

Constituent Assembly Election in Nepal: A Comparative Perspective

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The reinstated House of Representatives consists of 209 members drawn from the HoR and the National Assembly and ratified by the Interim Legislature consisting of 330

members. The interim constitution envisages a constituent Assembly of 425 members, which will have 409 elected members and 16 as nominated ones. Out of 409, 205 will be elected from the existing constituencies on the basis of First Past the Post electoral system and 204 will be elected proportional representational system based on Mixed system.

An electoral system can be defined as a part of the legal process, which deals with the final decision to determine as to who is elected to the position for which the election is held. In politics, it also determines the means by which votes are translated into seats in the process of electing politicians into office. It is believed that a given electoral system may not necessarily work on similar lines in different countries. As a result, hardly any two countries have the same electoral system without any variations. (Mishra, Birendra Prasad, Electoral Process, Nepal Conflict Resolution And Sustainable Peace, p –11, pub. by IIDS Kathmandu, Nepal, First Edition, July 2006.)

Politically, elections are generally needed to elect representatives to form an elected government. However, elections are also necessitated to elect a constituent assembly to have a constitution drafted and passed by the representatives of the people elected through free and fair elections. It is significant to mention here that although the main purpose of any election is to choose representatives, yet at times just and real representations are not guaranteed. As in First Past the Post system whosoever gets the maximum votes is elected irrespective of the fact that majority of votes remain unrepresented. Hence, for selecting an electoral system, the dynamics of electoral systems have to be considered seriously.

Some of the dynamics of elections are referred to hereunder:

1. With some common experiences in different regions of the world, it is found that the effect of a certain electoral system depends greatly on the socio-political context in which it is used. A multi-regional, multi-religious, multi-lingual, multi-caste country must use the electoral system as a tool of managing caste conflicts by providing them with proper representation.
2. Electoral system is an easily manipulative political institution for good or bad results as it is very effective in translating votes cast in an election into seats in the elected house. It can effectively determine as to who is elected and which party gains power as even with exactly the same number of votes for parties. One electoral system might lead to a coalition government while another might allow a single party to assume majority control.
3. Electoral systems can influence the relation between the representative elected and the electors who elect him to represent them in the manner they (electors) choose to be. Hence a relation between the elected and the elector is also a vital factor to be considered.
4. An electoral system shows its effect on conduct of election. In a particular system there is no need of holding by-elections that reduces the cost of election, but forces voters to elect a selected candidate of a party as no alternative is left before them but to choose the candidate already chosen by the party itself.
5. An electoral system should be such in which groups should not confine to their

own folks alone for votes and support, but go beyond their caste or group boundaries, creed, language, and regions etc. broadening their support base and mind-set reflecting an inclusive democracy. They may encourage, or obstruct, the forging of alliances between parties to provide incentives for parties and groups to be broad-based and all-inclusive or accommodating, or to base themselves on narrow appeals to regionalism, ethnicity or kinship ties etc.

6. Significantly, the power and role of prime minister and of opposition determined in a constitution can also shape the form of an electoral system. A political system, whether it is a presidential or parliamentary or, may demand a particular type of electoral system to be adopted. A constituent assembly election may require another type of electoral process to be adopted.
7. Complexities of the act of voting are always an important dynamics of an electoral system, particularly, in societies where a substantial number of voters are inexperienced.
8. A simple form of an electoral system has its own merit. An electoral system should be such, which can be understood easily even by illiterate voters, who cannot read and write the number, etc.
9. There are electoral systems where there is no room for independent persons to contest the election debarring popular sentiments and feelings to be represented in the legislature.

Every system has its own dynamics, which should be made the very foundation of making decision in the context of the country, which is going to have an electoral system or is in need of changing the existing electoral system. It must be ascertained as to which of the requirements or aspirations of the people are to be fulfilled by choosing an electoral system.

Electoral systems prevalent in the democratic world:
(Based on IDEA New Handbook on Electoral System Design)

No two countries have the same electoral system without any variation. Hence, there are dozens of electoral systems prevalent in the world. Scholars have divided the electoral systems differently. The most common way of dividing electoral systems is as follows:

1. Plurality system/ Majority system
2. Proportional Representation System
3. Semi Proportional System
4. Other Systems

A system based on the Plurality has a number of variations in voting pattern:

1. A. First Past the Post system(FPtP)

In this system, the candidate who secures the highest votes is elected. It is not necessarily required to get the majority of votes. Hence it is also called "Relative Majority or Simple Majority or Single Member Simple Plurality " system. In it, only one candidate is elected from one constituency. It is, therefore, also called "Single Member

Constituency system". In this system, the voter expresses his choice by putting a designated mark on the ballot paper before or after the name or symbol of the candidate. By-elections are held to fill the vacated seats. This system covers almost 43.55% of the world population and 47 nations out of 199 nations in the world.

1. B. Block Vote System (BV)

It is a kind of FPtP system. In this system too, the Candidate, who gets the highest vote, is elected, but the constituency is multi-member, in contrast to single member constituency. In it, a voter gets as many ballots as there are seats to be filled. They may use as many, or as few, votes as they wish. This system is prevalent in 15 countries covering 32 million people.

