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The Daily Star

LAW *opinion*

# Sea boundary of Bangladesh: A legal view

BARRISTER HARUN UR RASHID

BANGLADESH with its population of about 140 million in a land territory of 55,598 thousand square miles (147,570 sq.km) needs to explore and exploit the living and non-living resources of the adjacent sea. The full extent of marine resources is yet unknown to us. Considering that humans have smashed the atom, climbed the Mount Everest and landed on the Moon, our ignorance about the resources of the sea is a breath-taking gap in science.

Besides the traditional non-living resources of sea, such as oil or gas, we could be amazed at the life forms that could live in deep sea on the continental shelf (ocean floor). Continental Shelf could become in future one of the sources of food for our massive population.

Some experts consider that mineral deposits are greater in sea than those in land. The sea-bed covers 71% of the world's area and it contains approximately 293 chemical elements. As the resources of the land gradually diminish, there would be scramble for resources on the sea-bed.

### UN Law of the Sea Convention

The 1982 UN Convention on the Law of the Sea came into force in 1994 and Bangladesh ratified in 2001. Under the UN Convention, Bangladesh's maritime areas, besides inland waters, are as follows:

Territorial Sea
Contiguous Zone
Exclusive Economic Zone
Continental Shelf

In 1974 Bangladesh passed a law, "The Territorial & Maritime Zones Act (Act no. XXV). This law has allowed the government to declare its extent of maritime zones through gazette notification.

Bangladesh claimed 200 miles of Exclusive Economic Zone under the 1974 notification of April 16 of Section 5 of the Act and could claim 350 miles of Continental shelf under the UN Convention.

In this context, it is important that Bangladesh needs to settle sea boundary agreement with both India and Myanmar (Burma). Negotiations with both countries commenced in 1974 and there were series of meetings with the representatives of both countries in the intervening years. If I recall correctly, the last negotiations were held with India in 1982 and with Myanmar in 1986.

However, negotiations remained inconclusive both with India and Myanmar. The negotiations were held before the UN Convention on the Law of the Sea came into force. The Convention will have an impact not only on the extent of the claim of the areas in the Bay of Bengal but also on the applicable legal principles in delimiting sea boundary.

### Bangladesh's coastal characteristics

Bangladesh is an adjacent country to its neighbours as distinct from opposite country

( geographically India and Sri Lanka are opposite to each other while Bangladesh is not). This distinction is very significant and has considerable ramifications in delimitation of the sea boundary with India and Burma

Another fact is that Bangladesh is a geographically disadvantaged country because its 720-km coastal line is concave in shape (not convex) and highly indented. Bangladesh has to ensure that its frontal opening to the sea does not become blocked in the competing claims from India in the West and Myanmar in the East. Bangladesh must have an open wide front to the high seas in the Bay of Bengal.

Bangladesh is a deltaic country and three of the biggest rivers of South Asia flow through this country. As a result, its waters of the estuary are unstable. Furthermore monsoon rains carry silt through rivers of Bangladesh from upper catchment areas. The silt gives formation of innumerable coastal new small islets almost every year replacing earlier ones. The waters are in a constant flux.

There exists an underground river or canyon, known as the Swatch of No Ground, within the territorial waters of Bangladesh in the western sector. The canyon is believed to be 12 miles long, 1 and half a mile width and remains active and very deep. It is further believed that much of the silt carried by Bangladesh rivers is passed on through this canyon to the sea bed of Bay of Bengal as far as Sri Lanka.

### Legal principles involved in sea boundary

One has to acknowledge that jurisdiction on the sea emanates from the sovereignty over its land domain. If there is no land territory bordering the sea, no jurisdiction could be claimed on the sea. I would argue that the shape of the land domain has a direct bearing on its jurisdiction on the sea.

If one takes an aerial view of Bangladesh, its physical contours would look roughly rectangular in shape. There is an inherent connection between the shape of the land domain and its claim on the boundary on the sea. Following this principle, Bangladesh's boundary on the sea would be rectangular in shape.

