *Adivashi Jonogosthi*, Dhaka, 2007.

²⁵ Philip Gain (ed.), *Survival of the Fringe: Adivasis of Bangladesh* [Dhaka: Society for Environment and Human Development (SHED), 2011].

²⁶ Muhammad Rafi, *Small Ethnic Communities of Bangladesh: A Mapping Exercise*, Banerjee Publications Ltd., July 2006.

²⁷ Gain, *Survival of the Fringe*.

region include: 19. Garo, 20. Koch, and 21. Hajong. Those living in Northeastern region include: 22. Khasi, and 23. Monipuri. In addition, the Rakhaines live in the coastal region.²⁸

However, Bangladesh has historically refused to recognise the Adivashis. According to the Fifteenth Constitutional Amendment passed last June, “The People of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis” [Article 6(2)]. However, in Article 23A, the new Amendment states, “The State shall take steps to protect and develop the unique local culture and tradition of tribes, minor races, ethnic sects and communities.”

There are also a significant number of physically challenged and differently abled groups. By some estimates, their number amounts to about 5.6 percent of Bangladesh’s population.²⁹

3. Electoral Laws, Processes and Practices

Neither the Constitution of Bangladesh nor any other statute provides for reserved seats for religious minorities, ethnic groups or the physically handicapped in national or local elections. However,

²⁸ Gain also identified the following little-known small ethnic communities: 1. Asami, 2. Baday, 3. Bagdi, 4. Banai, 5. Bangli, 6. Barman, 7. Bauri, 8. Bedia, 9. Been, 10. Bhuimali, 11. Bhuiya, 12. Bhujpuri, 13. Bhumiij, 14. Bindo-Mondol, 15. Bonaj-Chowhan, 16. Dalu, 17. Dhanwar, 18. Gando/Ganju, 19. Ghatual, 20. Gurkha, 21. Halam, 22. Hari, 23. Hari, 24. Harizon, 25. Hajra, 26. Hindi, 27. Ho, 28. Hodi, 29. Jangli, 30. Kadar, 31. Karmokar, 32. Kharia, 33. Koda, 34. Kol, 35. Kolkamar, 36. Konda, 37. Kora, 38. Kurmi, 39. Lakhrao, 40. Lohar/Lohara/Lohra/Lahra, 41. Madraji, 42. Malo, 43. Murari, 44. Muriyar, 45. Mushor, 46. Nayek, 47. Nagri, 48. Noonia, 49. Oria, 50. Pahan, 51. Palia, 52. Panikha, 53. Patra, 54. Rabidas, 55. Rai, 56. Rajwar/Rajuar, 57. Ramdas, 58. Rana/Karmakar, 59. Ranjoarh, 60. Rautia, 61. Saddri (PL), 62. Saddri (Tea garden), 63. Shabar, 64. Shing, 65. Tati/Tantubai, 66. Telegu (Tea garden), 67. Teli, and 68. Turi.

²⁹ Rashed Al Mahmud Titumir and Jakir Hossain, “Disability in Bangladesh: Prevalence, Knowledge, Attitude and Practices,” *Unnayan Onneshan*, February 2005.

there has been a system of reservation for women both at national and local levels since independence.

3.1 Legal Provisions for Representation of Women

Both the Constitution and the Bangladesh legal code contain provisions for reserving seats for women. Such requirements are applicable to both the Parliament and local bodies. Specific legal provisions for women's reservation are presented in Table 6 below.

Table 6: Legal Provisions for Women in the Electoral Process

	Constitution	Statutes	Others
National Elections	<p>The Fifteenth Amendment to the Constitution increased the reserve seats for women in Bangladesh Parliament from 45 to 50. As in the past, these seats are to be filled through indirect elections, with women having no constituencies of their own. Provisions are made for filling these five seats for the remainder of the life of the Ninth Parliament. The representation is divided among the parties on a proportional basis – proportion to each political party’s strength in Parliament. Provisions for reserve seats do not, however, preclude women from contesting in regular seats.</p>	<p><i>The Representation of the People Order, 1972</i>, amended as of 2009, provides for registration of political parties under the Election Commission, subject to certain conditions. One of the conditions of the registration is that political parties, by 2020, must have 33% representation in all their committees, including the central committee.</p> <p>Elections of 50 reserved seats for Parliament are governed by <i>The Jatiyo Sangsad (Reserved Women Seats) Election Act, 2004</i>.</p>	<p>The election manifesto of the ruling Awami League published before the Ninth Parliament elections committed to reserve 33% seats of the Parliament for women. Following the elections, the Party Secretary General promised to fill those seats through direct elections.</p>

	Constitution	Statuses	Others
Local Elections	<p>Article 9 of the Constitution states: “The State shall encourage local Government Institutions composed of representatives of the areas concerned and in such institutions special representation shall be given, as far as possible, to peasants, workers and women.”</p> <p>However, the Fifteenth Amendment to the Constitution removed Article 9.</p>	<p>In 1997, the government instituted a system of reservation for women in local government bodies, namely the Union Parishad, Upazila Parishad, Zila Parishad, Paurashavas (small municipalities) and City Corporations. In Union Parishad, Paurashavas and City Corporations, provisions were made for women to be directly elected from reserved seats. Three general seats constitute a constituency for reserved seats for women – that is, women’s constituencies are roughly three times larger than the constituencies for regular seats. (No elections for Upazila and Zila Parishads were held and hence the reservation system meant nothing.)</p>	

During the previous Caretaker Government (2007-08), a Committee was set up to recommend reforms for strengthening and revitalizing local governance. The Committee recommended and drafted laws requiring 40% reservation for women on a rotational basis, which ensured direct elections for reserved seats and constituencies of similar sizes. However, that could not be implemented.

Consequently, the same reservation system introduced in 1997 for Union Parishad, Paurashava and City Corporation continues. However, for Upazilas, a position for a woman Vice-Chairperson, along with a Vice-Chairperson for regular seats, was introduced. A third of the women elected from reserved seats from Union Parishads are also to become members of the Upazila Parishad.

3.2 Reserved Seats for Women in Parliament

Although the programme started with only 15 reserved seats for women in 1993, it increased over time. When the elections to the 9th Parliament took place, there were 45 reserved seats for women. The Fifteenth Amendment to the Constitution, which was passed on June 30, 2011, increased the number of reserved seats to 50.

Although the number of reserved seats for women increased over the years, women elected from these seats are in essence kept out of the loop of power. They are indirectly elected and the seats are distributed among the parties according to their strength in Parliament. They do not have constituencies of their own and do not enjoy the same power, authority and prestige as their male counterparts from the regular seats. Major political parties, despite their repeated commitments to increase the number of reserved seats to 100 and fill those seats with direct elections, never kept their words. As a result, the reserved seats have come to be viewed as ‘extra’ or ornamental. In fact, many years ago a popular Bangla magazine termed women elected from reserved seats as “sets of ornaments”. Thus, the prevailing system of reservation in Bangladesh does not truly serve the purpose of political empowerment of women.

Table 7: Women's Representation in Parliament

(Number of Women Parliament Members in General (G) and Reserved (R) Seats)

Parliament	Reserved Seats (R)	Directly Elected (G)	Total Number of Women MPs	Total Representation in Parliament (%)
1 st (1973-75)	15	-	15	4.8
2 nd (1979-82)	30	2	32	9.7
3 rd (1986-87)	30	5	35	10.6
4 th (1988-90)	-	4	4	1.3
5 th (1991-95)	30	4	34	10.3
6 th (1996-96)	30	3	33	10.0
7 th (1996-01)	30	8	38	11.5
8 th (2001-06)	45	7	52	15.1
9 th (2009-)	45**	(19)18*	64(63)*	(18.6)18.3*

Source: P.K. Pandey, "Representation without Participation: Quotas for Women in Bangladesh," *International Political Science Review*, 29(4), 1988.

*Begum Momtaz Iqbal was elected from Sunamganj-4 constituency, but she died after the election. In the subsequent by-election, a man was elected as MP from that constituency.

**Increased the reserved seats to 50 through the Fifteenth Amendment to the Constitution, enacted at the end of last June. It has not yet taken effect.

Although the number of women directly elected from regular seats did not change much over the years, it took a big leap during the last elections. A total of 19 women MPs in the current Parliament

were directly elected, although the number subsequently declined to 18 due to the death of one directly elected woman MP who was replaced by a man in the subsequent by-election. A record number of 60 women contested from 65 seats, with Sheikh Hasina and Begum Khaleda Zia each contesting from three seats and Begum Rawshan Ershad from two seats.

Table 8 lists the women who won from regular seats in the last two elections and also the women indirectly elected from reserved seats. It is strikingly clear that most of the women who won from regular seats in the last elections are new. There are only a few repeat performers: very few women from regular seats could get re-elected in the subsequent elections, the exceptions being Sheikh Hasina and Begum Khaleda Zia. In other words, even women elected from direct seats are unable to develop their constituencies and subsequently get re-elected. Thus, the sustainability of women's inclusion in the electoral process is clearly at risk.

Table 8: Women Elected from Regular and Reserved Seats

Regulars seats (2001)	Reserved seats (2001)	Regular seats (2008)	Reserved seats (2008)
Dr. Hamida Banu Shova (AL: Nilphamari-1)	Principal Nur Afroze Begum Zyoti	Mahabub Ara Gini (AL: Gaibandha-2)	Principal Khadija Khatun Shefali
Begum Khaleda Zia (BNP: Bogra-6)	Ms. Abeda Chowdhury	Begum Sultana Tarun (AL: Kushtia-4)	Apu Ukil

Regulars seats (2001)	Reserved seats (2001)	Regular seats (2008)	Reserved seats (2008)
Mrs. Esrat Sultana Elen Bhutto (BNP: Jhalakhati-2)	Ms. Yasmin Ara Haque	Habibun Nahar (AL: Bagerhat-3)	Alhaj Momtaz Begum
Moshammat Khadiza Amin (BNP: Netrokona-3; by-elections)	Advocate Khaleda Panna	Begum Monnuzan Sufian (AL: Khulna-3)	Asma Zarin Jumu
Sheikh Hasina (AL: Gopalanj-3)	Advocate Ferdaus Akter Waheeda	Begum Motia Chowdhury (AL: Sherpur-2)	Ashrafun Nessa Mosharraf
	Advocate Bilkis Akhter Jahan Sheer	Rebeka Momin (AL: Netrokona-4)	Ahmed Naznin Sultana
	Advocate Rina Parvin	Sagufta Yasmin (AL: Munshiganj-2)	Aye Thein Rakhain
	Kazi Sahera Anwara Shammi Sheer	Begum Sanjida Khanam (AL: Dhaka-4)	Advocate Tarana Halim
	Khondaker Nurjahan Yesmin Bulbul	Advocate Sahara Khatun (AL: Dhaka-18)	Chemon Ara Begum
	Khaleda Rabbani	Mehere Afroz Chumki (AL: Gazipur-5)	Jahanara Begum
	Ms. Chamon Ara	Sara Begum Kabari (AL: Narayanganj-4)	Zinatun Nesa Talukder
	Jahan Panna	Syeda Sajeda Chowdhury (AL: Faridpur-4)	Jobeda Khatoon

Regulars seats (2001)	Reserved seats (2001)	Regular seats (2008)	Reserved seats (2008)
	Tasmin Rana	Sheikh Hasina (AL: Gopalganj-3)	Nazma Akhter
	Nuri Ara Safa	Begum Momtaz Iqbal (AL: Sunamganj-4)*	Noor Afroze Ali
	Bilkis Islam	Dr. Dipu Moni (AL: Chandpur-3)	Nurjahan Begum
	Begum Roji Kabir	Begum Rawshan Ershad (JP: Rangpur-3)	Parveen Talukder
	Begum Shamsun Nahar Khawja Ahsan Ullah	Begum Rumana Mahmud (BNP: Sirajganj-2)	Farida Rahman
	Rawshan Ara Farid	Begum Khaleda Zia (BNP: Feni-1)	Faridunnahar Laily
	Rabeya Chowdhury	Hasina Ahmed (BNP: Cox's Bazar-1)	Tahura Ali
	Raihan Akhter Banu		Saleha Mosharraf
	Rahana Akhter Ranu		Momtaz Begum
	Rokeya Ahmed Lucky		Mahfuza Mondal
	Shahira Akhter Hossain		Amina Ahmed
	Shahana Rahman (Rani)		Mosammat Shefali Momtaj

Regulars seats (2001)	Reserved seats (2001)	Regular seats (2008)	Reserved seats (2008)
	Sarwari Rahman		Mosammat Farida Akter
	Sultana Ahmed		Rowshan Jahan Shathi
	Selina Rahman		Ruby Rahman
	Syeda Nargis Ali		Shawkat Ara Begum
	Hasne Ara Gias (Daisy)		Shahida Tarekh Dipti
	Helen Jerin Khan		Shahin Monowara Haque
	Dr. Amena Begum		Dr. Shirin Sharmin Chaudhury
	Shanara Begum		Shadhana Halder
	Sultana Razia		Safia Khatun
	Merina Rahman		Sultana Bulbul
	Syeda Razia Faiz		Syeda Jebunnessa Haque
	Navila Chowdhury		Dr. Hamida Banu Shova
	Khodeza Imdad Lata		Nilufar Chowdhury Moni
	Newaz Halima Arali		Musammat Shammi Akhter
	Fahima Hossain Jubly		Rasheda Begum Hira

Regulars seats (2001)	Reserved seats (2001)	Regular seats (2008)	Reserved seats (2008)
	Rasheda Begum Hira		Rahana Akter Ranu
	Razina Islam		Syeda Ashifa Ashrafi Papia
	Symun Begum		Nasrin Jahan Ratna
	Rokeya Begum		Noor-E-Hasna Lily Chowdhury
	Naima Sultana		Mahzabeen Murshed
	Begum Noor-E- Hasna Lili		Salma Islam

**Begum Momtaz Iqbal died after the Ninth Parliament elections and was replaced by a man in the subsequent by-election.*

As mentioned before, women from reserved seats do not have constituencies of their own and the question of their constituency development and re-election does not even arise. In fact, their nominations represent patronage bestowed upon them by party higher-ups. Thus, in Bangladesh's system of reserved seats for women, women's leadership is not truly empowered, and talented and dedicated women have little chance to demonstrate their qualities as politicians. In fact, the inclusion of women in the electoral process is not generally viewed as a right of women, rather a privilege to be given to them out of kindness of all powerful leaders or at best mere tokenism.

3.3 Reserved Seats for Women in Local Bodies

As stated earlier, reserved seats for women were introduced with much fanfare in 1997. Women from reserved seats in local bodies are directly elected from larger constituencies with three regular seats constituting one reserved seat for a woman. This system is discriminatory as it requires women to get elected from larger constituencies and yet not granted the same power and authority enjoyed by their male counterparts elected from regular seats. They are not even allowed to give citizenship certificates to their constituents. In essence, the system has kept them out of the regular power structure.

After the reservation system for women was introduced in 1997, a great deal of enthusiasm was created and women in large numbers contested those reserve seats at all levels, including the Union Parishad. However, after experiencing discrimination – women were given some ‘ceremonial’ roles, such as chairs of various Committees and minor allocations of development projects and social safety-net allocations – the enthusiasm for reserved seats on the part of women gradually waned. For example, at the Union level, the number of women contesting the reserved seats declined from 43,969 in 1997 to 43,764 in 2003 elections.³⁰ Although this is a marginal decline, the number should have significantly increased with time and increased population.

In this context, our situation may be contrasted with that of neighboring India, where a “rotational system” with direct election is in place at the Panchayat level. Although one-third of the seats are reserved for women in all three tiers – Gram Panchayat (village-

³⁰ Badiul Alam Majumdar, Din Bodol, Gonotantrick Shashon (Dhaka: Agamee Prakashani, 2011).

level), Panchayat Samity (mid-level), and Zila Panchayat (district-level) – the actual number of women representatives significantly exceed the quota and such representation has been increasing over time. For example, the number of women representatives in all tiers combined increased from 586,000 in 2002 to 1,040,000 in 2008. During the same period, the total women Panchayat members increased from 13,300 to 21,351.³¹ Thus, it is clear that the rotational system is far superior to the system we have in Bangladesh for political empowerment of women.

