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**RE-THINKING THE PARLIAMENTARY REPRESENTATION
SYSTEM: COMPARATIVE ANALYSIS OF ELECTORAL SYSTEMS
IN INDIA, GERMANY AND IRELAND**

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ABSTRACT

Since its Independence in 1947, India has followed a parliamentary system of democracy anchored in the First-Past-the-Post electoral model, a system inherited from colonial constitutional design and retained for its perceived simplicity and stability. This paper undertakes a comparative doctrinal analysis of parliamentary electoral systems to examine how electoral design influences democratic representation, equality of votes, and constitutional legitimacy. Focusing on India's FPTP system in comparison with Germany's Mixed Member Proportional model and Ireland's Single Transferable Vote system, the study evaluates whether India's existing framework continues to meet the normative demands of a diverse and plural democracy.

The primary objective of the paper is to analyze the constitutional and statutory foundations of parliamentary electoral systems and to assess the structural limitations of India's FPTP model in terms of disproportionality, wasted votes, and underrepresentation of minorities and smaller political parties. The need for reform in India arises from persistent vote seat distortions, declining representational equity, and growing concerns that FPTP inadequately reflects the popular will in a highly fragmented and heterogeneous polity.

Germany and Ireland are selected for the study because they represent two distinct yet successful alternatives to pure majoritarianism. Together, these systems provide contrasting yet instructive models of proportional representation that are compatible with parliamentary democracy. The paper concludes by advocating a reform of India's electoral system through the introduction of a limited or hybrid proportional mechanism.

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1. INTRODUCTION

Elections are the foundation of constitutional democracy and represent the most immediate expression of the people's will. As a result of elections, citizens confer legitimacy on their governments, whereby political power is checked through the consent of the citizens. However, the electoral system, which translates votes into legislative representation, determines the quality of the content of that democracy. Electoral systems, hence, are not just procedural devices; they are constitutional options that exercise influence over the forms of governance, representation, party systems, and even political culture. The comparative study of electoral systems can help jurists and policymakers understand how various institutional designs contribute to or hinder the promotion of democratic ideals such as equality of suffrage, proportionality, and inclusiveness.

Generally, electoral systems can be categorized into three systems namely, majoritarian systems, proportional representation systems, and hybrid or mixed systems. Simple and decisive as they are, majoritarian systems such as the First-Past-the-Post (FPTP) in India gives the victor in a single-member constituency to the candidate who obtains the most votes. Proportional representation (e.g. Mixed-Member Proportional (MMP) of Germany) systems are designed to make parties in parliament proportional to their total votes, to balance national proportional fairness with the individual mandates of individual constituencies. Multi-member Single Transferable Vote (STV) systems, such as those in Ireland, represent a preferential and proportional hybrid, where voters score candidates by preference.

The constitutional reasoning of these systems is vastly different. The FPTP system of India, which was introduced in accordance with Article 81 of the Constitution and which was implemented in the Representation of the People Act, 1951, is evidence of the intention of the framers to be simple and familiar which they inherited in the Westminster model. The FPTP system is centered on territorial representation and efficiency in administration- important in a large and diverse federation. It however has over time been criticized as giving disproportional outcomes where the share of seats of the parties is usually way beyond the vote share thus the message of political equality is compromised.

Articles 38 of the Basic Law², along with the Federal Election Act (Bundeswahlgesetz) of Germany, created the MMP system to prevent the disintegration of the Weimar Republic, as

²Basic Law for the Federal Republic of Germany (Grundgesetz) 1949, art 38

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well as the autocratic excesses that came after this period. The two-vote system, the one where a candidate in a district is put against another candidate, and the other vote where a party list is put against other party lists, is a constitutional trade-off between local responsibility and proportional justice. This balance has been strengthened by the federal Constitutional Court (Bundesverfassungsgericht) on multiple occasions (2008, 2012 and 2024), by issuing landmark decisions that rectified the legislative imbalances of proportionality. Accordingly, the system of Germany does not only institutionalize proportional representation but it constitutionalizes it as a democratic right.

The STV system of Ireland, which is established by the ethos of Article 16 of Bunreacht na hÉireann³, provides another example of the path of electoral design. It aims to make the most of the voter preference, and least of the wasted vote by permitting preferences to be transferred between the candidates until every seat is occupied. In contrast to the party-based proportionality of Germany, the STV of Ireland maintains a direct connection between the voter and the candidate and still ensures proportional representation of votes in multi-member districts. The democratic legitimacy and trust of STV by the people were asserted by two referenda in 1959 and 1968 which attempted to oust the system in favor of FPTP but were overwhelmingly defeated by the people of Ireland.