1.C. Party Block Vote System:(PBV)

Like FPtP, voters usually have a single vote in this system, but on the contrary, like Block Vote system, the constituency is multi-member. Voters choose between party lists of candidates rather than individuals. The party, which wins most votes, takes all the seats and its entire list of candidates is duly elected. There is no need of winning an absolute majority of the votes. This system is prevalent in 4 countries (see Appendix) covering 30 million people making 0.8% of the total population 4939 million of 199 nations.

Majority System

A system based on Majority principle has three different forms:

A. The Alternative Vote System:(AV)

Like Plurality system, this system is used in single member constituency. But, voters are provided alternatives for expressing their choice on the ballot papers. They can register their choices in order of their preferences by putting numbers serially. This system is, therefore, also known as "Preferential Voting System". To get elected a candidate has to secure more than 50% of votes even by one vote. If no one gets the absolute majority, the candidate who gets the lowest votes goes out of counting and his second preference votes are counted and distributed among the rest. This process is continued till one of them gets the absolute majority. This system is used in Australia and Nauru. It was also used in Papua New Guinea between 1964 to 1975. It is used in 3 countries covering 26 million people forming 0.5% of the population of the 199 countries.

B. Round or Run-off System:(TR)

This is the most popular and accepted form of Majoritarian System. It is also known as double-ballot system. Every name has its own significance. It is an electoral system, which gets completed in two rounds within a week or two. Its first round is completed in the manner the FPtP is completed. If any candidate secures an absolute majority, he is declared elected immediately. If no body gets absolute majority the second round of voting takes place and the candidate securing the highest votes is elected. The process of conducting the second round is varied. In France, any candidate, securing votes of over 12.5% of the registered electors in the first round, are eligible to contest in the second round. Whoever wins the highest numbers of votes is then declared elected,

whether he/she has won an absolute majority or not. The two-round system is in vogue in 22 countries for 409 million people making 8.3% of the population of the 199 countries, for national parliament and is more common method for electing presidents. It is the third most popular system.

C. Supplementary Vote System:

This is the third form of majority system. This system stands between the Alternate Vote System and the Two-Round System. Like Alternate vote system, voters express their preferences on the ballot papers. If no candidate secures absolute majority on the basis of his first preference votes, all candidates are eliminated except the two who have secured the first and the second highest votes and the preferences of the eliminated candidates are distributed among the two. One who gets more votes is declared elected. This system may be called as 'Round-off' system. It is used in Sri Lanka's presidential election, and in the election of Mayor of London in 2000.

2. Proportional Representation System (PR):

Towards the end of the 19th century, several countries of Western Europe switched over to this system from FPTP system. After the collapse of the Soviet Union, not only Eastern European countries, but also its Asian states chose to adopt this system. Most of these countries are relatively more developed, having less gender bias with high levels of literacy and education. This system is a common choice in many new democracies. It is prevalent in many Latin American countries and one third of South Africa. There are 70 countries, which have adopted this system affecting 23% of the world's population. The main rationale behind its popularity is the real and conscious translation of national votes received by the political parties into a corresponding proportion of seats in parliament won by them. Seats are generally allocated within regionally based multi-member districts; the parliamentary seat distribution is effectively determined by the overall national votes.

Generally, the grounds for overall PR results are district magnitude and the threshold for representation. The greater the number of representatives to be elected from a district, and the lower the required threshold for representation in the legislature, the more proportional the electoral system will be, and the greater chance small minority parties will have of getting representation.

There are some variations in application of this system in different countries. There is a range of choice within the system, such as, use of one or two tiers to allocate seats, lists to be kept open or closed or free. Countries allocating seats on tier use only national lists or entirely regional lists. Single Transferable Vote (STV) is used as a one-tier allocation. Two-tier allocation includes both national and regional lists.

Systems coming under PR systems are of two types.

2.A. List Proportional Representation System (LPR):

There are 70 countries identified as using PR system till 2004 which covers about 23% of the population of the 199 countries. Generally, in this system, each party presents a list of candidates to voters, voters vote for a party, and parties receive seats in

proportion to their overall share of the national vote. Winning candidates are taken from the lists (national or regional) in order of their position on the lists.

2.B. Single Transferable Vote System (STV):

It has been advocated as the most attractive electoral system, but its use for parliamentary elections has been very limited. It uses multi-member districts, with voters ranking candidates in order of their preferences on the ballot paper in the same manner as it happens in the AV system. In most cases this preference making it optional. Voters are not required to rank-order all candidates; if they wish they can do that. After the total numbers of first-preference votes are tallied, the count then begins by establishing the "quota" of votes required for the election of a single candidate. Any candidate, who has more first preferences than the quota, is immediately elected. If no-one achieves the quota, the candidate with the lowest number of first preferences is eliminated and his/her second preferences being redistributed to the candidates left in the race. The surplus votes of elected candidates are also redistributed according to the second preferences marked on the ballot papers. For fairness, all the candidates' ballot papers are redistributed, but each at a fractional percentage of one vote, so that the total redistributed vote equals the candidate's surplus votes. This process continues until all seats for the constituency are filled. It is used in Ireland and Malta covering only 4 million populations making mere 0.1% of the population.