The marginalisation of women in local bodies led to several women Commissioners from Khulna City Corporation in 2003 to file a writ before a bench of the High Court challenging a government circular which was discriminatory to women representatives (*Shamima Sultana and others vs. Bangladesh and others*, Writ petition 3304 of 2003). The Honorable Court, in its judgment, observed clearly that our Constitution recognises the equality of women and men and allow affirmative action to redress discrimination. The court found for the petitioners, stating that – whether elected from the general or reserved seats – they must have the same rights, authority and responsibility as their male counterparts, and declared the relevant circular illegal.

As stated before, the reservation system for women was changed for Upazila Parishad, the election for which was held in 2009 after nearly 18 years. The Upazila Parishad is now constituted of a directly elected Chairperson, a Vice-Chairperson from a regular seat and another Vice-Chairperson from a seat reserved for women. Unfortunately, the government, decided to keep the whole Upazila system non-functional. The women Vice-Chairpersons have also not been given any meaningful responsibilities. Thus, at the UP and

³¹ Majumdar, Din Bodol, Gonotantrick Shashon.

Upazila levels, women leaders though directly elected from reserved seats have failed to be empowered.

3.4 Zila Parishad for Hill Tracts

Although Bangladesh does not provide constitutional recognition of Adivashis, it recognises the uniqueness of the people of the Hill districts, namely Rangamati, Khagrachori, and Bandarban. As part of this recognition, *The Parbatya Zila Sthanio Sarkar Parishad Ain, 1989*, which was renamed as *Parbatya Zila Parishad*, under *The Chittagong Hill Tracts Accord of 1997*, provides for three District Councils.

The Parbatya Zila Parishads are to be headed by a chairman of ministerial rank. Each Parishad is consisted of 30 members, with ethnic Bengali participation limited to one third. Unfortunately, the elections of those Parishads have not been held, and they are now being run by unelected individuals.

4. Electoral Practices

Although Bangladeshi laws do not require a reservation of seats for religious minorities or other disadvantaged groups, there is a long established practice of nominating certain number of individuals from ethnic and religious minorities to run from regular seats. As mentioned earlier, in most cases these nominations have been symbolic.

Table 9 below shows the number of religious minorities who were elected to Parliament since the return of democracy in 1991. Although the highest number of MPs belonging to religious minorities were elected in the current Parliament, their number is

not very significant – only 14. They account for less than 5 percent of the total number of MPs elected from regular seats, which is far below their share (10 percent) of the total population. However, there are a few MPs from religious minorities who were elected from reserved seats.

Table 9: Number of Religious Minorities and Ethnic Groups

5 th Parliament (1991-96)	6 th Parliament (1996-96)**	7 th Parliament (1996-01)	8 th Parliament (2001-06)	9 th Parliament (2009-)
Satish Chandra Roy (AL: Dinajpur-2)	Profullah Kumar Mandal (BNP: Khulna-1)	Ramesh Chandra Sen (AL: Thakurgaon-1; by-elections)	Monoranjan Shil (AL: Dinajpur-1; by-election)	Ramesh Chandra Sen (AL: Thakurgaon-1)
Paritosh Chakravorty (JP: Rangpur-2; by-election)	Gonesh Chandra Halder (BNP: Madaripur-3)	Satish Chandra Roy (AL: Dinajpur-2)	Dhirendra Nath Saha (AL: Narail-1; by-election)	Monoranjan Shil (AL: Dinajpur-1)
Shankar Govinda Chowdhury (AL: Natore-2)	*Parijat Kushum Chakma (BNP: Rangamati)	Biren Sikder (AL: Magura-2)	Pachanan Biswas (AL: Khulna-1)	Sadhan Chandra Mazumdaer (AL: Naogan-1)
Dhirendra Nath Saha (AL: Narail-1)	*Sating Pru (BNP: Bandarban)	Dhirendra Nath Saha (AL: Naarail-1)	Gautam Chakravorty (BNP: Tangail-6)	Ranjit Kumar Roy (AL: Jessore-4)
Dhirendra Devnath Shomvu (AL: Borguna-1)		Pachanan Biswas (AL: Khulna-1; by-election)	Pramod Mankin (AL: Mymensingh-1)	Sree Biren Shikdar (AL: Magura-2)
Shudangshu Shekar Halder (AL: Projpur-1)		Narayan Chandra (AL: Khulna-5; by-election)	Suranjit Segupta (AL: Sunamganj-2)	Nani Gopal Mandal (AL: Khulna-1)

5 th Parliament (1991-96)	6 th Parliament (1996-96)**	7 th Parliament (1996-01)	8 th Parliament (2001-06)	9 th Parliament (2009-)
*Promod Mankin (AL: Mymensingh-1)		Dhirendra Devnath Shamvu (Borguna-1)	*Moni Swapan Dewan (BNP: Rangamati)	Narayan Chandra Chanda (AL: Khulna-5)
Suranjit Sengupta (GP: Sunamganj-2)		Gautam Chakravorty (BNP: Tangail-6)	*Bir Bahadur (AL: Bandarban)	Dhirendra Chandra Debnath (AL: Barguna-1)
*Kalpa Ranjan Chakma (AL: Khagrachori)		Suranjit Segupta (AL: Habiganj-2; by-election)		Promod Mankin (AL: Mymensingh-1)
*Dipakar Talukder (AL: Rangamati)		*Kalpa Ranjan Chakma (AL: Khagrachori)		Sukumar Ranjan Gosh (AL: Munshiganj-1)
*Bir Bahadur (AL: Bandarban)		*Dipakar Talukder (AL: Rangamati)		Suranjit Sengupta (AL: Shunamganj-2)
		*Bir Bahadur (AL: Bandarban)		Bir Bahadur (AL: Bandarban)
				Dipankar Talukder (AL: Ranjamati)
				Jantindra Lal Tripura (AL: Khagrachori)

***BNP held the 6th Parliament elections which Awami League and other parties boycotted. The election failed to gain acceptability and the Parliament was dissolved in less than two months of being elected.*

One positive observation regarding minority representation is that, in almost every Parliament since 1991, 3 to 4 MPs were elected

from the Adivashi and other ethnic groups, even though they account for only a small proportion of the total population. Major parties normally nominated Adivashis especially for the three Hill district constituencies where they are the majority. Occasionally, some Adivashi women have also been elected from reserved seats held for women.

One negative observation regarding minority representation, however, is that very few of these MPs, outside the Hill districts, appear to have been able to develop their own constituencies.³²

5. Inclusion of Special Groups

5.1 Citizens Living Abroad: Eligibility for Office

The election manifesto of Bangladesh Awami League committed to the inclusion of Bangladeshi citizens living abroad in the electorate. Accordingly, section 8 of *The Electoral Roll Act, 2009* was amended in December 2010 to add a new sub-section in order to allow such individuals to become voters. The sub-section states that a Bangladeshi citizen living in another country would be considered a resident of that area, or the voter area where she/he lived before, or the area where her/his paternal home was or is located. Such residency would allow expatriates or migrant workers to be enrolled in the electoral roll.

Although the law now allows the citizens living abroad to become voters in Bangladesh, there has not been any special drive to enroll them. No special arrangements have been made to enlist them in the countries where they currently live or work. At this time, such

³² The exceptions are Mr. Suranjit Sengupta, Monoranjan Shil and Promod Mankin, who himself is an Adivashi.

residents must come to the Election Commission office in the locality where they are residents, as per law, and get their names included in the electoral roll.

In the past, the Constitution of Bangladesh did not allow Bangladeshis who took citizenship of other countries to run for Parliament. However, the recently enacted Fifteenth Amendment appears to have changed this. The newly amended Article 66 of the Constitution states: “(2A) Notwithstanding anything contained in sub-clause (c) of clause (2) of this article, if any person being a citizen of Bangladesh by birth acquires the citizenship of a foreign State and thereafter such person— (i) in the case of dual citizenship, gives up the foreign citizenship; or (ii) in other cases, again accepts the citizenship of Bangladesh— for the purposes of this article, he shall not be deemed to acquire the citizenship of a foreign State.” It may be noted that the sub-clause (c) of (2A) debar those who acquire the citizenship of, or affirm and acknowledge allegiance to, a foreign State.

5.2 Inclusion of Disabled

It is claimed that at least 10 percent of Bangladesh’s population are disabled and there is no barrier against physically disabled adults becoming voters. At present the number of disabled voters in Bangladesh is estimated at about 7.5 million. Although they face no difficulty in becoming voters, they face formidable challenges in casting their votes.

There are two Organisations in Bangladesh to promote the interests of disabled voters: National Disabled Women’s Parishad and National Grassroots Disabled Federation. In order to facilitate

voting by disabled persons, they voiced the following demands prior to the Ninth Parliament elections:

- Arrange separate queues for disabled voters and voting must take place in the ground floor.
- Provide ramps, either permanent or temporary, for disabled voters.
- Allow companions in the polling booths for disabled voters with sight impairment and introduce “techtile ballot” for them.
- Political parties must have clear commitment and sense of direction for implementation for education, health and employment for disabled persons included in their election manifestos.
- Public media must create public awareness for creating voter-friendly atmosphere for disabled voters.
- Every political party must nominate 12 disabled candidates, two from each Division, in the next Parliament elections.

Most, if not all, of these demands are reasonable. The Election Commission tried to improve the facilities for disabled voters. However, our political parties did not pay much attention to their demands to nominate people of disability.

6. Positive and Negative Developments

One positive development discernible from the information presented above is that a record number of women and religious minorities were elected from regular seats in the Ninth Parliament elections. This was partly due to the sweeping victory of the Awami League (which is considered to be relatively more progressive) led Grand Alliance in the elections. The challenge will be to keep the momentum and consolidate the gains made.

Another positive trend is the increase in the number of reserved seats for women in Parliament over the years. Nevertheless, the reserved seats still account for only 14.3 percent – 50 out of 350 – of the total strength of the Parliament. More seriously, the present system of reservation does not truly lead to political empowerment of women.

A recent negative development is that Adivashis have not been constitutionally recognised in Bangladesh, despite the widespread demand by the Adivashis themselves and the progressive citizen groups to do so. Despite these demands, Bangladesh Foreign Minister, Dipu Moni, while briefing foreign diplomats and UN agencies last year, categorically stated that the tribal people living in Chittagong Hill Tracts are ethnic minorities and they are not indigenous people.³³

Another seriously negative development is that a recent Constitutional Amendment reaffirmed Islam as the State religion despite strong opposition from secular forces. Zealots always use religion as a weapon against women and minorities. This

³³ The Daily Star, July 27, 2011.

development will have far-reaching implications for the inclusion of women and minorities in the electoral process in the future.

The most negative incident with respect to religious minorities was the violence unleashed against them following the Eight Parliament elections held in October 2001. The supporters of the Four Party Alliance, which won the elections with a huge majority, attacked the Hindus because the Hindus are considered to be the vote bank of the Awami League which lost the election. Those attacks occurred in many districts, but the newly elected government denied that any systematic violence had occurred and thus failed to take effective measures against such violence. The present government instituted an inquiry and a report was submitted to the Home Minister last April documenting widespread violence against Hindus. It is hoped that the true culprits will be brought to justice and that the present government will not try to extract political mileage from the incident.

One important area of reform would be the preparation of electoral rolls with photographs. Often minorities and women, particularly poor women, are excluded from voting even if they are enrolled because others often cast their votes. An electoral roll with photographs can prevent such irregularities. Furthermore, using such a system, Bangladesh could positively enroll and identify almost every eligible voter.

Annexure 1:
**List of Organisations Involved in Election Monitoring
and Related Activities**

1. Bangladesh Centre for Development, Journalism and Communication (BCDJC)
2. Bangladesh Manobadhikar Sammonny Parishad (BMSP)
3. COAST TRUST
4. DEMOCRACY WATCH
5. DAK DIYE JAI
6. Jatiya Nirbachon Parjobekkhon Parishad (JANIPOP)
7. Gono Kalayan Sangstha (GKS)
8. Gono Unnayan Kendra (GUK)
9. Institute for Environment and Development (IED)
10. KHAN FOUNDATION
11. LIGHT HOUSE
12. Mass-Line Media Centre (MMC)
13. Manabik Shahajya Sangstha (MSS)
14. Palishipara Samaj Kallayan Samity (PSKS)
15. NABOLOK
16. National Development Program (NDP)
17. Noakhali Rural Development Society (NRDS)
18. ODHIKAR
19. Rangpur Dinajpur Rural Service (RDRS)

20. RIGHTS JESSORE
21. SRIZONY Bangladesh
22. RUPANTAR
23. Shariatpur Development Society (SDS)
24. SOLIDARITY
25. UTTARAN
26. WAVE FOUNDATION (SC)
27. JAGORONI CHAKRA FOUNDATION
28. BROTEE
29. Fair Elections Monitoring Alliance (FEMA)

Annexure 2: Groups Promoting the Status of Women and Disadvantaged Groups

1. Shushashoner Jonno Nagorik (SHUJAN)
2. Transparency International Bangladesh (TIB)
3. Centre for Policy Dialogue (CPD)
4. BROTEE
5. Society for Environment and Human Development (SHED)
6. Nari Uddog Kendra
7. Democracy Watch
8. Action Aid
9. Nijara Kori
10. Ain O Salish Kendra
11. Mahila Parishad
12. Women for Women
13. Steps Towards
14. Nari Progoti Shanga
15. South Asian Partnership
16. USC Canada-Bangladesh
17. Manusher Jonno Foundation
18. Bangladesh Legal Aid Trust (BLAST)
19. Nagorik Uddog

20. National Disabled Women Parishad

21. National Grassroots Disabled Federation

The Organisations listed above in general promote and protect the rights and interests of women and disadvantaged groups and some of them have specific reform proposals, although not all of them are involved in promoting their electoral rights. The left political parties, although not a significant force in Bangladesh, are for greater and more meaningful representation of women and minorities. The major political parties also generally give lip service to the issue of inclusiveness of women and vulnerable groups. Only fringe rightwing groups are opposed to political empowerment of women.



INDIA

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1. Introduction

Elections constitute the foundation of the democratic system and are a defining feature of modern representative democracy. In addition to being an important mechanism of citizen participation, elections also serve to increase the sense of involvement and interest in the political affairs of the country. In India elections to Parliament, provincial legislatures and local governments are generally conducted every five years in accordance with the provisions of the Representation of People Act, 1950, under the overall supervision of the Elections Commission of India. Art.326 of the Constitution of India guarantees universal adult suffrage (18 years of age and above) to all citizens unless lawfully disqualified. At the time of the last General Elections to Parliament in 2009, India's electoral process involved 714 million voters, 370 political parties and 828,804 polling stations.³⁴

At the time of independence, India exhibited none of the traits most western scholars often associated with a democracy: a largely homogenous population, an industrial economy, high levels of

³⁴ GOI, General Elections 2009; Reference Handbook (New Delhi: Press Information Bureau, 2009), p.11.

education, and shared civic culture.³⁵ Yet, democracy in India has not just endured but thrived. Arguably, the extent to which an electoral process is an integrating factor within the political system³⁶ and a mechanism of social change depends on the extent to which it guarantees inclusion of and representation for minorities. As Franklin Roosevelt said, “no democracy can long survive which does not accept as fundamental to its very existence the recognition of the right of minorities.”³⁷ Given the centrality of the electoral process to achieving social, economic and political goals in a democratic polity, full participation and inclusion—including voting, involvement in political parties, having links with pressure groups, contesting elections etc.³⁸—is central to the ability of minorities to safe-guard their interests.

2. Minorities and the Need for an Inclusive Process

A ‘minority’ is often defined with one or more of the following features: inferior numerical strength, a desire to preserve its culture and traditions, social deprivation and disadvantage and an unfavourable power equation.³⁹ The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1977, defines a minority as “a group numerically inferior to the rest of the population of a State, in a non dominant position, whose members being nationals of the State—possess ethnic, religious or linguistics

³⁵ Zoya Hasan, *Parties and Party Politics in India* (New Delhi: Oxford University Press, 2002), p.1.

³⁶ Duncan B. Forrester, “Electoral Politics and Social Change”, in *Economic and Political Weekly*, Vol. 3, No. 26/28, Special Number (Jul., 1968), p.1075.

³⁷ Sebastian Vempeny, *Minorities in Contemporary India* (New Delhi: Kanishka Publishers, 2003), p.186.

³⁸ Subrata Kumar Mitra and James Chiriyankandath (eds.), *Electoral Politics in India a Changing Landscape* (New Delhi: Segment Books, 1992), p.201.

