

RGICS



RAJIV GANDHI INSTITUTE FOR CONTEMPORARY STUDIES
JAWAHAR BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI-110001

RGICS ISSUE BRIEF

Changing the Electoral Voting System

Prepared by Manas Raturi
under the guidance of Ms. Barkha Deva

RGICS Issue Brief

Changing the Electoral Voting System



KEY MESSAGES

- The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice has reached out to various political parties for discussing alternatives to the first-past-the-post (FPTP) system that is currently followed in the Lok Sabha and Assembly polls.
- While FPTP is regarded as an uncomplicated, stable and decisive electoral system, it causes large scale discrepancies between a party's vote-share and seat-share and has over the years resulted in exclusion of small and regional parties from the Parliament. The PR system, on the other hand, ends the vote-seat discrepancy and encourages newer parties, women and minority candidates to take part in the political process. However, both systems come with their own set of merits and demerits.
- Literature around FPTP and Proportional Representation (PR) system suggests that a hybrid model combining the advantages of both systems will be the most feasible way forward.
- As suggested by the 170th Law Commission report, changing FPTP to a hybrid model would require amending Article 81 and Article 172 of the Constitution to provide for elections through the list system (or any other variant of the PR system) and to increase the number of seats in Lok Sabha and the Legislative Assemblies – which are frozen by the Constitution (Eighty-fourth Amendment) Act, 2002 till the year 2026.

RGICS Issue Brief

Changing the Electoral Voting System



PART I: INTRODUCTION

- An all-party Parliamentary panel, earlier headed by Congress leader Mr. Anand Sharma, is exploring alternatives to the first-past-the-post (FPTP) system that is currently followed in the Lok Sabha and Assembly polls.
- The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice had sent a six-page questionnaire to all political parties as well as the Election Commission (EC), asking for their views on the matter.
- The panel has also asked the EC whether it would be feasible to introduce a different electoral system in India and what challenges may get in the way. The EC has also been asked to compare the FPTP system as followed in India and the UK, as well as how various major democracies use the system (if they still do) and the challenges they may be facing.
- According to *The Hindu*, the Congress, the NCP, the CPI and the CPI-M told the panel that the FPTP should be replaced by a hybrid model where elections for a small number of seats are through Proportional Representation (PR). The BJP, however, has neither answered the questionnaire nor presented its views yet.ⁱ

Here, we look at two formal documents which highlight certain key arguments around FPTP and the PR system. First is the 255th Law Commission Report (March 2015), in which the Commission while considering the issue of electoral reforms recommended a hybrid system that combines both FPTP and PR. Second is a joint report by the *Labour Campaign for Electoral Reform and Make Votes Matter*, which calls for the Labour Party to commit to introducing the PR system to the House of Commons in Westminster. The report was launched in May 2017, a month before the General Elections and its foreword was signed by key Labour Party members.

RGICS Issue Brief

Changing the Electoral Voting System



PART II: KEY ISSUES

a) The 255th Law Commission Report

The 261-page Law Commission reportⁱⁱ titled ‘Electoral Reforms’ had a section on the FPTP electoral model. It listed out the merits and demerits of FPTP and the PR system as one of the suggested alternatives. These are listed as follows:

FPTP

Merits	Demerits
Uncomplicated, simple for the voter to understand.	Leads to exclusion of small and regional parties from the Parliament; votes given to small parties are wasted.
Provides the voter the opportunity to assess the performance of the candidate rather than having to accept a list of candidates presented by the party (as under a List system). This also ensures a link between a constituency and its representative in the legislature, and incentivises representatives to serve their constituents well. This works well in smaller districts where common interests and a smaller size facilitate better delineation of these regional interests through increased movements at the grass-root level.	Results in large discrepancies between a party’s vote-share and the seat-share – where parties often win a large number of seats with a comparatively less vote share. The voices of a large number of voters remain unheard.
Represents the ‘hallmark of stability’ in India’s electoral system. The Supreme Court in <i>RC Poudyal v. Union of India</i> had categorised the FPTP system as possessing ‘the merit of preponderance of decisiveness over representativeness.’	Leads to an increase in election expenditure, since every candidate is required to reach out to the electors on an individual as well as a party basis.

