

ELECTORAL REFORMS - A MUSLIM POINT OF VIEW

(3150 words)

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Electoral Reforms

The 1978 constitution made a drastic change in the electoral method of representation embodied in both the 1948 and the 1972 constitutions.

It is said that to change the present constitution - (Election System) there should be two-third majority in parliament and a referendum. In 1977, the UNP had five-six majority and the former President Jeyawardene introduced the new system of Proportional representations. Under the Present Election system it is almost impossible for any political party to get two-third majority. In other words the 1978 Constitution cannot be lawfully changed by the methods spelt out in the constitution. This is one of the obnoxious features of Jeyawardene Constitution.

It should be noted that while the Donoughmore and Soulbury constitutions as well as the 1972 Republican Constitution provided for election of individual members to Parliament, the 1978 constitution obliterated the importance of the individual voters and made it compulsory to elect registered political parties or independent groups to Parliament. In other words the 1978 constitution handed over the role of representation of the people in Parliament from individuals to political parties/ groups.

The Proportional representation system together with the original 12 1/2% cut-off point, and the concept of the district bonus seat went against the very spirit of the concept of "Representation according to the proportion of the votes". In view of the fact that the Sri Lanka Muslim community does not constitute more than 12 1/2% (of the total population of the electoral district) except in Ampara, Batticaloa, Trincomalee and Vanni districts; the 1978 constitution dealt an effective blow to the political representation of nearly 60% of the Muslim community who are scattered in the other 18 districts.

If not for the timely emergence of Recognised Muslim Political Parties, the Muslims in the Northern and the Eastern provinces too would have been deprived of their independent political representation and their destinies would have been left to the whims and fancies of the chauvinist major political parties.

The features of the PR system which did not enable the minority communities and the minority political parties to have their legitimate shares, resulted in unjust gain for the major political parties, as the number of seats gained by these parties were disproportionate to the number of votes they received. It is a matter for record that electoral reform such as) the reduction of the 12 1/2% cutoff point to 5% for Parliamentary elections and the total abolition of the 12 1/2% cut-off point for the Provincial Council election law was a result of the efforts made by the SLMC founder leader Mr. M.H.M. Ashraff.

Muslims are pleased that the United National Party in its manifesto for 1994 Parliamentary Elections committed itself to the abolition of the district bonus seat as well as the 5% cut-off point

Muslims are also aware of the constraints that would be brought about by the fact that the new electoral reforms will not be preceded by the appointment of a traditional Delimitation Commission and the carving out of the electorates. This is due to the fact that the country has

not been in a position to hold a complete national census after 1981, It should be noted even the National Censers carried out in 2001 is not a complete exercise because most of the Tamil areas in the North-East were not included. We are also appreciative of the fact that there is no guarantee that the country can hold another complete census in the near future on account of the fact that there is no immediate likelihood of achieving peace.

The 1976 Delimitation Commission worked on the basis of the 1971 census which reflected a total population of 12,701,143; and 11,605,903 citizens. This Delimitation Commission created 143 territorial constituencies on the basis of 90,000 people per constituency and 25 additional constituencies for the land area of every 1,000 sq. miles. This exercise resulted in the creation of a total number of 160 territorial constituencies returning 168 members.

However the fact that the minority - Tamils and Muslims population of over 1 million (1,105,240) were not citizens and therefore ineligible to vote meant that they were deprived of their due share of representation in Parliament. The loss of representation of the minority community became the gain of the majority community. The resulting position was that the 73% Sinhalese were left with 83% seats in Parliament whilst the 12% Sri Lankan Tamils had 11% of the seats and 8% Muslims and 6% Indian Tamils were left with 3% of parliamentary seats respectively.

The 1976 Delimitation commission did not pay adequate attention to create smaller electorates with a view to ensure the Parliamentary representation of "substantial concentration of persons united by a community of interest where racial, religious or otherwise, but differing in one or more of these respects from the majority of the inhabitants of that area".

For example whilst the Delimitation Commission created constituencies with less than 1/2 the average number of voters in predominant Sinhala areas like Mahanuwara, Teldeniya, Viyaluwa and Colombo West, it is matter of regret that a substantial concentration of a minority Muslim community, living in a predominant Muslim village such as Akkraipattu in the Ampara district was irrationally and mercilessly divided into two areas so that one area became part of Sammanthurai electorate and the other area became part of Pottuvil electorate. This resulted in the permanent deprivation of a reasonable opportunity for a voter from Akkaraipattu from successfully contesting either the Sammanthurai electorate or the Pottuvil electorate.

The 1981 Delimitation was carried out without the figures of the general census held in that year. As a result, the 160 territorial constituencies as in the 1976 Delimitation were retained and 36 seats were added to the 9 provinces at the rate of 4 seats per province without any consideration for the population or land area. A further number of 29 seats were added on the national PR, thus making the total membership of parliament 225.

