



## LAW views

## Quota in Government Service Legality and the perpetuating injustice

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IMMEDIATELY after liberation of Bangladesh, the government vide Establishment Division Office Memorandum No.Estt.R1/R-73/72-109(500) dated 5 September 1972, issued an "Interim Recruitment Policy - Allocation of district-wise quota for filling vacancies in the services and posts under the Government, Autonomous and Semi-autonomous Organizations and Nationalized Enterprises". Through the years this Office Memorandum went through a number of amendments and finally on 10-3-97, the Establishment Division through an Office Order dated 10-3-1997 declared the following quota reservation for different categories.

Different Category of Quota	Percent for Class-I & II posts	Percent for Class- III & IV posts
1. Merit Quota (outside district/division quota)	45%	40%
2. Residents of Orphanages (outside district/division quota)	---	10%
3. District Quota (on the basis of population)	---	---
a) Freedom Fighters (or if Freedom Fighter is not available sons/daughters of Freedom Fighters)	30%	30%
b) Women's quota	10%	15%
c) Tribal quota	5%	5%
d) Members of Ansar & Village Defense Force	---	10%
e) Rest for general Candidates of districts/divisions on merit basis	10%	30%
Total=	100%	100%

### Chart 1 Introduction of quota and provisions of the Constitution

Quota in Government Service was first introduced by the Government by an Office Memorandum on 5 September 1972. All subsequent orders are amendments to that Office Memorandum. The Constitution of the People's Republic of Bangladesh came into effect on 16th December 1972.

Article 28(1) of the Constitution states that, "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth".

Article 29 on "Equality of opportunity in public appointment" states:

(1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic.

(2) No citizen shall, on grounds only of religion, race, caste, sex, or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic.

(3) Nothing in this article shall prevent the State from -  
(a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic...

### Legality of quota reservation

It is noticeable that the legislators of the Constitution have used the term "backward section of citizens" in Article 29 clause (3) sub-clause (a) and "backward section of citizens" by no way means any geographical area of the country. Article 29 of the Constitution does not allow all vacant posts to be divided into 64 districts or, if number of posts are less, into 6 divisions. Because all citizens of all the 64 districts can not be 'backward section of citizens'. If all the citizens of all 64 districts are 'backward section of citizens' then also dividing the vacant posts on the basis of population is against the fundamental rights as enshrined in Articles 28(1) and 29(2) of the Constitution.

If we look at the matter from this view point then from the date, the 'Constitution of the Peoples Republic of Bangladesh' had become effective i.e. 16

December 1972, the Office Memorandum dated 5 September 1972 along with all its subsequent amendments became invalid and ineffective. As such dividing the number of vacant posts in district/division quota according to population was not correct according to the Constitution.

Also there are Freedom Fighters from all sections of the population, advanced or backward, as such the quota for 'freedom fighters' or 'their sons and daughters' is also against the provisions of Articles 28(1) and 29(2) of the Constitution.

So, the Office Memorandum of 5 September 1972 along with all subsequent amendments of that Office Memorandum regarding reservation of quota on the basis of district/division should be declared illegal and against the spirit of the Constitution.

The general perception of the people of the country is that the 'women' and 'the tribal people' are backward sections of the citizens and as such the quota reservation for 'women', 'tribal' or 'handicapped' candidates for employment in the service of the Republic may not be against the spirit of Article 29(3)(a) of the Constitution. It is also true if we consider Article 28(4) of the Constitution which states that, "Nothing in this article shall prevent the state from making special provision in favour of women or children or for the advancement of any backward section of citizens".

### Picture of discrimination

Some examples of discrimination because of the present policy of recruitment by the "Bangladesh public Service Commission" and also by the Government/Semi-Government/Autonomous Bodies/Local Governments are as follows:

a) According to the Government Orders, for Class-I posts the method is to first fill the women and tribal quota, then these are to be adjusted with the district/divisional quota. In such cases the women (10%) or tribal (5%) candidates as per their number for quota are selected first and then they are adjusted with the number that was due to their districts/divisions. In many cases women and tribal candidates with much lower position in the merit list are selected first and candidates with much higher position in the merit list (their number in the merit list being within the number of vacant posts) belonging to the districts of those women and tribal candidates can not be selected. This is a violation of the Clause 29(2) of the Constitution.

b) Chittagong Division has 19.80% of population of the country. But while selecting candidates for service, 5% of vacant posts are at first filled by 'Tribal Candidates' and those are adjusted from the number of posts allotted to the Chittagong Division. The number of 'Tribal Population' in Chittagong Division is less than 1% of the country. So, rest about 19% of the population in the Chittagong Division are actually considered for 14.8% of the posts only.

c) Dhaka City has a population of about ten million but it is considered as a district of the Dhaka Division and is considered to have equal rights as districts of Shariatpur or Sherpur with less than one million population in matters of service.

d) Moreover, as the posts are filled by the tribal candidates first there is virtually no chance of non-tribal candidates from the districts of Rangamati, Bandarban and Khagrachari districts to be selected for a post and little chance of non-tribal candidates from the districts of Sylhet, Moulavi Bazar and Habigonj to be selected for a post if the number of vacant posts are not very high.

