

THE REPRESENTATIONAL SYSTEM

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The representational system is a key part of any modern democratic constitution because it is essentially the mechanism by which the people choose not merely their representatives in the legislature but also their rulers. The constitution of the Second Republic of Sri Lanka has in fact two distinct representational systems, one through which the people elect their legislature or parliament, and the other through which they elect an executive President. The two systems are best dealt with separately and each has features both novel and controversial in Sri Lanka.

The arrangements relating to elections to parliament involve a system of proportional representation. For this purpose the whole country is to be divided into a number of multi-member electoral districts, each such electoral district being, as far as this is practicable, identical with an existing administrative district or a combination of them. The constitution clearly states that this demarcation is to be done by a three member Delimitation Commission appointed by the President from among persons not actively engaged in politics, and that the number of electoral districts shall not be less than twenty or more than twenty four. The total number of representatives in parliament is fixed at 196. Of these 196 seats, 36 are allocated to the nine provinces on the basis of four seats per province and will be distributed within each province equitably by the Delimitation Commission.¹

The distribution of the other 160 seats is a little more complicated and is based on a variant of what is generally known as the 'method of smallest divisors'.² In the first place the total number of electors (or qualified voters) in the country is determined from the electoral register on the basis of which the election is to be held. In 1977 for instance there were 6,667,589 registered voters. This total is divided by 160 and the result is brought up to the next

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1. *The constitution of the Democratic Socialist Republic of Sri Lanka*, Colombo, Dept. of Government Printing, 1978. (hereafter 1978 *Constitution*) Articles 95, 96, 97 and 98 (1) Until such a delimitation of made the sixth schedule to Article 162 (2) of the constitution which gives a list of electoral districts determines the electoral districts and the distribution of these 36 seats amongst them. See Table II.
 2. M. L. Balinski and H. P. Young, "Stability, coalitions and schisms in proportional representation systems" *The American Political Science Review*, Vol. 72 p. 850.

highest whole number (e.g. for 1977 this would be 41,673). This is termed the qualifying number of electors. Each electoral district is entitled to one member for each qualifying number of electors for the district.³

To illustrate, had this system been in operation in 1977 the Batticaloa district with 132,943 electors would have been entitled to a minimum of three seats out of the 160, while Kandy with 475,171 would have obtained eleven and Jaffna with 408,261 would have received nine. If the total number of seats thus assigned to the electoral districts comes to less than 160, the electoral districts with the largest residue of electors for whom seats have not been credited will be allotted the remaining seats in succession.⁴ The seats allocated according to provinces would of course be added to these so that in the end Batticaloa district would have obtained four seats, Kandy thirteen seats and Jaffna also thirteen seats.

Once the election has been announced and the number of seats per electoral district known any recognised political party or any group of persons wishing to contest as independent candidates can submit a nomination paper setting out their list of candidates in order of priority.⁵ Any list which does not obtain $12\frac{1}{2}$ per cent of the total poll is discarded and the votes polled for that list are regarded as invalid.⁶ Thus for instance if we assume that this scheme was in operation in 1977, the Ratnapura district would have been entitled to a total of ten seats. The poll according to 1977 figures would have been 151,473 votes for the United National Party (UNP), 84,632 for the Sri Lanka Freedom Party (SLFP) and 46,983 for the United Left Front (ULF). Other lists of candidates would have been eliminated as they would not have attained the $1/8$ qualifying mark. The seats would then have been distributed in the following way. The total number of valid votes is first determined. In this instance it would have been 283,088. This is then divided by the number of seats (ten in this instance) and the answer is the qualifying vote per member (28,309 in this instance). On this basis the UNP would have gained five seats, the SLFP three and the ULF two.⁷

The system of proportional representation thus set up by the new constitution replaced a plurality system of the Westminster type which had existed

3. 1978 constitution, Article 99 (3), (4), (5).