Demarcation of Electoral Districts

The UNP - Jayawardene Constitution of 1978 is the same as its predecessor with regard to the abolition of safeguards to minorities. It also refrained from re-enacting the provisions of Section 29 of the Soulbury Constitution; reinstating the principals of appointment, and resurrecting the Senate. More damaging are its provisions with regard to demarcation of Electoral Districts - Article 96

- (1) The delimitation Commission shall divide Sri Lanka into not less than twenty and not more than twenty four electoral districts, and shall assign names thereto.

- (2) Each Province of Sri Lanka may itself constitute an electoral district or may be divided into two or more electoral districts.
- (3) Where a province is divided into a number of electoral districts, the Delimitation Commission shall have regard to the existing administrative districts, so as to ensure as far as is practicable that each electoral district shall be an administrative district or a combination of two or more administrative districts together constitute an electoral district.
- (4) The electoral district of each Province shall together be entitled to return four members (Independently of the number of members which they are entitled to return by reference to the number of electors whose names appear in the register of electors of such electoral districts), and the Delimitation Commission shall apportion such entitlement equitably among such electoral districts.

The Jayawardene Constitution of 1978 does not contemplate the establishment of any other future Delimitation Commission than the one which was established within three months of its coming into operation. Therefore, the demarcation of electoral districts that it has carried out is final for all times, and equally final in its distribution of the 36 members among the electoral districts of each of the nine provinces on the basis of Article 96(4) and the 160 members in terms of Article 98. These could be altered only by amending the Constitution by two third majorities, which is not practical politics under the proportional representation system which has been introduced into the machinery of elections. This is one of the most reactionary features of the Jayawardene Constitution of 1978

- We notice that the provisions cited above do not contain any instructions to the Delimitation Commission to some attention to the existence of minorities in the country while demarcating electoral districts. In other words, the provisions of the Soulbury Constitution with regard to minority representation have been deliberately omitted in the Jayawardene Constitution of 1978

When a Delimitation Commission was appointed under the Soulbury Constitution there was a specific direction in Section 41 that the Commission shall have regard to the transport facilities of the Province, its physical features and the community or diversity of interest of its inhabitants. There was a further specific direction that in so doing, that is to say, in dividing the Province into Electoral Districts, where it appears to be Commission that there was in any areas of province a substantial concentration of persons united by a community of interest, whether racial, religious or otherwise, but differing in one or more of these respects from the majority of the inhabitants of that area, the Commission may make such division of the Province into electoral districts as may be necessary to render possible the representation of that interest.

The essence of this provision is that the Commission, in demarcating an electoral district, was required to take into account the question of minority groups, whether they be found on race, religion or other common interest, in order to render possible the representation of such group in the legislature. A Delimitation Commission appointed under that Constitution would therefore have acted contrary to the terms of that provision of dividing a Province into electoral districts, if it has disregarded this requirement regarding a minority with a common interest.

It was made quite clear in the direction contained in Section 41 (3) that the general rule of each electoral district having as nearly as possible an equal number of persons was subject to this exception, regarding the representation of minority interests. The creation of an electoral district to enable the representation of a minority group with a common interest was to override the requirement of each electoral district having an equal number of persons. It was in

addition to this requirement that the Delimitation Commission under the Soulbury Constitution was empowered to create multi member constituencies in any Province returning two or more members.

Glaring examples of disparity can be noticed with regard to the allocation of voters to electoral districts. No two electoral districts are equal. For instance, the number of voters in the Kandy electoral district in 1983 was 602,232 for 12 members or 50,186 voters per member whereas the number of voters in the Vanni electoral district was 128,590- for 5 members or 25,718 voters per member. That is to say, one voter in the Vanni electoral district is equal to nearly two voters in the Kandy electoral district.

In the 1972 Constitution of Mrs. Bandaranaike, although the Delimitation Commission was required as a general rule to carve out an electoral district for every 75,000 persons and further to create an electoral district for every 1,000 Sq. Miles (calculated according to the provisions laid down) the minority interests were given a special place in contrast to these directions, in the present Constitution there is a total absence of these provisions in the matter of division of Provinces into electoral districts. This Law seems to be directed at the Muslim Community rather than at any other in Sri Lanka.

Election - Proportional Representation

When we consider the political fate of the Muslim Community under the system of Proportional Representation introduced by the Jayawardene Constitution of 1978, we have to look closely at the community's dispersion in the country vis-a-vis the provision of paragraph (6) of Article 99 of the Constitution.

"Every recognized political party and independent group polling less than one twentieth of the total valid votes polled at any election in any electoral district shall be disqualified from having any candidate of such party or group being elected for that electoral district".