³⁹ Riaz Ahmad, “Minorities”, in Mohanty, Saxena, Sebastian, Trivedi (eds.), *Weapon of the Oppressed: An Inventory of People’s Rights in India*, (New Delhi: Daanish Books, 2011), p.149.

characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity directed towards preserving their culture, traditional religion or language.”⁴⁰

The Constitution of India does not contain any definition of minority as such but as Dr. B.R Ambedkar noted in the Constituent Assembly, “the word is used not merely to indicate the minority in the technical sense of the word; it is also used to cover minorities which are nonetheless, minorities in the cultural and linguistic sense”.⁴¹ Drawing on this, this paper adopts a broad definition, conceiving minorities as non-dominant groups which are disadvantaged owing to their distinct identity, which maybe gender, caste, religion, economic status, language, region of origin or residence, ability, etc.

A number of safeguards to protect the interests of religious, linguistics and ethnic minorities are found in Indian Constitution. Rather than a uniform strategy of identity-based accommodation towards different communities, India has devised different institutional mechanisms for recognition of their interests, making different policy provisions for different types of ‘differences’, each justified in terms of some criterion of appropriateness.⁴² However, inequality of status based on religion, gender, caste, region, language and even ability remains deeply embedded within Indian society and mechanisms of State power, which have therefore often been over-shadowed,⁴³ perpetuating exclusion rather than inclusion.

⁴⁰ Minorities under International Law, www.ohchr.org accessed on 03.10.2011.

⁴¹ Sebastian Vempenny, *op.cit.*, p.181.

⁴² Niraja Gopal Jayal, *Representing India; Ethnic Diversity and the Governance of Public Institutions* (New York: Palgrave Macmillan, UNRISD, 2006), P.4.

⁴³ Akhtar Majeed, *Nation and Minorities; India’s Plural Society and its Constituents* (New Delhi: Kanishka Publishers, 2002), p.9.

This paper thus approaches minorities on the basis of their political exclusion. Geddes has defined political exclusion as “the isolation of poor people and communities from the mainstream of the political process, and the making of decisions about their lives elsewhere by others.”⁴⁴ Political exclusion is often a result of a combination of active barriers put up by dominant groups and ‘self-exclusion’ as a result of deficits in: information, knowledge and understanding of processes, opportunities, and representation. Zoya Hasan underlines two major reasons for focusing on the politics of inclusion, firstly, the increased presence of historically excluded groups is a sign of inclusiveness in public institutions and this, in turn, is an important marker of the fairness of democratic regimes. Secondly, inclusion of excluded groups in decision-making institutions would provide these bodies with the presence of people who can articulate the interests of these sections, which will otherwise be neglected by default.⁴⁵

This paper focuses on the following groups as minorities and marginalised on the basis of their continued political exclusion as well as historical injustices they have suffered: Women, Religious Minorities, Scheduled Castes (SCs) and Scheduled Tribes (STs), Internally Displaced People (IDPs), and the Physically Disabled People.

3. Women

The struggle by women for participation in modern India’s political life, dates back to the early 20th century, when organisations such as the Women’s India Association (WIA), the National Council of

⁴⁴ Geddes cited in Janie Percy Smith (ed.), *Policy Responses to Social Exclusion; Towards Inclusion?* (Buckingham: Open University Press, 2000), p. 148.

⁴⁵ Zoya Hasan, *Politics of Inclusion; Castes, Minorities and Affirmative Action* (New Delhi: Oxford University Press, 2009), p.2.

Women in India (NCWI), and the All India Women's Conference (AIWC) were formed in 1917, 1925, and 1927 respectively. In addition, the support and contributions by Bharat Stri Mahamandal, Bhagini Samaj, Gujarati Hindu Mandal, Culcutta Mahila Samiti and many other women's organisations who were working on eradicating social problems of women and to advance their education, were also decisive. Organised activism by women demanding franchise emerged in the context of the debate around sweeping reforms in 1917, as Anupama Roy explains:

When the Southborough Committee, which dealt specifically with the franchise issue toured India, a women's delegation led by Annie Besant, with Sarojini Naidu as one of its members, met it to press further for women's franchise. The committee's final report concluded that the demand for women's franchise in India was a 'limited' one, confined to a small group of educated women, and that Indian women in 'general' did not want the vote. Even if they did, the committee claimed that the social disabilities of women under Indian customs would hamper a general implementation of female enfranchisement. It was argued that the low rates of literacy in India and the prevalence of purdah would give rise to practical administrative problems in giving women the vote.⁴⁶

⁴⁶ Anupama Roy, *Gendered Citizenship; Historical and Conceptual Explorations* (New Delhi: Orient Longman Pvt Ltd, 2005), p. 132-133.

By 1929-30, nine provinces had granted franchise to women based on the condition of age and property but not the right to sit in the legislature. Later, in 1931, the Karachi session of the Indian National Congress passed the fundamental rights resolution, affirming its espousal of universal adult franchise.⁴⁷ However, the Government of India Act 1935 did not accept universal adult franchise but introduced separate electorates for women, with the reservation of 41 seats for women in the provincial legislatures (communal basis).⁴⁸ Throughout this period, in addition to several women's organisations, efforts of prominent women leaders⁴⁹ led to the awakening of a new political consciousness that centred on women having a political identity as citizens.

The post-independence Constitution of 1948 not only guaranteed universal franchise but also brought in several safe-guards and provisions to ensure complete equality between men and women. Yet, as this section will demonstrate, women's political inclusion is far from being achieved despite many significant steps and milestones being achieved.

Women's voting rates increased from 37 percent in 1952 to 68 percent in 1984 and stood at 58 percent at the 1999 Lok Sabha elections.⁵⁰ Studies have shown that factors such as socio-cultural context, industrial development, and urbanisation, literacy and caste

⁴⁷ Ibid., p. 147.

⁴⁸ Ibid., p. 145.

⁴⁹ They include: Rajkumari Amrit Kaur, Muthulakshmi Reddy, Begam Hamid Ali, Sarojini Naidu, Annie Besant, Dr. Joshi, Mrs. Sushma Sen, Mrs. L. Mukherjee, Mrs. N.L. Subba Rao, Saraladevi Chaudhurani, Rameshwari Nehru, Margret Cousins, Mrs. Hamid Ali, Rani Rajwade, and Tarabai Premchand.

⁵⁰ Zoya Hasan and Ritu Menon, *Unequal Citizens: A Study of Muslim Women in India* (New Delhi: Oxford University Press, 2004), p.206.

and class identity; impacts the voting behaviour of women.⁵¹ As Praveen Rai observes:

The electoral participation of women in India is a much discussed issue with a wide range of opinions and differing views. On one hand, some theorists argue that the electoral process in India is fraught with male patriarchy and dominance that act as impediments to women participation. The lack of political voice and poor representation in parliament is a result of exclusions on gender basis. On the other hand there are theorists who dispute the argument and feel that the increased participation of women in electoral competition in the 1990s as voters and sharing political power at the grass root level, reveal that electoral politics in India is no more gender exclusive but is quite inclusive⁵².

Women are under-represented in India's Parliament. The representation of women in Parliament has increased from 4.4 percent in the first Parliament to 8.8 percent in the 1998 elections, 8.3 percent in 2004 and 10.9 percent in the 2009 elections,⁵³ but

⁵¹ Usha Thakkar, "The Women's Vote", in Subrata Kumar Mitra and James Chiriyankandath (eds.), *Electoral Politics In India : A Changing Landscape* (New Delhi: Segment Books, 1992), p. 202.

⁵² Praveen Rai, "Electoral Participation of Women in India: Key determinants and Barriers", *Economic and Political Weekly*, Vol XLVI, 15 Jan 2011, p.47.

⁵³ Amrita Basu, "Gender and Politics", in Niraja Gopal Jayal and Prathap Bhanu Mehta (eds.), *The Oxford Companion to Politics in India* (New Delhi: Oxford University Press, 2010), p.172.

is still way below the world average of 20 percent, considered a “critical mass” required to introduce gender parity in political decision making and legislation. Similarly, the number of female representatives in legislative bodies in most of the States in India is also below the 20 percent mark reflecting a pan Indian gender exclusion from electoral participation and quality representation.⁵⁴

Table 10: Representation of Women in Indian Parliament - 1st to 15th Lok Sabha

Year	Total number of seats	Number of women members who won	% of the total
1952	489	22	4.4
1957	494	27	5.4
1962	494	34	6.7
1967	523	31	5.9
1971	521	22	4.2
1977	544	19	3.4
1980	544	28	5.1
1984	544	44	8.1
1989	529	28	5.3
1991	509	36	7.0
1996	541	40	7.4
1998	545	44	8.0
1999	543	48	8.8
2004	543	45	8.1
2009	543	59	10.9

Source: Election Commission of India⁵⁵.

⁵⁴ Praveen Rai, “Electoral Participation of Women in India: Key determinants and Barriers”, *Economic and Political Weekly*, Vol XLVI, 15 Jan 2011, p.47.

⁵⁵ Praveen Rai, “Electoral Participation of Women in India: Key determinants and Barriers”, *Economic and Political Weekly*, Vol XLVI, 15 Jan 2011, p.47.

Table 11: Proportions of Male and Female Candidates of All Political Parties

Election Year	Percentage of all candidates who were Men(excluding all independents)	Percentage of all candidates who were Women (excluding all independents)	Percentage of Elected candidates who were Men (excluding all independents)	Percentage of Elected candidates who were Women (excluding all independents)	Percentage of all candidates who were Elected (excluding all independents)	Percentage of the Women Candidates who were Elected(excluding all independents)	Percentage of Male candidates who were Elected(excluding all independents)	Percentage of Independent candidates who were women
1984	95.5	4.5	91.8	8.2	33.5	61.8	32.2	2.5
1989	95.3	4.7	94.4	5.6	21.1	25.0	20.9	2.2
1991	95.1	4.9	92.1	7.9	16.9	27.2	16.4	2.8
1996	94.7	5.3	92.5	7.5	16.1	22.9	15.7	4.0
1998	93.1	6.9	92.2	7.8	18.9	21.3	18.8	4.0
1999	92.4	7.6	91.1	8.9	19.9	23.3	19.6	4.0
2004	92.2	7.8	91.6	8.4	17.6	18.9	17.5	4.9

Source: *The Oxford Companion to Politics in India*⁶.

Table 11 considers the representation of women in political office. From the table it is evident that women are more likely to be elected than men. In the 2009 national elections the success rate of women candidates was 11 percent compared with 6 percent for men. Yet,

⁶ Niraja Gopal Jayal and Prathap Bhanu Mehta (eds.), *The Oxford Companion to Politics in India* (New Delhi: Oxford University Press, 2010),p.172.

the fact that women find it much harder to secure nominations than men underscores the extent of marginalisation of women within the structure of political parties.

Perhaps the most significant breakthrough came in 1992 with the reservation of one-third of the total seats in local government bodies (Village Panchayats and Municipalities) established by the 73rd and 74th amendments to the Constitution of India.⁵⁷ This has resulted in over 1 million women entering the political sphere at the local government level, holding elected offices in villages and towns. While the road has been far from smooth and women in office do not necessarily always wield the power given the many barriers, it remains a crucial step in establishing the legitimacy of women as actors in the political sphere. However, a legislative move to reserve a third of the Parliamentary seats for women, the Women's Reservation Bill, has remained stuck for years, over the question of a reservation within this reservation for women from disadvantaged communities.

Despite a strong women's movement, political parties remain dominated by men, reflecting broader male domination of the political and public sphere. While most leading parties have a visible women's wing, they are seldom mobilised for anything other than election campaigns and mustering numbers for rallies and meetings (one exception is the women's wing of the left parties who were the part of women's movement in India). Even if women do rise to leadership positions, they are seldom recognised adequately and they are assigned low profile or 'soft or feminine' responsibilities.

⁵⁷ Daniel W Crowell, *The SEWA Movement and the Rural Development* (New Delhi: Sage Publications, 2003), p. 163.

By and large, women's access to power is still mediated by their relationship to male kin, and is often indirect and symbolic.⁵⁸ More often than not women get tickets to contest election on the basis of patronage of male leaders or their politically influential families. Women in public life are often judged, by others and themselves, by two different standards: on one hand, the femininity of the private world, which regards her as nurturing, submissive, emotional and home-bound, and on the other, her changed role in the public world which expects women to be competitive, ambitious and rational; a private/public split that is detrimental in more ways than one.⁵⁹

At the same time, forces of religion and orthodox traditional values embedded in the society continue to restrict the mobility of women. As Usha Thakkar points out,

Muslim women's right of equality in law, Mary Roy's claim for equality, the struggle launched for the land rights of the tribal women, and the Deorala incident of Sati clearly show that women's issues are intertwined with religious norms and the political process, not free from gender bias. These issues are of paramount importance not only to women, but to all citizens who have faith in democracy and equality. Still, these did not get the attention they need in the agenda of political parties⁶⁰.

⁵⁸ Amrita Basu, "Gender and Politics", in Niraja Gopal Jayal and Prathap Bhanu Mehta (eds.), op.cit., p.168.

⁵⁹ Usha Thakkar, "The Women's Vote", in Subrata Kumar Mitra and James Chiriyankandath (eds.), op.cit., p. 209.

⁶⁰ Ibid.,p. 200.

The status of Muslim women in India is of particular concern. A study by Zoya Hasan and Ritu Menon found that Muslim women are not only likely to be less aware about the legal age for voting and reservations for women as compared to Hindu women but that the former are also more likely to consult their husbands in deciding in whose favour to cast their vote.⁶¹

4. Religious Minorities

The Preamble of the Constitution proclaims that India is a secular republic.⁶² As per the 2001 census, the religious composition of India was as follows: Hindus 80.5%, Muslims 13.4%, Christians 2.3%, Sikhs 1.9%, Buddhists 0.8%, Jains 0.4%, others 0.6%, and 0.1% who did not state their religion.⁶³

However, the religious diversity is only rendered complex by many cross-cutting identities and cleavages, including caste and sectarian. Another factor is the diversity in geographic concentration. While Christians, for example, are a minority population with fairly large numbers they are thinly spread throughout the country and exist in relatively large groups only in small pockets. In some other cases some of these national minorities may be local majorities such as the Sikhs in Punjab and Muslims in Kashmir.⁶⁴

⁶¹ Zoya Hasan and Ritu Menon, *op.cit.*, p.206.

⁶² The Constitution (42nd Amendment) Act, 1976 added the word secular to the preamble.

⁶³ GOI, India Census 2011, accessed from www.censusindia.go.in on 25 Aug 2011.

⁶⁴ T.V Sathyamurthy, "Introduction to Volume 3", in T. V Sathyamurthy(ed.), *Region, Religion, Caste, Gender and Culture in Contemporary India* (New Delhi: Oxford University Press, 1996), p.39.

Table 12: Position of Major Religious Minorities in 1951 and 2001

Muslims	35,414,284	9.91	138,188,240	13.4
Christians	8,392,038	2.35	24,080,016	2.3
Sikhs	6,219,134	1.74	19,215,730	1.9

Source: www.censusindia.go.in

Though the Muslim Population is 13.4 percent, their representation in the Lok Sabha and State Assemblies are less than a third of their population share. In 1952 the Muslim representation in the Lok Sabha was 4.3 percent, reaching a high in 1980 with 95 seats but coming down in the 2004 election to 6.4 percent with 35 out of 543 seats.⁶⁵ The representation of Muslims in politics has been the subject of much debate with various historical, political, social and economic dimensions, some of which are explored below.

One factor that is often cited is that the Muslim middle class is still weak, relatively small and hesitant to act as an agent of change to provide leadership in its search for equity and justice.⁶⁶ This, according to some, also goes back to historical developments such as the Muslims refusal to take to the learning of English education under the British for the fear that it would undermine their religion, resulting in loss of access to office and power in the British administration.⁶⁷ Another major problem facing the community is the continued eruption of large scale communal riots from time

⁶⁵ Election Commission Statistical Report, www.indian-elections.com

⁶⁶ Zoya Hasan, *Politics of Inclusion...* op.cit., p.166.

⁶⁷ Sebastian Vempeny, op.cit., p.3.

to time, “regardless of which side starts the riots (this is often impossible to determine objectively), the Muslims are generally the relative losers in terms of lives lost and property destroyed.”⁶⁸

The condition of Christians in India is also not very different from that of Muslims and they too have been the targets of communal violence. In terms of proportionality Christians are perhaps more favourably represented in Parliament. However, Rowena Robinson points out how the Indian census merges the Christians into a single group even though there are many different denominations:⁶⁹ Catholics form 50% of this; followed by Protestants with 40%, 7% Orthodox Christians and 6% belong to other indigenous sects.⁷⁰ Their social backgrounds are also diverse: over 50% of all Christians are from the untouchable castes and people of tribal origin account for 15-20% of the population. Dalit Christians have not been able to gain official recognition as SCs and nor have Dalit Muslims, these have been amongst the key issues with respect to recommendations of the Mandal Commission and more recently the Sachar Committee.⁷¹

⁶⁸ D.E.Smith cited in Kamlesh Kumar Wadhwa, *Minority Safeguards in India*, (Delhi: Thomson Press (India)Ltd, 1975), p.154.