4. *Ibid.* Article 98 (6) and (7). For a full table of the distribution of seats to different electoral districts on the basis of the 1977 voters registers see, C. R. de Silva, "The constitution of the Second Republic of Sri Lanka (1978) and its significance", *Journal of Commonwealth and Comparative Politics*, Vol. XVII (2), July 1979. p. 201.

5. 1978 Constitution, Article 99 (1), (2) and (3). A list of candidates should be one third more than the number of seats vacant. This is to provide for cases when individual candidates withdraw, die or are expelled from the party or group during the election campaign or after it.

6. *Ibid.*, Article 99 (5) a.

7. See Table III.

in Sri Lanka since the early twentieth century. The new system did not lack critics but the criticism has been from two different perspectives. The smaller parties such as those of the traditional Left and the Ceylon Workers' Congress (CWC) the last representing the interests of the plantation Tamils, have generally welcomed the introduction of the principle of proportional representation. On the other hand they have condemned the one-eighth cut-off point as being far too high. V. Thondaman, leader of the CWC stated that this requirement was undesirable in a land of political and ethnic diversity.⁸ More recently K. Shinya made an eloquent plea for the removal of this restriction in favour of Leftist 'flowers yet to bloom'.⁹ On the other hand it might be noted that 12½ per cent on a district basis is not much more difficult to obtain than 5 per cent on a national basis which is the minimum requirement which exists in the Federal Republic of Germany. In the 1977 General Elections for instance the ULF barely made 5 per cent of the national vote but they obtained well over 12½ per cent of the vote in five of the twenty two electoral districts. Given the 1977 figures a reduction of the district cut-off point to 10 per cent or even somewhat lower would not have helped them to win any further seats. In fact the only large groups the 12½ per cent requirement is likely to affect adversely in the near future are two ethnic groups—the plantation Tamil group in the central highlands which might find that it impedes the capture of a CWC seat in the Kandy district and the opposition to the dominant Tamil United Liberation Front (TULF) in the Jaffna district.¹⁰

Also against any considerably lowering of the 12½ per cent cut-off point is the fact that it is the only factor promoting the merger or coalition of parties in the new electoral system and of course checking their tendency to splinter. Other schemes of proportional representation have other factors inbuilt in them for this purpose and thus can afford to reduce or even dispense with the cut-off point. An example is the method of d'Hondt, a nineteenth century Belgian lawyer, a method also proposed by Thomas Jefferson in 1792 and often known as the method of the highest average. Allocation of seats by this method is done by dividing the total number of votes by the number seats to be allocated plus one and by giving any extra seats to the party that would be worst off if every party were to get one more seat. This method currently used in Argentina, Belgium, Brazil, Finland, Israel and the Netherlands favours the

8. *Parliamentary series No. 14 of the Second National State Assembly. Report from the select committee of the National State Assembly appointed to consider revision of the constitution (together with the proceedings of the committee and minutes of evidence)*, Colombo, Dept. of Government Printing, 1978. pp. 171.

9. *Ceylon Daily News*, 29 May 1979 and 8 June 1979.

10. Both these groups can secure a seat with 7.8% of the vote in those districts if the 12½% barrier is removed. Of course if no minimum barrier is set the ULF would win one seat in Colombo district with minimum 3.4% of the vote. The ULF actually obtained about 4.6% in Colombo district 1977.

larger parties in the allocation of seats. As Table IV will illustrate both this scheme and the one adopted in the 1978 constitution with the cut-off point encourages coalitions while this incentive disappears if the 1/8 barrier is removed or even very substantially lowered, On the contrary there will then be a tendency towards a multiplicity of small parties or factions.