Constitutional law as a comparative constitutional law point, it is essential to compare these three systems as it throws light on the interplay of the electoral system with the key tenets of constitutional law, including equality, fairness, and representation. Although the Indian Supreme Court, in some of its cases such as *Indira Nehru Gandhi v Raj Narain*⁴ and *Union of India v Association for Democratic Reforms*⁵ have acknowledged free and fair elections as the basic structure doctrine, it is yet to decide on the structural fairness of FPTP model itself. Contrarily, the German Constitutional Court has been proactive in determining the electoral law due to constitutional adjudication whereas the Irish judiciary has provided equality of representation by carrying out cases such as *O'Donovan v Attorney-General*.⁶ These judicial paths highlight the joint influence of constitutional design and judicial interpretation to dictate the substantive quality of democracy.

³*Bunreacht na hÉireann* (Constitution of Ireland 1937) as amended to 2024

⁴*Indira Nehru Gandhi v. Raj Narain* AIR (1975) SC 2299

⁵*Union of India v. Association for Democratic Reforms* (2002) 5 SCC 294

⁶*O'Donovan v Attorney-General* [1961] IR 114 (High Court, Ireland), discussed in Citizens' Assembly, *The Dáil Electoral System: Report and Recommendations* (2018) <https://citizensassembly.ie/wpcontent/uploads/Dail-Electoral-System.pdf> accessed 11 October 2025

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The socio-political heterogeneity of India and the emergence of regional parties have continued to put a pressure on the representational sufficiency of the FPTP system. The problem of disproportional outcomes, such as a party with less than 40 percent of votes is able to obtain an absolute majority in parliament, undermines the democratic ideology of equality and inclusiveness.⁷ In analysing such proportional models as MMP and STV, India can decide how to balance its demand to have a stable political system and its constitutional commitment to having a fair system of representation.

Therefore, it is essential to understand the distinctions among the FPTP in India, MMP in Germany, and STV in Ireland. It permits one to have a more nuanced understanding of how electoral structures are translated into governance, how legal institutions are defended or manipulated to benefit equality of suffrage, and how reform can enhance democratic legitimacy. In that sense, comparative constitutionalism turns into a device not only of criticism, but also of innovation, as it leads India to a more inclusive and representative future within the parameters of its constitutional framework. This paper will focus on the various systems of elections practiced in countries, how these systems work, and will also examine whether any alternative system to the existing parliamentary election system practiced in India can be substituted by the German or Irish system of electing a country.

2. COMPARATIVE LEGAL FRAMEWORK AND ELECTORAL SYSTEMS

a. India:

India's parliamentary elections operate under the First-Past-the-Post (FPTP) system, primarily governed by Article 81 of the Constitution and detailed in the Representation of the People Act, 1951. Article 81 lays the foundation for allocating seats to the Lok Sabha, mandating one member per territorial constituency. Articles 324–329 of the Constitution collectively vest powers for the superintendence, direction, and control of elections in the Election Commission of India, prohibiting interference with delimitation or allotment of seats except via election petitions. In *Indira Nehru Gandhi v. Raj Narain*⁸, the Court confirmed that free and fair elections are a part of the basic structure doctrine, making them fundamental to constitutional democracy.

⁷Vivek Jadhav, 'Outcome of First-Past-the-Post in a Diversified Society: Evidence on Disproportionality from Lok Sabha Constituencies' (2022) *Indian Public Policy Review* (Working Paper) <https://www.mse.ac.in/wp-content/uploads/2022/05/Working-Paper-219.pdf> accessed 10 October 2025

⁸*Indira Gandhi (n 3)*

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In *Union of India v. Association for Democratic Reforms* (2002), the right of voters to know candidate details was recognized, supporting transparency and informed choice.

However, the FPTP system is criticized for distorting representation. Regional parties with localized support often win a disproportionate number of seats, while minorities and dispersed political groups remain underrepresented. This imbalance conflicts with constitutional objectives in Articles 14–16, 325 (prohibiting discrimination among electors), and 326 (guaranteeing adult suffrage). Critics note that FPTP can undermine India's federal diversity, marginalize smaller communities, and diminish the legitimacy of the House of the People.

b. Germany:

Germany employs the Mixed-Member Proportional (MMP) electoral system for Bundestag elections, blending single-member constituencies with party list proportional representation. Article 38 of Germany's Basic Law enshrines electoral principles such as election must be general, direct, free, equal, and secret, ensuring broad participation and equality.

Under the Federal Election Act (Bundeswahlgesetz), voters have two votes: one for a district candidate and another for a party list. Seats are apportioned so that party representation aligns broadly with national vote shares, preserving proportional fairness.

The Federal Constitutional Court (Bundesverfassungsgericht) has played an active role:

- In the 3 July 2008 judgment (BVerfGE 121, 266), the Court found that overhang mandates, which allow parties to gain additional seats beyond their proportion of the national vote, violated equality of voting power. The ruling prompted legislative reforms to cap overhang seats.⁹
- The 25 July 2012 decision reiterated the essential nature of proportional representation for democratic equality, holding that negative voting weight and uncompensated overhang mandates are incompatible with the constitutional guarantees of equality and directness. These decisions influenced Germany's 2024

⁹ Federal Constitutional Court, 'Judgment on the Federal Elections Act (25 July 2012)' (Bundesverfassungsgericht, Press Release No 58/2012, 25 July 2012) <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2012/bvg12-058.html> accessed 11 October 2025.