3. Semi- Proportional Systems

It is an electoral system which translates votes cast into seats won in a semi proportional way. In other words, the translation of vote cast into seats won falls between the proportionality of Proportional Representation system and the plurality-majority systems.

Systems falling under this category are of two kinds.

3.A. Mixed Member Proportional System: (MMP)

It is a form of PR system, which seeks to combine the merits of both Majoritarian and PR system. A proportion of the parliament is elected by plurality-majority methods, usually by FPTP (single member district), while the rest is constituted by PR lists. This provision appears similar to that of Parallel System, but there is a crucial distinction between the two. Under MMP the list PR seats compensate for disproportionality produced by the district seat results, as they would be awarded enough seats from the PR lists to bring their representation up to approximation. This system is used in 9 countries covering 299 million-population making 6% of the total population of the 199 countries. Out of 9 countries, 8 countries use FPTP system and one (Hungary) uses TR system.

Table 1

Country	No. of PR Seats	No. of Puerility/Majority (or other) seats	Plurality/Majority (or other)System	Total No. of seats
Albania	40 (29%)	100 (71%)	FPtP	140
Bolivia	62 (48 %)	68 (52%)	FPtP	130
Germany	299(50%)	299 (50)	FPtP	598
Hungary	210(54%)	176 (46%)	TRS	386
Italy	155 (25%)	475 (75%)	FPtP	830
Lesotho	40 (33%)	80 (67%)	FPtP	120
Mexico	200 (40%)	300 (60%)	FPtP	500
New Zeeland	55 (46%)	65 (54%)	FPtP	120
Venezuela	65 (39%)	100(61%)	FPtP	165

Source: Electoral System Design: The New International IDEA Handbook,P 91, 2005.

Broadly, there are three types of division of seats in MMP system. First, Seats under both components are equally divided as in Germany. Secondly, seats under PR component are less than the FPtP component as in Leshotho. Thirdly, Seats under PR component are more than the seats under FPtP component as in Hungary.

3. B. Parallel System:

This system has emerged recently in 1990s. It combines the benefits of both the systems of List Proportional Representation system and the single member constituency system. It is also known as Mixed System as it uses two systems simultaneously. It uses both PR lists and other systems. In this system, unlike Mixed Member Proportional System (to be explained later), the PR lists, do not compensate for any disproportionality within the Majoritarian districts. It is used in 21 nations (see Appendix) covering 773 million population making 15.7% of the population of 199 countries. All of them use PR lists with varying from 25 seats in Albania (18% of seats) of the House to 113 seats in Somalia (92% of seats). Out of 20 countries, 11 countries adopt the FPtP system, 4 adopt Two Round System, 3 adopt Party Block Vote system, 1 adopts Block Vote and another one adopts the Single Non-Transferable Vote System as another parallel systems.

4. Other Systems:

There are some other systems, which are used in some countries.

4. A The Single Non-Transferable Vote System (SNT):

In this system, the voter has only one vote to cast, but there are many seats to be filled in each constituency. Those candidates with the highest votes fill these positions. It was used in Japan from 1948 to 1993. It is used in 4 countries, covering 34 million people making 0.7% of the population

4. B. The limited Vote System (LV)

This system is an improvement upon the Block Vote system as a voter can choose another party's best candidate as well. Like SNT vote system, the Limited Vote system is a plurality/majority system used in multi- member constituency. In this system, unlike SNT vote system, voters have more than one vote, but fewer votes than there are seats to be filled or representatives to be elected. Counting is similar to SNT vote system, i.e. the candidates with the highest votes win the seats. This system is used in Gibraltar and for Upper House of Spain with large- member constituencies; each voter has one vote less than the number of members to be elected. It is also used for various local level elections. It is used in only one country.

4.C The Cumulative Vote System:

This system has been devised to improve upon the Block Vote System as in the BV system the voter has as many votes as there are seats to be filled in the constituency. But, the voter is not obliged to give one vote to each of that number of candidates; he may give two or more votes to one candidate.

4. D. The Points System or Borda Count

It is a candidate-centered preferential system used in either single or multi-member constituency in which voters use numbers to mark their preferences on the ballot paper and each preference marked is then assigned a value using equal steps. These are summed and the candidate(s) with the highest total (s) are elected. It is used in only one country. Norway uses a form of the points system for determining the order of election of candidates within each party.

Electoral experience in Nepal:

After the restoration of the multiparty parliamentary system in 1990, the new constitution of 1990 adopted the FPtP system for HoR elections, which was for the first time used in 1959 for parliamentary general election in the country. Under the present constitution of 1990, three general elections were held in 1991, 1994, and 1999.

Table--2

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

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

Analysis of the results: -

(To be brief, only the third election has been considered)

A. No Proportional Representation--

1. Extra over representation (more seats with comparatively high percentage of votes)

The analysis of the results of the elections shows the following facts with regard to the votes received by the parties and independents and the seats won by them. In the third election too, the CPN-UML won 34.63 % of seats against 30.74 % of votes and the NC bagged 54.15 % of seats with 36.14 % of votes.