⁶⁹ Rowena Robinson, “Negotiating Boundaries and Identities: Christian Communities in India”, in Surinder S Jodhka (ed.), *Community and Identities: Contemporary Discourses on Culture and Politics in India* (New Delhi: Sage Publications, 2001), pp.222-223.

⁷⁰ Ibid.

⁷¹ Mandal commission’s task was to identify the OBCs and to determine whether they should be eligible for reservations along with the lines of the SCs and STs. When it came to religious minorities, the commission made all the excluded groups among them to OBCs for purposes of affirmative action. The Sachar committee suggested bifurcation of the OBC category and putting Dalit Muslims in a separate Most Backward Category (MBC).

5. Scheduled Castes (SCs) and Scheduled Tribes (STs)

Indian society is strongly embedded in hierarchical social orders. The SCs and STs are a list of communities belonging to Dalit and Adivasi communities who are listed in a separate schedule in the Constitution and constitute 16.2% and 8.2% of the Indian population respectively.⁷² As K.M Panicker has observed, “in India, minorities had come to denote religious minorities, which will exclude small communities within the majority community who may not have adequate representation in the service. The SCs were neither a racial minority nor a linguistic minority and certainly not a religious minority - but disadvantaged Hindus who needed protections earlier enjoyed by non-Hindu minorities⁷³. STs are there in almost all major states of India. 94% of the Adivasi population lives in rural areas compared to the 80% of the general population⁷⁴.

British colonial rule treated caste as the ‘institutional key stone of the Indian society’. Beginning with the decennial all India censuses of 1871, the census became the main instrument of gathering information about the caste system and classifying it⁷⁵. From 1920 onwards, under Gandhi’s leadership, the struggle for freedom also incorporated social equality for the ‘Harijans’, on the one hand, and the more radical rejection of Brahminical Hinduism articulated by B.R Ambedkar on the other. In the Government of India Act of 1919, the ‘depressed classes’ were given representation in the central and provincial legislatures⁷⁶. Jayal explains,

⁷² GOI, India Census 2011, accessed from www.censusindia.go.in on 25 Aug 2011.

⁷³ Zoya Hasan, *Politics of Inclusion*...op.cit., p.31.

⁷⁴ B.Janardhan Rao, “Adivasis in India: Characterization of Transition and Development”, in T. V Sathyamurthy(ed.), op.cit., p.417.

⁷⁵ Niraja Gopal Jayal, *Representing India*...op.cit., p.58.

⁷⁶ *Ibid.*, pp.58-59.

The arrangement was formalised in the Communal Award of 1932, whereby a fixed number of seats in every provincial legislatures were to be reserved for the members of the depressed classes, as well as of the religious minorities. This was clearly an important precursor to the provisions of the constitution of independent India, as was the procedure of creating Schedules for tribes and castes deserving of such reservation. Initiated in 1936, the task of 'scheduling' attempted to identify and list every depressed community in every province, and the initial list contained 400 untouchable groups apart from many tribes. This is the origin of the terms Scheduled Castes and Scheduled Tribes⁷⁷.

The question of separate electorates, which had remained a bone of contention throughout the later stages of the Independence struggle, was however not recognised in the Constitution. In 1959, the Supreme Court upheld elections on the basis of joint electorate and noted that although seats were reserved for the SCs and STs, they were not precluded from contesting the general seats⁷⁸. However, the Constitution guarantees of equality and non-discrimination and provides the basis for special legislation to protect them from violence, SCs and STs are also guaranteed the benefit of affirmative

⁷⁷ Ibid., p.60.

⁷⁸ In Supreme Court of India decided on 20.05.1959. Shri V.V Giri vs D.S Dora Judgment, www.manupatra.htm.

action with quotas in elected bodies at all levels and recruitment to public services and entry into educational institutions.

The 73rd and 74th Constitutional amendments provide for one-third of all seats in rural and urban local bodies to be reserved for SCs and STs. This has seen the entry of over a million SCs and STs into governance at this level. In State (provincial) legislatures as well as Parliament the number of seats or constituencies reserved is proportional to their share of the population. In total there are 84 parliamentary seats reserved for the SCs and 47 seats for the STs in Parliament. The statistical report of the election commission gives a caste wise candidate summary in which in the 2009 general election 23.95 percent candidates were from SCs and 7 percent were from STs. Since, 1971 the maximum number of SC and ST candidates was in 2004 with the percentage of 25.24 and 7.16 respectively.⁷⁹ Jodhka quoted Kaviraj, 'caste groups instead of crumbling with historical embarrassment, in fact, adapted themselves surprisingly well to the demands of the parliamentary politics'⁸⁰.

Now today's Political parties give opportunities to a number of Dalit leaders only because the constitution requires it and to fill the reserved seats. Another aim is to get votes in the name of minority sentiments. This will be evident if we look into the fact of how many Dalits were elected to the Lok Sabha other than from the reserved constituencies. In India a certain number of parliamentary constituencies are reserved for the SCs and STs in each State according to their proportion to the total population⁸¹. In such constituencies only candidates from these communities can contest

⁷⁹ Statistical Reports on General Election, Election Commission of India, New Delhi.

⁸⁰ Surinder S Jodhka, "Caste and Politics", in Niraja Gopal Jayal and Prathap Bhanu Mehta (eds.), *op.cit.*, p.164.

⁸¹ Provisions contained in Art.330 of the Indian Constitution.

the election and these constituencies will change from one election to the other. In most of these reserved constituencies SCs and STs are a minority and upholding their interests are really a challenge. Most of the SC seats are supported by political parties and very rarely an independent Dalit candidate contests the elections. Moreover, more of urban based professionals are getting elected and the SCs from the rural areas hardly get any chance. It is also worth noticing that the same SC and ST leaders are getting re-elected for many years and most of the time they do not enjoy any particular power in the legislatures. However, the reservation of seats has played a vital role in the rise and subsistence of backward caste politics. If we see the last few elections there are a high turnout of Dalits and the poor, noticeably in support of parties like Bahujan Samaj Party (BSP) which is a Dalit party led by a Dalit woman.

6. People with Disabilities

Harlan Hahn, the American political scientist observes “that the emergence of disabled people as a ‘new minority group’ is complemented by a novel socio-political analysis that offers a direct challenge to the dominant ‘functional limitations’ paradigm, which informs medical rehabilitation and economic policies for disabled people⁸². He emulates studies of contemporary political protest to argue that the distinguishing physical and behavioural features of people with disabilities, their growing collective awareness, and their differential treatment, secure their redefinition as a ‘minority group’. This signifies their common interest with other oppressed minorities, and heralds their embrace of the struggle for legal and civil rights.⁸³

⁸² Colin Barnes, Geof Mercerand and Tom Shakespeare, *Exploring Disability; a Sociological Introduction* (Cambridge: Polity press, 1999), p. 71.

⁸³ *Ibid.*, pp. 71-72.

People with disabilities constitute around 2.13 percent of the total population as per the 2001 census of India. According to 58th round National Sample Survey, there are 1.85 percent persons with disabilities in India, including persons with visual, hearing, speech, locomotor and mental disabilities⁸⁴ and 10.63 percent of them suffer from more than one type of disability.⁸⁵ Moreover, about 55 percent of them are illiterate and only about 9 percent have a 'secondary or above' level of education.

The primary legislation in India which guarantees equality and non-discrimination towards enhancing their social inclusion is the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995. In spite of the existence of legal safeguards persons with disabilities continue to remain marginalised and vulnerable to being stigmatised and stereotyped. However, owing to a growing movement advocating the rights of persons with disabilities, in recent years disability has gained recognition as a social and human rights issue rather than a medical concern.

⁸⁴ Vikash Kumar, "Disability, Inclusiveness and PRIs in India", in Yagati Chinna Rao and Sudhakara Karakoto (eds.), *Exclusion and Discrimination* (New Delhi: Kanishka Publishers, 2010), p.348.

⁸⁵ Disabled Persons in India, Report number 485 (58/26/1), National Sample Survey Organisation, Ministry of Statistics and Programme Implementation, Government of India, New Delhi, December 2003.

Table 13: Per 1000 Distribution of Physically Disabled Persons by Extent of Physical Disability – Sex and Sector

all-India disabled persons	extent of physical disability				total
	cannot take self-care even with aid/appliance	can take self-care only with aid/appliance	can take self-care without aid/appliance	aid/appliance not tried/ not available	
(1)	(2)	(3)	(4)	(5)	(6)
rural male	116	179	610	93	1000
rural female	152	154	585	107	1000
rural persons	131	169	600	99	1000
urban male	126	186	625	60	1000
urban female	160	181	598	58	1000
urban persons	140	184	614	59	1000
male	118	181	613	86	1000
female	154	160	588	96	1000
persons	133	172	603	90	1000

Source: *Disabled Persons in India, Report number 485 (58/26/1), National Sample Survey Organisation, Ministry of Statistics and Programme Implementation, Government of India, New Delhi, December 2003.*

However, changing social perceptions of disability to promote the rights of people with disabilities as equal members of society and view disability as a social consequence remains a challenge.⁸⁶ The Census in 2001 was the first to account for persons with disabilities and

⁸⁶ Nikhil Jain, “Physically or Mentally Challenged”, in Mohanty, Saxena, Sebastian, Trivedi (eds.), *op.cit.*, p.171.

they have never been significantly represented in any legislatures.⁸⁷ Recently, in the course of local body elections in Chennai the nomination of a hearing impaired woman candidate was rejected on the grounds that ‘the rule does not allow a hearing impaired person to contest the election.’⁸⁸ The condition of those with double or triple disability, for example, SC/ST disabled women is particularly serious. There is no reliable data available about the number of disabled women. They have no history. Despite their significant numbers, women and girls with disabilities, remain hidden and silent, their concerns unknown and their rights overlooked. In a society with patriarchal attitudes they subject to deliberate neglect, verbal abuse, physical assault and sexual harassment.⁸⁹

People with disabilities face significant obstacles to inclusion in the electoral process. To start with, as voters polling stations are seldom accessible in different ways; electoral rolls do not contain information on disabilities and special needs and therefore a significant number of persons with disabilities may be unable to cast their vote. The lack of accessible public transport is another hindrance. The lack of awareness of Rule 40 of the conduct of Elections, which contain several provisions aimed at enabling persons with disabilities to cast their vote, including with the help of a companion, is another significant problem. Attitudinal and architectural barriers also present a significant hindrance to the active participation of persons with disabilities in the activities of political parties. For the complete expression of their citizenship, they need to take part in the various political processes including elections, directly.

⁸⁷ Interview with Jayashree Raveendran and Janaki Pillai at The Ability Foundation, Chennai on 03.10.2011.

⁸⁸ Assurance to Persons with Disabilities, The Hindu, Chennai, Oct 4, 2011.

⁸⁹ Meenu Bhambani, “Social Responses to Women with Disabilities in India”, in Asha Hans and Annie Patri (eds.), *Women, Disability and Identity* (New Delhi: Sage Publication, 2003), pp.76-88.

7. Internally Displaced Persons

IDPs are those who were forced to flee their homes or habitual residence because of various natural and manmade reasons. They are refugees in their own country. By and large, they remain outside the public “consciousness” or “imagination”, experiencing a high degree of alienation, marginalisation and exclusion from the larger society⁹⁰. There is a huge variation about the numbers of IDPs in India because the population is constantly fluctuating. The latest World Refugee Survey puts the total number of IDPs in India at 507,000; the Indian Social Institute in Delhi and the Global IDP project place it at 21.3 million⁹¹. Thukral quoted Cernea that ‘by its true nature displacement is a disruptive and painful process. Economically and culturally it creates a high risk of chronic impoverishment that typically occurs along one or several of the following dimensions: landlessness, joblessness, homelessness, marginalisation, food insecurity, morbidity and social disarticulation’⁹². In India the major cause of displacement is the development induced projects. A close look at the composition of the displaced people reveals that the majority belong to the poorer and the backward sections of the society. Even government estimates show that 40% displaced by various development projects are Tribals and almost 20% are Dalits⁹³.

Lama in his paper categorises the displacement into four major types. (1) political causes including secessionist movements (Naga Movement, Assam Movement and Kashmir’s ‘war’ between the

⁹⁰ Monirul Hussain, “Internally Displaced Persons in India’s North East”, *Economic and Political Weekly*, Feb 4, 2006, p.391.

⁹¹ Mahendra P Lama, “Internal Displacement in India: Causes , Protection and Dilemmas”, *Forced Migration Review*, Vol.No.1, Issue No. 8, Oxford UK, 8 Aug 2000. pp.24-26.

⁹² Michael Cernea quoted in Enakshi Ganguly Thukral (ed), ‘Big Dams , Displaced People; Rivers of Sorrow, Rivers of Change (New Delhi: Sage Publications, 1992), p.21.

⁹³ *Ibid.*, p.8

State and militants etc.), (2) Identity Based Autonomy Movements (Bodo Movement), (3) Localised Violence (caste disputes in Bihar and Uttar Pradesh, urban riots in Mumbai, Coimbatore, Aligarh, Bhagalpur and 'son's of soil' policy etc), (4) Environmental and Development Induced Displacement (Dams, Roads etc)⁹⁴. Another major reason for displacement is Natural Disasters like Floods, Landslides, Cyclones, Earthquake, Tsunami etc. which often happens in different areas of the country.

Now, how can these displaced people be included in an electoral roll when the people displaced 10 years back are still IDPs? India does not have an efficient rehabilitation policy, moreover, with the increase of population the pressure on land also increases which makes it difficult for the resettlement of the displaced people. In the case of natural calamities people still come back to where they lived, but that is not the case with the people displaced because of the development projects. In spite of the controversies still many scholars advocate the only practical solution in such cases as the Unique Identification Number (Aadhaar)⁹⁵ by which people can be identified and through which, the problems in issuing the voter identity card or enrolling their names in the voters list, can be solved.

⁹⁴ Mahendra P Lama, op.cit., p.24-26.

⁹⁵ Aadhaar is a 12-digit unique number which the Unique Identification Authority of India (UIDAI) will issue for all residents in India. The number will be stored in a centralised database and linked to the basic demographics and biometric information – photograph, ten fingerprints and iris – of each individual. It is easily verifiable in an online, cost-effective way.

8. Observations and Recommendations

1. Right to vote should be a fundamental right.
2. Adequate amendments to the Representation of the People Act, 1950. The act is more than 60 years old and it should be amended according to the needs of changing time.
3. The concerned authority should keep updating the electoral rolls. Usually it is the last moment work from the Election Commission and in the process they miss out the names of many voters.
4. Pass the Women's Reservation Bill as soon as possible through which women get 33% reservation in the legislatures.
5. The Election Commission and Civil Society organisations should organise more awareness programmes and advocacy at the grassroots level.
6. The Election Commission should ensure that all political parties have a secular behaviour and provide more seats to religious minorities, especially Muslim candidates. All political parties should give mandatory quotas for the candidates from minority communities (apart from the reserved constituencies and general candidacy).
7. The issuance of Unique Identification Numbers will help IDPs and those who have changed their place of residence because of various reasons such as employment, education and marriage, to exercise their voting rights.

8. The Election commission should identify the areas where any particular group of people are systematically excluded from voting, especially in the remote areas, villages in the forest peripheries, tribal hamlets and border villages of the State.
9. Ensuring a violence free election and greater security will result in more participation of the people from vulnerable communities.
10. The Election Commission should create more awareness on the minority voting rights and keep systematic statistics about the minority voting and participation in the election process.
11. Make provisions for Absentee Ballot system. It can be a combination of internet and postal ballot. The Election Commission can upload the e-ballot on their websites and the NRIs can download and cast the vote and post it according to the prescribed norms.
12. It is a known fact that campaign expenditure plays a vital role in the ability of candidates to contest elections. This adversely affects those women candidates and marginalised sections who are not really economically independent. The Election Commission must find a solution to this.