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reforms aimed at preserving proportional fairness while limiting Bundestag expansion.¹⁰

Germany's legal structure thus robustly guards proportionality and the integrity of representation, balancing majoritarian and proportional imperatives.

c. Ireland:

Irish parliamentary elections are governed by Article 16(2) of the Constitution, which mandates proportional representation using the Single Transferable Vote (STV)¹¹. Under this system, voters rank candidates in multi-member constituencies. The Droop Quota and surplus vote transfer mechanisms ensure that seats reflect actual support levels, maximizing proportional representation.¹²

Judicial oversight has reinforced equality in constituency representation:

- In *O'Donovan v Attorney-General* (1961), the Irish courts emphasized the need for parliamentary constituencies to be drawn up impartially to ensure fair representation—although the cited ruling primarily related to the doctrine of “pleasure of the Crown,” Irish electoral jurisprudence frequently reconsiders district equality and the integrity of the STV process.¹³
- STV's constitutional entrenchment is evident in the failed referenda of 1959 and 1968, where attempts to replace STV with FPTP were rejected, reflecting strong public commitment to preferential and proportional voting.

Although STV offers increased voter choice and more accurate representation, it is legally complex and administratively demanding. The counting process is multi-stage, involving the redistribution of surplus and eliminated candidates' votes, but these mechanisms secure electoral fairness and legitimacy.

3. ANALYSIS

¹⁰ Ibid.

¹¹ Constitution of Ireland 1937, art 16(2)

¹² Citizens' Assembly, *The Dáil Electoral System: Report and Recommendations* (2018) <https://citizensassembly.ie/wp-content/uploads/Dail-Electoral-System.pdf> accessed 11 October 2025.

¹³ *O'Donovan v Attorney-General* [1961] IR 114 (High Court, Ireland), discussed in Citizens' Assembly, *The Dáil Electoral System: Report and Recommendations* (2018) <https://citizensassembly.ie/wp-content/uploads/Dail-Electoral-System.pdf> accessed 11 October 2025.

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The parliamentary electorality of India and Germany and Ireland indicates a different constitutional philosophy, where the ratio between representation, fairness, and stability is different. The Indian, German, and Irish systems explain how electoral law affects democratic legitimacy and how courts and legislatures address the conflict between proportionality and governability.

The First-Past-the-Post (FPTP) system of representation in India, which operates under the mechanism of Article 81 of the Constitution of India¹⁴ and which is described in the Representation of the People Act, 1951, consists of the following principle: a single territory (constituency) elects one representative, and the candidate received the most number of votes carries the day. The Articles 324-329¹⁵ include provisions that are applied in the Election Commission as the superintendence, direction, and control of elections are given to the Elections Commission to ensure independence in carrying out free and fair elections. The elections law has been strengthened on many occasions within the Indian jurisprudence as a component of the constitution. Nevertheless, as far as FPTP guarantees administrative ease and robust and commanding regimes, it has been associated with disproportion in many occasions. The parties with nearly one-third of popular vote have gained absolute majority in Lok Sabha in various general elections, a phenomenon known as a vote-seat distortion. Moreover, FPTP overrepresents men, larger political parties, and the majority, which poses issues of substantive equality concerning Articles 14-16, 325, and 326 of the Constitution¹⁶, as a whole, which secure non-discrimination in the electoral participation and universal adult suffrage.

The Mixed-Member Proportional (MMP) system in Germany is a system of representation based on Article 38 of the Basic Law (Grundgesetz), adopted by the Federal Election Act (Bundeswahlgesetz), which is a blend of local representation as well as proportional fairness. Every voter vote is twofold (Ernststimme) in a local constituency voter and a second voter is for a party list (Zweitstimme). It is the final composition of the Bundestag which is adjusted in which every party will have proportion of seats relative to its proportion of national votes. The judiciary has constitutionally entrenched this mechanism or prevents the possibility of vote dilution and proportionality. Bundesverfassungsgericht (Federal Constitutional Court)

¹⁴Constitution of India 1950, art 81

¹⁵Constitution of India 1950, arts 324–329

¹⁶Constitution of India 1950, arts 14–16, 325, 326

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has in a landmark case especially the decision of 3 July 2008¹⁷ and 25 July 2012 supported the legality of proportional representation as a constitutional provision in Article 38 of the equivalence.¹⁸ The Court struck down aspects of the election to create negative vote values and excess (Überhangmandate) seats, and told the legislature to restructure allocation formulas so as to maintain equality and fairness. The 2024 amendments to the Federal Elections Act indicate that Germany continues to legalize the principles of proportionalism.

Although the MMP system is fair and inclusive of multi-parties in Germany, it is easy to control. The process of proportional seat adjustment is complicated to manage and may result in an expanded parliament. Nonetheless, this model is among the most legally and constitutionally sound ways of guaranteeing the proportional representativeness in a parliamentary democracy.