RGICS Issue Brief

Changing the Electoral Voting System

Proportional Representation

Merits	Demerits
It ensures that smaller parties get representation in the legislature, particularly when they have a broad base across constituencies. It also encourages new parties to emerge and more women and minorities to contest for political power.	Ensures less stability, since numerous parties get seats without any party gaining a majority. Coalition government becomes inevitable, with challenges to such governments also becoming frequent. This is also why the Constituent Assembly decided that proportional representation would not be suited to the Parliamentary form of government that our Constitution lays down.
The single transferable vote variant of the PR system ensures that voters do not feel encumbered by tactical voting strategies in the worry that their vote might go 'waste'. In that sense, proportional representation ensures honesty in the election process both from the side of the candidate, who can choose their ideological commitments freely, and from that of the voter, who can vote freely.	<p>The relationship between a voter and the candidate may dilute, for the candidate may now be seen as representing the party and not the constituency.</p> <p>Detractors of the list system of proportional representation point out that while the method ensures that more political parties are represented, it concentrates power <i>within</i> a political party, in the hands of the leaders who decide on the list of candidates.</p>

The report suggested that “any changes in India’s electoral system will have to follow a hybrid pattern combining elements of both direct and indirect elections;” and that this would “necessitate an increase in the number of seats in the Lok Sabha, which raises concerns regarding its effective functioning” (p. 87). The report revisited the 170th report of the Law Commission (May 1999), which suggested that FPTP could be combined with the PR system. For this, the 170th report recommended that the existing 543 seats of the Lok Sabha continue to be filled through direct elections, and the number of seats in the Lok Sabha be increased by an additional 25%, or 136 seats, which are filled by PR following the list system. A similar expansion should take place in the State Assemblies as well.

At the same time, the report expressed its apprehensions with regard to numerous “small parties and fringe groups” gaining entry into the Parliament. This, the Commission suggested, could be prevented through setting a minimum threshold for representation, i.e. a provision be made in the Representation of People Act, 1951, that “any political party which obtains less than 5% of the total valid votes cast in the country (in the case of Parliament) and in the concerned State (in the case of a Legislative Assembly) shall not be allowed any representation in the Lok Sabha or in the concerned Legislative Assembly, as the case may be, either through the direct election or the proportional representation system” (p. 86).

RGICS Issue Brief

Changing the Electoral Voting System



b) **The joint Labour Report – The Many, Not the Few: Proportional Representation & Labour in the 21st Century – by *Make Votes Matter* and *Labour Campaign for Electoral Reforms*.ⁱⁱⁱ**

Following are the arguments the report puts forward advocating the replacement of FPTP entirely through the PR system.

FPTP

There is a demarcation between <i>safe seats</i> and <i>marginal seats</i> .	<input type="checkbox"/> No electoral incentive to maximise vote share, but only seat share. <input type="checkbox"/> More focus on <i>marginal seats</i> to influence ‘swing voters.’ <input type="checkbox"/> People from the <i>safe seats</i> are neglected.
Targeting Strategy (<i>safe seats</i>)	<input type="checkbox"/> Party strongholds taken for granted <input type="checkbox"/> Voters grow disillusioned <input type="checkbox"/> Parties grow complacent, ignorant
Tactical voting by voters	

Proportional Representation

Every vote matters	<input type="checkbox"/> <i>Safe seats</i> and <i>marginal seats</i> no longer factor into election campaigning. <input type="checkbox"/> Parties incentivised to campaign everywhere. <input type="checkbox"/> Core voters aren’t neglected.
<ul style="list-style-type: none"> ➤ Black-Asian-Minority-Ethnic (BAME) representation ➤ Gender Balance 	<input type="checkbox"/> Under FPTP, white-middle class men perceived as ‘safe bets.’ <input type="checkbox"/> “Under PR there would be a greater focus on selecting candidates based on an equality and diversity perspective along the spectrum of candidates with the right skill mix to be a politician.” (Patrick Vernon, former Labour councillor in the London Borough of Hackney)
Larger voter turnout	<input type="checkbox"/> Arend Lijphart finds that citizens in countries with PR have been found to be more satisfied with the performance of their country's democratic institutions, even when the party they voted for is not in power.

RGICS Issue Brief

Changing the Electoral Voting System



<ul style="list-style-type: none">➤ Income equality➤ Welfare and sharing of public goods	<ul style="list-style-type: none">□ Evidence shows that countries with proportional electoral systems have considerably lower income inequality than those with majoritarian systems like FPTP.□ Birchfield and Crepaz: “The more widespread the <i>access to political institutions</i>, and the <i>more representative the political system</i>, the <i>more citizens will take part in the political process</i> to change it in their favour which will manifest itself, among other things, in lower income inequality. Such consensual political institutions <i>make the government more responsive to the demands of a wider range of citizens.</i>”
---	---