2. Over representation (more seats with fewer votes)

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

3. Under representation (Less seats with comparatively low percentage of votes)

In the third general election, the NSP bagged 2.44 % of the seats with 3.13 % of the votes, the RPP-T secured 5.37% of the seats with 10.14% of the seats, the SJMN obtained 0.49 % of the seats with 0.84 % of the votes, the NWPP bagged 0.49% of the seats with 0.55 % of votes cast in the election.

4. Comparative under representation (Less seat with more votes)

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

B. No representation

We have seen that in the third general election (1999), two parties—the RPP-C and the CPN—ML could not get any representation by way of seats in the HoR. The CPN-ML got 567,760 votes (6.38 % of the total valid votes cast) in the election. Similarly, the RPP-C secured 295812 votes (3.33% of the valid vote cast) in the election.

C. Un-representation:

In all the three elections, polling percentage was found to be average. It varied from 61% to 66% of the voters registered in the electoral rolls. In other words, 34% to 39% of voters did not cast their votes in the elections, e.g., about six to seven million voters remained unrepresented in the country. Therefore, one vital question remains: who represent those absent voters?

D. No just social and ethnic representation

Apart from no proportional translation of votes into seats on party-lines, the non- representation or no just representation of several castes, languages, and other indigenous nationalities in the HoR, received severe criticisms from different quarters. It is evident from the fact shown in table mentioned below:-

Table--3
Socio-cultural Discrimination after Peoples' movement 1990:

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

Source: Gurung, H.1998 (2048), IIDS, 2000 & Central Bureau of statistics, 2002, National Census Report

Analysis of representations

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

Among hundred and one caste/ethnic groups have been enumerated in the last Census, 2001 only 23 caste/ethnic groups have been represented in the last three HoR. The population of Brahmin is 12.74% of the total population of the state, but it has obtained 38 to 42% of the seats in the House. The other castes/ethnic groups whose representations in the House are more than their population in the country are--Thakuri, Gurung, Newar and Thakali in the hills; whereas in Terai, Brahmin, Yadav, Haluwai and Marwari have their shares more in representations in the House than their population in the country. Thakuris are

1.47% of the national population, whereas their representation in the House varies from 5.4% to 6.5%. Similarly, Gurungs form only 2.39 % of the population, but their representation varies from 2.4% to 3.4 %, Newars are only 5.48 of the population, but they enjoy 6.3% to 6.8%of representation, Thakalis cover only 0.06 % of population, but occupy 0.5 % to 1.5% of representation and Sunwars constitute 0.42% of the population, but only once represented having 0.5% of representation.

In Terai also, some castes are over represented. Brahmins form only 0.59% of the population, but their representation varies from 1.5% to 2.9%, Yadavs enjoy more representation as it varies from 2.4 to 5.9% against their population only 3.94%, Haluwais are 0.22 % of the population, they have got their representation only once of 1.5 % and Marwaris are 0.19 % of the population, but have 0.5 % of their representation.

2. Under representation (Less elected than their population):

With regard to the ethnic representation, we find that there are several castes that get less representation in the House than their population in the country. Chhetris are marginally less represented as their population is 15.80% where their representation varies from 13.7% to 14.1%, Magars cover 7.14% of the population, but their representation varies from 1.5 5 to 3.00%, Damai/Dholi have 1.72% of the population, but could get representation of 0.5 in the first House, Kamis cover a substantial 3.94% of the population, but they did not get any representation in the HoR (of course, 1.1 % in the Upper House), Rais cover 2.79% of the population, but their representation is constant at 2.4%, Tamangs cover 5.64 %, but their representation varies from 2.00% to 2.4%.

Similarly, there are several castes whose representations have been less. More significantly, Tharus constitute 6.75% of the population, but have their representation on decline from 7.3 % in the first House to 6.3% in the second House and further to 4.9 % in the third House, Telis are 1,34% of the population, but their representation is 1.00 % and only once in the House, Dhanuks cover 0.83 % Of the population but they are represented once by 0.5 % and Muslims who form 2.7% of the population get only 2.00% to 2.4% of their representation. Some other castes get 2.0% to 2.4 %. of their representation.

B) Evaluation of the Electoral Systems: (Discussed earlier)

The evaluation is based mainly on the views expressed in the Electoral System Design: The New International IDEA Handbook, Pub. by IDEA, Sweden.2005.)

A. First Past the Post system:(FPtP).

Merits

- A. In this system, the voter gets a chance to choose between two major political parties. In other words, there is competition between two main political parties. The 3rd and other small parties sometimes, move towards left centric or right centric parties.

- B. This system increases the possibility of one party government as the party securing the highest votes gets extra seats as bonus votes. It results seldom in coalition government. Even if, it happens, it is an exception. But the recent trends in India and Pakistan have proved its opposite, of course, for different reasons.
- C. This system establishes an organized opposition. Opposition, with a substantial number of seats in the House succeeds in putting pressures and control over the government. It also creates a situation, which can provide an alternative government.
- D. This system provides incentives to those political parties who have broader outlook. It can provide a common platform to form an all-inclusive society, which can include all who are divided on communal and regional lines. The political parties can nominate their candidates from all castes, communities and regions.
- E. It can exclude extremist parties from parliamentary representation. The extremist parties cannot get their representation in the House till they have their voters concentrated on specific areas.
- F. One of the salient features of this system is the close relation between the elector and the elected. It creates both geographic and regional representation in parliament. In reality, it gives the voter the real responsibility to choose his representative who is well known to him. In a developing country and especially in an agrarian society the geographic representation gets more relevance.
- G. It provides alternatives to the voter to choose between the candidates of the different parties. It facilitates the voter to choose his representative on the basis of the abilities of the candidate.
- H. It provides opportunity to popular independent candidate to be elected. In developing countries, politics sometimes centers around families or clans where party- politics are not matured.
- I. This system is very simple and it is very easy for the voter to understand it. A valid vote means to put a designated seal after or before the name or symbol of the candidate. The ballot papers are generally short as there are fewer names of candidates, which make counting process easier.

