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## New doors open

S. Viswam

Experience has taught us that there is a golden rule to be evoked when talking of India-Pakistan bilateral relations and/or developments relating to them. The rule is this: never pitch your expectations from any bilateral interaction too high, and never despair too low over failures or lack of progress. The last fortnight has opened some new doors to welcome and assess the latest status of the relations. Let us therefore proceed to greet those developments and see if the new doors lead deep into the premises or like in the past encounter unexpected hurdles in the way. At the outset, we need to acknowledge that anything that seems and sounds positive deserves to be welcomed even if for the simple reason that dialogue is always preferable to talk of war and conflict.

The people of India and Pakistan have good reason to hail, with a sigh of relief, the new developments that have indicated a potential for not only a sustained dialogue but also a possible breakthrough with long-time projections. Statements from both sides of the border have shown that the desire for an improvement in relations is shared. This is a good augury

After a long interval, signs of a thaw first emerged at the sidelines of

an international conference in Ufa, Russia. The atmosphere improved somewhat but neither side capitalized on the good vibes generated at Ufa to attempt an interaction at lower bilateral levels. The Ufa meeting was in July this year but we are now close to entering another year. As if to demonstrate continued mutual goodwill, the prime ministers of India and Pakistan happened to run into each other at the climate conference in Paris, and thereby hangs a tale.

All of a sudden, in the first week of December we learn that the national security advisers of India and Pakistan have had a surprise meeting in Bangkok. India's Ajit Doval and Pakistan's counterpart Naseer Khan Janjua met in a third venue, the Thai capital Bangkok. After the meeting they let it be known that they had discussed the two subjects with which the two nations are usually preoccupied during exchanges. This meeting was important because since 2014 the NSAs have been unable to meet even though arrangements were made: the first meeting could not be held because Pakistan insisted on meeting leaders of Kashmir Hurriyat Conference. The second did not take place as India wanted Kashmir kept out of agenda, Pakistan insisted it must be included.

## Equal democracy *electoral system needs a change*

Hippu Salk Kristle Nathan

The 42<sup>nd</sup> general elections to the House of Commons of the Canadian parliament in October, 2015 could well be Canada's last elections on the basis of first-past-the-post (FPTP) system. Three national parties including the winning Liberal party and to be Prime Minister Justin Trudeau have promised electoral reforms in which the country is expected to move decisively towards proportional representation (PR) system. In September 2015, the Republic of Nepal gave itself a new Constitution. With this it has reinforced a parallel voting system of election to its House of Representatives. Of the 275 members of the House, 60%, i.e., 165 members are to get elected from 165 one-member territorial constituencies through the FPTP system of election and the rest 40%, i.e., 110 members get elected by the PR electoral system based on contesting political parties' vote shares. Compared to an exclusive FPTP system which is in vogue in India, this mixed voting system in Nepal is an improvement in terms of fairness of representative democracy.

The FPTP system is based on the winner-take-all form of simple plurality. The term FPTP has its origin from horse-racing where the owner of the horse that finishes first goes away with all the money gambled on all horses. On the face of it, this system is undemocratic. Applying the same principle in elections, it can lead to large

discrepancies in shares of votes and seats secured by different parties. On the contrary, in the PR system there is a close match between the vote share and seat share. With the skewed translation of votes to seats, the FPTP system betrays the very essence of democracy which is based on the principle of equality and justice edified in the motto 'one person one vote'. In India we have been experiencing such political injustices in all Lok Sabha and Vidhan Sabha (Legislative Assembly) elections.

Let us look closely into India's Lok Sabha Election results of 2014. The discrepancies are readily noticeable in the top two national parties. The Bharatiya Janata Party (BJP) with 31% of vote share has secured 52% of seats (an excess of 114 seats from a PR situation). On the contrary, the Congress party with 19% of vote share got 8% of seats (61 seats less from a PR situation). The darker side of the FPTP system is all the more visible if one considers the case of two smaller parties, the Biju Janata Dal (BJD) and the Dravida Munnetra Kazhagam (DMK). The BJD and the DMK have polled 95 and 96 lakh votes with vote shares of 1.71% and 1.74%, respectively. With almost similar number of Indian voters voting for both the parties, any representative democratic system is expected to award similar number of seats to the two concerned parties. However, the reality has been strikingly different. The BJD has walked away with 20

Lok Sabha seats whereas the DMK has got none. If one compares the Bahujan Samaj Party (BSP) and the Trinamool Congress (TMC), the political injustice meted out to the BSP is all the more shocking. 229 lakh voters voted in favour of the BSP while 213 lakh voters cast their votes in favour of the TMC candidates. With 3.84% vote share the TMC has bagged 34 seats. But with a higher vote share, i.e., 4.14%, the BSP has drawn a blank.

