

Reserved Seats and Women's Representation in Bangladesh Parliament: Gaps between Expectation and Reality

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Abstract

To encourage women in national politics, the Constitution of Bangladesh (1972) provided 15 reserved seats for women for 10 years which was later extended for several times alone with increasing number. The latest extended tenure was made in 2004 and it is going to be finished in 2019 unless the present parliament or next parliament before 29th January 2019 further extended it. After the 15th Amendment in 2011, there are 50 reserved seats for women in Bangladesh. As 49.46% of the voters of Bangladesh are women, the political parties may use the issue of extending tenure of reserved seats targeting the next election. Thus this paper begins stating the evolution of reserved seats in Bangladesh Parliament, Constitutional stand relating to it, philosophy of the Constitution makers for keeping this system, judicial response to this system and then analyses whether this reserved seats system actually ensures women's representation in the parliament or not, problems create impediment for women to join and continue politics, reasons for their less representation in the Parliament. Finally, this write-up suggests an alternative way of appointment procedure of reserved seats that can really increase women's quantitative as well as qualitative representation in the Parliament.

Keywords: Parliament, Reserved Seat, Women, Election, Constituency, Representation, MP.

1. Introduction

"A balanced representation of women and men at all levels of decision making guarantees better government"(The European Network of Experts, 1997).

Like other third world countries, in Bangladesh there has been great inequality between males and females regarding their representation in politics, public services and in almost every sector of public life (Panday, 2013, p. 2). To encourage and ensure women's greater representation in politics especially in the Parliament some special provisions like quota or reserved seats in the

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electoral bodies, special funding for women to conduct pre-election activities e.g. meetings, processions, campaign etc. are adopted by various countries. Reserve seats system for women was originated in Indian subcontinent in 1930s. Despite this long history neither India nor Pakistan has achieved parliamentary gender balance and Bangladesh is not also an exception to this (Hoodfar & Tajali, 2011, p. 149). In Bangladesh, the Original Constitution of 1972 has made room for women to be Member of Parliament (herein after mentioned as MP) both by direct election and from reserved seats. In the first parliament election of Bangladesh (1973), women MP from both direct constituency and reserved seats occupied only 5% which now stands 20% in the 10th Parliament election (International Foundation for Electoral System [IFES], June 2016). The intention of the constitution framers of Bangladesh for keeping reserved seats was to encourage women to join in the national politics at large number. From the 1st to 10th Parliament (1973 to 2014), is a considerable time to lift up women's participation and representation in the Parliament. But in reality the less representation of women in the Parliament clearly shows that it is time to look back and review what should do better. In this paper it is tried to find out the reasons responsible for less representation of women in parliament and way to forward.

2. Evolution of Reserved Seats System in Bangladesh

In the historical Provincial Election of 1970, when Bangladesh was known as East Pakistan, only few women participated. As women were the backward section, to increase the number of female politicians in the Parliament 15 reserved seats were kept for women for 10 years in the Constitution of Bangladesh, 1972. But before ending of this tenure in 1979, by the 5th Amendment the number was increased from 15 to 30 and tenure was extended for 15 years giving retrospective effect from 1972 to 1987. In 1990 by the 10th Amendment the tenure of reserved seats were further extended for 10 years became effective from 1991 and came to end in 2001 (Halim, 2012, p.166). In 2004, by the 14th Amendment the number was increased to 45 and the tenure was renewed for further 10 years which became effective from the 1st meeting of the 9th Parliament in January 2009 because after the dissolution of the 8th Parliament in 2006, a caretaker government ruled the country from 2006 to 2008. Thus the extended tenure is going to end on January 2019 unless the present parliament or the next parliament within January 2019 [1] renewed the tenure. Lastly, in 2011 the number of reserved seats was increased to 50 by the fifteenth Amendment. It is important to mention that there was no reserved seat in the 4th Parliament (1988-1990) and 8th Parliament (2001-2006) as the tenure

was not extended by the 3rd and 7th Parliament respectively as per the requirement of Article 65 of Bangladesh Constitution (Halim, 2012, p.166).