Demerits:

- A. This system does not facilitate real representation to the minorities. Real representation means proportional representation. If any party that receives 15% of votes, it should generally get 15% seats in the house for which election has taken place. But in this system, it is difficult to attain.
- B. In this system, minority communities hardly get proper representation as parties nominate their candidates generally from majority communities to get them elected easily.
- C. It is also very difficult for women to get proper representation in this system. Political parties do not favour to nominate women candidates in the election as they undermine women's capacity to win.
- D. In this system, political parties come up and develop on the basis of family, clan, caste and regional dominations.
- E. This system enhances the tendency of regionalism and fixes the regional boundaries. If any party wins all the seats in an area, it does not allow minorities or other communities to get representation in that region keeping its domination irrespective of the capacity of other candidates.

- F. In this system, the numbers of "waste votes" are considerably more. A winner is he who gets the highest votes rendering others votes useless or without any representation.
- G. This system is insensitive to the under-going changes in the public opinion. In any geographic area where the followers of any party are concentrated, any fall in the public opinion, does not change the result. If the rating of the public opinion falls to 60% from 80%, it will not reverse the result.
- H. In this system, gerrymandering is very much possible. Since it is a one-member constituency, there is very likelihood of unfair delimitation of the boundaries of the constituencies. The party in power, may misuse its administrative machineries to suit its electoral benefits.
- I. In developing countries, especially, where the bureaucracy is not neutral, there are chances of misuse of civil servants by the party in power.
- J. In the least developed countries, where voters live under abject poverty line and illiterate, the role money is obvious as voters can be easily allured to vote in favour of the moneyed candidate.
- K. To some, in this system the result of the election is just like a game of dice or a drawing of a lottery as some body can be elected unexpectedly.

List Proportional Representation System: (LPR)

Merits:

- A. This enables real translation of votes cast into seats won, eliminate unfair results by way of "seat bonus" for larger parties and facilitate small parties in gaining seats.
- B. It reduces the number of "waste- votes" when threshold is low as almost all votes cast go towards electing a candidate. This also increases the participation of voters.
- C. It facilitates minority party's access to representation unless the threshold is unduly high and district magnitude is unusually low.
- D. It encourages parties to present inclusive list of candidates including all sections of society- class, caste, ethnic, racial, gender, religious minorities.
- E. It hinders the growth of "regional fiefdoms" as minority parties are rewarded with a minority seat stopping a single party to hold all seats in a given region or district.
- F. To some, it leads to more efficient government as government elected by PR method. They claim that PR coalition governments are more stable and coherent in decision- making.
- G. It makes power-sharing more visible between parties and interest groups. In new democracies, power-sharing between the numerical majority of the population who hold political power and a small minority with economic power should be more transparent which is possible in a coalition government formed by it.

Demerits:

- A. The main criticism of PR system is that there is always a tendency to give rise to a coalition government which fails to carry out coherent policies at a time of most pressing need. In post transition period, when new governments are

formed, against their huge expectations, coalition cabinets can obstruct quick and coherent decision-making.

- B. It facilitates a fragmentation of the party system. It is possible that such polarized pluralism can allow tiny minority parties to hold larger parties to ransom in coalition negotiations.
- C. It provides a platform for extremist parties. It gives a parliamentary stage to extremist parties of the left or the right.
- D. Coalitions, formed by it, have insufficient common ground by way of policies and their support base. These "coalition of convenience" are sometimes contrasted with stronger "coalition of commitment" produced by other systems.
- E. Under this system, it is not possible to throw any party out of power. It may be very difficult to remove a reasonably sized party from power. Some parties are always present in the government despite weak electoral performances.
- F. It weakens the link between elected representatives and their voters. In simple List PR system, seats are allocated in huge national constituency; the link between the MPs and voters is destroyed. Voters have no ability to determine the identity of the persons who will represent them. Voters have no ability to easily reject their representatives whom they feel not worthy in the next election. In rural-based developing countries, where identification of the representatives with their region of residence is sometimes considered stronger than their identification with any party.
- G. This system creates two classes of MPs when seats are allocated on two tiers basis. MPs elected on national lists have the nation as a constituency, whereas, MPs elected on regional list are bound to be accountable to the voters of the regions.
- H. The PR system using a national closed-list, leaves too much within party headquarters wielded by senior party leadership. A candidate's position on the party list resulting success or failure is dependent on the favour of the party bosses, whose relationship with the voter is of secondary importance.
- I. The use of PR system presumes some kind of recognized party structure; voters are expected to vote for parties rather than individuals. It is difficult to implement it in those societies, which do not have parties or have very loose party structures.
- J. This system has a great barrier to surmount because it is still an unfamiliar system to many countries with English and French colonial histories and some variants are seen too complex for voters to understand and to implement by administration.
- K. For the national list PR system, the entire country has to be made one Constituency. No district boundaries are required. For district list system again, the districts with one seat have to be made multi-member districts by reorganizing the kingdom.