The story was not much different in 2009 elections except that instead of the BJP, the beneficiary was the Congress. With 29% vote share, the Congress party got 38% of seats (an excess of 51 seats from a PR situation). The Janata Dal-United (JDU) and the Praja Rajyam Party (PRP) faced a situation similar to what the BJD and the DMK faced in 2014. The JDU with 63 lakh votes got 20 seats, whereas the PRP, with 66 lakh votes, got none.

The same trend is observed in all the state assembly elections. For instance, in 2012, Uttar Pradesh assembly elections, the Samajwadi Party (SP) with 29% of votes won 224 seats out of a total of 403 (an excess of 107 seats from PR situation), whereas the BSP with 26% votes could manage to win only 80 seats. The same BSP had taken the advantage of the system and had won 206 seats (an excess of 83 seats from PR situation) with just 30% votes in the previous Assembly Election held in 2007.

This is not a new trend. The political injustice planted and propelled by the FPTP system of election was evident from very first Lok Sabha elections of 1951-52. The Praja Socialist Party, i.e., the then Socialist Party and Kisan Mazdoor Praja Party together polled 16.4% of the popular vote but they got only 3.8% of the seats. Had there been the PR system of elections, they would have got 89 seats and this 'intellectually gifted' political party could have emerged as the strongest Opposition to the Congress. In 1984, the BJP won 7.7% of popular votes, but could secure only two seats, i.e., 0.4% of seat share. In 1996 in Tamil Nadu Assembly elections, the All India Anna Dravida Munnetra Kazhagam (AIADMK)-Congress alliance polled 27% of votes, but got only four seats, i.e., 1.7% of seat share.

With the FPTP system, a supposedly fair election results in what Churchill once remarked, a 'fluke' representation. A slight swing in vote percentage can lead to a landslide change in seat share. Parties victimized under this system of election don't oppose as they themselves have got benefited from such a system in the past and wait for their luck in the next election.

One might argue that in the FPTP system a voter votes for the candidate and the candidate getting highest number of votes in the constituency represents the same. However, it is not hard to recognize that the vote cast in an election is not only for the candidate, but largely it is for the party. Candidates get ticket from the party and fight the election on the party-symbol. The campaigns delve into issues relating to parties' leaderships, past performances, and manifestoes. Votes cast for the

candidates, excepting those for the independent candidates, are in a way votes for the party to which the candidates are affiliated. So, under the FPTP system of election, though every voter is given equal vote, the final representation of political parties in the House, make the votes get differently valued. Some votes get over-valued and some get under-valued. Some political parties, in spite of polling substantial vote share go unrepresented. For instance, in the present Lok Sabha, those who voted for candidates of certain parties including those of the BJP, AIADMK, Trinamool, BJD, Shiv Sena have been overrepresented, whereas those who voted for candidates of certain other parties including those of the Congress, SP, Communist Party of India (Marxist), and Aam Aadmi Party have got under-represented. Certain political parties such as Communist Party of India (Marxist-Leninist) Liberation, All India Forward Bloc, Marumalarchi Dravida Munnetra Kazhagam, Jharkhand Vikas Morcha (Prajatantrik), Desiya Murpokku Dravida Kazhagam, DMK and BSP though polled 10,12, 14, 16,21, 96, and 229 lakh votes, respectively, went unrepresented.

The FPTP system is particularly unfair to smaller parties as they can only find representation when any of their candidates can get highest number of votes in one of the constituencies. Also, the system is biased against those political parties whose support base is scattered across constituencies rather than concentrated in a few constituencies. The system also discourages the voters to vote for their favourite candidate if the candidate has less chance of winning. Even the possibility of a convincing win discourages the voters to vote as the

margins of win do not matter under the FPTP system. Both literature and evidences show that the voter turnout is lower under the FPTP system of election compared to the PR system.

It is not that our Constituent Assembly was not aware of any form of PR system of election. We have one of the most appropriate electoral system i.e., PR system by means of the single transferable vote for the election of our President and Vice-President. For the members of Lok Sabha and Vidhan Sabhas we inherited the FPTP system from the British. The Constituent Assembly did discuss two alternative systems—PR with single transferable vote and PR with multi-member constituencies by means of cumulative vote. The PR with single transferable vote was rejected as it was not practical to expect the voters in India with only 14% literacy to rank the candidates on a ballot papers with numerals. The idea of multi-member constituency also did not find acceptance as this would increase the size of the constituency (assuming four-member constituencies the size would be increased by four times) and it would become practically difficult for the candidates to approach all voters.

Our Constituent Assembly went ahead with the FPTP system expecting that this system would result in more often a majority government - even with minority vote - leading to better decision making and greater accountability. This argument is less convincing in the eras of coalition politics and government. But, the arguments put forward by the Constituent Assembly for not going for the two specific forms of PR were apt and

justified. However, unfortunately, the Assembly did not think of any out-of-the-box alternative PR method to uphold the equality of votes and thereby to ensure fair representation and political justice. In the same year as our Constituent Assembly debated on the PR system, i.e., in 1949, West Germany invented the Mixed Member PR (MMPR) system which preserves the territorial representation through single-member constituencies (as in the case of FPTP) and combines it with compensatory representatives drawn from a list to maintain overall proportionality.