3. Reserved Seats for Women under the Constitution of Bangladesh

The provisions of reserved seats are adopted by the Constitution of Bangladesh in Article 65 of Part V. As to the formation of Bangladesh Parliament the Constitution says that parliament shall consist of three hundred (300) directly elected members of parliament from three hundred constituency along with women MPs from reserved seats which is now fifty (BD. Const. art. 65[2] & [3A]). Again, as to the extended tenure, the Constitution further says that the extended period of 10 years made by the fourteenth Amendment shall start with the first meeting of the Parliament which will be formed after the dissolution of the Parliament exists during the time of enactment of the Constitution (Fourteenth Amendment) Act, 2004. (BD. Const. art. 65[3]). That is to say the last extended tenure has been started from the first meeting of the 9th Parliament (29.01.2009) and is going to end with the termination of the Parliament exists before 29.01.2019. Moreover the Constitution provides that besides these reserved seats women can also participate in the direct election of three hundred constituencies (BD. const. art. 65[3]).

4. Election Procedure of Women MPs of Reserved Seats

Initially election of reserved seats was held under the Representation of People (Seats for Women Members) Order, 1973. This law did not provide for proportional distribution of seats among the political parties. Each MP was entitled to cast a vote for a candidate of the reserved seats. The candidates securing majority in each of the seat won (Chowdhury, 2017, p. 348).

After the enactment of the Jatyasangsad (Reserved Seats for Women) Election Act 2004 (hereinafter mentioned as the Election Act 2004), 45 reserved seats (at present 50) were allotted to parties proportionately according to their representation in Parliament. In other words these seats are distributed among the political parties as per seats achieved by them in the general election and this is followed from the 9th Parliament (Chowdhury, 2017, p. 348). According to section 5 of the Election Act 2004 after any general election of Parliament, the Parliament secretary shall prepare a list of newly elected MP who has already taken oath and sent the list to the Election Commission. The Election Commission then shall prepare voter list for each political party representing in the Parliament. If candidates number and allocated seats are same, there will be

no election and the reserved seats are filled as per the list prepared by party leaders. If candidates number of a party is more than the allotted seats, then the voters of the concern party give their vote. History shows that the directly elected MPs need not to exercise their vote as the party leaders have nominated only as many candidates as they have reserved seats (International Foundation for Electoral System [IFES], June 2016). So in reality the women MP of reserved seats are nominated rather than elected.

5. Ineffective Role of Reserved Seats Ensuring Women's Representation in the Parliament

“The juristic reason for keeping reserved seats in the Parliament under Article 65(3) in the Constitution of 1972 was to encourage women join in the national politics largely as only few number of women contested the elections in the National Assemble and in the Provincial Assemble held in 1970 although nearly 50% of the population was women” said Dr. Kamal Hossain, chairman of the Constitution Drafting Committee, in *Shamima Sultana Seema v. Bangladesh (2005)* case [2] where he was called as an expert. Regrettably from 1973 to 2014 the women representation in the Parliament is increased from 5% to 20%.

After the murder of father of the nation Bangabandhu Sheikh MujiburRhaman, his successor Sheikh Hasina took the leadership of AwamiLaegue (AL). Similarly Khaleda Zia came in politics and took the leadership of Bangladesh Nationalist Party (BNP) after the murder of her husband President ZiaurRhaman. That is these two ladies got leadership by way of succession. Since the 5th Parliament in 1991, Bangladesh has female Prime Ministers and opposition leaders and from the 9th Parliament female Speaker. Seeing this one may presume that women have significant representation in the Parliament. But the real scenario is quite different.

Representation may be of two types: quantitative and qualitative. Quantitative indicates satisfactory number and qualitative indicates effective as agency role player (Human Development Research Centre [HDRC], 2017). From the very beginning to the present, women's representation in Bangladesh Parliament is neither quantitative nor qualitative.