As per Government Order 55% of the vacancy in Class I posts are to be

divided into 64 district quota on the basis of population. On this basis if candidates of each district are to get at least one job then the number of vacancy must be 827. Very rarely such large number of vacant posts are advertised for any particular job. So, almost in all cases the number of vacancies to be filled on the basis of district/division is distributed division wise on the basis of population. At least 18 vacant posts are needed for candidates from each division to get at least one post. In most of the cases both for cadre or non-cadre jobs the number of vacancies advertised are less than 18. In such cases the distribution is as shown in chart 2.

Vacant Posts	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Merit Quota	1	1	1	2	2	3	3	4	4	5	5	5	6	6	7	7	8	8
Dhaka Div.	0	1	1	1	1	1	1	1	2	2	2	2	2	2	3	3	3	3
Rajshahi Div.	0	0	1	1	1	1	1	1	1	1	1	1	1	1	2	2	2	2
Chittagong Div.	0	0	0	0	1	1	1	1	1	1	1	1	1	1	2	2	2	2
Khulna Div.	0	0	0	0	0	0	0	1	1	1	1	1	1	1	1	1	1	1
Barisal Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	1	1
Sylhet Div.	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Chart 2

In the above circumstances even if there are 17 vacant posts then a candidate from Sylhet division holding 9th to 17th position will not be selected for a job. Similarly as the number of vacant post decreases persons from more divisions are ruled out from getting a job except from the merit quota of 45%. This is also a violation of Article 29(2) of the Constitution.

f) Another important matter must be mentioned; all the posts of assistant professors, associate professors and professors in the medical colleges and partially in the government colleges, polytechnic institutes and senior posts of other technical institutes/colleges are filled by direct recruitment by the Bangladesh Public Service Commission. In such cases almost in all cases only 1 to 3 post(s) is/are advertised. So candidates of 4 out of six divisions are deprived from getting selected for such jobs. This is not only immoral in the sense that teachers are selected on the basis of place of birth and not on the basis of merit but also a violation of Articles 28(1) and 29(2) of the Constitution.

g) In the present method of selection of candidates, if there is shortage of required number of candidates from a division the remaining posts are again redistributed into divisions. For example, if there are 8 posts in Chittagong Division Quota but there are only 6 qualified candidates, then the remaining 2 posts are filled by the candidates of the Dhaka and Rajshahi Divisions even if there are candidates much higher in the merit list from other divisions.

### Quota system should be reviewed

It is being continuously alleged in different forums that the quality of people in Government Services is deteriorating and as such the whole issue of quota reservation in the Services of the Republic should be reviewed in the light of the constitutional provisions.

Reservation of quota on the basis of districts/divisions in recruitment of government services is against the provisions of fundamental rights as contemplated in Articles 28(1) and 29(2) of our Constitution. But unfortunately no one ever challenged this unconstitutional procedure of recruitment because of the sensitive nature of the subject. The "Administrative Reform Commission" in their report took cognizance of the matter as discriminatory and recommended for gradually abolishing the system. The government should take initiatives to implement the recommendations of Administrative Reform Commission to ensure people's right to equality of opportunity in public employment.

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## READER'S queries



## LAW letter

### Appointment of teachers

A new rule for appointment of teachers in the non-government High School was promulgated in the year of 2000 that no third class degree holder would be eligible for the position of teacher. It has created a frustration among the candidates. No doubt that there has been a disparity in our education system. There is a gulf of difference between pass course and honours course. On the other hand due to some unavoidable circumstances one meritorious student may get third class in any exam. One-third class degree in whole education life may not be deemed as disqualification of the degree holder. So, this specific condition should be repealed. It is not the degree but dedication and firm commitment of the teacher to inspire the student in pursuit of knowledge should be considered. Teaching is an art even one-third-class degree holder may do better in teaching than a higher qualified incumbent. If a third class in public examination is not considered as grade it would be better to drop it from the examination grading list. Hon'ble State Minister for Education Mr. Ehsanul Haq Milon already informed last 16th June that this pre-requisite for selection of teacher would be revoked. Besides, following recommendations may be considered in the appointment of teacher.

- One-third class in academic carrier shall be allowed for selection of teacher.
- Minimum 6 point as like as BCS exam may be taken into consideration in this respect.
- B. Ed degree for teacher may be made compulsory.

Above all, teachers should be selected through a competitive examination in a very fair way. Eligibility and competence should be yardsticks for appointing teachers. So, I earnestly request the Prime Minister, Education Minister and other relevant authorities to consider the matter with due diligence.