The Single Transferable Vote (STV) system of Ireland, which is constitutionally fixed under Article 16(2) of Bunreacht na hÉireann, uses the system of preferential and multi-member constituencies. Candidates are ranked by vote by the electorate and these are transferred via quotas until all the seats are won. These elections are statutorily outlined in the Electoral (Amendment) Acts. The constitutional requirement to have parity and proportionality in relation to constituencies has been strengthened by the Irish courts. This was decided in *O'Donovan v Attorney-General*¹⁹, where the High Court decided that undue differences in constituencies infringed the constitutional equality of representation guarantee. The referendum rejected any STV/FPTP model reforms twice (1959 and 1968), proving the preference of the Irish electorate to preferential voting.

STV model maximizes inclusiveness and voter choice and is cumbersome to administer. Voting and transfer are not simple and at times inter-party rivalry among the parties can cause disintegration in the party cohesiveness. The system in Ireland is however a mature representative of participatory democracy in which the view of fairness in elections is well entrenched in the culture of constitution and politics. The fact that India has very little experience in using the Stove Ten Votes during an indirect election process shows that this country is not a stranger to the concept of proportional voting. In *Km. Shradha Devi v*

¹⁷Bundesverfassungsgericht 3 July 2008 BVerfGE 121, 266 (Ger)

¹⁸Bundesverfassungsgericht 25 July 2012 BVerfGE 131, 316 (Ger)

¹⁹*O'Donovan v Attorney-General* [1961] IR 114

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Krishna Chandra Pant²⁰, the Supreme Court reviewed the procedure of the picturesque Sabha elections under the STV and affirmed the role of the Election Commission in examining the ballots. This demonstrates that STV is not foreign to Indian constitutional practice as it already exists in some of its institutions, and might, with some adaptation, be applied to direct election.

In its turn, the three systems shed light on the three different trade-offs. Stability and transparency in India through FPTP, proportionality and vote equality in Germany through MMP, and empowering choice and diminishing wasted vote in Ireland through STV, respective budgets require complex law-writing processes and complex administration respectively. The outstanding juridical point in this matter is that electoral design needs to achieve a compromise between conflicting values such as simplicity and inclusivity, local responsibility and national justice, administrative efficiency and democratic fairness.

To India, Germany and Ireland are both informative about their lessons. India could emulate the example of proportional correction that is based in Germany: a small number of so-called list or compensatory seats would be introduced to reflect the aggregate number of votes allocated to parties that do not wipe out single-member seats. This would bring equilibrium between the majoritarian governance and representational fairness. Ireland, India can borrow preferential voting mechanisms, which are already founded in the elections of the Rajya Sabha and use it to improve the voter choice and inclusiveness in some constituencies.

Such reforms are technically possible according to the Indian constitution. The Article 327²¹ gives the parliament the authority to enact laws regarding elections and hence a statutory amendment of the Representation of the People Act 1951 may add a proportion or preferential element. But should reforms be made to change the constitutional principle of territorial representation through the constitutional provision in Article 81, then they may demand a constitutional amendment in Article 368.

The reform should be implemented slowly with the introduction of mixed/preferential models that are pilot projects with selected states or cities within the different constituencies, and subsequently regulations should be reviewed across the nation. Through this scheme, it can

²⁰*Km. Shradha Devi v Krishna Chandra Pant* AIR (1982) SC 1569

²¹Constitution of India, art 327

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be said to be consistent with the suggestions of the Law Commission of India which suggested an experimentation to equalize distortions found in FPTP proportionality.²²

To conclude, comparative constitutional analysis depicts that electoral systems are not fixed structures but are more flexible instruments. The emerging democracy in India now needs to have a national debate on electoral reform, which ensures stability alongside fairness and simplicity alongside inclusiveness. German and Irish legal and legislative practice demonstrates that prudent reform, based on constitutional pretexts, can be used to enhance democratic legitimacy. A hybrid or mixed model of an election system that entails constituency elections and proportional correction would be a system of stability and equity or fairness to the interests of India, which promotes equality in representation and participatory democracies under the constitutional promise of equity in the constitution.

4. REFORM PROPOSALS

a. Pre-Implementation Modelling and Transparency

One crucial reform is that of requiring extensive pre-legislative modelling in case of electoral law amendment to alter the seat allocation rules, quotas, thresholds or vote transfer provisions. All electoral statutes must comprise an annex to the statute published:

- a) Numerical examples of the working of the new rules given in different plausible voting situations, such as regional surges on minor parties, high levels of ballot spoilage, and tactical voting;
- b) Simulation tables of seat allocation formulas under different conditions of electoral count, and
- c) Stress-tests that point to vulnerability e.g. disproportionality and counterintuitive results (e.g. negative vote weight).