5.1. Less Quantitative Representation

Instead of Constitutional provision for women to become MP both by direct election and from reserved seats still their number is not satisfactory in Parliament, Cabinet and different Parliamentary Committees. In the 1st

Parliament the percentage of women MP (General Seat + Reserved Seat) was 5% which stands 20% in the 10th Parliament (IFES, 2016). In Cabinet, women's representation is limited to 4% to 9% except in the 9th Parliament when it was 13.89% (Panday, 2013, p. 96) and among them only very few MP of reserved seats can make their way to the Cabinet. Women's representation is not also different in case of Parliamentary Committees. In the 9th Parliament, among 525 members of 51 Standing Committees only 9.7% represented from reserved seats and in the 10th Parliament it stands to 10% (Name of Committees for 10th Parliament, 2017).

5.2. Less Qualitative Representation

It means playing effective role in policy making and enacting laws. In Parliament the average attendance of MPs of reserved seats are much higher than that of directly elected MPs and during question-answer session in the Parliament, their participation is also higher compared to male MPs (HDRC, 2012). But mere attendance and participation in general discussion is not enough to make the representation of women MP of reserved seats qualitative unless they get chance to join in the Standing Committees significantly and play effective role regarding 'Bill'. In practice female MP including MP of reserved seats are discriminated during allocation of time for discussion in the Parliament. They are provided with less time than male MPs. When male MP requests for some additional time during his debate, in many cases they are provided with that additional time which female MP almost never gets (HDRC, 2012). It is reported from MPs of reserved seat that when they have introduced any private Bills it is treated as 'read' and ultimately rejected. Again when a Bill is passed and enacted as law, no discussion was held with them before hand and when the Bill is tabled in the Parliament, the Bill is read to them and they hear it and agree to pass it (HDRC, 2012).

5.3 Reasons for Less Quantitative Representation

In the words of Sushma Swaraj, foreign minister of India:

It is difficult for a woman to make up her mind to enter politics. Once after overcoming all these difficulties when she applies for nomination, the male contestants make propaganda against her. Lastly when her name goes to the party leaders, in maximum cases they reject her name as they fear to lose the seat (Ballington & Karam, 2005, p. 38).

Like India, this situation is very common to maximum women politicians of Bangladesh. There are many obstacles in women's large representation in the Parliament which are discussed below.

5.3.1. Political Obstacles

Politics is always based on the idea of 'winners and losers', competition and altercation, rather than on systematic cooperation and harmony, especially across party lines which may resulted in the rejection of politics by the women largely (Ballington & Karam, 2005, p. 35-36). Due to the male domain nature of the society in Bangladesh, women are dominated by male even in politics. Here male politicians and rule makers often lay down those norms and values that are more beneficiary for them. Thus the presence of masculinity discourages women to join or continue politics.

Another political barrier is lack of party support. In many cases political parties hesitate to give nomination to women due to the patriarchal attitudes on the part of voters. Again during election campaign all nominated female candidates do not get equal resources support from their party, though they have significant roles in campaigning and mobilizing support for their parties. Women MP of reserved seats are now selected technically rather than elected. Their selection process is not also transparent which resulted in potentially under-qualified and unprepared representatives especially on political credentials. Here during selection or nomination whatever may be kinship or other relationship ties with party leaders or amount of donation for the party are given importance over the merit of candidates and their accomplishment with the party.

One more political obstacle is that although the leading political parties in Bangladesh do have at least one female wing or organization, very few such Women's organizations are active to patronize female politicians. Women's organizations or networks help female politicians to find out their problems in work field as well as inspire them to go ahead by sharing their experiences.

5.3.2. Socio-Economic Obstacles

In participating politics, a woman first face problem inside the family unless she has any political succession. As a wife or/and mother, her family expect full attention to domestic activities from her. So when a woman chooses politics as her career, she has to carry dual burden, that is burden inside and outside of the home. If she fails to balance between the household works and political works

then she has to sacrifice either family or politics and in most of the cases she sacrifices the later. Beside family, a female politician has to face the society surrounding her. Still now, social structure in Bangladesh does not warmly support women in politics as the common perception about politics is to consider it as a 'dirty game' which cannot be won without having '2M' that is money and muscle.