The second angle from which criticism of the system of proportional representation has come is from the SLFP. The SLFP criticism is that the introduction of the new system is likely to lead to minority governments which would be weak and unstable.¹¹ It is true that the introduction of proportional representation makes minority government more likely but it does not make them inevitable. Had this system been applied in the 1970 elections the United Front Coalition would still have obtained a majority (99 out of 196 seats) and in 1977 the UNP would have secured a clear majority of 107 out of 196 seats. In any case with the institution of an executive President the command of a majority in the Legislature by one party becomes less important. The arguments for and against the new system seem to be dominated more by party interests than by dispassionate judgements. The 12½ per cent barrier is a useful weapon for the ruling UNP and even the main Opposition Party, the SLFP, to keep its dissidents in check. This explains why after a lone statement by Mrs. Bandaranaike in 1978¹² the SLFP made no strong criticism of the 1/8 barrier. The SLFP is more concerned that the system of proportional representation will probably deny them the ability to gain an absolute majority in Parliament in the future. To the small Leftist parties however the 1/8 barrier looks a formidable one and they have therefore marshalled a sustained attack against it.

Perhaps more important is the criticism also voiced by the SLFP that with the introduction of large electorates the member of parliament will become a remote figure with much less contact with the voter. This is a valid argument. Of course the obvious defence would be that advanced by R. Premadasa, the present Prime Minister as far back as 1971. He argued that this would make the legislators less concerned with parish-pump politics and give them more time to really weigh national policy and the merits of various pieces of legislation.¹³ Such a defence would be more acceptable if there was a greater delegation of power to district and local bodies so that popular wants and individual grievances can be handled by members of those bodies.

Perhaps the most important criticism of the proportional representation system is the power given to the party hierarchy to prepare a list of candi-

11. *Parliamentary series, op. cit.* pp. 166-167.

12. *National State Assembly debates*, 3 August 1978, column 1061.

13. *Ibid.*, 2 August 1978, column 806.

dates. The party prepares the list and the voter has to vote for or against the total list. There is no system of primary elections such as that found in the USA to determine the more popular candidates. This is a serious problem in a situation where a truly democratic party organization has not been developed by any party in Sri Lanka. It becomes even more serious when you consider that the expulsion of a member from the party results in his losing his seat in parliament,¹⁴ and that the party can change the priority of names in the list or substitute any other names for those in it virtually at any time.¹⁵ Of course all these powers are limited by political reality. A party which fields too many unpopular candidates cannot really hope to do well in an election and resentment against party nominations can lead to defections of large sections of voters in subsequent elections.¹⁶ Finally it can be argued that in any case the nomination of party candidates in Sri Lanka has not been all that democratic even under the Westminster system.

So far we have dealt with criticisms of the new system. Of course it has definite advantages. It will give a truer picture of public opinion in the legislature. Under the Westminster model it was possible in 1960 for a party with only 33.6 per cent of the vote to gain 50 per cent of the seats in the legislature. It will not of course make parliament an absolute mirror of the state of public opinion because of the 12½ percent minimum requirement and certain other provisions. But it will reflect party division in the country far more accurately than the provisions of the 1948 or the 1972 constitutions.

TABLE I

1970 Elections

	<i>% of votes</i>	<i>Actual % of seats</i>	<i>% of seats according to PR system of the 1978 constitution.</i>
UNP	37.9	11.3	39.3
UF	49.0	76.8	50.5
FP	4.9	8.6	6.6
TC	2.3	2.0	3.6

1977 Elections

UNP	50.9	83.3	54.6
SLFP	29.7	4.8	31.1
ULF	6.0 (approx.)	0.0	4.6
TULF	6.4	10.7	9.7

14. The Second Amendment to the constitution approved on 22 February 1979 stipulates that a member of the first parliament who ceases to be a member of a party or group through which he was elected would not lose his seat unless he was deemed to have vacated his seat by a majority of members of parliament. This Amendment however does not apply to future parliaments and in effect merely safeguards the seats of Opposition MP's who cross over to the government, during the lifetime of the first parliament.

15. 1978 Constitution, Article 99 (1r).

16. This was proved in the local government elections of May 1979 when a group of dissident UNP members successfully challenged the party machine at Panadura and won one of the nine seats.