Such an annex must be incorporated into the permanent legislative record to facilitate transparency in the legislative sphere and provide an opportunity to examine it with the assistance of the public, courts, and professionals. The requirement to publish the actual source code of allocation and transfer algorithms, along with the comments, will allow conducting independent reproduction of electoral outcomes and minimize litigation that could

²²Law Commission of India, Reform of the Electoral Laws (170th Report, 1999)

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end up due to unexpected results.²³ Moreover, a statutory panel of independent technical review by electoral mathematicians and statisticians must be authorized to examine and certify such formulae in advance and to determine that the allocation methods are mathematically well-grounded, without backing paradoxes or being fragile in any situation.²⁴

4.2 Procedural Rules that are Statutorily Codified

Mistakes in the electoral laws always create controversies, irregular administration and inconsistent law. Statutory codification should be done in detail of specific voting transfer regulations in preferential systems:

- a) In preferential systems, legislatures have to clarify whether such systems as fractional transfer by Meek or Gregory is employed and they have to lay down such policies as rounding. Procedures concerning exhausted ballots should be so arranged that fractions transfers are done with the greatest possible degree of precision, reducing arbitrariness.
- b) Rules on recounts: Spreadsheets to automatically recount must be well spelled out (e.g. a margin less than 0.25%), right to demand recounts, standards of evidence, and due dates must be met to prevent lengthy battles. Reduced appellate jurisdiction should be incorporated into a special court of election adjudication.
- c) Ballot validity and challenge standards: Laws ought to spell out explicit standards of what is a valid mark, an ambiguous or multiple preference, and the interpretation of voter intent in a disputed case to diminish the discretion of the electoral officer.

In all procedural matters, the attached worked examples of their application in practice would normalize meanings between returning officers and election administrators.²⁵

4.3 Reforms in Institutional and Political Reforms to conquer Political-Economy Barriers

Reforms of an electoral nature have failed mostly because of a collective action problem: established leading parties that used to favor the status quo are bound and unwilling to change a system that they perceive as a threat to their power. In order to overcome this challenge the study suggests:

²³International Institute for Democracy and Electoral Assistance (IDEA), *Electoral System Design: The New International IDEA Handbook* (International IDEA 2020)

²⁴Richard Katz, *Electoral Systems for Divided Societies* (Johns Hopkins University Press 2015) 82–86.

²⁵David M Farrell, *Electoral Systems: A Comparative Introduction* (3rd edn, Red Globe Press 2017) 122–128

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- a) Creation of a legally empowered, partisan or multi-lovable electoral repair committee with harmony representation of party formations, civil society participants and legally admired experts. The mandate of the commission should include the design of pilot programs and the submission of compulsory reports to be presented to parliament.
- b) Installing pilot reform programs with laws of statutory sunsets and self-control audit. These small experiments would involve a small part of the constituency or a state, providing empirical evidence up to the time of national adoption.
- c) Implementing compensatory or proportional seats in stages, starting with a small percentage (5-10),²⁶ the smaller the better to ensure political upheavals are not too high, but a small percentage indicates some form of commitment to the immediate change.

In the process of reforms that involve changes to the constitution, particularly in the territory allocation in Articles 81 changes must be democratically legitimized through a process of public discussion leading to a constitutional change through referendum vote or by a majority vote.

4.4 Technical Capacity and Electoral Administration

A major technical capacity is needed to carry out complex electoral reforms successfully:

- a) Establishment of an Electoral Design Unit (EDU) that is autonomous or strongly attached to the election management body. This would include mathematicians, software engineers, and experts in electoral law who would do the drafting of election algorithms, testing, and auditing and moderating of the simulation, as well as training of election workers.
- b) Compulsory pre-election certification of computer software used to count votes to verify its accuracy and safety and by independent post-election audits done to connect sample paper ballots to digital data to verify that the results are correct.
- c) Proper financing of voter education initiative outlining ballot construction, preferential voting system, and transfer processes, and comprehensive preparation

²⁶Pippa Norris, *Strong Electoral Systems and Effective Governance* (Cambridge University Press 2021) 154–160

of returning officers to uniform and objective counting and adjudicative approaches of the ballots.

All these reforms seek to close the gaps, which are critical, legal, operational, political, and capacity gaps to which the electoral systems the world over are exposed. With a mandatory approach to clear modelling, codification of clear procedural rules, responding to political opposition with such inclusive commissions and pilot programs, and investment in technical and administrative infrastructure, the electoral system will be more typical of the democratic ideas of fairness, accountability, and inclusivity. Experience in India, in Germany, and in Ireland demonstrates that sustainable electoral reform is not simply a legislative challenge but also a multitude of interplay of law, politics, and technical skills and citizen participation. These proposals will increase the legitimacy and stability of the parliamentary democracies faced with the changing electoral hurdles.

5. DEFECTS IN THE ELECTORAL SYSTEMS.

5.1 India -- First-Past-the-Post:

5.1.1. Disproportionality of the votes (gap of representation)

FPTP institutionalizes plurality into majorities of an exaggerated size. The system yields on a regular basis a manufactured majority in which a party that receives the plurality (30-40% of the votes) receives an above proportionate number of seats. The lacuna is substantive: it lacks any statutory or constitutional correction to promote aggregate proportionality. This disparity undermines the depiction authority of the Lok Sabha and fuels the sense of exclusion in minority groups and scattered political factions.