After family and social adversity, financial crisis is also responsible for less representation of women in politics. Ballington&Karam (2005, p. 39) point out that in established democracies, socio-economic conditions are very important for women to set up themselves in the legislatures. In Bangladesh a contestant has to invest huge money from the beginning to the end of the election that is from getting nomination to the last part of the election which is not easy for female contestants comparing with their counterparts. Owing to insufficient financial resources, if a woman fails to win an election, she has to think again before taking part to another election.

5.4. Reasons for Less Qualitative Representation

There are links between the reasons of women's less quantitative and qualitative representation in the Parliament. Some vital reasons are pointed here below:

5.4.1. Nonexistence of Constituency for Reserved Seats

The Constitution provides no specific constituency for reserved seats. As a result, the MPs of reserved seats are not allocated Constituency development funds that their general seat counterparts receive. For example the amount of Constituency funds for MPs increased in July 2015 from BDT 30 million to BDT 40 million per year where BDT 200 million during the five-year term of an MP (IFES, June 2016). Thus a directly elected MP can serve the people of his/her constituency with this fund and gets public blessings and support which encourage him/her to continue politics. In contrast, MPs of reserved seats are in fact selected by concern political parties. They have no accountability to people and no recompense from people for good performance. As a result, they consider themselves inferior to the directly elected MPs which decrease their confidence and discourages them to continue their representation in the Parliament.

5.4.2. Exclusion of Qualified Persons

Where appointment or selection procedure is not transparent, financial power and kinship with party leaders are given more priority, there it is impossible to have qualified persons. In Bangladesh the political parties raise a large portion of their fund from selling nomination papers for general and reserved seats (IFES, June 2016). This causes the exclusion of qualified persons.

5.4.3. Lack of Proper Orientation for New Members in the Parliament

As already mentioned there is no specific constituency for reserved seats and practically women are selected for reserved seats by concern political parties, many of them lose the inspiration to come for the second time and for subjective satisfaction of the parties some of them do not get the tickets for second time. Consequently majority reserved seats are owned by new comers. The functions of the Parliament are regulated by the Rules of Procedure of Parliament of the People's Republic of Bangladesh (hereinafter mentioned as RPP). It is essential for the MPs to have clear knowledge about it (RPP). Unfortunately in many cases, the MPs are not trained properly on this Rules of Procedure ((HDRC, November 2012). As a result new MPs especially from reserved seats cannot represent in the Parliament and its different committees qualitatively.

6. Judicial Response towards Reserved Seats

In 1990, the then Government renewed the tenure of Reserved Seat for next 10 years by 10th Amendment of the Constitution. A writ petition known as Dr. Ahmed Hussein v. Bangladesh (1992) was filed challenging it. The petitioner argued that the election system of reserved seat is inconsistent with the principle of democracy preserved in the Preamble, Article 7(1), 8 and 11 of the Constitution. Similarly separate election system and electoral roll violated the provisions of Article 121 and 122(1). The Court dismissed the petition and upheld the 10th Amendment on the grounds that as per Article 28(4) Government can make special law for women and the Constitution of 1972 along with the Representation of People Order 1973 kept provision for reserved seats (Chowdhury, 2017, p. 348-349). The point which the Court missed here was not to search the intention of the Constitution framers behind the provision of reserved seats. In this regard it is worth mentioning that the framers of the Constitution intended to encourage women's participation in national politics at large number.

By another writ petition known as *Farida Ather and 2 others v. Bangladesh (2006) the Constitution (Fourteen Amendment) Act, 2004* which increased both number of reserved seats from 30 to 45 and tenure for next 10 years and the *JatyaSagnshad (Reserved Seat for Women) Election Act, 2004* were challenged. It was argued by the petitioners that

- The 45 reserved seats have no specific constituency;
- Under the new system a political party gets one reserved seat if it has 6.65 or 7 seats in the Parliament won by direct election. So a party having seat less than 6.65 will not get any reserved seat;
- The Act of 2004 makes it mandatory for woman to be nominated from a political party and thus there is no scope to participate independently. But there is no such prohibition for direct election in Article 66(2).