Secondly, the new scheme greatly reduces the distortions which had crept into the representational system since 1947. In 1947 seats were allocated to each province on the basis of one for every 75,000 residents and one for every thousand square miles of area. The area weightage was introduced to give weightage to backward areas and to Muslim and Tamil communities who lived in sparsely populated regions. The disfranchisement of the bulk of the plantation workers in 1949 introduced grave distortions into the structure for while seats continued to be calculated on the same basis in some areas a large number of residents did not have the vote. Thus it was that in 1977 that 21,301 voters from Wiyaluwa elected one member while 64,190 voters from Moratuwa also elected only one.¹⁷ The new system does not completely eliminate these disparities for it too incorporates some weightage for area but calculation of seats according to the number of registered voters in the area rather than the total population reduces disparities. Had the scheme been applied in 1977 every 39,350 voters from the Kalutara district would have had one representative as would have every 31,404 from Jaffna district and every 28,305 from Mannar and Vavuniya. An important step had been taken towards what the former Australian Prime Minister E. G. Whitlam described as making, all men and women ... equal in making the law as they are before the law.¹⁸

Let us finally turn to the TULF charge that the new system of allocation of seats actually gives the Sinhalese majority further advantages. This argument is based on the fact that while in the earlier constitution the Northern and Eastern Provinces where many Tamils are concentrated had eight out of the twenty-five seats allocated according to area under the new one they have merely eight out of a total of thirty six seats. It is thus argued that the Sinhalese majority areas have been given a gift of eleven seats. On the other hand it can be pointed out that this factor is more than outweighed by the changed basis of calculation of the other seats. Hitherto the Sinhalese majority areas of the highlands had gained extra seats as the non-citizen plantation Tamil population was also calculated in allocating seats to them. This advantage has now been eliminated and as a result had the new system been in operation in 1977 the Northern and Eastern Provinces with 13.2 per cent of registered voters would have been allotted 35 seats out of 196 (or 17.9 per cent) as against the 26 seats out of 168 (or 15.5 per cent) which they actually held under the constitution of the First Republic.

More important than these minor gains in the Legislature however is the overall impact of the system of proportional representation. The huge major-

17. C. R. de Silva, *op. cit.* p. 204.

18. Quoted from J. F. H. Wright and E. W. Haber, "Equal electorates, unequal votes—1977 House of Representatives, election aftermath," in *The Australian Quarterly*, June 1978 p. 94. This article (pp. 93-100) deals with the problem in Australia and advocates the adoption of a system of proportional representation there.

rities gained by the victorious party in 1970 and 1977 had rendered the Tamil representatives from the North somewhat powerless in parliament. This situation is unlikely to recur again and the TULF could be in a strong bargaining position in the parliament in the future.¹⁹

Let us now turn to the constitutional provisions relating to the election of the President. Any person who is qualified to become a member of parliament and who is over thirty years of age can be nominated as a candidate for the Presidency by any recognised political party. Former and current members of parliament have the special concession of being able to be nominated by any registered voter. A direct nationwide election then determines which of the candidates shall be elected President and the successful candidate serves for a period of six years.²⁰ If three or more candidates contest every voter is expected to indicate not merely his first choice as President but his second and third choices as well. Any candidate who receives more than one half of the valid votes is declared elected but if none of the candidates obtains a majority, all candidates other than those who received the first and second highest number of votes are eliminated. The second or third preferences of the votes of the candidates who have been eliminated are then added on to the votes of one or other of the remaining candidates and the candidate who receives a majority of the votes so counted is declared elected President.²¹