M.H Bari  
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### Parliamentarians Vs Local Government

Local Government has become a subject of unending experiment to the policymakers in the recent years. Now government is in favour of four-tier Local Government. The government's decision came considering three aspects; (i) holding election of Upazila Parishad was an electoral commitment of BNP, (ii) to give shares of power to the local leaders who were denied nomination in the last national election and (iii) creating a strong grass route support base for national election. Nothing is beyond political consideration.

However, there is an increased fear that a strong local government could foil the multi dimensional power exercise of the parliamentarians. Communication Minister Barrister Nazmul Huda invented devil in the Upazila Parishad, which is "inconsistent with the parliamentary democracy." But the honourable minister couldn't give any detail or evidence in support of his view.

Moreover, local bureaucracies like Thana level and Zila level administration are intensifying the doubt because they don't like to be accountable to the political leadership. We have seen alliance between Military and Civil Bureaucracy; nowadays we are experiencing the nexus between the Politicians and Civil Bureaucracy which systematically denies the people's right to be a part of the governance.

According to the constitution of Bangladesh the principal role of the parliamentarians is law making. But their involvement in the society is so huge that they even take part in the family matters in their own constituencies. In the election time they distribute commitments to their electorate and people demand these in absence of local government. However, parliamentarians continue this unholy relation with the electorate for the sake of election. The cabinet committee on the Upazila Parishad made a compromising stand so that the Local Government and parliamentarian could enjoy a peaceful coexistence in development. Nonetheless, this is a biased attempt, which is against the poor. Again it is becoming a subject of the administrative laboratory. Even after the inception of the four-tier local government we could again engage ourselves in the same debate in the coming days. Can't we take sound and complete decision?

However, to draw a line of the power we should define the role of the parlia-



Local people's participation is necessary in Local Government.

mentarians, which is missing, in our constitution. We introduced what they cannot do (Article 70) but we never said what else they could do. This tight-lipped attitude is frustrating and provokes them to exercise their power over a weaker institution like Local Government. However, the question is if we replace parliamentarians by local government in terms of development what are the other options do we have to offer them to be elected in the next election? I think it is such an important issue that should be dealt with seriously. If not, the predominant notion relying on the parliamentarians may continue and ruin the effort of a strong local government.

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## LAWscape



There were three men at a bar. One man got drunk and started a fight with the other two men. The police came and took the drunken guy to jail. The next day the man went before the judge. The judge asked the man, "Where do you work?"

The man said, "Here and there."  
The judge asked the man, "What do you do for a living?"  
The man said, "This and that."  
The judge then said, "Take him away."  
The man said, "Wait, judge when will I get out?"  
The judge said to the man, "Sooner or later."  
\*\*\*\*\*

The lawyer returned home at 3 AM. His wife became very upset, telling him, "You are late! You said you would be home by 11:45!" The lawyer replied, "I am right on time. I said I would be home by a quarter of twelve."  
\*\*\*\*\*

Out of town: Any criminal lawyers in this town?  
Local: Yes. But none of them is in jail.

## LAW week



### Judges feel embarrassed before formation of Bench

Four Justices of the Appellate Division of the Supreme Court felt embarrassed to hear the Bangabandhu Murder case. The hearing of the leave to appeal petition of the case is waiting for disposal for several months due to lack of Justices in the Appellate Division who can hear the case. The Justices informed their embarrassment to the Chief Justice through their chamber while the Chief Justice urged to the president to appoint a judge to the Appellate Division on ad-hoc basis to hear the case. The embarrassed four Justices are Justice K.M. Hasan, Justice Saiyad J.R. Modassir Hossain, Justice Abu Sayed Ahmmad and Justice Md. Fazlul Haque. The reason behind their embarrassment was not clear even to the pro-government lawyers. It is noted that right to get justice in an impartial court is the fundamental right as guaranteed by our Constitution. The Justices of the Supreme Court had taken their oath under Article 148 of the Constitution to protect the Constitution as well as constitutional rights of the people. They also vowed to be impartial irrespective of any threat from the vested quarter or relation with any person connected with the litigation. Therefore, Justices' falling in embarrassment before even forming the bench has raised questions among conscious people. -Daily Bhorer Kagoj, 21 September.

### Proposal finalized for the Human Rights Commission

The Cabinet Committee has finalised the draft proposal for the constitution of much talked Independent Human Rights Commission on 15 September. According to the proposal the body will consist of five members which will include a retired Justice of the Supreme Court, a woman member and three other members from human rights activists. The President will appoint the chairman of the commission with the prior consent of the Prime Minister. Tenure of the commission will be three years. The commission will be formed under the National Human Rights Protection Act, 2000 which will be enacted soon. The commission will review the existing laws relating to the protection and promotion of human rights and will recommend ways to implement the laws. -Daily Star, 16 September.

