

# Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

## Women Members of Parliament

# Towards Alternative Modes of Election

By Md Abdul Halim

ACCORDING to the existing provisions of the Constitution of Bangladesh, women members may be of two types — general women members and special women members. Those who according to Article 65(2) of the constitution are elected from single territorial constituencies by direct election are called general women members of parliament. And those who according to Article 65(3) of the constitution are elected indirectly in reserved seats for women by the directly elected members of parliament may be called as special women members of parliament.

### Mode of Election in Reserved Seats

Article 65(3) of the constitution provides that in thirty reserved seats women members shall be elected according to law by the 300 members who are directly elected under Article 65(2). So direct election in 300 constituencies is held first and thereby 300 general members are elected. Then anytime before the sitting of the first session of the parliament these 300 general members elect by secret ballot 30 women members. After these 30 women members in reserved seats are elected the parliament is constituted by 330 members in total.

### Status of Women Member elected in the Reserved Seats

Though the 30 women members in the reserved seats not elected directly by the people, they enjoy the same status, from legal point of view, as directly elected MPs do. They enjoy the same opportunities and privileges and have the same rights and standing in all kinds of functions in the parliament as general MPs in the House do and have. But from the view point of representation they have weaker status than those of directly elected members. Because these 30 women do not really represent any one except the party which has selected them. Though they have national geographical constituency they have no link with it, for the people of that constituency do not elect them and, therefore, they constitute a non-representative group. They also cannot be said to represent women in general, as the women of the country have no role in their election. Again, since these women members of parliament have not gone through a competitive election process, they are taken less seriously by their directly elected colleagues who actually consider them as a mere vote bank.

### Justification of Women Members Reserved Seats

The constitution of the country recognises that all citizens are equal before law and undertakes to give them equal opportunities. However, it is also accepted that in reality all sections of society are not equal and, therefore, the need for special provisions for any disadvantaged sections of the society is also recognised. In question of reserved seats for women members in parliament it is argued that compare men women

in our country are in a disadvantaged situation. Their status is unequal to and subordinate to that of men in the society. This is why the provisions of reserved seats for women were incorporated in the constitution. The purpose was to ensure a minimum representation of women in parliament, and to ensure a wider participation by them in national politics. But howsoever noble philosophy worked behind the incorporation of this special provision, one thing is clear that the constitution makers did not apply their cautious mind in making this system democratic, effective and fruitful.

It is for the method of election that these 30 women members are being used as a ready tool or a 'vote bank' at the hand of the majority party rather than true representation. Because they are elected by the general members of parliament. In practice therefore, it means that the winner takes all i.e. the party that can muster 151 votes can bag these 30 additional seats. The majority party nominates 30 women candidates and since election is for general conclusion, other parties do not bother with nominating anybody. A democratic people's Assembly should discourage an influx of members through this process of 'back-door' style. The practice is being viewed by conscious people with contempt calling it 'back-door democracy'. This provision for reserved seats for women in our constitution is being misused as a 'vote bank' or a 'balance of power' in the following ways creating a bad impact over the constitutionalism in Bangladesh:

First, a party gaining simple majority in a general election can use these 30 seats as a total to achieve its absolute majority. For instance, the result of the 1991 election i.e. the 5th Parliament Election gave the BNP 140 seats, AL and allies 100, the JP 35, the JI 18 and others 7. This did not give any party and absolute majority (151). So it was not possible for the BNP to form government without power-sharing with another party. However the BNP got support from the JI and according to the understanding between them the BNP took 28 women seats and the JI then acquired its absolute majority. So had there been no reserved women seats or had it not been a 'vote bank' system, the BNP would have to have some power-sharing agreement with other parties if it were to form a government.

Second, sometimes even in bringing a constitutional amendment these 30 women can play a crucial role. For instance, it was possible for Ershad to pass the 7th Amendment to the constitution mustering a two-third majority only because he could bag these 30 women member as his ready weapon. Ershad was so paranoid about winning the 30 women seats that he did not even trust his own party member in voting for the party women candidates. He promulgated a special Ordinance (Ordinance No XLVII of 1986) which said that if the returning officer receives a nomination paper proposed and seconded by more than half of eligible

voters (MPs) the candidate would be declared automatically elected.