3. Semi- Proportional System:

It is an electoral system which translates votes cast into seats won in a semi proportional way. In other words, the translation of vote cast into seats won falls between the proportionality of Proportional Representation system and the plurality-majority systems. Hence, it is called semi proportional system.

3.A. Mixed Member Proportional System: (MMP)

Merits:

- A. It has all the merits of PR system.
- B. It gets the benefits of two-ballot system.
- C. Representatives elected on the basis of FPtP and TR systems have close relation with their voteNRs.

Demerits:

- A. Less importance is attached to this system in comparison to LPR system as it suffers from "strategic voting" anomalies to get seat under another system.
- B. It also creates two classes of MPs.
- C. It has all the demerits of PR system.

Mixed system (both MMP + Parallel Systems) has some serious inherent demerits.

- D. This system is a complicated one.
- E. It requires boundary delimitation, which is not required for Nepal right now.
- F. It often requires for by-election.
- G. It creates two classes of representatives.
- H. It is very difficult to arrange absentee voting in it.
- I.

There are some practical deficiencies too.

There will be no real expression of the choices of the voters in constituencies falling under FPtP component in which a candidate is elected even by a margin of one vote. If any confusion is created in the minds of the illiterate voters regarding two ballot papers meant for two separate components -- one for individual and another for the party. In Germany, only one ballot paper is used for both components and voters express their choices by ticking against the names of the candidate and the parties, Every German voter is literate enough to read and distinguish between the PR list and the FPtP name list. This system will be totally unsuitable for Nepal, as illiterate voters cannot express their choices by separately ticking the names of the candidate and the party they wish to vote for. The use of two ballot papers will also create difficulty but there is no alternative to it in the Mixed System.

Interestingly, the voters whose candidates will be elected under the FPtP component will be doubly benefited where as the majority of the voters, who are losers, will not be equally benefited. Of course, they will be proportionally represented under List PR component. Moreover, the parties contesting election under FPtP, will not be sure of the victory of its candidates as they field only those candidates whose chances of victory are more and not on the basis of inclusiveness. Hence, reasonable inclusiveness will be a far cry.

The use of the PR system and especially the National List PR system is fraught with some practical difficulties. When the number of parties contesting election

is enormously big, it will create problem regarding the size of the ballot papers. This will pose a big headache for an illiterate voter. Hence, Regional List PR system will be more practicable.

The regional list system should be based on the following considerations. First, one region should not have more than 15 seats (it may comprise three to four districts). Secondly, regional boundary should be based on language and ethnicity proximity and easy communication linked areas. Delimitation is not required now. The existing boundaries are not be disturbed. Districts have to be clubbed together for election purposes. Thirdly, the political parties should be allowed to be formed on the basis of regions or lists should be prepared on the basis of regions only. Consequently, (a) the size of the ballot papers will be manageable for peaceful voting by illiterate voters, (b) local people will be represented by their own representatives and, (c) granting autonomy to ethnic and cultural groups will be met to some extent. It will be the first step towards state restructuring.

To clarify the representation problems under Mixed System, examples of Germany and Lesotho are presented hereunder:

Table 5
The 1998 German Federal Election (Results)
First (constituency) vote Second (list) vote Final result

	Vote %	Seats No.	Seats %	Vote %	Additional Seats No	Total Seats No	Total Seats %
SPD	43.8	212	64.6	40.9	86	298	44.5
CDU	32.2	74	22.6	28.4	124	198	29.6
CSU	7.3	38	11.6	6.7	9	47	7.0
FDP	3.0	0	0	6.2	43	43	6.4
GP	5.0	0	0	6.7	47	47	7.0
PDS	4.9	4	1.2	5.1	32	36	5.4
DR	2.3	0	0	1.8	0	0	0
DV	0.0	0	0	1.2	0	0	0
Others	1.5	0	0	3.0	0	0	0

Note. SPD (Social Democrat), CDU (Christian Democratic Union), CSU (Christian Social Union), FDP (Free Democrat), GP (Greens), PDS (Party of Democratic Socialism), DR (The Republicans), DV (Deutsche Volkunion)

Source, Electoral Returns, Electoral Systems, A Comparative Introduction, David M. Farrel, Page 103, First published 2001 by Palgrave, New York.

The above results show that in spite of compensatory provision, the results are not fully proportional. The national vote percentage of the SPD is 40.9% where as its sharing of the percentage of the total seats is 44.5% which is higher by 4% as the party has succeeded in getting higher percentage of seats under FPtP component elections.