This petition had the same fate of *Dr. Ahmed Hussein v. Bangladesh (1992)* case. The Appellate Division ruled out the petition by stating that the Constitutional rule of specific constituency in Article 119(1) (c) and right to vote in article 122 are related to the direct election of 300 Constituency under Article 65(2) and not for reserved seats as mentioned in Article 65(3) (Chowdhury, 2017, p. 348-349).

While deciding the petition, the Supreme Court again failed to explore the philosophy of the framers of the Constitution of 1972 for keeping reserved seats in the Constitution as well as the ineffective role of existing reserved seat system to increase women's representation in the Parliament.

7. Constitutional Controversies with the Provision of Reserved Seats

Though reserved seat system is accepted by the Constitution of Bangladesh, there are some constitutional controversies. One of the fundamental principles of state policy of Bangladesh is 'Democracy' which declares that the State shall be a democratic State where there must be effective representation of the people through their elected representatives (BD. Const. art. 11). Here by the expression 'effective participation by their people through their elected representatives' indicates that all representatives of people must be elected. Section 5 of the Election Act, 2004 prescribed election for reserved seats where directly elected MPs are the voters. But election will be held then when number of candidates of a political party is more than allocated seats to it. History shows that the members of Parliament elected from the three hundred constituencies need not to put their vote for reserved seats as the political

parties nominate as many candidates as many seats they get (IFES, June 2016). So in real sense members of reserved seats are not people's representatives, they are parties' representatives and thus the fundamental principle of state policy of Article 11 is not fulfilled as in practice there is no election held for reserved seat.

Again it is the fundamental right of every citizen of Bangladesh to have freedom of thought and conscience and of speech (BD. Const. art. 39). But the Election Act, 2004 requires that in order to be MP of reserved seat a candidate must be nominated from a political party. Therefore there is no scope for a woman to contest in the election independently which infringed her right under Article 39 of the Constitution.

Over again there is nothing in the Constitution which makes it mandatory that the Parliament cannot be formed without reserved seats. It is said in the Constitution that Parliament shall consist of three hundred directly elected members from three hundred constituencies and for so long as reserved seat is effective with reserved seat members (BD. Const. art. 65[2]). Here the words 'for so long reserved seat is effective' make it clear that Parliament can be formed without reserved seat. Moreover it was not the intention of the framers of the Constitution to continue the reserved seat system for indefinite period (Shamima Sultana Seema v. Bangladesh, 2005).

8. Alternative Way to Ensure and Encourage Women Representation in the Parliament

Bangladesh is not the only State having reserved seat system for women in the Parliament. In 2005, more than 40 countries have included quotas or reserved seats for women by amending the Constitutions or introducing different types of legislation (Ballington & Karam, 2005, p. 145). Keeping quota or reserved seat in the Parliament of a country creates an opportunity for women to join Parliament at a large scale. So the provision of reserved seat in Bangladesh Constitution and its continuation by extending the tenure and seat is not undemocratic. However, the main problem is that the existing system of reserved seat fails to represent women in the Parliament effectively. Therefore, it is essential to find out an alternative way and it may be the initiation of direct election in reserved seats.

Now, some questions may arise such as what should be the procedure of election; how should the constituencies be distributed? In answer to these questions it can be said that the election procedure of local government can be

followed. Under the present local government system, in a City Corporation or a Paurashava, there must be one woman ward councilor for every three wards and in a Union Parishad there must be one woman member for every three wards who is elected by the direct votes of the people [3]. So in local government election women can directly contest in both general and reserved seats. Similarly in Parliament election, the existing three hundred constituencies may be distributed among women of reserved seats as 3:1 that is one women MP for three constituencies. As a result the number of reserved seats will be one hundred. So, on the same day of election people will put their votes by two ballots for electing the MPs of their own constituencies as well as MPs of reserved seats.