RGICS Issue Brief

Changing the Electoral Voting System

8

PART III: ANALYSIS

a) The Law Commission Report

The recommendations of the Law Commission raise several questions. First, does a threshold calculated according to the total valid votes cast in the country and in the concerned State imply that the assembly and Parliament elections would be required to take place simultaneously? Second, because of a threshold, what happens to the small parties which are unable to field candidates outside their core areas? As Macdonald and Moussavi (2015) note, in the 2014 Lok Sabha elections, only seven parties fielded candidates in more than 100 of India's 543 constituencies – which places a ceiling on the potential vote share of smaller parties.^{iv} Even the Commission noted that only a few parties would be able to fulfil a 5% threshold. For instance, in the 2014 elections, a 5% threshold would have given seats in Parliament to just two parties – the BJP and the Congress; at 3%, 5 more parties – the BSP, the TMC, the SP, the AIADMK, and the CPM; at 2%, three more – the TDP, the YSR Congress and the AAP.^v As the Commission underlined, if large parties would still benefit from a threshold, the purpose of introducing a proportional system in the first place gets defeated.

b) The Labour Report

The points highlighted in the Labour report need to be read in the Indian context. First is the issue of access to political institutions. If it is indeed the case, as Birchfield and Crepaz note, that a PR system, through ensuring representative assemblies and Parliament, can make the government more responsive to the demands of a wider range of people, then such a model can be immensely beneficial to countries like India, where, in most cases, people's access to political institutions is hindered by social and economic barriers.

Second issue is that of representation. There is a general consensus that varied forms of PR system in many countries have enhanced representation of women and racial and ethnic minority groups in legislative bodies. This is important in the context of India which was recently ranked 149th in a list of 193 countries in terms of women's representation in the lower or single house of parliament (11.8% in Lok Sabha and 11.1% in Rajya Sabha) as of July 1, 2017.^{vi} Also significant is the case of lack of Muslim representation, which, at the commencement of the 16th Lok Sabha, hit an all-time low at only 22 members.^{vii}

However, this argument is not without its problems. For instance, under the closed party list system – a variant of PR – voters elect not a candidate but a party, which then decides which member should be elected. As Dr. S.Y. Quraishi notes, this system could lead to only influential party members getting elected, resulting perhaps in the candidate choosing to woo the party leaders instead of the voters. This, Dr. Quraishi notes, could “reinforce various forms of an elite capture of election tickets—at the whims of the party leadership” and “the tickets could be issued to family members or particular party leaders, or to candidates on the basis of their caste, linguistic, or religious communities.”^{viii} How far, then, a PR model can go, as the Labour report argues, in ensuring diversity in terms of candidature, is a matter subject to scrutiny.

The PR system should significantly tilt the outcome in favor of regional parties and give them a bigger role to play, thus making the system more representative. Since the focus is on vote share rather than seat share, this change in the electoral pattern is likely to make the whole process more representative by allotting seats according to the voters polled. However, this is possible only if we assume that there is no minimum threshold that the parties need to achieve. Given the visible advantages of PR and the status quo FPTP has generated, the PR system or a hybrid model might be beneficial for the democratic process in the long run through increased representation of regional parties, women, and religious minority groups in legislative bodies. It will also ensure utilisation of every vote and proportionality between the vote share and seat share.

RGICS Issue Brief

Changing the Electoral Voting System

PART IV: CONCLUSION

Given that both FPTP and PR pose distinct challenges, a hybrid system combining the advantages of both models – as proposed by the four parties (the Congress, the NCP, the CPI, the CPI-M), the Law Commission and S.Y. Quraishi – seems to be the most feasible way forward. In this regard, Dr. Quraishi suggests^{ix} the following:

- The mixed-member proportional system of Germany may be considered – without the threshold of a 5% vote share. Out of the 598 seats in the German Parliament, 299 seats are filled through FPTP, for which the voter directly elects a candidate, and the remaining 299 are filled through PR, for which the voter elects a party. In the latter round, elected parties have to elect their members in a way that the proportion of votes polled in this round are reflected in the total 598 seats. For instance, if a party wins 20 seats under the FPTP system and a 10% vote share in the second round of voting, it is given 40 seats from the remaining 299, thus ensuring that the party has 60 seats, or 10%, of all 598 seats.
- The parallel system of Nepal – which will be implemented in the upcoming elections in November and December – may be considered. Out of the 275 seats of Nepal’s House of Representatives, 165 would be elected through FPTP and 110 through PR. Unlike Germany, the seats from the PR system in Nepal would be allocated only in proportion to 110 seats and not the total 275 seats.
- Both these systems, Mr. Quraishi notes, require an increase in the number of Lok Sabha constituencies. This is in consonance with the Law Commission report, which recommended that the existing 543 seats of the Lok Sabha should continue to be filled through direct elections, and the number of seats in the Lok Sabha be increased by an additional 25%, or 136 seats, to be filled by the list system.