Third, these 30 women members act as puppets for the ruling party to gear its expectations in legislative business. Because in making laws, approving ordinances or in defending a no-confidence motion the ruling party uses them as mere tool. They can never raise even a minimum voice against the decision of the ruling party, for they do not represent truly any locality; neither they represent women of Bangladesh; they are to remain under the grip of the ruling party. It is due to this dependency relationship and low profile that the female MPs in reserved seats so far have been

No. of Parliament	Total Women MPs Reserved Seats	General Seats	No. of Women MPs with experience	Percentage
First (1973)	15	0	5	33.3
Second (1979)	30	0	7	23.3
Third (1986)	30	2	3	9.3
Fourth (1988)	0	4	3	75.0
Fifth (1991)	30	5	12	34.2
Seventh (1996)	30	7	14	37.8

branded as "30 sets of ornaments in parliament."

### Towards Better Alternatives

It cannot be denied that though women constitute half of our population, they continue to be an under privileged section of our society. So reservation of seats for women members are not undemocratic at all as branded by some quarters. But the present system does not allow for any meaningful method of selecting women candidates who can truly represent the women section of our country. Nominations by majority are a gift given to selected women who are not required to get through any election process. The absence of a contest restricts the number of women entering the political arena and can never lead to achieving the primary objective of the constitutional provision that was framed for this purpose. In some countries, of course, there are provisions for reserved seats for women members in legislature but they provide for direct election in reserved seats. No where in the democratic world such ignominious women representation as exists in Bangladesh is found. We should, therefore, suggest a way for making these reserved seats truly representative. Three alternative options are suggested below.

### Alternative One: Direct Election

Among the various ways of electing representatives, direct elections are considered the most democratic. If we were to follow a system of one person two ballots, women candidates could be directly elected by the people to the women seats. Each political party would nominate candidates to the women seats as it does in general seats. Each voter would have to fill up two ballot papers; one for the candidates to the general seats, and other for the women seat. He or she would cast one ballot for the general seat and one for the women seat resulting in 330 directly elected Members of Parliament. Administratively or

logistically this would not be a major problem if different coloured ballot papers are used.

One argument against this method would be that the constituencies would become too large and would be difficult for women candidates to mount an effective campaign. The other argument would be that in practice, only major party candidates could contest. The answer to these arguments are that in any case 88 per cent of the voters in 1991 and 1996 election respectively voted for the four major parties. General elections are based on party lines and modern democracies are based on the party system. If we take this premise as a base, then women party candidates

would lack geographical representation. A second method of proportional representation would be to allot seats to parties in relation to their strengths in the parliament. Here also the members elected would not really be the purpose for which the constitutional provision has been provided.

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### Alternative Three: Election by MPs of the General Seats

The election law provides for 30 women constituencies with geographical areas. The law also says that a candidate would have to be nominated for a particular women's seat and election would be seat-wise. Every women reserved seat, therefore, comprises more than

one general seats. If according to this principle, the election to women seat is restricted to Members of Parliament of that women's constituency, then the party position would be different, and electoral adjustment would have to have taken place. In case of a tie, the result can be decided by a toss. This system, therefore, provides for a more equitable distribution of seats.

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### Female Representation and Their Role in the Parliament

Women's presence in the party structure and in national law making body is indicative of their involvement in the country's political process. The political parties assume an important role to act as instrument of linkage between the electorate and parliament since their nominated candidates are sent to the parliament through elections. Status within the party structure is, therefore, important to obtain candidacy for contesting the polls. In spite of the existence of women's wing in political parties, female politicians' status has not enhanced and they still play a limited role in party affairs even in parties which are headed by women. As a consequence women keep low profile and their candidature from general constituencies remain peripheral. In the election of 1973 only 0.3 per cent contested from the general seats. Their participation in mainstream politics rose from 0.3 per cent to 0.9 per cent in the parliamentary election of 1979 when out of 2125 total candidates 17 women contested the polls. It was only since 1979 did the major political parties began offering nominations to female candidates for direct seats. Thus 13 (0.9 per cent), 15 (1.3 per cent), 7 (0.7 per cent) and 40 (1.5 per cent) women candidates were put up by major contesting parties in 1979, 1986, 1988 and 1991 elections respectively. In 1996 in the seventh parliamentary election 13 political parties put up 32 women contestants from the general constituencies. Of the total 36 women