13. People with disabilities should get essential facilities in the polling booth. The UN Convention on the Rights of Persons with Disabilities, which was ratified by India in October 2007 legally supports:

- The right to vote (article 29)
- The right for recognition before the law (article 12)
- The right to access to information (article 21)
- The right to freedom of expression and opinion (article 21)
- The right to accessibility (article 9)

First of all, disabled people have to be educated about their right to vote. Greater awareness should be created by roping in the local news papers, television channels, and radio, and disseminate information through mass media campaigns about the voting rights of disabled people and the facilities they can demand from the presiding officer if necessary. This information needs to be released periodically shortly before the commencement of the elections, to help people recall the information. The voter ID cards should mention the disability details of the voter, so that the statistics can be collected to facilitate easy access to the polling booths. There should be permanent postal ballot system for people with severe mobility problem⁹⁶.

There should be much more awareness on the Rule 40 of the conduct of Elections, which says,

⁹⁶ Able to Vote, Success and Ability, The Ability Foundation, Chennai, Apr- Jun , 1999, p.11.

- A blind or infirm person is allowed to take a companion to the polling booth to assist him/her, provided the presiding officer is satisfied about the disability.
- The companion who accompanies the disabled voter must be over 18 years of age and should not assist more than one person on that day.
- The companion must maintain the secrecy of the vote.
- It is the elector's prerogative to choose the companion⁹⁷.

To include them in the election process we will have to ensure their accessibility to the polling stations. They need aid according to the extent of their disability. We should ensure them special facilities like priority for entering polling stations without waiting in the queue and other needed assistance for them to cast the vote. Electronic Voting Machines (EVMs) with Braille to enable visually impaired voters and special care for the speech and hearing impaired voters and temporary ramps for people using wheelchairs should be provided.

14. Generally, the political parties only bring the disabled persons to the polling booth on the Election Day which makes them obliged to vote for that particular party. The Election Commission should arrange transportation facilities for all disabled persons and old age people and anyone in need.

15. If the disabled person does not have a companion, one of the polling officers or other designated officers should

⁹⁷ Ibid., p.13.

accompany the physically challenged person to the ballot box. If the disabled person is accompanied by a party worker, he/she will not be able to cast the vote in free spirit.

16. The blind and speech and hearing impaired voters should be given proper training and practice before the final casting of the vote.
17. There is a scope for extensive research in the area of Inclusive Electoral Process and the role of the Civil Society is crucial especially, in a country like India where 'unity' and 'diversity' has to connect together.

9. Conclusion

Notwithstanding the criticisms, the positive discrimination policies have worked more effectively for the disadvantaged and marginalised sections of people. As justice Shetty of Supreme Court of India observed, "it is well said that in order to treat some persons equally, we must treat them differently. We have to recognise a fair degree of discrimination in favour of minorities"⁹⁸.

The paper has tried to examine the status of minorities in India. It could gather that even after so many constitutional assurance and legislations the most vulnerable sections in the minorities are still left outside the system. Their voter turnout would be higher, but their representation in the legislature is negligible. Even if they win the elections to the legislature through the reserved seats most of them become very passive without taking part in any legislative debates. It is hard for people from poor social and educational background like SCs and STs, Women and other disadvantaged to

⁹⁸ See Sebastian Vempeny, *op.cit.*, p.189.

speak at meetings without inhibitions, asserting one's individuality in a group and to express their opinions freely without any doubt. Another noticeable point is that the problems of socio cultural and political inequalities discussed in the paper on the basis of gender, religious minorities, caste/ tribe and displacement overlap sturdily with economic inequalities. Majority of people from these communities are under the poverty line. All these issues appeal for a more inclusive electoral process and a better governance system. The electoral system and the electoral laws must be reformed adequately for a more free and fair representation.



PAKISTAN

Conceptualised, implemented and funded by South Asians for Human Rights; Researched and written by Neha M. Zaigham.

1. Introduction

The Constitution of Pakistan guarantees “fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to the law and public morality” to its citizens.⁹⁹ Pakistan is a country populated by over 177,000,000 people, an amalgamation of various cultures, ethnicities, languages, religions, sects and sub-sects. It was created on the principles of a democratic nation, which would ensure that, “everyone has the right to take part in the government of his country, directly or indirectly or through freely chosen representatives.”¹⁰⁰ Pakistan’s founder, Muhammad Ali Jinnah, demonstrated this belief when he appointed Sir Zafarullah Chaudhry – an Ahmadi who was also the author of the Lahore Resolution in 1940 – as Pakistan’s first Foreign Secretary.¹⁰¹

⁹⁹ Constitution of Pakistan, Preamble – State of Human Rights 2009, Human Rights Commission of Pakistan.

¹⁰⁰ Universal Declaration of Human Rights, Article 21 (1) – *ibid*.

¹⁰¹ The Persecution of Ahmadiyya Muslim Community - <http://thepersecution-org.blogspot.com/2010/05/view-second-amendment.html>.

In Pakistan, minorities, if defined in terms of their relative political weight, could be constructed on the lines of religion, gender, and geographic location. The largest such minority group within the country ironically comprises of almost half the population: women. Women are considered a minority due to their marginalisation within the electoral process – whether as voters or elected representatives – as well as in the public and private sphere in a male dominated society. Ninety-five percent of Pakistan’s population is Muslim while the remaining 5% is comprised of Hindus, Christians, Parsis, Ahmadis and a few other denominations. Ahmadis follow the teachings of Mirza Ghulam Ahmed that deviate from the fundamentals of Islam¹⁰² and as a result they are not considered Muslim and ostracized in predominantly Muslim countries such as Pakistan. Hindus and Christians are also vulnerable to such treatment due to their religious beliefs. Concerns of religious minorities are exacerbated by the minimal or zero representation of these communities in key public institutions.

Moreover, since its inception in 1947, Pakistan’s history has been rife with decades of military regimes, a weak judiciary and multiple changes to the Constitution, which have significantly restricted the role and voice of minorities within the country.

Internally displaced persons (IDPs) are another vulnerable group, whose numbers have swelled in Pakistan over recent years. This minority has multiplied within the country due to natural disasters – the earthquake that hit the northern part of Pakistan in 2006 – and the more recent urgency to evacuate certain regions within the country due to flooding, conflict and security concerns.

¹⁰² Ahmadiyah – <http://en.wikipedia.org/wiki/Ahmadiyah>.

The marginalisation of these minorities is evident in almost all civil and military institutions though for the purposes of this paper the core issues are those that revolve around the deprivation of these groups of the exercise of their right to equal participation in the electoral process. Within the context of this framework, this report will endeavour to: a) identify minority groups within Pakistan, b) enumerate the issues surrounding fair and inclusive electoral processes by providing examples of cases over the past year, and c) ascertain what needs to change in order to promote full electoral rights for minorities.

2. Women

Women make up a very important part of Pakistani society and its economy, which unfortunately is not reflected in the country's electoral process. Although women's suffrage was granted in 1947, it was not till 1956, almost a decade after Pakistan's inception that women were allocated (dual) voting rights, "one for general seats and the other for the reserved women's seats", which was intended to greatly enhance women's role in the electoral process. However, this right was abolished in 1962 and was not reinstated in the 1973 Constitution.¹⁰³ Therefore, rather than moving forward in the direction set by Jinnah i.e. walking next to men in every sphere of life, Pakistan's legal framework regarding women's representation regressed.

The most glaring example of this comes in the form of women being barred from voting in the Gilgit-Baltistan region in the 2009 election due to 'traditional' customs as well as an illegal pact among

¹⁰³ Political Empowerment of Women in Pakistan - <http://www.pu.edu.pk/psc/journal/PDF-FILES/Artical%20-%208.pdf>.

political candidates.¹⁰⁴ As reported by an Observers' Mission the Human Rights Commission of Pakistan (HRCP), the Election Commission of Pakistan cannot take-up the matter unless those barred from voting lodge a formal complaint. Similarly, in the beginning of 2010, it was reported that female voters were barred from voting in the by-elections in the constituency of National Assembly 21 of Mansehra district. It is widely believed that "all the contesting parties namely the PML-N, the PPP, the PTI, the PML-Q, the JUI-F and the Jamaat-e-Islami signed a document forbidding female voters from casting their vote in the elections".¹⁰⁵ Such incidents in conjunction with low levels of female voter registration and high levels of corruption¹⁰⁶ belie the notion that reserved seats for women in the political structure bridge the divide between female votes cast and female representation in the political framework.

The number of reserved seats allocated to women in the National and Provincial Assemblies has increased over the past decades. However, as Tables 14¹⁰⁷, 15¹⁰⁸ and 16 illustrate, it is still too low to suggest significant levels of women's empowerment and in terms of their representation and participation in Pakistani politics.

¹⁰⁴ Gilgit-Baltistan Elections 2009 - <http://www.hrcp-web.org/pdf/Gilgit-Baltistan%20Report.pdf>.

¹⁰⁵ The News – Not Allowed to Vote!, January 31, 2010 – HRCP Reference Section.

¹⁰⁶ Aurat Foundation's Annual Report – 2006 & 2007 - http://www.af.org.pk/Annual%20Reports/2006-07/Annual%20Report%202006-07_final.pdf.

¹⁰⁷ Election Commission of Pakistan - <http://www.ecp.gov.pk/content/ERSYS.html>.

¹⁰⁸ Dawn – Call to Increase Funding for Women Ministry, January 2, 2010 – HRCP Reference Section.

Table 14: National Assembly

NUMBER OF SEATS				
Province / Area	General Seats	Seats reserved for		Total
		Non-Muslims	Women	
Federal Capital	2	10		2
Punjab	148		35	183
Sindh	61		14	75
NWFP	35		8	43
FATAs	12		--	12
Balochistan	14		3	17
Total:	272		10	60

Table 15: Provincial Assemblies

NUMBER OF SEATS				
Province / Area	General Seats	Seats reserved for		Total
		Non-Muslims	Women	
Punjab	297	8	66	371
Sindh	130	9	29	168
NWFP	99	3	22	124
Balochistan	51	3	11	65
Total:	577	23	128	728

Table 16: Number of seats held by women in National Assembly 1970–2008

Year	Total number of seats in National Assembly	Number of seats reserved for women	Number of general seats held by women
1970	313	13	0
2002	342	60	13
2008	342	60	15

The most glaring discrepancy in respect to the reserved seats is the fact that they are not accessible to independent candidates. According to the 1962 Constitution “elected members of the Assemblies would elect women members for the reserved women seats”; women candidates are therefore to be selected by their party bosses rather than elected by their real constituents i.e. the women of Pakistan, which has resulted in many women politicians being overly dependent on their respective political parties.¹⁰⁹

In addition, their male colleagues do not take most women parliamentarians seriously. This is evident from the rant of Mr. Sheikh Allauddin, MPA, against female MPAs with regard to the provision of reserved seats. He is noted to have commented that he was an elected MPA (and therefore, more legitimate) as opposed to having been appointed to a reserved seat as is the case with most women MPAs.¹¹⁰ Statements such as these allude to the prevalent

¹⁰⁹ Political Empowerment of Women in Pakistan - <http://www.pu.edu.pk/psc/journal/PDF-FILES/Artical%20-%208.pdf>.

¹¹⁰ Dawn News – Pervasive Misogyny, June 23, 2012 – <http://tribune.com.pk/story/397762/pervasive-misogyny/>.

psyche that women are filling the 33% seats required by law and are just ‘tokens’ in the policy making processes.

Women as a political minority in Pakistan also face more cultural barriers and restrictions that hinder their ability to step into the political arena, whether to exercise their fundamental right to vote and/or represent their countrymen and women. A very prominent belief in Pakistani society with regard to women is that of *chadar aur chardivari*. This phrase signifies that, “a woman’s place of honour is inside the four walls of home (*chardivari*); and when she must go out, she has to be wrapped from head to foot in a sort of winding sheet (*chadar*)”.¹¹¹ The *Aurat Foundation*, following a series of workshops with women representatives in local constituencies, reported that some women faced resistance from their family members and acquaintances when considering participating in the local elections and training programmes.¹¹²

Moreover, even securing a seat in the local government was not enough to guarantee a voice. The literacy rate for women in Pakistan stands a little over 36%.¹¹³ Many women who are elected to fill the 33% reserved seats at the local municipal level do not have sufficient educational skills to negotiate legislative procedures or analyse the annual budget, for example. Therefore, a very serious obstacle to women with regard to the electoral process is the unequal access to education.

¹¹¹ State of Human Rights in 2009 – Human Rights Commission of Pakistan.

¹¹² Aurat Foundation Annual Report – 2006 & 2007 - http://www.af.org.pk/Annual%20Reports/2006-07/Annual%20Report%202006-07_final.pdf.

¹¹³ CIA – The World Factbook - <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>.

3. Religious Minorities

In terms of religion, Pakistan is quite homogenous with a 95% Muslim population. However, as noted earlier the remaining 5% of Pakistanis consist of Hindus, Christians, Parsis, Ahmadis, Sikhs, Buddhists, Shias, Bahais, etc. While Pakistan was created on the premise that Muslims needed a land of their own where they could practice their religion without judgment and persecution, every citizen of Pakistan was to be guaranteed the freedom to practice his or her own faith. Ironically, even the Shias, a Muslim community in the minority in Pakistan, are not afforded this basic right.

The Constitution and Penal Code of Pakistan use very strict language in the construction of blasphemy laws and offences can be punishable by death. While there has been no judicial execution of a person charged with blasphemy to date, there are however numerous accounts of individuals such as Mirza Mubarak Ahmed¹¹⁴ and Rimsha Masih¹¹⁵ who are persecuted on charges of blasphemy. Organisations such as Human Rights Watch have asked the Pakistan government to repeal laws that are discriminatory towards religious minorities, which include a ban on the statute that makes capital punishment mandatory for blasphemy.¹¹⁶ Furthermore, Gen. Zia ul-Haq deleted the word 'freely' from the Objectives Resolution in 1985 in his attempts to Islamicize the nation. The clause originally read, "Wherein adequate provision shall be made for the minorities to 'freely' profess and practice their religions and develop their culture".¹¹⁷

¹¹⁴ The Persecution – Individual Case Reports - <http://www.thepersecution.org/case/case001.html>.

¹¹⁵ Dawn.com – Girl accused of blasphemy 'denied meeting with lawyer', August 23, 2012 - <http://dawn.com/2012/08/23/rimsha-accused-of-blasphemy-traumatized-activist/>.

¹¹⁶ The Friday Times – Interview (Lahore Carnage), June, 4, 2010 – HRCP Reference Section

¹¹⁷ Daily Times – CJP Raps Change in Objectives Resolution, June 9, 2010 - http://www.dailytimes.com.pk/default.asp?page=2010\06\09\story_9-6-2010_pg1_1.

Steps are being taken by the Ministry of Minority Affairs (whose Federal Minister was given full Cabinet status for the first time this year) to revise Pakistan's blasphemy laws but in the meantime EU deputies and independent agencies have determined that religious minorities are not provided their civil liberties and equal opportunities in the economic or political sector.¹¹⁸ The assassinations of Salman Taseer, Governor of Punjab¹¹⁹ and Shahbaz Bhatti, Minister of Religious Minorities¹²⁰ for their commitment to minority rights and voice against the blasphemy laws underscore the issues facing religious minorities in Pakistan.

3.1 Ahmadis

The Ahmadiyya community is between 3 to 4 million people in Pakistan, which makes for about 1.5% of the total population and face high levels of discrimination. Notwithstanding the vision of the founders, including Muhammad Ali Jinnah, that every citizen will have the equal right to vote,¹²¹ Pakistan does not even provide Ahmadis the universal right to vote.

With the implementation of the eighth amendment to the 1973 Constitution in 1985, the system of separate electoral lists for all religious minorities was introduced in Pakistan. In the course of the 2008 elections, registered voters were required to sign a certificate denying the authenticity of holy founder of the Ahmadiyya

¹¹⁸ The Nation – Pakistan Blasphemy Laws used to Justify Murder, May 21, 2010 – HRCR Reference Section.

¹¹⁹ BBC News South Asia – Punjab Governor Salman Taseer assassinated in Islamabad, January 4, 2011 – <http://www.bbc.co.uk/news/world-south-asia-12111831>.

¹²⁰ Dawn.com – Minorities minister Shahbaz Bhatti assassinated in Islamabad, March 2, 2011 – <http://dawn.com/2011/03/02/minorities-minister-attacked-in-islamabad/>.