The boundary on the territorial waters is to be governed by Article 15 of the UN Convention and the equidistant method can only be departed by reason of "historic title or special circumstances" on the seas.

However delimitation of Exclusive Economic Zone (EEZ) and Continental Shelf of adjacent countries will be guided by the principles of equity in terms of Articles 73 and 84 of the Convention. These Articles of the Convention emphasise that any agreement arrived at must achieve "an equitable solution". Principle of equity is ingrained in notions of fairness in the context of shape of the coastal land. This equitable principle found recognition by the World Court in North Sea Continental Shelf Cases (1969:ICJ:general list : nos 51 &52).

The geographical location of countries is very important in drawing a sea boundary. This means whether a country is opposite or adjacent to the other country. For example, Sri Lanka is opposite to India while Bangladesh is adjacent to it or to Myanmar.

The "equidistance method" that is applicable between the opposite countries in respect of delimitation of EEZ and Continental Shelf cannot be invoked to draw the sea boundary between adjacent countries as it disregards the physical features of coastal areas and does not achieve "an equitable solution" as mandated by the UN Convention.

If this method is applied, the boundary between adjacent countries will be unfair, distorted and inequitable. Therefore, sea boundary of Bangladesh with its adjacent neighbours requires to be drawn in terms of the provisions of the UN Convention so as to achieve "an equitable solution."

The territorial sea would cover 12 nautical miles from Bangladesh baseline, the EEZ another 188 miles ( total 12+188=200 miles) and finally the Continental Shelf would cover another 150 miles from the end of EEZ jurisdiction ( total 200+150=350 miles).

I would suggest that sea boundary could be drawn by stages -first on the territorial sea, followed by EEZ and thereafter the Continental shelf. Each has a jurisdiction of different length.

### Strategy pending the outcome of negotiations

Pending the conclusion of sea boundary agreements with India and Myanmar, one strategy for consideration is to examine the possibility of sharing resources of the alleged overlapping or disputed areas on the sea. Many countries have been able to conclude such interim agreements of sharing maritime resources. For instance, Thailand and Malaysia agreed in 1979 and in 1990 to jointly exploit sea resources of the continental shelf pending a final agreement. In 1989 Indonesia and Australia concluded an interim agreement to share resources of the Timor Sea.

The advantage of such interim agreement of sharing resources is two fold: first sea resources do not remain unexploited and second, neighbouring countries share the resources (living and non-living) for benefit of their people. Such agreement puts neighbouring countries in "win-win" situation prior to arriving at a final agreement.

Barrister Harun ur Rashid is former Bangladesh Ambassador to the UN in Geneva.

LAW *views*

# Concern over performance of the law officers

MUHAMMAD SAMSUL HOQUE

Recently as per the report in the Daily Star of 2nd January, 2004 the Attorney General has expressed extreme concern over a sort of corrupt and poor performance of his fellow law officers. The Editor of the Dhaka law Reports, Mr. Shahabuddin Ahmad has rightly pointed finger to the 'persons responsible' for making irresponsible appointments as though distributing charities without caring if the appointees are fit for the job. The appointments were made more than two years ago. Immediately after the appointments conscious members of the Supreme Court Bar Association reacted strongly. Standing legal provisions, even, as to the requirement of regular practice for 5 years or 10 years as the case may be for appointment as Assistant Attorney General or Deputy Attorney General have been trampled on by the Government whom the people granted two-third majority in the parliament. The 'Persons responsible' have only considered the date of enrolment as an Advocate to count 5 years or 10 years of practice for the purpose of the appointments in question without at all seeing the actual and regular practice. Thus persons having actual regular practice of less than 3 years in the High Court Division have been appointed as Deputy Attorney General for Bangladesh.