Mrs. Sirimavo Bandaranaike, leader of the SLFP, argued that this system was much too complex for voters in backward areas and held that it 'amounts to a disenfranchisement of the simple rural voter'.²² The UNP reply was that the rural voter was sophisticated enough to write 1, 2 and 3 in order of his preferences. The number of rejected votes in General Elections in Sri Lanka have been at the extremely low figure of 0.53 per cent both in 1970 and in 1977. This might rise somewhat with the operation of the single transferable vote system but hardly sufficiently to affect the result. Once again predictably it is political expediency rather than academic arguments that determines the attitude of the political parties on the question. The UNP hopes and the SLFP fears that the second and third preferences of the votes for a Tamil minority candidate would help the UNP to keep its current hold on the Presidency. This fear has been strengthened by the attraction of two senior Tamil politicians, V. Thondaman and C. Rajadurai, the latter a former Vice-President of the TULF, into the Cabinet during the past year. It is now clear that unlike in the old pluralist system it is difficult to capture executive power

19. On this and related questions see, C. R. de Silva, "The Tamil minority and the 1978 constitution of Sri Lanka", *Ceylon Studies Seminar*, 1978 series, no. 4 serial No. 75. 10 p. mimeograph.

20. 1978 *Constitution*, Article 31 and 92.

21. *Ibid.*, Article 94.

22. *National State Assembly debates*, 3 August 1978, columns 1037-42, 1056-60.

by appealing to sectionalist interests. In the Presidential elections neither the UNP nor the SLFP can afford to neglect the substantial Tamil minority vote. It was perhaps in recognition of this that the SLFP abandoned its 'Sinhalese only' language policy which it had adhered to since 1955 and quickly approved the acceptance of Sinhalese and Tamil as national languages. The very same factors will also push the major parties to occupy the "middle ground" of politics rather than deviate to the extreme left or right. The tendency seems to be towards moderation and consensus politics.

One other possible effect of the direct election of the President might be noted; it will enhance the prevalent tendency to focus on a leader figure in each party. With the introduction of television in Sri Lanka in 1979 and the anticipated spread of TV transmissions to cover the entire country it is likely that 'personality building' will soon achieve a degree of sophistication hitherto unknown in Sri Lanka. This is yet another factor that would strengthen the influence of the executive President.

The representational system of the Second Republic of Sri Lanka cannot be studied in isolation from the rest of the constitution. The success of the representational system must at least in part be judged from the point of view of the objectives it was designed to achieve. The authors of the new constitution desired to create a stronger and more effective executive, 'not subject to the whims and fancies of an elected legislature'.²³ They wished for a more representative legislature and a strong opposition element in the legislature so that no ruling government would be able to tamper with the constitution and individual rights.²⁴ Finally, they sought to use constitutional reform to check the development of extreme political positions and to foster consensus politics. Judged from this stand-point the new system seems well designed. In pursuing these objectives the framers of the new constitution have had to make certain compromises. The decision to continue giving weightage to area in electoral delimitation for instance runs counter to the 'one vote, one value' principle. The establishment of a qualifying barrier of 1/8 of the votes might cause hardships to some small parties. But any scheme of representation has its defects as well as merits. What should be borne in mind is that the new representational system is part and parcel of a new approach to the political problems of Sri Lanka. Whether it will gain acceptance from a broad measure of opinion will be revealed within the next decade.

23. The view of J. R. Jayawardene, leader of the UNP and the first executive President as expressed before the Ceylon Association for the Advancement of Science, 1966. For a discussion of the motivation see also W. A. Wiswa Warnapala, "Transition to a Presidential system: The second Amendment to the constitution of Sri Lanka," *The Indian Review*, Vol. 1, no. 1, 1977 pp. 43-57.

24. *Parliamentary series*, op. cit. p. 214.

TABLE II

Sixth schedule of the Constitution of Sri Lanka

(This scheme gives the distribution of thirty six seats by electoral districts to be adhered to in case the delimitation commission had not completed the allocation of the thirty six seats given on a provincial basis before the first delection.)