¹²¹ The Nation – Minorities Demand Separate Electorate, January 4, 2010 – HRCR Reference Section.

community. Since the Ahmadis would not sign this certificate, “they were thus de facto denied their right to vote”.¹²² In addition to the *de jure* barriers facing the Ahmadi community, there is an acute danger of physical persecution by individuals who decide to take the law into their own hands. After the deletion of the word ‘freely’ from the Objectives Resolution in 1985, there was a surge in brutality towards the Ahmadi community. Table 17¹²³ shows statistics on violence against Ahmadis, and how it has risen in the recent years.

Table 17: Persecutions of Ahmadis in Pakistan

Year	Murdered on account of religious beliefs	Booked under Blasphemy Law	Booked under Ahmadi specific laws
2007	5	22	24
2008	6	30	76
2009	11	37	57
2010 (to date)	91, including 85 killed in two terrorist attacks on May 28		

With the above-mentioned incident that occurred in Lahore on May 28, 2010, it has become apparent that Ahmadis who are already discriminated against within the electoral process cannot possibly feel secure enough to vote when they are not even provided protection in their own prayer houses.

3.2 Christians and Hindus

Pakistani Christians and Hindus face similar challenges even though they have the largest minority population in terms of

¹²² Pakistan: The Electoral Process is Self-contradictory and Denies the Ahmadi Minority its Right to vote - <http://www.ahrchk.net/statements/mainfile.php/2010statements/2474/>.

¹²³ The Friday Times – Report (Lahore Carnage), June 4, 2010 – HRCP Reference Section.

percentage. In the 1956 Constitution, and later in the amended 1973 Constitution under the Zia ul-Haq regime, Pakistan instituted separate electorates against the will of minorities.¹²⁴ Although certain minorities still seek a separate electorate, joint electorate was introduced under General (Rtd.) Pervez Musharraf in 2002. This has benefited minorities by at least granting them dual voting rights. However, this legislative change does not provide Christians, Hindus and other religious minorities the freedom to become an unencumbered part of the Pakistani electoral system.

Christians and Hindus are also vulnerable to persecution under the blasphemy laws although there aren't other specific legal provisions that target Christians or Hindus, as is the case with Ahmadis. Many individuals mete out punishments towards members of these religious communities based on desecration of the Holy Quran or a blasphemous comment allegedly directed at the Prophet. Whether these allegations have any credibility cannot be determined as most of these incidents are 'settled' outside of court. One glaring example of this is the Gojra incident in the summer of 2009 where seven Christians, including women and children, were burnt alive based on an allegation of blasphemy that allegedly incited rioting and violence amongst the Muslim community.¹²⁵ Another recent example is that of Rimsha Masih mentioned earlier.

Due to the worsening of religious intolerance in recent years within Pakistan, political parties seem hesitant to nominate non-Muslims for general seats and do not advocate for an increase in the number

¹²⁴ Islamic Radicalism and Minorities in Pakistan - <http://www.apcss.org/Publications/Edited%20Volumes/ReligiousRadicalism/PagesfromReligiousRadicalismandSecurityinSouthAsiach19.pdf>.

¹²⁵ Dawn - LHC Takes suo moto notice of Gojra Incident - <http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/provinces/12-lhc+takes+su+o+motu+notice+of+gojra+incident--bi-o8>.

of reserved seats for non-Muslim minorities.¹²⁶ Therefore, even with the provision of a joint electorate the electoral process itself is not free and inclusive with regard to religious minorities after almost a decade of its implementation.

4. Internally Displaced Persons (IDPs)

Many Pakistani citizens have been internally displaced for decades. In 2001, it was reported that hundreds of Hindus had to flee their homes due to rioting and violence by Muslim mobs in their neighbourhoods.¹²⁷ Within a year, almost 5,000 Hindus had to leave their homes in Lasbela to find refuge elsewhere. Additionally, as recently as a few days ago, over a hundred Hindus have fled to India and are seeking refugee status.¹²⁸ Many natural disasters in the past few years have compelled hundreds of thousands of Pakistanis to leave behind their homes and belongings to find shelter elsewhere. The earthquakes in northern Pakistan in October 2005 left over 73,000 people killed and over 3 million without homes.¹²⁹ A similar earthquake hit the Balochistan region in 2008 killing hundreds and forcing thousands of injured survivors to move into refugee camps due to the destruction of their homes.¹³⁰ Furthermore, May

¹²⁶ European Union Election Observation Mission Pakistan 2008 - <http://www.eueompakistan.org/PDF/preliminary/Preliminary%20Statement%20Pakistan%2020%20February2.pdf>.

¹²⁷ Internal Displacement Monitoring Centre, "Displacement of Hindus in Pakistan (2004) - [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEvelopes\)/8C8DCB200FDEAB80C12571F8003E3782?OpenDocument#36.2.2](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEvelopes)/8C8DCB200FDEAB80C12571F8003E3782?OpenDocument#36.2.2).

¹²⁸ The Hindu - Hindu migrants seek refugee status, September 11, 2012 - <http://www.thehindu.com/todays-paper/tp-national/article3883317.ece>.

¹²⁹ World Bank, "Pakistan Earthquake, A Year After" - <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/0,,contentMDK:21081761~pagePK:146736~piPK:146830~theSitePK:223547,00.html>.

¹³⁰ Balochistan Earthquake 2008 - <http://www.pakquake.com/category/balochistan-earthquake-2008>.

2010 witnessed the fear of the Hunza Lake flooding which led to thousands of families being evacuated from the region.¹³¹

In addition to natural disasters, which have marked the history of Pakistan's topography, the current state of conflict and security crises in many parts of the country is also leading to more IDPs. The military surge in the Swat valley, which commenced in the summer of 2009, resulted in millions of families having to relocate. While many have had the opportunity to resettle after the situation was brought under control, returnees and IDPs still face dire conditions.¹³²

Both natural and human engineered causes have combined to result in an unprecedented rise in the number of IDPs in Pakistan. It is important to view IDPs as a political minority in order to ensure that their electoral rights are not being ignored. While there are no *de jure* hurdles to the participation of IDPs in the electoral process, there is however an acute lack of information regarding IDPs and their situation that creates obstacles in ensuring their inclusion in the electoral process.

For one, the loss of homes and belongings often means that IDPs are without documentation and National Identification Cards (NICs). Since an NIC is a must in order to register to vote, this creates a serious problem for IDPs who do not have proper documents available to them in refugee camps or at relatives' houses.

¹³¹ Evacuations as Hunza Lake Flooding Looms - http://www.centralasiaonline.com/cocoon/caii/xhtml/en_GB/newsbriefs/caii/newsbriefs/2010/05/24/newsbrief-03.

¹³² Pakistan – Millions of IDPs and Returnees Face Continuing Crisis - [http://www.internal-displacement.org/8025708Foo4BE3B1/\(httpInfoFiles\)/824D103A25A742E4C1257680005872C3/\\$file/Pakistan+-+December+2009.pdf](http://www.internal-displacement.org/8025708Foo4BE3B1/(httpInfoFiles)/824D103A25A742E4C1257680005872C3/$file/Pakistan+-+December+2009.pdf).

Table 18¹³³ shows the number of people who as of August 2009, according to information provided by the National Database and Registration Authority (NADRA), were registered as IDPs.

Table 18: Summary of NADRA's Verification Report as of August 2009

Total Families Registered	754,822	---
Total members of the Registered Families	5,423,085	---
Total Correct Families	329,165	43.61%
Members of Correct Families	2,337,072	---
Total Incorrect Families	425,657	56.39 %
Members of Incorrect Families	3,086,013	---

This summary paints a telling picture of how IDPs are being seriously marginalised. There are 5,423,085 families registered in total, however, the detailed account of this report states that only 710,126 heads of families actually had an NIC available.

It is important to note that being registered as an IDP or being in possession of a NIC does not guarantee that the person is registered on an electoral roll. Furthermore, if a person from the Swat region has had to relocate to Punjab or Sindh, the geographical difficulty of going back to Swat to cast his or her vote is nearly insurmountable.

Furthermore, it cannot be determined from the information provided as to how many within the registered IDP families are actually of voting age and how many of them possess NICs. Therefore, this population is by default excluded from voting.

¹³³ Verification Report NADRA - http://ndma.gov.pk/Documents/NWFP_Malakand_IDPs_Situation/Updates/verification%20report%20Nadra%20050809.doc.

5. Conclusion

Despite its flaws, the elections held in the Gilgit-Baltistan region showed an increase in media coverage, greater interest displayed by many political parties, and a largely transparent electoral process. However, out of 99 candidates put forward by the political parties, there was only one female. There is also no indication that non-Muslims were given a chance to participate in the elections.¹³⁴ These omissions are a glaring testimony to what still needs to be done in order to ensure free, fair and inclusive elections within Pakistan.

Women and non-Muslim minorities are not given adequate representation in Parliament and Local Councils. In addition, special attention needs to be given to internally displaced persons and people with disabilities, especially as there is no formal legal framework that deals with issues related to these groups.

The Election Commission of Pakistan (ECP) has drafted a five-year plan to implement laws that will take into account minorities' rights.¹³⁵ It is important for the government to pay heed to the ECP's suggestions and put them into action.

Central to any significant change is the need for the State and political institutions to work independently rather than under the banner of religion. Pakistan's laws and regulations have become mired by rules that some consider 'holy decrees'. However, it is these dictums that need to be re-evaluated and restructured in order to have an inclusive electoral system.

¹³⁴ Gilgit-Baltistan Elections 2009 - <http://www.hrcp-web.org/pdf/Gilgit-Baltistan%20Report.pdf>.

¹³⁵ Dawn, EC Working on Five-Year Plan (March 14, 2010) – HRCP Reference Section.



SRI LANKA

Conceptualised, implemented and funded by South Asians for Human Rights; Researched and written by People's Action for Free and Fair Elections (PAFFREL).

1. Introduction

Sri Lanka's population is a mixture of diverse ethnicities, languages, religions and other socio-cultural identities. Sinhalese who constitute an ethno-linguistic majority (74%)¹³⁶ are considered to be descendants from a migrant prince from India while Tamils who constitute the second largest group (18.1%) are considered to be descendants of people of Indian origin. The latter fall into two sub-categories – viz. those who came in ancient times and settled down in the Northern and Eastern areas of the Island and are called Sri Lankan Tamils and those who were brought from India during the colonial period to work in the plantation sector, mostly in the upcountry areas, and are called Indian Tamils. Moors or Muslims who comprise the next highest ethnic category (7.1%) are more dispersed in areas dominated by the Sinhalese but have their concentrations in the Eastern Province, especially Ampara. Before the ethnic conflict there were Muslim residents in the Tamil concentrated areas in the North as well; but like Sinhalese residents in these areas Muslims were forced to leave due to terrorist atrocities committed by the Liberation Tigers of Tamil Eelam (LTTE).

¹³⁶ Source: Census Department 1981 Census.

There are also several other ethnic categories in the Sri Lankan population such as Burghers, Malays etc., but their numbers constitute approx. 0.8% of the population and they are amongst the major ethnic groups mostly in urban localities.

The following table shows the Sri Lankan population by ethnicity and its Provincial/Electoral District distribution on a percentage basis.

Table 19: Distribution of Sri Lanka's Population (Per Cent) By Ethnicity and Provincial/Electoral Districts (Per Cent)

Electoral Districts By Provinces	Sinhalese (%)	Sri Lankan Tamils (%)	Indian Tamils (%)	Moors (%)	Burghers (%)	Malays (%)	Others (%)
Western							
1. Colombo	77.9	9.8	1.3	8.3	1.1	1.1	0.5
2. Gampaha	92.2	3.3	0.4	2.8	0.6	0.6	0.1
3. Kalutara	87.3	3.3	4.1	7.5	0.0	0.1	0.2
Central							
4. Kandy	75.0	4.9	9.3	9.9	0.2	0.2	0.4
5. Matale	79.9	5.9	6.7	7.2	0.1	0.1	0.1
6. Nuwara Eliya	35.9	13.5	47.3	2.8	0.1	0.2	0.2
Southern							
7. Galle	94.4	0.7	1.4	8.2	0.0	0.1	0.2
8. Matara	94.6	0.6	2.2	2.6	0.0	0.0	0.0
9. Hambantota	97.4	0.4	0.1	1.1	0.0	1.0	0.0
Northern							
10. Jaffna	0.6	95.3	2.4	1.7	0.0	0.0	0.0
11. Mullaitivu*	5.1	76.0	13.9	4.9	0.1	0.0	0.0

Electoral Districts By Provinces	Sinhalese (%)	Sri Lankan Tamils (%)	Indian Tamils (%)	Moors (%)	Burghers (%)	Malays (%)	Others (%)
12. Mannar*	8.1	50.6	13.2	26.6	0.0	0.0	1.4
13. Vavuniya*	16.6	56.9	19.4	6.9	0.0	0.0	0.2
Eastern							
14. Trincomalee	33.6	33.8	2.6	29.0	0.5	0.3	0.2
15. Batticaloa	3.2	70.9	1.2	23.9	0.7	0.0	0.1
16. Amparai	37.6	20.1	0.4	41.5	0.2	0.0	0.1
North Western							
17. Kurunegala	93.1	1.1	0.5	5.1	0.0	0.0	0.1
18. Puttalam	82.6	6.7	0.6	9.7	0.1	0.2	0.1
North Central							
19. Anuradhapura	91.3	1.4	0.1	7.1	0.0	0.0	0.1
20. Polonnaruwa	90.9	2.2	0.1	6.5	0.0	0.1	0.2
Uva							
21. Moneragala	92.9	1.8	3.3	1.9	0.0	0.1	0.0
22. Badulla	68.5	5.7	21.1	4.2	0.1	0.2	0.2
Sabaragamuwa							
23. Kegalle	86.3	2.1	6.4	5.1	0.0	0.0	0.1
24. Ratnapura	84.7	2.3	11.1	1.7	0.1	0.1	0.1
TOTAL	74.0	12.6	5.6	7.1	0.3	0.3	0.1

Source: Census Department 1981 Census.

*These three Administrative Districts have been combined as Wannu electoral district.

The composition of the Sri Lankan population by religion is as follows:

Buddhists	-	69.3%
Hindus	-	15.5%
Muslims	-	7.6%
Christians	-	7.5%
Others	-	0.1%

Source: Census Department 1981 Census.

Buddhism is the religion of the majority of Sinhalese, Hinduism is the religion of the majority of Tamils. Islam is the faith of Muslims while Christianity has several denominations and counts Sinhalese, Tamils and people from other minor ethnic groups as its followers.

Sinhalese use Sinhala language as their mother tongue while Tamils and a majority of Muslims use Tamil language as their mother tongue. English that was established as the language of administration during the British colonial period continues to gain popularity although Sinhala and Tamil have been declared as the official languages of administration.

2. The Electoral Process

The electoral process of a country is a fundamental component of its governance. It sets out the ways and means of selecting citizens' representatives and the terms on which they will be entrusted with right to manage the affairs of their country including the protection of citizen's democratic rights.

In Sri Lanka, the process of representative governance based on democratic principles had its beginnings in 1931 with the grant of adult franchise and came to its fruition with the grant of independence

in 1948. The legal basis is provided by the Constitutions that were adopted periodically and other legal enactments on various aspects of the process of representative governance including the electoral laws. The Constitution in force at present was adopted in 1978. So far it has been amended nearly 20 times.

2.1 Legal Provisions and Implications for Minorities

Some Constitutional provisions as well as other legal enactments have been cited as instances that have adversely affected the minorities in the electoral process. In one of a series of seminars held by the Council for Liberal Democracy¹³⁷, Dr. Chanaka Amaratunga and Dr. Rajiva Wijesinghe, while pointing out the importance of Proportional Representation (PR) in Sri Lanka's context, have shown that under the territorial representation based on plurality that was existing in Sri Lanka prior to 1978, Tamils and Muslims were not adequately represented in Parliament. They have pointed out that according to the distribution of population up to 1983, even though 55% of Tamils resided outside the Northern and Eastern Provinces no mainstream political party nominated a Tamil to stand for Parliament from a constituency outside those provinces. In the period since independence, no Burgher, apart from one exception (Mr. Pieter Keunaman) and no member of a smaller ethnic community was nominated to stand for Parliament, despite many members of such minorities reaching levels of considerable eminence in non-political fields of activity.

As the 1978 Constitution introduced the PR system it is argued that the anomaly described above has now been removed. However, at a workshop on the electoral system in Sri Lanka held at the Sri Lanka

¹³⁷ Ideas for Constitutional Reform edited by Dr. Chanaka Amaratunga pg 183 onwards.