It may be argued that in this procedure a woman contestant of reserved seat will face trouble during election campaign especially financially as she has to cover three constituencies simultaneously and after becoming elected it becomes even more difficult for her to make development in all constituencies equally. In this respect, it can be said that if women contestants get financial and technical support both from political parties and Government they can overcome it. In France, Italy, Kenya, South Korea, Portugal, Romania etc. public funding is given to political parties especially for gender equality purposes (IFES, June 2016). By legislative reform Bangladesh can initiate this.

It is true that while discharging duties, it will be difficult for elected MPs of reserved seats to administer three Constituencies simultaneously by each MP. But this is not impossible for them. For doing this they need proper Constituency fund. As one reserved seat MP will have to run three constituencies, her constituency fund must be larger than that of an MP of general seat. Besides constituency fund, capacity building measures such as training on the Rules of Procedure of the Parliament is also necessary and women MPs should be given equal time and floor to speak in the Parliament. Above all, assistance of political parties and other MP of general seats are necessary as well as the caliber, honesty and sincerity of the concern MPs are also essential. The party politics of Bangladesh is governed by three women (AL by Sheikh Hasina; BNP by Kaleda Zia and JP (E) by Rowshan Ershad) for long time and since 1991 to till now the post of Prime Minister and Opposition Leader are held by female and from the 9th Parliament a female Speaker is presiding over the Parliament. Undoubtedly it is a great inspiration for women politicians to show their best. If the aforesaid direct election system for reserved seat can be introduced, it will increase and ensure women representation in the Parliament in true sense.

9. Conclusion

In the world, women are still discriminated inside and outside of the house, underrepresented in the legislature and far away from decision making levels. In 2005, only 16% of parliamentary seats were held by women around the world (Ballington&Karam, 2005, p. 33). According to the United Nations SUMMIT of 2010, New York, from 1995 to 2010, special measure, like quota system, helps women to increase their number in the parliament globally but their representation in the executive branches (e.g. cabinet, parliamentary committee) of government is still low (United Nations [UN], 2010). The same is applicable for Bangladesh. In spite of incorporating reserved seats in the Constitution from the very beginning, women representation in the Parliament, Cabinet and Parliamentary Committees is not satisfactory even now and the reasons are already mentioned in the paper. The tenure of reserved seats of Bangladesh Parliament is going to be ended. If the tenure and the number of reserved seats are again extended like before without making Constitutional provision for direct election, no effective women representation in the Parliament is possible. It is unfortunate that half of the population of Bangladesh is women and they occupy almost 49.46% in the voter list but they cannot exercise their franchise to elect women MPs for reserved seats (Chowdhury, 2017). So it is time to change the existing electoral system of reserved seats. Here, the Women Organizations [4], NGOs, civil society can create pressure on ruling and opposition political parties.

Notes

[1] According to Article 123(3)(a), in the case of dissolution of a Parliament because of normal expiration of the tenure, the general election must be held within the period of ninety days prior to such dissolution. The first meeting of the present Parliament (10th Parliament) was sat on the 29th January 2014. Hence it is expected that the next 11th Parliament election will be held on a date between 1st November 2018 and 29th January 2019.

[2]In the case of Shamima Sultana Seema v. Bangladesh (2005), 10 elected women Ward Commissioners of reserved seats of Khulna City Corporation (KCC) challenged a circular of Joint Secretary, Ministry of LGRD. According to the circular Ward Commissioners of general seats were allowed to do certain functions of the KCC but the Commissioners of reserved seats were not so allowed.

[3] According to the City Corporation (Amendment) Acts, 1990, direct election was introduced for one-third reserved seats for women ward councilors. By the Paurashava (Amendment) Act, 1998 (subsequently replaced by the Pourashava Act, 2009) same procedure was introduced for women ward commissioners. By the Local Government (Union Parishads) (Second Amendment) Act, 1997 a Union Parishad shall consist of twelve wards where there shall be three women members directly elected by the adult franchise.

[4] Bangladesh Mahila Parishad (BMP), Naripokkho, Bangladesh Nari Progoti Sangstha (BNPS), Nari Unnayan Samity (NUS) etc. are some mentionable Women Organizations who have been effectively pay their role as watchdogs on women's right regarding education, employment, health and tracing discrimination and raising demands on social, economical and political matters.

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