In India, there was a proposal in 1977 for a parallel system of voting, like the current system of Nepal, mooted by S L Shakhder, the then Chief Election Commissioner. This proposal was endorsed for serious examination by both the 1999 and 2015 Law Commission Reports on Electoral Reforms. Some of the enthusiastic advocates of the PR system of election include J M Lyngdoh, former Chief Elections Commissioner and Dr. Jayaprakash Narayan, the founder president of Lok Satta Party and a sitting member of the Andhra Pradesh legislative assembly.

There are three primary criticisms of the PR system of election. First, this includes a list-based system which further concentrates power with the party high command which decides the names of the candidates to be included in the list. The second criticism lies with fragmented legislatures often emanating out of PR system and that of stability of government - a concern raised by the Indian Constituent Assembly, particularly, Dr. B R Ambedkar. Thirdly, compared to the FPTP, the PR system seems to be more complex.

To overcome the above limitations a modified MMPR is proposed here where the compensatory representatives need to be drawn from the party candidates who got the highest votes among those who failed to win in the territorial elections. This way, one can get rid of any list system and prevent any dilution of relationship between the candidate and voters. This also prevents anybody creeping into the House of Representatives by a route over which people cannot stand on guard.

In order to address the issue of stability, the leader of the House of Representatives must get elected by the representatives themselves. This election must have the run-off component (election of top two candidates if no candidate manages to win more than 50% of the votes) to ensure that the leader enjoys the confidence of majority of the representatives. This way, in a scenario where no party wins majority of seats in the House - which may be a more frequent case under any PR system compared to the FPTP - a realignment of parties is most likely to happen at the run-off stage. The stability can further be ensured by having the provision of constructive vote of no confidence, which allows a House to withdraw confidence from a head of government only if a prospective successor has absolute majority support.

For simplicity, India can initiate the MMPR method with single vote. The usual MMPR method has two votes - one for the candidate and one for the party. This provides flexibility to the voters in evaluating the candidate independent of the party and vice-versa. Even without the provision of second vote, the

party share of votes can be calculated based on the total votes polled by the candidates contesting on behalf of the party. In this way, all the votes, other than the votes cast for independent candidates, can be utilized for compensatory 'top up' representatives.

To make the territorial representation foolproof and to ensure that the representatives have majority support in their respective constituencies, we can go in for run-off election at the constituency level (for the constituencies where no candidate manages to win more than 50% of votes). The 2002 report by the National Commission to Review the Working of the Constitution did recognize that the task of run-off elections is manageable. It is like a re-poll with the same electoral rolls and without any fresh nominations or campaigning. The report also indicated that with the run-off election, the need to appeal to the majority of the constituency can make parties to be more universal in approach than sectarian. Also, run-off elections can prompt pre-poll alliances among political parties leading to the much needed stability in government.

In the Handbook of Electoral System Choice, the author and editor Prof. Joseph Colomer has reasoned how political parties choose a particular system of election to strengthen their position. A political configurations dominated by one or two parties choose exclusionary system like the FPTP, whereas balanced multiparty pluralistic settings opt for inclusive systems based on PR principle. As per the electoral system design database of the International Institute for Democracy and Electoral Assistance, currently exclusive FPTP system of

election is in practice in 46 countries, of which three-fourths were once British colonies. This system used to be more prevalent, but some countries have abandoned it for a more proportional system. For example, Sri Lanka did it in 1978; New Zealand in 1998; and Nepal in 2008. (There is no instance of a country moving to an exclusive FPTP system from a more proportional system).

John Stuart Mill, one of the most influential thinkers of all time, had regarded disproportionality representation to be 'contrary to the principle of democracy, which professes equality as its very root and foundation'. In his 1861 book entitled *Considerations on Representative Government*, he wrote "In a really equal democracy, every/or any section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives, but a minority of the electors would always have a minority of the representatives. (Hu)Man for (hu)man, they would be as fully represented as the majority." This condition laid down by Mill one and half century back has still remained as the last word on the test of a representative system.

The FPTP system may be regarded as the simplest. But, by compromising on the representative character of democracy, the system deprives the citizens of political justice – an important ideal pledged in the Preamble to the Constitution of India. The proposed method of no-list MMPR with single vote remains as simple as FPTP in terms of voters choosing their best option in the ballot. It preserves the equality of votes which translates

into proportional seats and fair representation. Unfortunately, this important issue relating to the system of election is missing from the public

discourse in India. It's time we must move towards proportional system of election to make our largest democracy more meaningful.