Foundation Institute in 1985¹³⁸, it was pointed out that even under the PR System there is the possibility of minorities ethnic, religious or other communities whose distribution did not correspond to the demarcation of the electoral districts being adversely affected as a result of the high cut off points mentioned under paragraph 5 (a) of Article 99 of the 1978 Constitution.

Political analysts have pinpointed several other negative features of the PR system in Sri Lanka, which have led to the undermining of the democratic nature of the electoral system in Sri Lanka.

Firstly, the system makes the candidate dependent on the party for nomination. It solidifies party loyalty and diminishes member's individual responsibility to the electorate and the voter. It has diminished the independence of the member who is forced to vote according to the dictates of the party. According to Act. 19(3) of the Constitution members who resign or are expelled from their parties are liable to lose their seats in Parliament. Deficiencies in the internal democracy of political parties serve to aggravate this situation.

A second negative feature of the PR system is its contribution to the escalation of the competition in the electoral process leading to corruption, malpractices and conflicts. As the constituencies are fairly large, candidates have to cover a much larger area than before, meaning persons who have higher financial and other resources have a better chance of winning and are therefore more likely to be given nominations.

The violence and terror that have entered into the field of electoral competition prevent some sections like women and citizens with

¹³⁸ Report on workshop on Electoral Reforms in Sri Lanka held at SLFI on 5th and 6th July 1985 - item 10 on page 41 and item 11 on page 42.

low financial and other resources from assuming leadership roles in the process of governance of the country.

The application of the PR system for electing members to Local Authorities from 1987 has also been criticized as a method that negates the benefits expected under a system based on the principle of subsidiarity. The need for adjusting the governance system based on this democratic principle to better enable people to directly participate in the affairs of their areas has been widely accepted and proposals have been made that Local Authorities should be vested with powers and resources to manage the affairs in their localities on this basis. It has also been suggested that in this process the re-introduction of electing members on the ward basis would make the practical aspects of the principle of subsidiarity more beneficial to groups who are isolated in small localities like villages due to various socio-cultural factors as they will have a representative of their own to look after their interests.

Fourthly, the PR system in Sri Lanka has also been criticized as a system, which is the very antithesis of a structure that fosters and strengthens interdependence among communities. It not only perpetuates and facilitates division along ethnic lines among voters, but also carries the additional drawback of polarising the communities even within political parties. A critic of the PR system says – “it is no coincidence that political ‘ghettoisation’ through the formation and emergence of communal political parties has coincided with the introduction of the present PR system. It is also not a coincidence that heightened ethnic tensions have become common after the introduction of the PR system.”¹³⁹

¹³⁹ Javid Yusuf in *Nation Building – Priorities for sustainability and Inclusivity*.

The powers, functions and immunities of the Executive President under the present Constitution indicate that the person in that position can act untrammelled without the checks and balances available in a sound democracy. The President is the Head of State, Head of the Executive and of the Government. Article 42 of the Constitution mentions that the President shall be responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions under the Constitution and any written law but this has become largely notional. According to Article 38, the approval of two-thirds of the whole number of members will be necessary to unseat him. While it is granted that the presence of a Head of State of this position is a positive feature when factors like Sri Lanka's geographical location and economic, social and cultural situations are taken into consideration, there are arguments that the holder of this position could manipulate the process of governance and the electoral mechanisms with ulterior motives. Some instances where this has been done in the past have been pointed out by analysts of the governance process.

2.2 Political Culture

The influence of Sri Lankan political culture in the formulation of the present electoral process has contributed to the presence of certain negative factors which are considered as deviations from the accepted democratic norms. At the time of granting self-rule a unitary State with a highly centralized administration and an ethno-centric political system, which was majoritarian in character came into being. Thus, a political culture of a unitary State, a highly centralized administration and a majoritarian democracy was established. In this setting the composition of the political elite that was holding the reigns of governance underwent far-reaching changes. The number of politicians coming from the new

generation rapidly increased and gave expression to the values, grievances and expectations of the ethnic, religious and cultural mainstream. Many of these did not have easy access to the thought, literature and the practice pertaining to democratic ideology and value systems. There was no systematic effort directed at providing a broad-based political education in democracy to both politicians and the electorate. Consequently the political culture of the new institutions and practices absorbed values and patterns of behaviour from the larger culture. They were inconsistent with the values and practices of a genuine democratic system that lagged behind. The following principal core values that ought to govern democratic institutions got undermined due to this position.

- A non-partisan consensus on core national issues and societal goals;
- The freedom and tolerance of political dissent and political opposition;
- Free and fair competition for power within an agreed set of rules;
- The legitimacy of the opposition parties and their right to offer choices of alternative government to the electorate;
- Acceptance by the opposition of the legitimacy of the elected government during their term of office.

While many of these core values are embodied in the Constitution and Statutes, these values have not been fully absorbed into the political culture and do not find full expression in the political behaviour of politicians, their parties and their leadership.

The competition to acquire political power under the representative governance system that was introduced began to be based on factors

that enhanced the ethnic and other divisions in the society. The political parties tended to behave and act as though their rivals had no right to exist and compete for power. They almost failed to show magnanimity as ruling parties nor did they show a gracious acceptance of their defeat as opposition parties. This situation led to the increase of violence in politics mainly during pre-election and post-election periods. The politics in the period after the introduction of democratic institutions based on adult franchise in 1931 up to 1956 were conducted in a relatively peaceful environment. Apart from the post-election murders in Matale in 1936 no major acts of violence were reported. However, political campaigning and elections were not entirely free of intimidation and the use of force. Local elites in many electorates often used their social and economic power combined with the threat of violence to make it difficult for rival parties such as the left parties to mobilize support and bring their voters to the polls. The criminal elements and village bullies were drawn into these activities.

This latent violent atmosphere began to break out in ugly form after 1956. In 1959, the Prime Minister was assassinated. With the outbreak of ethnic riots in 1958 and the violent disruption of the democratic protest campaign of the Federal Party in Colombo, the violence against any opposition was used with impunity in the presence of the law enforcers.

In these events there were several far-reaching implications for the political culture and therefore, the electoral system of the country as a whole.

- The law enforcing authorities were not able or willing to act independently where the political party holding power seemed to condone violence.

- Non-activation of the due legal processes against offenders acted as a signal to political parties and their followers.
- The State was not willing to uphold the rule of law when the opposition, in this case the minority party was the victim of violence and the supporters of the ruling party were the offenders.

The overwhelming majority gained by the United National Party (UNP) in 1977 led to a regime, which showed scant respect to the opposition and used violence flagrantly against political opponents. The 1980s witnessed election malpractices and the use of force of a somewhat unprecedented nature. Obstructing election propaganda campaigns, prevention of voters from going for voting, impersonation, vote rigging, prevention of polling agents of opposition parties from performing their duties etc. were some of the election-related violent acts.

To bring the grave problem of escalating electoral violence to the nation's attention, PAFFREL under its mission of orienting society towards free and fair elections held a National Convention in Colombo on 30th April 2000 in association with the Marga Institute. Some details of the types of violence that took place at an election immediately prior to this event – namely the North Western Provincial Council election – were narrated at this convention. The Chairman of the UNP at that time who was the Opposition Leader of the North Western Provincial Council (PC) and the Chief Minister of the Western Province, at the time, representing the People's Alliance (PA) attended this convention on invitation from the organisers. At that convention where representatives from most of the prominent Civil Society Organisations (CSO) committed to the task of strengthening the democratic process were present, the chairman of PAFFREL at that time told the meeting, “while

the two main political parties must accept collective responsibility for the violence, what is happening is a fierce dispute between the two, as to who started the violence and who did more of it when in power”. He added “This approach only means that both parties – the PA and the UNP – would continue using various forms of force and violence when they come to power and justify it on the grounds that the other had done worse”¹⁴⁰.

The programme of this convention allowed a few victims of political violence to relate their harrowing experiences. A feature article entitled “**Never Again Those Ugly Scenes**”, published in *The Sunday Times* of 14th May 2000, and an editorial in *The Daily News* of 6th May 2000 under the caption “**Admirable Initiative**”, while acclaiming these Civil Society initiatives, described the gravity of the problem of political violence.

2.3 Groups that lose their Political Rights due to Electoral Violence and Malpractices

2.3.1 Women

Although women make-up more than half the population in Sri Lanka, their participation as candidates in elections is very low. Women’s representation in Parliament is only around 4%. Harsh and vituperative language used to attack opponents, mobilisation of persons with criminal backgrounds, threats and violence etc. that usually become a part of electoral campaigns prevent women from entering these contests to the same extent as men do. Although the Constitution guarantees equality to all citizens including women and recognises all rights such as freedom of speech, peaceful assembly,

¹⁴⁰ Report of the Workshop on Electoral System in Sri Lanka held at Sri Lanka Foundation Institute on 5th and 6th July 1985.

freedom of association etc. for citizens on an equal basis there are communities such as Muslims where women have restrictions on the basis of socio-cultural norms and practices. The violent culture in electoral campaigns would become a factor that prevents them from enjoying their democratic rights of participation in politics.

The Sinhala newspaper “Lakbima” of 25/01/2011 carried an interesting news item. The President of Social Development Organisation, P.Muttulingam, addressing the Women’s Front of that organisation told the audience that except for the single instance of a female Provincial Councillor there are no women representatives from the Indian Tamils or the estate sector in Parliament or in any of the Local Authorities. The reason adduced by the women in the audience was that unlike men, women cannot be enticed by offering bottles of liquor and, therefore, some politicians have a reluctance to sponsor women in estate areas to hold elected positions in representative bodies.

2.3.2 Other marginalised groups and voters in remote areas

In a report under the title “The Subversion of the Electoral Process in Sri Lanka” Janaki Perera has published the following data in respect of the Presidential Election held in December 1988 to show the differences in percentage of votes cast in a number of electorates.

Electorate	Electoral district	Registered voters	Total polled	% of voting
Hanguranketha	Nuwara Eliya	44,596	37,705	84.42
Hewaheta	Mahanuwara	42,868	34,374	80.1
Dambulla	Matale	72,515	7,710	10.63
Minneriya	Polonnaruwa	50,128	4,725	9.43
Moneragala	Moneragala	51,823	3,373	6.51
Hakmana	Matara	65,407	2,913	4.45

She says, “Of course, this could mean that the mass of the people in some regions were not very interested in the elections. But for those who know the country this seems highly unlikely. Especially so in Hakmana, where voter participation in the 1960s and 1970s had been: March 1965, 85.23%; July 1965, 78.34%; 1970, 85.95%; 1977, 87%. This would then make the reported 1988 turnout of 4.45% rather impossible.”¹⁴¹

The author does not come out with a clear reason or reasons for the drop in the percentage of votes in the example she has analysed.

Quoting Campaign for Free and Fair Elections (CAFFE), the Sinhala medium weekend Newspaper “Lankadeepa” dated 17/07/2011 reported the situation and some incidents in the North during the pre-poll period of the Local Government Election held in July 2011, as follows.

“A Local Government Election is held in the North after 25 years. Yet even after 25 years, the space available for the residents there to freely engage in political activities is low. We found that the political freedom of residents in Jaffna, Mulativu and Kilinochchi has reduced. Political party activists also appear to have become helpless. The first meeting of the Tamil National Alliance held at Alaweddi in Jaffna came under attack. There were security arrangements at the second, third and fourth places where meetings were held. In one of these, there was a widespread search operation. As a result, there was a decrease in people attending for these meetings.

¹⁴¹ The subversion of the Electoral Process in Sri Lanka”, pg 1, by Janaki Perera.

There was an incident where excreta were thrown at the resident of a TNA candidate in Jaffna. In the context of the cultural factors in Jaffna this is considered an insulting act.

A dog domesticated by a TNA candidate named S.X. Sivakumar was killed and its head was hung on the fence of the candidate's house.

A wreath was found to have been placed at another house.

It was clear that these attacks were carried out in an organized and subtle manner with a view to create fear among the candidates. Activities of the JVP and UNP were also obstructed.”

This note recorded in this newspaper concludes with the following statement made by Mr. Kirthi Tennakoon, Director of CAFFE.

“The right of expressing views by the candidates and the people has been clearly violated. There are no fundamental rights in the North. Majority of them do not have the National Identity Cards. We went and took action to issue Identity cards to about 1500 before the election”.

2.4 Deficiencies in the Voter Registration Procedure

In Sri Lanka, the register of voters is revised every year. This process has to commence in June. PAFFREL in association with the National Democratic Institute and the Department of Elections published a monograph giving the legal provision relating to qualifications for registration, revision procedure, shortcomings in the existing procedure, proposals to reduce such shortcomings and the roles and responsibilities of voters and the political parties. The

purpose of this publication was to draw the attention of the public and the authorities to the need of eliminating the shortcomings and strengthening the present procedure.

After observing the work related to the revision of the voter register for 2010, PAFFREL brought the following deficiencies to the notice of the authorities.

- a. Non-receipt of necessary forms by voters in many areas even up to 14th July 2010 although the revision work commenced officially in June and the first phase was expected to end by 31st July. This problem was pertinent especially to the Northern areas and the District of Colombo.
- b. Non-filling of vacancies in the Grama Niladhari (GN) Cadres, non-availability of voters in their places of residence, lethargy on the part of voters in filling forms were some of the problems in this revision exercise. Lack of ability due to poor literacy on the part of some persons in remote areas to fill the BC forms was also an issue.
- c. Failure on the part of some GNs to issue receipts when completed BC forms are accepted.
- d. Refusals of GNs to enter names of persons temporarily abroad, to issue BC forms to those living in rented homes or those who shifted to new houses unless they bring letters of GNs from the original places. This has particularly affected the IDPs in the North who are living with their relatives. When this was brought to the notice of the Commissioner of Elections, he informed PAFFREL that he would rectify these shortcomings.

2.5 Misuse of State Resources and Public Media

Although the ways the State resources and the public media used by the ruling parties in electoral campaigns were violations of the laws relevant to such elections, authorities responsible for the application of such legal provision were helpless to take legal provision or remedial measures due to political interference and the fear of reprisals. PAFFREL in its report regarding the Presidential Election of 2005 noted¹⁴²:

“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”.

With a view to strengthen the enforcement of legal provisions in several important areas, Sri Lanka adopted the Seventeenth Amendment to the Constitution in 2001. In the field of elections, it was expected that an Election Commission will be set-up in place of the present Elections Commissioner. However, owing to the failure to nominate members to the body responsible for setting up the Election Commission – viz. the Constitutional Council, the intended Election Commission did not become a reality until the amendment itself was repealed by the 18th Amendment.

¹⁴² Observations report on Presidential Election 2005 – pg 7 heading 1.5 “Misuse of State Property and Resources”.

However, at the time of the General Election in 2004, in terms of the provisions in the Seventeenth Amendment, the Election Commissioner took some steps to regulate the activities of two State media Organisations – viz. Sri Lanka Broadcasting Corporation and Sri Lanka Rupavahini Corporation – by appointing a Competent Authority to enforce the guidelines issued by him. When the two media Organisations challenged these guidelines, the fact that the Supreme Court rejected the interim relief prayed for is a positive development¹⁴³.

2.6 Loss of Voting Opportunities Due to Lack of Facilities

(a) Internally Displaced Persons (IDPs)

The inability to exercise their democratic right to cast their vote was one of the significant difficulties faced by persons resident in areas affected by the civil war that was raging in the Northern and Eastern parts of Sri Lanka. The inability to be registered as voters as the registration procedure could not be implemented by the election authorities, the non-availability of documents to prove their identity and the shifting to temporary camps outside their permanent areas of residence were some of the factors that led to the denial of this basic democratic right of the IDPs.

Another significant result of this civil war was the creation of a large number of female-headed households. A report on IDPs prepared by the Consortium of Humanitarian Agencies for the

¹⁴³ PAFFREL Report on 2004 General Election pg 9, Other media reports.

Human Rights Commission puts the numbers of such households as below:

Vavuniya	-	820
Jaffna	-	288
Trincomalee	-	158
Ampara	-	60
Mannar	-	58
Batticaloa	-	48

These households have become a minority group that is liable to lose their democratic right of participating in the electoral process. In fact PAFFREL, in its report on the Presidential Election 2010, stated that owing to a break down in transport facilities provided by the Sri Lanka Transport Board, to transport voters from Arunachalam and Ramanthan relief villages at Cheddikulam in Vavuniya, many voters could not come to the Kilinochchi Cluster Polling Station before the closure of the poll and thus could not cast their votes.