Changes in law:

To introduce a change from FPTP to a hybrid model, constitutional amendments would have to be introduced by amending Article 81 and Article 172 to provide for elections through the list system (or any other variant of the PR system) and to increase the number of seats in Lok Sabha and the Legislative Assemblies before 2026. Such an amendment would require an absolute and special majority in both the houses. Given that the BJP has not yet responded to the questionnaire sent by the Parliamentary panel, and assuming thereby that the NDA does not vote in favour of a hybrid/PR system, other parties would fall short of the majorities required for the respective constitutional amendments in the Lok Sabha itself.

Required amendments:

As per the 170th Law Commission Report^x, in order to introduce a hybrid electoral model of FPTP and the list system, the following Constitutional amendments would be needed:

- i) To bring in the model in the Lok Sabha, the following clause shall be substituted for clause (1) of Article 81:

“(1) The House of the People shall consist of:

RGICS Issue Brief

Changing the Electoral Voting System

- (a) not more than 530 members to be chosen by direct election from the territorial constituencies in the States;
- (b) not more than 20 members to represent the Union territories chosen in such manner as Parliament may by law provide; and
- (c) *not more than [number of members which will be elected through the List System] members chosen according to the list system in such manner as Parliament may by law provide.*

Provided that the provisions of article 330 shall not apply to the election of the members to be chosen under this clause.”

- ii) To bring in the model in the Legislative Assemblies, the following clause shall be substituted for clause (1) of article 170:

“(1) The Legislative Assembly of each State shall consist of not more than *[increased number of members]*, and not less than sixty members chosen both by direct election from territorial constituencies as well as according to the list system in the State.”

After clause (1), the following clause shall be inserted:

“(1A) The strength of each Legislative Assembly as at present fixed by the Second Schedule to the Representation of the People Act, 1950, shall be filled by persons chosen by direct election from the Assembly territorial constituencies. In addition thereto, *[insert per cent by which total membership is to be increased]* of the *total membership of the said strength of each Legislative Assembly shall be chosen according to the list system.* The membership of each Legislative Assembly shall accordingly stand enhanced by *[insert per cent by which total membership is to be increased]* of the existing strength.”

After clause (3), the following clause shall be inserted:

“(4) The *[insert per cent by which total membership is to be increased]* seats added to the membership of each Legislative Assembly by clause (1A) of this article shall be chosen in such manner as Parliament may by law provide :

Provided that the provisions of article 330 shall not apply to the seats so added by clause (1A).”

- iii) The total number of seats both in the Legislative Assemblies and that allocated to various states in the Lok Sabha has been frozen till 2026 by the Constitution (Eighty-fourth Amendment) Act, 2002.^{xi} Hence, assuming that the hybrid model would be implemented before 2026, a Constitutional amendment would be required to increase the number of these seats before 2026.

RGICS Issue Brief

Changing the Electoral Voting System



Effect on political parties:

The PR system should significantly tilt the outcome in favor of regional parties and give them a bigger role to play, thus making the system more representative. Since the focus is on vote share rather than seat share, this change in the electoral pattern is likely to make the whole process more representative by allotting seats according to the voters polled. However, this is possible only if we assume that there is no minimum threshold that the parties need to achieve.

Long term impact on democracy:

Given the visible advantages of PR and the status quo FPTP has generated, the PR system or a hybrid model might be beneficial for the democratic process in the long run through increased representation of regional parties, women, and religious minority groups in legislative bodies. It will also ensure utilisation of every vote and proportionality between the vote share and seat share.

RGICS Issue Brief

Changing the Electoral Voting System



12

PART V: BACKGROUND INFORMATION/REFERENCE DOCUMENTS

ⁱ <http://www.thehindu.com/news/national/parties-call-for-hybrid-electoral-system/article19663572.ece>

ⁱⁱ <http://lawcommissionofindia.nic.in/reports/Report255.pdf>

ⁱⁱⁱ <https://static1.squarespace.com/static/563e2841e4b09a6ae020bd67/t/5910ab2437c5811c7b50d78e/1494264678262/Report+-+The+Many+Not+The+Few+-+online.pdf>

^{iv} <http://www.epw.in/journal/2015/50/commentary/indias-electoral-system.html>

^v <http://www.thehindu.com/opinion/blogs/blog-datadelve/article6029392.ece>

^{vi} <http://www.ipu.org/wmn-e/classif.htm>

^{vii} <http://indianexpress.com/article/india/politics/only-22-muslims-in-16th-lok-sabha/>

^{viii} <http://www.caravanmagazine.in/vantage/why-india-needs-to-change-its-electoral-voting-system>

^{ix} *Ibid.*

^x <http://www.lawcommissionofindia.nic.in/lc170.htm>

^{xi} <http://indiacode.nic.in/coiweb/amend/amend84.htm>