It is important to note that women's active participation in legislative business is dependent on the parliament's proper functioning as per parliamentary norms and practices. The 7th parliament has a number of highly qualified women parliamentarians and a handful of experienced women politicians whose collective endeavour can provide significant input in legislative business. But since the sitting of the 7th parliament it has been observed that both the treasury bench and opposition are intolerant of each other. So what is urgently needed is to allow the parliament to function regularly and to introduce the method of direct election of women in their reserved seats so that they can learn the mechanism parliamentary devices and play an effective role in legislatures.

candidates. Gono Forum nominated the highest 7, the AL 4, BNP 3, JP 3, smaller parties 15 and independents 4. All these female candidates contested from 44 constituencies. Like the 1991 election, a fundamentalist JI did not put up any female candidate. In 1996 election 5 women candidates came out successful from 11 constituencies. These female contestants who defeated their male rivals was from the AL, BNP and JP. Later in the by-election held in September 1996, after 2 women candidates came out successful from general seats. It may be mentioned that there has been a gradual increase in the number of directly elected women MPs in national elections. In 1986 the figure had been 2, in 1988, 4, in 1995, 5, and in 1996 it became 7.

If we count women's reserved seats along with their general seats, we find that the rate of women's representation in the parliament has gradually increased. But as to women members participation in legislative business in the House there has been low rate of participation of women MPs in the first four parliaments of Bangladesh. In the 5th parliament the performance of the female parliamentarians was visible, though it did not make substantial qualitative change in the legislative activities. Efforts were, however, made by them to create impressions through their participation in legislative deliberations. Some women MPs thus took part in the discussion on President's speech and joined the debates on budget and supplementary budget, finance bill, the Penal Code (Amendment) bill, and other discussion on jail situation, campus violence and the like. Efforts on the part of women MPs for using the other legislative devices including question hour, adjournment motion, half-an-hour discussion etc. were indeed very insignificant. The performance of the 5th parliament including the role of women in it remained without any significance in the midst of prolonged political impasse and opposition's continuous boycott of the House since the thirteenth session till the dissolution of the legislature.

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# Law Watch

## Constitutional Guarantee for the Freedom of the Press

By Martin Saldamando

RIGHT to information and freedom of communication, or dissemination of information originated in relation to the rights and responsibilities of the mass media. The subject has rapidly become much more complex and controversial in the wake of the virtual revolution in information technology which has made access to a whole range of issues easy, quick and relatively cheap.

In Bangladesh, freedom of the press is guaranteed by the Constitution. The High Court Division of Bangladesh in the case of *Abdul Kader vs. Bangladesh*, has incorporated the concepts of Freedom of Speech and Expression and the principles as enunciated in the USA and in India, and in other countries where these rights are constitutionally guaranteed. As stated by the Court:

"It appears to us that the concepts of the freedom of speech and expression and freedom of the press as enshrined in clause (2) of Article 39 of our Constitution, are not different from what these mean in the United States, India and other countries where these rights are constitutionally guaranteed. Plainly speaking, these freedoms mean and include expression, publication, distribution and circulation of anything and any idea of any sort subject to the restrictions that may be imposed by law for securing any of the eight purposes mentioned in clause (2) of Article 39 of the Constitution." [46 DLR, page 600, para 16].

The above judgment of the High Court Division was reversed by the Appellate Division, but the interpretation given to Article 39 was not altered. As a matter of fact it has further been reinforced by the dissenting judgment of Mr. Justice Latifur Rahman as His Lordship is of the view that:

"Everyone is free to propagate and circulate his own ideas and thoughts, by word of mouth, writing or any form or like. What the notebook writer is doing is not reproducing the contents of the author, but they are making notes, comments, annotation, explanation and opinions on the original works of the author. The freedom of speech and expression cannot be limited to the original ideas and views but it will also include the views and comments of others. A dichotomy is not permissible to make between original 'speech and expression' and propagation of the ideas, comments and views on the original 'speech and expression' of others."

While 'Freedom of the Press' contains elements of 'Freedom of Speech', it also ensures that the managers and proprietors of newspapers, journals or television stations are free to have the last word about what they will or will not print or broadcast. In the case of the Supreme Court of Pakistan reported in 19 DLR (SC) 44, their Lordships struck down Section 12 of the Security of Pakistan Act, which sought to empower the government to prohibit the printing and publication of a newspaper. Their Lordships held:

"Subject to reasonable restrictions on specified grounds, the press has the freedom to print or not to print any matter it chooses and the government cannot interfere."