Another significant matter that the voting statistics pertaining to the Local Government Elections held in July 2011 reveal is the comparatively high rates of rejected votes in areas where the IDPs are residing. In Kilinochchi it was 10.70%, Mulativu it was 9.85% and in Jaffna 8.57%. The election monitors believe that this may have been due to the secluded and restricted life that the IDPs are compelled to undergo especially in camps where they do not get updated knowledge and information and have poor electoral literacy¹⁴⁴.

¹⁴⁴ PAFFREL Report on 2011 Local Government Elections.

(b) Others

Lack of transport and the inability of procuring private transport facilities for elders, invalids, pregnant mothers etc. in marginalised groups especially in rural areas to come to polling stations to cast their votes may prevent them from exercising their voting right.

In summary, even though Sri Lanka does not impose any significant *de jure* obstacles or directly discriminate against any particular section of citizens in terms of the electoral process, there are however many aspects of the political culture and electoral practices that impacts minority communities, women and other disadvantaged communities negatively. Various proposals have been made by CSOs and by the authorities charged with the implementation of the present electoral process to how these and other problems may be addressed.

3. Proposals by Civil Society Organisations

At a dialogue sponsored a few years ago by PAFFREL together with the Centre for Monitoring Election Violence (CMEV) and the Centre for Policy Alternatives (CPA) the following recommendations were made:

- Ensure that at least 30% of elected positions are filled by women. It has been suggested that to remove the impediments faced by women, the political parties should take steps such as increased training, education, and funding for women candidates etc.
- Ensure that constituency or voting area boundaries do not negatively affect minority populations (such as by splitting minorities for purposes of vote gains etc.)

- Ameliorate the difficulties of obtaining National Identity Cards (NIC) by some citizens, especially the Indian Origin Tamils in Plantation areas, have led to the loss of their voting rights. It was pointed out that during the last Presidential Elections many could not vote due to the lack of identity documents. PAFFREL in its final report on the Presidential Election 2010 has recommended that the process of issuing Identity Cards to these citizens should be expedited.
- Some of the other recommendations that have been made by citizens' Organisations to rid the electoral process of its other weaknesses are as follows:
- The 17th Amendment to the Constitution should be re-enacted and its provisions including the setting up of independent commissions should be implemented.
- To counter the widespread abuse of public resources and State media by the Government in power for the benefit of its candidates contesting elections, the following steps have been proposed to empower the Election Commission appointed under the 17th Amendment, to curb these abuses.
 - To take into custody or otherwise deal with any movable public property abused or likely to be abused for election propaganda,
 - In the case of immovable property so abused to prohibit the usage of such property for electoral propaganda,
 - To bring any person violating the orders to justice,

- To get police assistance to enforce orders,
 - To give directions to heads of public institutions and, if necessary, to inspect the property or premises of such institutions,
 - To appoint a competent authority to regulate the media to act in a balanced manner.
- The Election Commission should be vested with power to annul candidacies who violate electoral laws. Though the existing laws can prevent persons with criminal records or recent convictions from standing for elections, it is essential that such laws are enforced.

Laws relating to the declarations of assets by candidates have to be revised to remove ambiguities. There should be rules requiring candidates and parties to declare their campaign expenses and limits should also be set on such spending.

- A code of conduct for election campaigning should be established with provisions for sanctions against parties and candidates who violate the code.

4. Proposals by the Election Commissioner¹⁴⁵

The recently retired Election Commissioner who enjoyed a long spell of service in the Department of Elections appeared before a special Parliamentary Select Committee to consider Electoral Reforms and made the under-mentioned proposals:

¹⁴⁵ Interim Report of Parliamentary Special Committee on Electoral Reforms.

A. Registration of Voters

Necessary legal provision should be made to continuously update the voter register to enable all eligible voters to get enrolled, up to a date very close to date of the elections.

B. Mandatory Re-election in case of an annulment

Re-election be made compulsory in the event of an annulment by repealing the requirement of consultation with political parties for such a decision.

C. Date of the Elections

It has been proposed that the present legal framework should be changed to vest the Election Commission with the power to fix dates for Referendums, Parliamentary Elections and Presidential Elections instead of vesting that power with the Executive President.

In order to minimise the election expenses of candidates and reduce administrative costs in connection with the maintenance of law and order during the period of electoral activities, electoral activities that begin after the conclusion of the nominations should not be extended beyond five weeks.

D. Police Clearance Certificate

Necessary laws should be made to make it mandatory for the candidates to submit along with their nominations, a police clearance certificate to the effect that there are no criminal charges against them.

E. Assets and Liabilities Declaration

Filing a statement of assets and liabilities at the time of handing over the nominations should be made compulsory.

F. Code of Ethics

It is recommended that necessary legal provision should be instituted to ensure that during an election all candidates, parties and their leaders and cadres as well as elected representatives follow a code of ethics.

G. Prevention of Meaningless and Fraudulent Candidacy

As it was seen, in recent elections there were many instances of meaningless and fraudulent candidacies. It is proposed that there should be constitutional provisions to prevent that habit.

It is recommended that the nomination of every candidate should be attested by a proposer (a registered voter) and a seconder (a registered voter) of the relevant electorate. To prevent the inclusion of fraudulent names of candidates the NIC number of every candidate should be included in (his/her) nomination paper.

H. Security Deposit

It is recommended that legal provisions be enacted for establishing the need of keeping a security deposit for every candidate in order that nominations for elections be tendered separately. It is further recommended that the difference in the values between sums that must be deposited by the candidates coming from accepted political parties and the candidates coming from other parties and

independent groups be removed and all candidates should tender an equal sum as the security deposit.

I. Election Petitions

As the time for raising objections for nominations prior to the elections is limited, it has been observed that there are impediments in the proper functioning of that procedure. Therefore, it is recommended that legal provision be made to allow the election petitions to be filed only at the end of the election.

J. Extra Authority to Enable the Issue of Orders at Unspecified Instances

It is proposed that the Commissioner/Commission be empowered to issue orders/direction in unforeseen circumstances to address any question or matter in respect of which there are no clear provisions in the respective election laws.

K. An Atmosphere Conducive for an Election

The Police Commission in consultation with the Elections Commissioner should clearly decide and issue instructions regarding the role and duties of police officers so that they would not be idle and inactive when on election duty.

L. Obstructions at Polling Stations

The Elections Commissioner is of the view that legal provisions regarding obstructions at polling stations (Sec. 48 (a) of Parliamentary Elections Act), (46 (a) of Presidential Elections Act), (46 (a) of Provincial Councils Elections Act) should be further amended and they should also be incorporated into the Local

Authorities Elections Act. It is proposed that legal provisions are needed regarding the following matters that could arise on the polling day and the day before:

- i. If the poll cannot be held due to a reason beyond the control of the presiding officer.
- ii. If one or more of polling agents are threatened, assaulted or chased away while the poll is in progress.
- iii. If the polling staff do not arrive at the polling station due to an obstruction to their arrival.
- iv. If the peace in the polling station breaks down in a manner that makes it impossible to take the vote.
- v. If some person casts his/her vote forcibly.
- vi. In any polling station where the poll is not genuine, free reasonable or secret, the Commissioner will use his power and cancel such a poll.
- i. Necessary arrangements should be made to postpone the poll and also to conduct the new poll on a day not later than fourteen days from the day fixed for the poll.

M. Filling of vacancies (Parliament, Provincial Councils and Local Authorities)

In filling a vacancy, the Party/Independent Group or the Commissioner cannot implement their wish, other than declare the next person first in order of the results list but who had not been declared before to fill such a vacancy. Accordingly, the Returning Officer of the relevant Electoral District/Elections Commissioner will take suitable action. However, there is inconsistency in the provisions of the Provincial Councils Elections Act and the Local

Authorities Elections Ordinance, where the Returning Officer should consult the secretary of the political party to which the person who vacated the office belonged to, in order to nominate a suitable person. It is recommended that similar provisions be enacted to bring in the said Laws in line with the principles governing the filling of vacancies in respect of Parliament seats.

N. Limitations in Respect of Candidates

It is proposed that from the declaration of the poll until its end, Ministers and other relevant power holders should refrain from the following acts:

- i. Announcing a promise or a grant of any other financial award.
- ii. Laying foundations or starting any type of projects or programmes.
- iii. Make promises like construction of roads, supply of drinking water etc.
- iv. Make appointments in government or in the private sector in a way to influence the casting of votes in a manner that is beneficial to the party in power.
- v. Ministers of Central or Provincial Government entering a polling station or a counting centre other than as candidates or voters or accredited representatives.

O. Election Expenditure

According to the view of the Election Commissioner to prevent or reduce the influence of financial power in elections the following steps have to be taken. As it is expected to introduce the First-

Past-the-Post system of elections the supply of funds from the government on the proportion of 50 cents per vote received at the last election should be abandoned and made mandatory for the parties and independent candidates to act compulsorily according to the following parameters:

Every political party recognised by the Commissioner/Commission should publish its accounts annually and such accounts should be audited by agency institutes especially named by the Elections Commissioner/Commission.

Without the written authority of the relevant candidate or his polling agent no society or group of persons (other than a recognised political party) be allowed to make any election expenditure and if such a power has been given such expenses should be included in the relevant candidate's account of expenditure. Anybody who violates these provisions should be subject to punishment.

Any type of person as mentioned above if proved guilty should be declared as ineligible to be a Member of Parliament or any constitutional council for a period of seven years.

Any candidate who fails to handover his statement of expenditure to the Returning Officer within the recommended time period should automatically become disqualified for seven years from the date of the last day of submitting such reports.

P. An Incorporated Elections Act

To achieve the objectives of holding free and fair elections and referendums, elections laws have to be reviewed and amended. Therefore it is recommended that all elections laws should be

consolidated into one statute for the conducting of all types of elections.

Q. Standing Committee on Universal Franchise and Elections

It is clear that in some countries a standing committee on elections and universal franchise has been set up to maintain a continued dialogue to consider suitable amendments to elections laws. In Sri Lanka too there should be a similar programme to bring about suitable amendments to elections laws without long delays.

It appears that most of the above recommendations made by the Elections Commissioner are solutions he proposes to the problems pinpointed by the CSOs and the problems that he himself has experienced. The Parliamentary Special Committee on Electoral Reforms has recommended that necessary amendments to the legal framework should be done to implement these recommendations. In addition this committee has made the following recommendations to improve the electoral process.

i. Parliamentary Elections

The introduction of a system combining the First-Past-the-Post-system and the Proportional Representation System.

ii. Provincial Councils Elections

A system similar to the one proposed for Parliamentary elections.

iii. Local Authorities Elections

To redesign the boundaries of Local Authorities to make them smaller than the ones at present in terms of area and population to ensure:

- Peoples participation,
- Increase ability of management,
- Diversification of development,
- Development of the economic needs in the area, and
- The democratic participation of minority communities.

iv. Women's Representation in Politics

Political parties should include in their policies arrangements which ensure the granting of nominations to women.

Legal provision should be made to ensure that out of every three persons named by a Party Secretary from the national list, one should be a woman.

v. Electronic Voting Process

In addition to the recommendations forwarded to Parliament on 23/1/2004 by the Electoral Reforms Special Committee appointed on 28/8/2003 this Committee has recommended that a method of electronic voting should be introduced.

This method would reduce expenditure on human labour during election times and also improve the efficiency of counting votes and reduce delays in the declaration of results.

vi. The System of Postal Voting to be Altered to a Pre-Voting System

The proposal is to make special arrangements to enable those eligible to apply for the present method of postal voting to cast their votes at centres arranged by officials appointed by the Election Commissioner/Returning Officer. The date for pre-voting should be a date not 14 days before and five days after the poll.

vii. Recognition of Political Parties

As the present legal provisions are not adequate, necessary amendments have to be introduced.

5. Conclusion

As the Special Committee in Parliament has endorsed these recommendations, there is hope that the government would take necessary steps to implement them. In the meantime, CSOs and the media have an important role to stimulate the authorities to expedite this task.

Once these recommendations are implemented with the necessary legal backing, the electoral process would be free of most of the present undemocratic features that have been detrimental to some minority groups.

The Election Commissioner's proposal to redesign the boundaries of Local Authority areas to make them smaller and the CSO proposal that in re-demarcating boundaries of electoral areas should not be disadvantageous to minorities and should have the interests of minority groups in view. When the Local Authority areas are

made smaller, groups, which have common interests based on ethnic, religious or other factors, can get an opportunity to assume leadership in such Local Authorities.

The proposal to make legal provision to update the registry of voters to register all those who become eligible up to a date very close to the Election Day could also benefit groups such as IDPs who will get an opportunity to register themselves in their new locations.

However, this by itself would not bring about a lasting solution to the communal grievances and misgivings unless a political system internalising core values of democracy is developed.

In a recent publication entitled “**Nation Building – Priorities for Sustainability and Inclusivity**” edited by Gnana Moonasinghe, a multi-disciplinary and multi ethnic team of writers have analysed the situation in the country and made valuable suggestions outlining the priorities for building an inclusive and sustainable Sri Lankan nation.

The following extract from the Editor’s Note in this publication hints at the best path that should be adopted.

“This publication is a response to the post war dilemma of how best to bring together the different communities and build a nation on strong foundations, of inclusivity, fairness, justice, equality and contentment for all. In nation building, the essence of coming together is to build personal, communal and national relationships, creating the environment for understanding each other, for forming

and holding close bonds of affection, trust and respect. The end of the war will come to naught if facilitation is not provided to find means of purging the people, irrespective of majority minority differentiations, of the bitterness, anger, misunderstandings and pain, experienced from the post 1956 years up to now”.

References

1. The Constitution of the Democratic Socialist Republic of Sri Lanka – 1978.
2. Parliamentary Elections Act No. 1 of 1981.
3. Report of the Workshop on Electoral System in Sri Lanka held at Sri Lanka Foundation Institute on 5th and 6th July 1985.
4. Ideas for Constitutional Reform – edited by Dr. Chanaka Amaratunga.
5. The Changing Face of Electoral Politics in Sri Lanka (1994-2004) by Professor Laksiri Jayasuriya.
6. The Subversion of Electoral Process in Sri Lanka by Janaki Perera.
7. Revision of Voters Register in Sri Lanka – Published by PAFFREL Sri Lanka.
8. Final Report on the Abuse of Public Resources During the Presidential Election – 2005 - by Transparency International Sri Lanka.
9. From Dialogue to Action: Recommendations and Strategies for Electoral Reform in Sri Lanka – PAFFREL and CMEV.
10. PAFFREL's Final Report on the Presidential Election – 2010.
11. PAFFREL's Final Report on the Parliamentary Election – 2010.
12. Interim Report of Parliamentary Special Committee on Electoral Reforms.
13. Nation Building – Priorities for Sustainability and Inclusivity – Edited by Gnana Moonasinghe.

Organisations engaged in or responsible for election related and minority rights-related activities within Sri Lanka

Centre for Policy Alternatives (CPA) 24/2, 28 th Lane Off Flower Road Colombo 7.	- 2565304
Centre for Society and Religion (CSR) 281, Deans Road Colombo 10.	- 2672065
Centre for Women's Research 222/4, Kirula Road Colombo 05.	- 2368965
International Centre for Ethnic Studies (ICES) 2, Kynsey Terrace Colombo 08.	- 2679745
National Peace Council of Sri Lanka (NPC) 12/14, Purana Vihara Mawatha Off Dutugemunu Street Colombo 06.	- 2818344
Institute of Policy Studies (IPS)	- 2448212
Consortium of Humanitarian Agencies (CHA)	- 46106943
Law and Society Trust	- 2691228

International Movement Against All Forms of Discrimination and Racism	2682505
Institute of Human Rights	2502810
Movement For Defence of Democratic Rights (MDDR)	2873775 2865655
Rights Now	2822375
Sarvodaya Legal Aid Division	2647159
Women and Media Collective	2690201, 2809343
Peoples Action for Free and Fair Elections (PAFFREL)	2514441/2
Centre for Monitoring Election Violence (CMEV)	2673032
Marga Institute 941/1, Jayanthi Mawatha Kotte Road Ethul Kotte.	2888790/1

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 realization 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 organisation's executive body while the membership committee oversees enrolment of members. The SAHR Chairperson and Co-Chairperson are Hina Jilani and Dr. Nimaka Fernando respectively. The Secretariat is located in Colombo, Sri Lanka. Chapter offices are located in Colombo, Dhaka, Kabul, Kathmandu, Lahore and New Delhi.

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