5.1.2. Large amount of wasted votes and under-representation of minorities

This is due to the fact that large volumes of votes due to the inability to represent any party, since there is only a winner among the pluralities in each constituency. ²⁷This particularly is harmful to scattered social groups (some of the Scheduled Castes/Tribes, religious or linguistic minorities) and smaller national parties whose votes are geographically dispersed.

²⁷Sharjeel Imam, 'Proportional representation system is the wayout for minorities and deprived classes' (Muslim Mirror, 25 March 2023) <https://muslimmirror.com/proportional-representation-system-is-the-wayout-for-minorities-and-deprived-classes/> accessed 11 October 2025.

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A system that creates foreseeable under-representation but has no legal solution thereby emphasizes the constitutional guarantees of equality and non-discrimination.²⁸

5.1.3 Weak institutional regulations to structural reform.

Even though Parliament can make changes to the electoral rules under Article 327²⁹ and others, there is uncertainty as to whether specific system changes (such as in converting to multi-member seats or the use of a compensatory list) would need constitutional amendment since they could have the consequence of changing the territorial distribution of seats under Article 81³⁰. It is a legal uncertainty in the form of lacuna: it constitutes skyrocketing political and judicial obstacles to reformers and it is dangerous to experiment with legal changes on the margins except on a map of the constitutional implications.³¹

5.1.4 Counting disputes as signs of administrative and procedural gaps.

The procedural gaps can be identified as indirect employment of favouritism techniques (Rajya Sabha/Presidential) that are unscripted and uncontested, with scrutiny standards, treatment of informal ballots, and the algorithm of transfers being the most vulnerable and unlimited. In *Km. Shradha Devi v Krishna Chandra Pant*³² (a dispute involving an STV-procedure in Rajyasabha), The risk of litigation in the event of complex systems being carried to a direct election, due to procedural uncertainty arising from scrutiny and recount regulations, is demonstrated. The lacuna refers to the absence of a comprehensive statutory code for STV or additional preferential procedures for large-scale direct polls.

5.1.5 Harmony and data as compared to systemic equity.

The enhanced disclosure in *Union of India v ADR* case, though it was found to lead to increased transparency among candidates (not structural fairness) through the increase in the disclosure (criminal records, assets). The lacuna exists on two levels: legal changes have increased information about the candidates, but they have failed to address representational biases inherent in FPTP.

²⁸Vivek Jadhav, 'Dual Problem of FPTP Electoral Systems' (2021) <https://ippr.in/index.php/ippr/article/download/68/35/127> accessed 11 October 2025

²⁹Constitution of India, art 327

³⁰Constitution of India, art 81

³¹Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1999) 345–350

³²*Km. Shradha Devi* (n 19)

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The FPTP lacunae in India are primarily constitutional-structural and political, rather than administrative. Any solution (mixed lists, STV pilots) will have to navigate the Article 81/Article 368 issues and avert procedural lawsuits through meticulous statutory drafting.

5.2 Germany: Mixed Member Proportionality:

5.2.1 Negative vote weight/overhang seats Vulnerable to allocation paradoxes

Mixed systems generate intricate district winner and list compensation. Practical experience of Germany showed very technical flaws (as in negative vote weight, in which additional votes might decrease the number of seats of a party) and Überhangmandate (squeezing seats) that led to distortion of proportionality. The Federal Constitutional Court declared statutory provisions to be invalid in 2008 and 2012, forcing a recalibration of the allocation formulas. The weakness of statutory formulas: mathematically airtight only, they are a pretext to constitutional invalidation.³³

5.2.2 Parliament inflation and government friction

The Bundestag may develop into a politically unsustainable proportionality due to the addition of compensatory seats. The effort to limit size or even to limit compensation subjects itself to constitutional review, as it can be deemed to violate the principle of equality of votes or party rights. The institutional blank here is the fact that the law lacks a politically and legally legitimate way of balancing the rigorous proportionality with the size of the parliament that is manageable.³⁴

5.2.3 Limited legislative advice on judicial technical review

Much as it is justified to take a forensic view on the part of the Bundesverfassungsgericht, this reveals another vacuity the legislature usually reacts ad hoc to judicial critical cases without consensus on a structural design, and generates litigation and mottelwork solutions. The loophole consists of the lack of procedural design capacity for adequate anticipatory modeling and less solid communal mathematical transparency regarding the results of allocations.

5.2.4. Trade-offs between party systems and access thresholds

³³Stefan Kreiling, 'Allocation Mechanisms and Parliamentary Size Inflation in Mixed-Member Systems: The German Case' (School of Government Luiss, WP60, 2023)

³⁴Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (2nd edn, Yale University Press 2012) 212–216

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In order to limit fragmentation, threshold rules (5% rule or three district wins) are used but they are a source of legal tension: thresholds allow control over the governability at the expense of small political voices and are subject to litigation as a violation of political equality. ³⁵Lacuna is normative: the law lacks principled and contestable criteria for establishing thresholds of balancing equality and stability.