"Principles of democracy which ensure freedom of the press (with recognized limitations) and freedom of expression when violated by arbitrary Governmental action, when it is inconsistent with the Fundamental Rights enshrined in the Constitution, such law must be struck down and such Government action must be held as done without lawful authority."

This was decided in the case of *Hamidul Haq Chowdhury vs. Bangladesh*, [34 DLR (1982)], decided by the Supreme Court, Special Original Jurisdiction.

Recently, it has been reported that in the draft bill of the Public Safety Act, the Government of the People's Republic of Bangladesh has placed some provisions that would limit the guaranteed freedom of the press in Bangladesh. The Law Ministry is currently re-considering this before a final draft is made. Any measures to curtail this freedom have failed every time.

If the Government is serious about ensuring accountability across the board, it should not do so by transgressing the Freedom of the Press, but instead of reforming the laws relating to accessing information, especially government-held information. In addition, the Government should repeal the draconian laws on the statute books which have been held over from the British Colonial administration. Laws such as the Official Secrets Act. By reforming information access laws, administrative orders and government conduct laws, and by passing a Right to Information Act - the government can incorporate measures to ensure accountability not only of the government, but also the mass media and private companies. This way Government efforts would be acceptable and welcomed by all and would fulfill the need of the day to ensure effective participation by the people in governance.

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## India Restricts NGO Meetings

THE Government of India has recently acted to curtail Freedom of Assembly and Association, and further limit the effective operation of non-governmental organisations (NGOs) in India. From mid-1999, NGOs organising international conferences in India have required prior permission from the Ministry of Home Affairs and other relevant ministries (the clearance requirement). The clearance requirement is not pursuant to any law, rule or guidelines, it is simply the new practice of the Government of India. In July 1999, three foreign nationals were denied visas to attend the 11th Annual John Hopkins International Philanthropy Fellows Conference on Building Civil Society, being organised by the Development Support Initiative, Bangalore. The individuals were told by the Indian High Commission in London that they should first obtain clearance from the Ministry of Home Affairs in India. The High Commission in London reportedly told the applicants that "all conferences to do with the voluntary sector" and which appear to be Government/politically sensitive has (sic) to get clearance for participants from abroad" (as cited in The Hindu (New Delhi), 25 June 1999). The precise operation of the clearance requirement is not certain as it does not operate pursuant to an established policy or procedure. It would, however, appear that conference organisers require permission from the Ministry of Home Affairs, then from the nodal Ministry dealing with the subject matter of the conference, and finally from the Ministry of External Affairs, in the event that foreign nationals are participating in the conference. Furthermore, it is mandatory for all foreign nationals attending seminars and workshops organised by the voluntary sector, to first obtain clearance from the Ministry of Home Affairs. They must provide detailed personal information and secure permission before being granted an Indian visa. When Voluntary Action Network India (VANI) - an NGO based in New Delhi - contacted the Ministry of Home Affairs about the clearance requirement, Joint Secretary Ambuj Sharma informed VANI that "there were no written rules but such was the practice that was being followed for sometime." Yet the procedure has only recently come to the attention of civil society, though there have been other cases of visa denial in the past. In adopting the clearance requirement, the Ministry of External Affairs has established a firm political control over the subject matter of international conferences and the involvement of foreign nationals in conference regarding politically sensitive issues. The clearance forms from the Ministry of External Affairs state that the Ministry takes note of the "political angle" in deciding whether to grant permission for the holding of an international conference and the participation of foreign delegates. The final approval is issued by the Ministry of Home Affairs upon consultation with other ministries. The approval - when granted - requires that the full identifying particulars of any foreign participant be furnished in duplicate to the Ministry well before the event. The details should include: the foreigner's name, parentage, nationality, date and place of birth, passport details, present and permanent residential address. The new procedures provide for a blanket requirement across the NGO sector - all voluntary sector conferences must be approved.

- Human Rights Features

# Trial of Pakistani Prisoners of War: The Conspiracy of Silence

By A.H. Monjurul Kabir

It is not clear whether the then Government of Bangladesh was unaware of the International Law or purposely did not become the party. Even they did not bother to attempt to be a party by filing a simple application in the International Court of Justice at The Hague.