In other words, in order to qualify to have its candidates elected, the party or independent group should have polled not less than 5% of the total valid votes polled at the election. The proportion of Muslim voters to other communities is much less than 5% in 11 out of 22 electoral districts. In these districts even if the Muslim community forges a complete solidarity and vote enblock for a party or a group of Muslim candidates, it cannot poll the required minimum and therefore will be disqualified from having any of their candidates elected to represent it. The election laws introduced by the present constitution entitle the voters to vote for one of the parties or independent group whose list of candidates appears on the ballot paper. The party or an independent group that polls the highest number of votes in any electoral district shall be entitled to have the candidate nominated by it, who has secured the highest number of preferences, declared elected, - Article 99. The disqualified votes polled by the parties and independent groups, if any, shall be deducted from the total valid votes polled at the election in that electoral district and the number of Valid votes resulting from such deduction the "relevant number of votes" shall be divided by the number of members to be elected for that electoral district reduced by one. Then what happens to the Muslim community in electoral districts like Batticaloa or Trincomalee to which 4 seats have been assigned. In these districts in order to have one member elected, the Muslims should collect 1/3 of the relevant number of votes. But Muslims are only 24% and 29% in Batticaloa and Trincomalee districts respectively. It is the same position in other electoral districts except in Colombo and Digamadulla. Therefore nearly 75% of the Muslim community is deprived of the opportunity of being represented by members elected independently by their own community, an opportunity which other communities - Sinhalese and Tamils, have in ample measure.

In this multiracial, multi-cast, multy-religious, multilingual country, the Muslim community finds itself quite marginalised in that it has not effective representation to make know its needs and aspiration in the decision making body, the Parliament of this country. Like the other communities, the Muslims too want to have their grievances aired in the appropriate forum and have them redressed.

In a parliamentary democracy, a community takes part in the government of the country through its freely elected representatives. This is a human right and this human right had been taken away from the over whelming majority of the Muslim community by the provisions of Jayawardena Constitution of 1978.

Under the present system of Proportional Representation election a voter can indicate his preference for three candidates of any one party or independent group. But the UNP and SLFP have nominated only one or two Muslim candidates in their nomination lists in most of the electoral districts Outside Northern and Eastern Provinces. In some districts none. When the Muslims are denied the opportunity to use all the three preferential votes to secure representation for them selves by their own Community members, they are forced to cast their votes for non-Muslim candidates. The present election system enables the non-Muslim community to derive an undue advantage for itself of the Muslin preferential votes.

The proportional representation cannot be applied to by-elections. When vacancies occur, they are filled by party loyalists, regardless of the opinion of the voters in the electorates or of the appointees connection with them.

However good a representation chosen for it by others may be, he cannot be regarded as an adequate substitute for a representative chosen by the community itself.

Proposals

- 1 (a) Electoral Reforms should provide equal opportunities for all communities and the legislature should reflect the true national ethnic composition.
- (b) In view of maximum devolution and a second chamber, the parliament need not be large. Even the present 225 members should be reduced.
- (c) The Parliament should be bicameral - House of representative with 220 members and Senate with 50 members.
- 2 (a) One half of the members of Parliament from territorial constituencies on First Past the Post - FPP and other half on National Proportional Representation - NPR
- (b) Votes on the National PR is the deciding factor for the number of seats Party/Group should have in the Parliament as in the German system.
- (c) The 50 members to the Senate should be appointed on the basis of the votes on the national PR each Party/Group received in a General Election.
- (d) Both House of Representatives and the Senate should be co-terminus.

- (e) Two ballots - first to elect the candidate for the territorial constituencies on FPP and the second to elect the Party/Group on National PR.
- (f) The Commissioner of election will determine the total entitlement of seats in Parliament of individual parties/ groups based on the composition of the 2nd ballot at National Level. From that entitlement the Election Commissioner will deduct the total number of seats secured by the parties at individual constituencies on the basis of the first ballot.
- (g) The political party/group concerned, on the direction of the Election Commissioner will nominate names of candidates from the National PR list to fill only the remaining number of seats to which that party is entitled.
- (h) We suggest that the total number of seats be 220 of which 110 shall be elected from 90 territorial constituencies on FPP and the balance 110 on National PR.
- (i) The said 90 territorial Constituencies can be achieved by retaining the boundaries and areas of the present 160 territorial constituencies with the adjacent constituencies joined as far as possible.
- (j) The 90 territorial constituencies will consist of 75 one member constituencies, 10 two member constituencies and 5 three member constituencies.
- (k) Parliament should reflect the true voting pattern of the people. Votes on National PR should be the deciding factor each Party/Group should have in the legislature.
- (l) The 220 seats in Parliament should be allocated as follows:

<u>Ethnic Group</u>	<u>%</u>	<u>Seats/FPP</u>	<u>Seats/NPR</u>	<u>Total</u>
Sinhalese	74	82	82	164
Tamils	12	14	14	28
Muslims	8	8	8	16
Indian Tamils	5	6	6	12
Total	100	100	100	220

- (m) Preference votes, 5% cut-off point and district bonus should be abolished.
- (n) Within three months after the commencement of the amendments, a delimitation commission should be established.
- (o) The delimitation commission should have the power to create multi-member constituencies in appropriate areas in order to render possible the representation of minority communities.
- (p) In the demarcation of constituencies, reduced electoral strength should be utilized by the delimitation commission in order to give adequate representation to the minorities according to their national ethnic ratio.

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