Slightly different from that of Germany, where the seats are divided equally (50% each) under both components, in Lesotho, a southern African country, the seats are divided into 66.3 and 33.3. The National Assembly has 80 seats to be elected under FPTP component and 40 seats are under List Proportional Representational System. In the general election May 2002 the Lesotho Congress for Democracy (LCD), not entirely unexpectedly, won 55% of the party (PR) votes but 65% of all the seats. The reason for that was that the party won 77 of the 78 single-member districts contested on Election Day (elections in the remaining two were postponed because of the death of candidates, but eventually the LCD also won them). The system did not have overhang mandates, so the opposition got all 40 compulsory seats. Seven of the eight opposition parties which won seats ended up being under-represented in terms of share of votes compared to share of seats. This under representation was, however much smaller than it had in 1998 (LCD has got all the 80 seats in the NA), and the NA is now a fairly representative body in terms of political representation. It is clear that the combination of (a) one party taking almost all the single-member district, (b) only 33% of the seats being compensatory seats, and (c) the absence of surplus seats may continue to cause some degree of disproportionality in future.

It is interesting to note that had there been more PR seats the result will definitely be representative. I have failed to obtain the results of election of the country that has more seats under national vote component.

3.B. Parallel System:

Merits:

- A. With regard to disproportionality, it gives results, which falls between plurality-majority and proportional representation systems.
- B. In most cases, it gives the voter both a district choice and a party choice on the national level as two ballots are used.
- C. When there are enough PR seats, small minority parties can be rewarded for their votes by winning seats in the proportional allocation.
- D. In this improved version of system, the chance of getting any party fragmented is less in comparison to PR system.

Demerits:

- A. This system creates two classes of MPs—one class is related directly the voters and another class is chosen by the party is loyal to their leaders.
- B. It cannot guarantee overall proportionality as some parties still remain unrepresented which do not cross the threshold of minimum percentage of votes.
- C. This system is relatively complex and makes voters confused due to its nature and operation of the system.
- D. This system is complicated one.
- E. It requires boundary delimitation, which is not required for Nepal right now.
- F. It often requires for by-election.
- G. It creates two classes of representatives.
- H. It is very difficult to arrange absentee voting in it

The historic agreement signed by PM GP Koirala and Maoist Supreme leader Prachanda on 8 November has accepted Mixed System (MS) to be adopted for the election to the CA. The First Past the Post (FPtP) system of election will be adopted for 205 seats and elections for 204 seats will be held under MS. The MS, as the very name suggests, is a mixture of two electoral systems—the FPtP and the PR system. The MS is of two kinds,— Mixed Member Proportional System (MMP) and Parallel system

The MMP is a form of semi proportional system, as it produces result that will never be full proportional in translating the votes received and the seats won by the political parties contesting elections. It is because the seats (about 50%) being contested on the basis of FPtP system will never be proportional as has been found in all previous elections. But, the rest of the seats to be contested under PR system component will definitely guarantee proportionality. Thus the final result will be semi proportional. The agreement signed on 8th has a provision for Mixed system. It is not clear whether it will be MMP or Parallel.

Significantly, there is a crucial distinction between Parallel and MMP. Under MMP, the list PR seats compensate for any disproportionality produced by the district seat results under FPtP component as the parties having no seats or less seats will be awarded enough seats from the national PR lists to bring their representation up to approximation. This system is used in 9 countries including Germany and New Zealand. Out of 9 countries, 8 countries use FPtP system and one (Hungary) uses TR system. It is yet to be decided as to which of the two is to be followed in the present context of CA election.

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

Mixed system consisting of MMP + Parallel Systems has some serious inherent demerits. This system is complicated one. It requires boundary delimitation, which is not required for Nepal right now. It often requires for by-election. It creates two classes of representatives. It is very difficult to arrange absentee voting in it.

Under Mixed system, apart from getting only semi proportional representation, the constituency-wise result will be unexpected because of the very nature of the FPtP. In it, a candidate securing the highest votes gets elected. The margin may be of one vote. If any confusion is created in the minds of the illiterate voters regarding two ballot papers meant for two separate components, one for individual and another for the party. However, Germany affords to use only one ballot paper for both components, as its every voter is literate enough to read and distinguish between the PR list and the FPtP name list. But Nepal can hardly afford it as illiterate voters may get confused and may not express their choices by separately stamping the Swastika Mark wrongly despite their genuine choice for a particular candidate and a particular party they wish to

vote for. So, the use of two ballot papers will be impractical, but there is no alternative.

Interestingly, the voters whose candidates will be elected under the FPtP component will be doubly benefited whereas the majority of the voters, who are losers, will not be equally benefited. Of course, they will be proportionally represented under List PR component. Moreover, the parties contesting election under FPtP, will not be sure of the victory of its candidates as they might field only those candidates whose chances of victory are more and not on the basis of inclusiveness. Hence, full inclusiveness will be a far cry.

The use of the PR system and especially the National List PR system is fraught with some practical difficulties. When the number of parties contesting election is enormously big, it will create problem regarding the size of the ballot papers. This will pose a big headache for an illiterate voter. Hence, Regional List PR system will be more practicable.

The regional list system should be based on the following considerations. First, an ideal regional constituency should consist of seven to nine seats. But one region should not have more than 15 to 20 seats which may comprise three to four districts. Secondly, regional boundary should be based on language, ethnicity proximity and easy communication facilities (Delimitation is not required now. The existing boundaries are not to be disturbed. Districts have to be clubbed together for election purposes). Thirdly, the political parties, formed on the basis of regional basis, should be allowed to contest election.