	<i>Members of Number</i>
Colombo City and Mount Lavinia	.. 1
Colombo district (excluding Colombo city and Mount Lavinia)	.. 2
Kalutara district	.. 1
Kandy district	.. 2
Matale district	.. 1
Nuwara Eliya district	.. 1
Galle district	.. 2
Matara district	.. 1
Hambantota district	.. 1
Jaffna district	.. 3
Mannar and Vavuniya districts	.. 1
Batticaloa district	.. 1
Trincomalee district	.. 1
Amparai district	.. 2
Kurunegala district	.. 3
Puttalam district	.. 1
Anuradhapura district	.. 3
Polonnaruwa district	.. 1
Badulla district	.. 3
Moneragala district	.. 1
Kegalle district	.. 2
Ratnapura district	.. 2

TABLE III

1977 election results had new PR scheme been in operation

Electoral district	Qualifying vote for one seat	UNP		SLFP		TULF		ULF	
		votes	seats	votes	seats	votes	seats	votes	seats
Colombo City & Mt. Lavinia	.. 24,664	181,380	7	65,260	3	—	—	—	—
Colombo district	.. 29,183	515,910	18	359,578	12	—	—	—	—
Kalutara	.. 34,678	206,710	6	94,168	3	—	—	80,585	2
Matale	.. 25,727	82,900	3	45,735	2	—	—	—	—
Kandy	.. 28,747	233,672	8	140,040	5	—	—	—	—
Nuwara Eliya	.. 22,456	62,520	3	49,760	2	—	—	—	—
Galle	.. 28,040	207,443	7	107,378	4	—	—	49,705	2
Matara	.. 32,316	163,101	5	75,615	2	—	—	52,128	2
Hambantota	.. 25,273	91,262	4	60,378	2	—	—	—	—
Jaffna	.. 18,390	—	—	—	—	239,070	13	—	—
Mannar & Vavuniya	.. 20,549	22,373	1	—	—	39,223	2	—	—
Trincomalee	.. 27,328	39,729	1	20,041	1	22,664	1	—	—
Batticaloa	.. 25,939	30,002	1	19,735	1	53,018	2	—	—
Amparai	.. 21,576	66,026	3	35,725	2	27,703	1	—	—
Puttalam	.. 29,631	104,687	4	73,099	2	—	—	—	—
Kurunegala	.. 28,179	298,973	11	180,072	6	—	—	—	—
Anuradhapura	.. 20,612	94,239	5	70,663	3	—	—	—	—
Polonnaruwa	.. 24,207	43,317	2	29,303	1	—	—	—	—
Badulla	.. 22,847	114,042	5	68,737	3	—	—	—	—
Moneragala	.. 23,289	39,982	2	29,884	1	—	—	—	—
Kegalle	.. 30,544	171,003	6	93,507	3	—	—	40,934	1
Ratnapura	.. 28,308	151,473	5	84,632	3	—	—	46,983	2
Seats gained by each party	..		107		61		19		9

This table is based on the following assumptions:—

- (a) That electoral districts would be those set out in the sixth schedule of the constitution.
- (b) That voting patterns would not have changed with the introduction of PR.

TABLE IV

Incentives for coalitions/against splitting under different PR systems

Party	Votes received		Seats gained Jefferson /d' Hondt method		seats gained 1978 const. with 1/8 requirement		seats gained 1978 const. without 1/8 requirement	
	(a)	(b)	(a)	(b)	(a)	(b)	(a)	(b)
A	40,292	20,492	15	8	17	11	15	8
		10,050		3		0		4
		9,750		3		0		4
B	27,744	27,744	10	11	11	15	10	10
C	19,947	19,947	7	7	8	10	7	7
D	9,225	9,225	3	3	0	0	4	3
E	2,792	2,792	1	1	0	0	0	0
	<u>100,000</u>	<u>100,000</u>	<u>36</u>	<u>36</u>	<u>36</u>	<u>36</u>	<u>36</u>	<u>36</u>

(a) Party A composed of three factions contests as a unified group.

(b) Party A splits and contests as individual factions.