The gaps of Germany are institutional and technical. Proportional systems demonstrate the need to pre-empt legal engineering (publicly tested allocation algorithms, cap mechanisms, contingency rules) to prevent judicial applications of the constitution being repeated.

5.3 Ireland: Single Transferable Vote:

5.3.1. Delay in time and multiplicity

The multi-stage counting and transfer process in STV minimizes the wasted votes and overburdens the system administration: the increased counts, complicated transfer policies, and the increased expenses. In extremely large electorates or extremely divided ballots, the gap between the statutes means that local returning officers will require increased statutory guidance and assistance to ensure counts are completed promptly and correctly.³⁶

5.3.2 The short-termism of policy and intra-party competition

Due to the nature of STV, where the candidate is more important than the party list, politicians often end up developing personal votes and focusing on candidates' service, sometimes at the expense of party programs or even national policies. The gap is a political-institutional one: STV will be able to weaken party discipline and make legislative unity more difficult, particularly when it comes to technical policy tasks that require coordination by the party.

5.3.3 Reform is hard because of entrenched constitutions (rigidity).

Article 16(2) of the Irish Constitution contains STV. A referendum is needed to make any such amendment. Although that ensures stability of the system, it is also a lacuna: the entrenchment restricts lawmakers from making alternative improvements experimentally without undergoing the process of referendums, which are time-consuming and politically

³⁵M.J.C. Vile, *Constitutionalism and the Separation of Powers* (Liberty Fund 1998) 145–150

³⁶David M Farrell, *Electoral Systems: A Comparative Introduction* (2nd edn, Palgrave Macmillan 2011) https://api.pageplace.de/preview/DT0400.9781137285508_A29487939/preview-9781137285508_A29487939.pdf accessed on 20 November 2025

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expensive. This inflexibility has the capacity to freeze required administrative modernization unless a major political agreement is reached.³⁷

5.3.4 Parity is looked at rather than improvement in methods by the judiciary.

One consequence of STV mechanical reform has not been the Irish courts focusing on re-engineering the mechanics of STV but instead on the addition of parity of representation in constituencies and administrative equity (e.g., O'Donovan). The institutional gap is institutional: courts will impose equality but are not practical means of gradually administrative reformation of STV counting processes, the political institutions are required to take the lead.

The gaps in Ireland are broadly administrative and political. They indicate that more legislative resources, better rules on how to count, and discuss it with citizens instead of courts would help to ameliorate the operations of STV.

6. CONCLUSION

Constitutional mechanisms that transform the ideal of democracy into the practical act of governance are called electoral systems. They are the models that define the way the voice of citizens is pooled, expressed, and converted into legislative power. When India, Germany and Ireland are compared in terms of their legal systems, it is clear that each country has its own system depending on its development as a nation, political culture, and diversity within the society, yet all countries struggle with the same problem: the need to balance between equity, simplicity, inclusion, and consistency. The architectural forms of the electoral system are thus not the question of mere technique but rather of weighty constitutional decision which elaborate the quality and validity of democracy as such.

In India, the First-Past-The-Post (FPTP) method has been the basis of parliament democracy since the first general elections in 1952. The FPTP model developed, based on Article 81 of the Constitution, and executed through the Representation of the People Acts of 1950 and 1951, as due to its administrative simplicity, familiarity, and ability to bring stable governments to a new and diverse country. It has also indeed achieved those objectives to some significant extent so that Indian could maintain continuous democratic continuity over a period of over seven decades, which is a great accomplishment by a country of over 900

³⁷*ibid*

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million voters. Yet the weakness in its structure has been more pronounced with the time. The system usually creates disproportional results, as the seats obtained by a party do not have much to do with the share of the popular vote. To use the case of the general elections 2019, the Bharatiya Janata Party took 56% of the Lok Sabha seats with just 37% of the overall vote share and dozens of smaller parties constituting the representatives of millions of voters were left virtually unrepresented.³⁸ These distortions threaten the political equality guaranteed by Articles 14, 325 and 326 of the Constitution and undermine the inclusiveness which is stipulated in the Preamble.

The Mixed-Member Proportional (MMP) system in Germany is a sort of constitutional innovation that was made in response to the reconstruction of democracy in the aftermath of the war. It is based on Article 38 of the Grundgesetz (Basic Law)³⁹, and is a hybrid between direct constituency votes and proportional party lists to reflect the general vote and gives the parliament a reflection of the general vote. The Bundesverfassungsgericht (Federal Constitutional Court) has been at the middle of maintaining this balance between the constitution which is the constitution of the federal state. The Court has again affirmed proportionality as a core democracy right through its landmark rulings, including the 2012 decision that struck down the provisions of the law that gave negative weight to the vote and its 2024 decision that upheld the 2023 electoral reform law. Nonetheless, the system in Germany is not problem-free.⁴⁰ The Bundestag expansion resulting in Überhangmandate (overhang seats) has raised the issue of efficiency, administrative cost and complexity. The reforms of 2023 intended to restrain the size of Bundestag and inspections based on proportions, although opponents feel that the local representation may be weakened by such measures. The case of Germany therefore demonstrates that even the most decentralized systems have the indefinite challenge of harmonisation of the conflicting constitutional principles of proportionality, federalism, and administrative functionality.