Consequently, the size of the ballot papers will be manageable for peaceful voting by illiterate voters. Local people will be represented by their own representatives and one of the demands of the Maoists, granting autonomy to ethnic and cultural groups will be met. It will be the first step towards state restructuring..

The second address by the Prime Minister at midnight of 7 February 2007 within a week, assuring to meet the demands of the Madhesi Janaadhikara Forum (MJF), has succeeded in subsiding the first phase of the people's uprising as the MJF called off its bandh and transport strike programme for ten days. The Prime Minister assured that after amending the interim constitution electoral constituencies would be delimited on the basis of equal population distribution and the country's geographical "feature" and "expediency". The division of seats will be based on 49/51% between Madhes and hill regions. Constituencies would be increased in the Madhes regions on the basis of the percentage of population growth and an equal number of seats would be increased for the proportional representation. Representation of the Madhesis, Dalits, Indigenous Nationalities, Women and Backward communities in the administration would also be ensured through federal system of governance in and through the new constitution.

Secondly, the 8-party alliance appears to be obscure on the issue of the electoral system to be adopted for CA polls. The issue has been further confused by the assurance of the PM to increase the number of seats under both components—the district constituencies under FPtP and the List Proportional Representation. It is a well known fact that the Mixed System will hardly fetch cent per cent proportional results and can hardly guarantee the inclusiveness for which all Indigenous communities, Dalits, Women and Madhesis are clamouring since long.

The insistence on having 205 seats elected under FPTP system shows the lack of confidence of the political parties in getting elected under LPR system. Significantly, the FPTP loses its merits when it is used as a component in the Mixed Electoral system.

The Delimitation Commission has already submitted its report to the Prime Minister increasing the seats to 240 which will be clear from the table 6 mentioned below. There has not been increase in every district where population has increased. But the increase in number, which has been suggested as hereunder in the scheme of regional system, is less in number by 5 seats as it has been based on clusters of districts called as Regions. The whole country can be divided on the regional basis in the following manner:

Districts	population in thousands	seats in the HoR	seats to be added as per Regional lists	Seats added as per Delimitation Commission
1. Jhapa, Morang and Sunsari	2156	18	4	5
2. Ikam, Taplejung, and Panchthar	519	7		
3. Sankhuasabha, Terathum Dhankuta and Bhojpur	641	7		
4. Khotang, Okhaldhunga, Solukhumbu and Udaipur	777	7	1	1
5. Saptari, Siraha, Dhanusha and Mahottari	2357	19	5	6
6. Dolkha, Sindhupalchok, Sindhuli Ramechhap and Kavre	1387	13	1	1
7. Lalitpur, Bhaktapur and Kathmandu	1645	12	4	3
8. Rasua, Nuakot and Dhading	667	7		
9. Chitwa and Makwapur	864	7	2	2
10. Sarlahi, Tauthat, Bara and Parsa	2037	17	3	6
11. Gorkha, Lamjung, Tanahu and Manang	730	9		
12. Kaski, Parbat, Syanja, Myagdi, and Mustang	985	10		1
13. Baglung, Gulmi, Arghakhanchi and Palpa	1042	10		
14. Pyuthan, Rolpa and Rukum	610	6		
15. Nawalparasi, Rupandehi and Kapilvastu	1753	13	5	5
16. Jajarkot, Salyan, Surkhet and Dailekh	862	9		
17. Dang, Banke and Bardia	1230	10	2	3
18. Bajura, Acham, Bajhang and Doti	714	7		
19. Jumla, Kalikot, Mugu, Humla and Dolpa	309	5		
20. Kailali and Kanchanpur	994	7	2	3
21. Dadeldhura, Baitari and Darchula	482	4	1	
Total		205	30	35

Since the CA election could not be held in June and the new date of election is fixed for 22 November 2007, it is not late to consider the Regional List proportional system as the only electoral system for the election on the basis of loose division of the country into 21 regions clubbing two to three districts together on the basis of languages, ethnicity and communication facilities providing efficient administrative machinery to conduct CA elections.

It may be suggested that if a one-lakh population slab is accepted as a basis for one seat, there will be an increase of about 23 seats in the Terai regions and about a half-a dozen seats in the Hill region including four seats in the Kathmandu valley and one each in Kavre, Chitwan and Dang as well. The total number of seats will be 233 in place of 409 fixed in the Interim constitution. If 50/60 seats are reserved for some eminent constitutional experts, civil society organizations, professional organizations, disabled and a few seats for those communities (who cannot be elected on the strength of their population and are really marginalized), the total number of the CA will be well within the limit 295 and it will really be a more descriptive and lively house to frame a democratic constitution.

Since participation of the maximum number of electors is needed for a CA, the only way to have a meaningful CA in Nepal, is to adopt the Regional List Proportional System as suggested above. By including constitutional experts, civil society organizations including professional organizations, disabled, religious minorities and those communities who cannot be elected on the their strength of their numbers the CA will not only be proportional and inclusive in nature but also a qualified inclusive House in reality. It would be qualitatively inclusive by including women, Dalits, Indigenous Nationalities of those regions where they really inhabit.