Not only the duly qualified persons have been deprived of their rightful claim to the offices of the law officers but the institution of justice has also been damaged which, today, stands proved. There is none to disaffirm this reality. The learned Judges do not get necessary assistance from the law officers and almost every day we find serious annoyance in the court rooms. If such Deputy Attorney Generals are elevated to the Bench the conscience of the nation will suffer further.

On 5th February, 2004 I had the opportunity to hear the learned Attorney General Mr. A. F. Hassan Ariff, being called up, in his office. He, in course of discussion, expressed his anxiety as to poor performance of the law officers. To improve the situation, he added, that the Government has decided not to appoint Deputy Attorney Generals directly rather they would be promoted from the Assistant Attorney Generals on the basis of their performance standard. We must thank the persons in the Government, at least, for their anxiety. But now the question is who will assess the performance standard and on what basis? If the Government wishes to assess the performance standard of the law officers without any rules then who will assess the standard of the Government? Because the Government has proved that power means pick and choose from those who are skilled in rat race. Another important question is if the already appointed law officers are not go away then how conscious and capable one from among the members of the Bar will join the office of the Attorney General as Assistant Attorney General?. The way remains open in that case is to bring the Assistant public prosecutors (App) by promotion as Assistant Attorney General because no competent practitioner in the Supreme Court will accept humiliation being subordinate to those without requisite qualifications. Similarly the benches of the Supreme Court might be, according to them, filled up by the judges of the Sub-ordinate Courts on promotion.

However in the greater interest I wish to put forward some suggestions to ensure performance standard of the law officers. The longer procedure of removal of a law officer from the office should be curtailed. A Council headed by the learned Attorney General with two Additional Attorney General should be vested with powers to take effective measures. Such Council will review, once in a month, the performance standard of the Deputy Attorney Generals and Assistant Attorney Generals. This might keep the law officers vigilant to achieve better performance standard.

Muhammad Samsul Hoque is an Advocate of the Supreme Court.

LAW *campaign*

# Women's participation in parliament: An alternative proposal

DR. BADIUL ALAM MAJUMDAR

ACCORDING to newspaper reports, the government is considering to increase the number of parliamentary seats to 450, of which 50 would be reserved for women. The women's seats would be divided among political parties according to their existing parliamentary strengths. Various stakeholders reacted sharply and angrily against this proposal. I make here an alternative proposal for ensuring a critical mass of women in Parliament for effectively raising their voice while overcoming the criticisms of the government proposal.

### Why women's representation in Parliament?

There are two overriding arguments for significant representation of women in Parliament. First is the argument of democracy, human rights and equality. The fundamental principle of democracy is that the power of government is only legitimate when derived from the consent of the governed. That is, a truly democratic system requires participation of all citizens. Hence a governance system with little or no presence of women can hardly be called democratic. Thus, democracy cannot be gender-blind, and our Constitution (Articles 10, 19(1) and 28(2)) guarantees equality for women.

Poverty eradication is the other reason for increased women's participation in governance. Nearly half of our population lives below the poverty line. Of the poor, women are the poorest, and their poverty is unfortunately the primary source of the overall poverty condition in our country.