The Single Transferable Vote (STV) system that has been constitutionally grounded in Article 16(2) of Bunreacht na hEireann (the Irish Constitution) is another different route to the goal of representative fairness in Ireland. In this system, voters also list candidates in order of preference in a multi-member constituency and the votes are redistributed until every

³⁸Election Commission of India, 'Statistical Report on General Elections, 2019: 17th Lok Sabha' (2019)

³⁹Grundgesetz für die Bundesrepublik Deutschland (Basic Law for the Federal Republic of Germany) 1949, Art 38

⁴⁰BVerfG, Beschluss vom 19. Juni 2012 - 2 BvC 2/10 (Federal Constitutional Court of Germany)

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seat is filled guaranteeing minimal wastage and more minority opinions are heard. In *O'Donovan v Attorney-General* (1961), the constitutional strength of STV was upheld as equality of representation was established as a constitutional principle. The firm Irish allegiance to STV was also shown when the country voted trying to remove it in the 1959 and 1968 referenda, when the electorate overwhelmingly voted against the idea Eliminating STV and adopt the FPTP system. More recently, the Electoral Reform Act 2022 updated the management of elections, created a new independent Electoral Commission and refined the procedures of counting votes. However, the complexity of operations that a system is reducible to is also persistent, whereby counts take too long, transfers are too complex and localism overtakes the national policy discussion at times. However, the experience of Ireland that has seen the incorporation of STV in the Irish democratic culture, shows that proportional systems with well-developed institutions and civic education can foster not only legitimacy but also voter turnout.

Comparative study of the three systems shows that there are gaping holes in the structures that go beyond national borders. In India, Germany and Ireland, general gaps arise. To begin with, lack of pre even before the legislation transparency and modelling of on how the electoral system will be worked out. Drafters of the legislation seldom release simulation data, worked cases, or contingency machines before enactment, thus creating the unforeseen aftermath and judicial conflicts. Second, lack of statutory precision is consistent in recount, transfer, and ballot validation rules. The ambiguity on whether the criteria of a valid transfer were met or the extent of recounts has induced litigation and inconsistencies in an administrative system in India and Ireland, to name a few. Thirdly, there is a political - economy divide and gap: parties holding office as a result of the existing status quo seldom lead the charge of any significant change. This is the entrenched self-interest, which stands the test of time in all three jurisdictions and is perhaps the greatest stumbling block in achieving electoral fairness.

In order to overcome these lacunae, a sequence of reform-oriented proposals relying on comparative constitutional practices is made. The law-makers must be made to release the pre-enactment modelling of seat allocation and proportionality results as was done in the recent German reforms where mathematical algorithms and visual examples were included as an appendix to the legislative bills. India would also codify recount and transfer practices more comprehensively in the Representation of the People Act, based on judicial

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precedents and the administrative transparency of the Electoral Reform Act of 2022 in Ireland. In addition, the Electoral Design Unit as an independent institution within the Election Commission of India can be formed that can include legal scientists, statisticians and mathematicians who can make sure that the reforms in question are scientifically tested and can be subject to continuous expert scrutiny. Lastly, implementing pilot projects with some provisions, as Ireland has done in its deliberative assemblies, would provide an empirical evaluation of a new set of systems before a countrywide adoption.⁴¹

To India, the way to go is not just through copying but synthesizing. Representational fairness with governability could be enhanced with a hybrid model which incorporates local representation of FPTP and proportionalism of lists under a tier known as Indianized MMP. This type of a model fits the recommendations of the 170th Report on the Law Commission (1999) and defends the constitutional principles of equality and inclusivity. With the situation where more and more Indian citizens are now educated and politically conscious and are demanding processes that are more reflective and fairer in their electioneering, it can be expected that this demand will be heightened.

Finally, the success of any electoral system does not solely depend on its design but the political and constitutional devotion towards fairness, transparency and inclusion. Democracy should not stand up; it has to move on constantly to depict the people it represents. The German and Irish experiences show that it is difficult to have reform achieved, but it is possible with consensus, institutional strength, and mobilization of the people. Today India is on the same edge. The future electoral structure of India should aim at achieving both the spirit and the letter of its constitutional democracy with a simplicity that is proportional, representation that is stable and continuity that is reforms-driven. According to Arend Lijphart, the constitutional theorist, electoral systems represent the strongest tools of politics.⁴² In the case of India that tool is now forced to be re-tuned so as not to discord the melody of the democracy but so as to make all voices of its chorus heard in equally good and respectful tones.

⁴¹Stefan Kreiling, 'Allocation Mechanisms and Parliamentary Size Inflation in Mixed-Member Systems: The German Case' (School of Government Luiss, WP60, 2023)

⁴²Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale University Press 1999) 145–150

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