IN the judgment (13 July 1973, General List No. 60) of the International Court of Justice of the case concerning the trial of Pakistani prisoners of war, Pakistan filed an application on 11 May 1973 requesting for interim measures of protection instead of transferring 195 prisoners of war of 71 in Indian Custody in its judgment of 13 July 1973 the court notified to other states entitled to appear before the court.

The terms of the definition of genocide contained in Article 2 of the United Nations Convention for the Prevention and Punishment of the Crime of Genocide (1948) are clearly fulfilled in the case of Bangladesh. Pakistanis with intent to destroy, in whole, 'targeted': a) all Bengalis, specially the pro-independence people b) Hindus c) the Bengali military and police d) young students e) Bengali intellectuals. The Pakistani Government through its military killed three million people in about nine months. At the same time three hundred thousand women were raped by the military and the local collaborators.

In terms of mere number of victims, Bangladesh genocide tops the list of the rape victims, ever perpetrated in the history. Dr. Ahmed Ziauddin, Director, Bangladesh Centre for Genocide Studies, a Brussels based think tank organization, pointed out. But the irony is that the Government of Bangladesh did not become a party to the proceedings of the above-mentioned case, which was a bounden duty to it.

In the judgment dated 15th December 1973 the court mentioned that the Government of India has not taken any step in the proceedings and the court "Ordered that the case be removed from the list." It is not clear whether the then Government of Bangladesh was un-

aware of the International Law or purposely did not become the party. Even they did not bother to attempt to be a party by filing a simple application in the International Court of Justice at The Hague. There was no doubt that the court was ready to accept Bangladesh as a party as the court notified about the "States entitled to appear". The government and the party in

power who were in power in 1973 did not give any explanation to the nation about this astonishing governmental inaction. Does anyone care to break this silence of conspiracy?

### The Order of the International Court of Justice

Year 1973

15 December 1973

Case Concerning Trial of Pakistani Prisoners of War (Pakistan v. India)

### Order

The President of International Court of Justice, Having regard to Article 48

of the Statute of the Court and to Article 74 of the Rules of Court.

Having regard to the Application by Pakistan filed in the Registry of the Court on 11 May 1973, instituting proceedings against India in respect of a dispute concerning charges of genocide against 195 Pakistani nationals, prisoners of war or civilian internees in Indian custody.

Whereas this Application was, in accordance with Article 40, paragraph 2, of the Statute of the Court, communicated to the Government of India, and was, in accordance with Article 40, paragraph 3, of the Statute, notified to Members of the United Nations and to the other States entitled to appear before the Court;

Whereas the notification provided for in Article 63, paragraph 1, of the Statute was addressed to the States parties to the Convention for the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly of the United Nations on 9 December 1948, which was invoked in the Application;

Whereas by an Order dated 13 July 1973 the Court decided that the written proceedings should first be addressed to the question of the jurisdiction of the Court to entertain the dispute, and fixed 1 October 1973 as the time-limit for the Memorial of the Government of Pakistan and 15 December 1973 as the time-limit for the Counter-Memorial of the Government of India, and whereas by an Order



The genocide of 1971: Confronting the past

of 29 September 1973 the President of the Court extended to 15 December 1973, at the request of the Agent of Pakistan, the time-limit for the filing of the Memorial and extended to 17 May 1974 the time-limit for the filing of the Counter-Memorial;

Whereas by a letter dated 14 December 1973 and received in the Registry the same day, the Agent of Pakistan referred to negotiations between the Government of Pakistan and the Government of India which had resulted in an agreement signed at New Delhi on 28 August 1973, and with a view to facilitating further negotiations, requested the Court to make an Order officially recording discontinuance of the proceedings in this case.

Whereas the Government of Pakistan has thus informed the Court in writing that it is not going on with the proceedings;

Whereas the Government of India, while it has addressed certain communications to the Court through its Ambassador in The Hague, has not yet taken any step in the proceedings;

Placed on record the discontinuance by the Government of Pakistan of the proceedings instituted by the Application filed on 11 May 1973;

Orders that the case be removed from the list.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this fifteenth day of December, one thousand nine hundred and seventy-three, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of Pakistan and the Government of India respectively.

The writer is indebted to Barrister Mohammed Hashmat Ullah of Tower Hamlet Barristers' Chamber, London, UK mkabir99@hotmail.com