### Violation of child rights in custody

1200 children have been detained in different jails of the country. According to the Children Act, 1974 the juvenile delinquents would be detained in the Juvenile Correctional Center. But most of them are detained in the jails with professional criminals due to lack of much room in the correctional center for accommodation of child offenders. The statistics were shown in a launching ceremony of the yearly report book titled "Our Children in Jail", jointly organised by "Odhikar" a human rights organisation and "Save the Children UK" on 17 September. The book, published regularly on yearly basis to depict the state of juvenile justice and violence against children in Bangladesh, contained this time four articles. The articles described the scenario of violation against children, prisons and prison management in the country, plights of our children in jail and suggested what needs to be addressed to improve the situation. The report revealed that children living in jail were more vulnerable to diseases due to poor living condition in jail. The report also showed that police were not aware of the rights of the children and often they sent the children in jail after registering as over 18 years old. Most of the children are shown arrested under the Special Powers Act, the Narcotics Control Act and so on, according to the report. Mr. Afsan Chowdhury, one of the contributors to the book said that children were not supposed to be in jail but still were more interested to go abroad in seminars than to go in jails and get children out. Justice K M Hasan, Chief guest of the ceremony said, "If we are to improve the juvenile justice system we need a comprehensive community-wide response". The speakers of the ceremony urged for separate Juvenile Court and amendment to the Children Act of 1974. -Law desk

### Tribal people should be recognised by the Constitution

The speakers of an inauguration ceremony had expressed that the Tribal Inhabitants should be recognised by the constitution as Bangladeshi with their respective culture and heritage. They are recognised as the indigenous people in the constitution and reportedly forced to give up their own culture, which is violation of Universal Declaration of Human Rights as well as fundamental rights. The ceremony named "In Search of Withering of Community: The Santal of Bangladesh" organised by the 'Empowerment Through Law of the Common People' (ELCOP) was held on 19 September at the VIP lounge of National Press Club. There are 45 tribes in our country struggling for their existence. Speakers of the ceremony alleged that though the tribal people had taken part in the War of Independence they were not yet recognised as freedom fighters. The speakers had expressed their deep concern that the tribal inhabitants were forced to convert in other religion by some NGOs, which is violation of fundamental rights. The recommendations that came from speakers include the recognition of the tribal groups in the Constitution, distribution of Khas land among them, ensuring security mostly for the women, expansion of education facilities among them. -Law Desk.

### Writ petitions of ETV rejected

The High Court Division of the Supreme Court rejected two separate writ petitions of ETV. The ETV Limited had filed these petitions challenging the closure of its transmission and seizure of transmission equipment. The vacation bench comprising Justice Mohammed Abdul Matin and Justice S K Sinha rejected the petitions after hearing both sides. Earlier, Justice S K Sinha expressed embarrassment to hear the petitions and send it to the Chief Justice. But the Chief Justice returned those to the bench again for disposal. -Daily Star, 17 September.

### Citizens' Committee to supervise police action suggested

The United Nations Development Programme (UNDP) had suggested that Citizens' Committee should be formed to supervise the action of the police. The suggestions were made in a report named "Human Security in Bangladesh: In Search of Justice and Dignity". The report revealed that a National Crime Prevention Committee at the country level and Citizens Committee at District level or Thana level should be set up with immediate priority basis. As the police abuse section 54 of the Code of Criminal Procedure amendment to this section is indispensable, according to the report. Police enjoyed a wide discretionary power, which is jeopardous for the administration of justice. The report advocated for the establishment of an "Independent Investigation Cell" for the investigation of the cases only. The report also suggested for the amendment to the Evidence Act to blot out the improper sections relating to the investigation. -The Bangladesh Observer, 24 September.

### Two wing anti-corruption body proposed

The Transparency International Bangladesh proposed for building up a two wing independent anti-corruption commission to check corruption. According to the proposal the body will consist of a chairman and two members who would be appointed by a five members Constitutional Council. The tenure of the council would be for five years. Members of the council will be appointed by the President on advice of the Prime Minister, leader of the opposition in parliament and Chief Justice. The proposed commission would have two wings; operation and prevention, headed by the commission members. The proposal came on a two days "Workshop on National Integrity" organised by the Transparency International Bangladesh at CIRDP auditorium. According to the proposal the commission would be empowered to take action against the false, fabricated and motivated complaints. If false and motivated complaints are filed to the commission to harass people the commission would identify the complainants and punish him/her with imprisonment up to five years and fine up to Tk. 2 lakhs. The commission would also have the power to assess the bank account and property of the wife, children and other family members of a person accused of corruption. The speakers of the workshop said that before formation of an anti-corruption commission the government itself must become free from corruption. -Daily Star, 23 September.

## Corresponding Law Desk

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