### Flawed government proposal

The government's proposed new reservation system for women is seriously flawed. First of all, the proposal offers too little only 50 out of 450 or 11% seats in Parliament for women compared to 10% during the last Parliament. This represents a token gesture, reflecting the "generosity" of the policymakers rather than a genuine effort to redress long-standing discrimination against women. Secondly, contrary to the commitment of BNP, the proposal calls for selection rather than direct election of women MPs. Thirdly, in the proposed system the MPs from the regular and reserve seats will have overlapping responsibilities, and the female MPs will have no accountability to the people. Rather they will be "accountable" to the party bosses. Fourthly, the selection of MPs by parties rather than election by the voters will exclude women from the process of mainstream politics and decision-making. They will be looked down upon by their male colleagues, and denied real powers and responsibilities. They will be relegated to minor, peripheral and symbolic roles as has happened in the case of women representatives in local governments. Fifthly, since under the proposed system the women MPs will not have their own constituencies and do not have to face voters, their selections will not be based on competence or "electability." Rather their connections to party leaders and their lobbying ability will be the most important qualification for being selected. In our present corrupt and criminalised political culture, "selling" the women's membership in Parliament for money or other considerations may not also be completely ruled out. Sixthly, the proposal will allow the women's seats in Parliament to be used as spoils by the party high command a tool of bestowing "favours" to women in party or in family. This will further corrupt our politics, contributing more to our already ineffective parliamentary democracy. The naked patronage system practiced in our "winner-take-all" political culture, ignoring fairness and justice, is perhaps the worst form of corruption, and it has already caused enormous harms to our political system. We can ill afford yet another patronage tool, especially for selecting our leaders. Finally, the proposed reservation system, like in the past, will fail to empower a significant cadre of women leaders with deep grassroots connections who can stand on their own and get elected competing against men. Given all these pitfalls, the proposed system will be clearly counterproductive to our goal of empowering women and their voices and concerns reflected in national policymaking.

### An alternative proposal

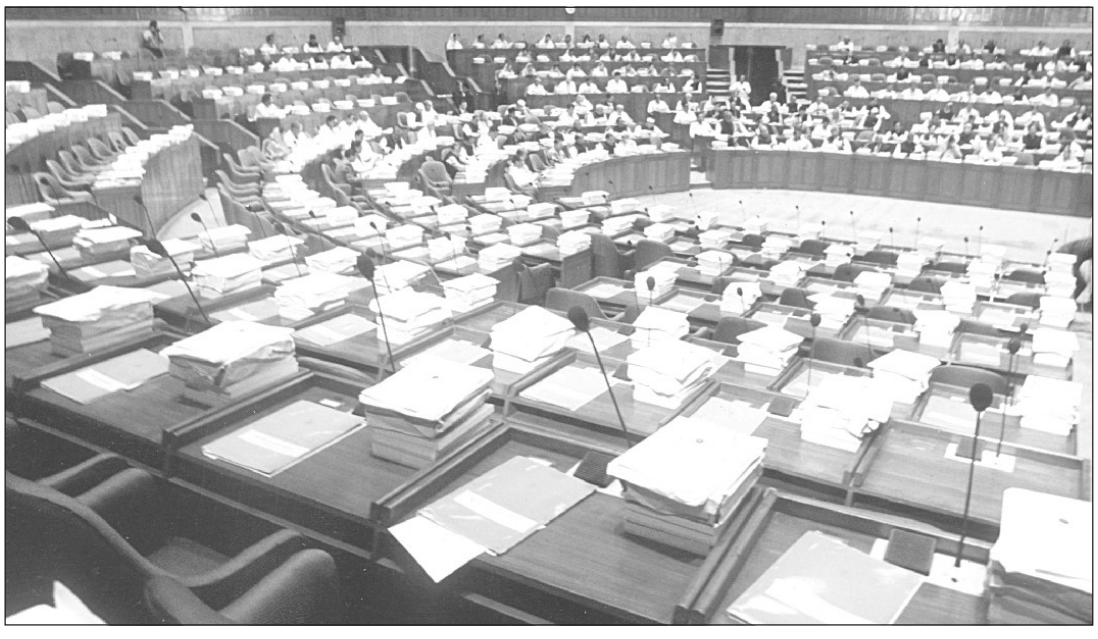
A quota or reservation is usually introduced to protect and promote the interests of minority groups who are traditionally excluded from political powers. However, women are not minorities, and a reservation system is not appropriate for them in the long-run, although it will be necessary for a while to give them a head start. Women are half of our population and their legitimate right is to have 50% representation in Parliament. With this premise, I propose a rotating system that will reserve 1/3 of all parliamentary seats for women through direct elections, plus the possibility of women being elected to unreserved seats.

This proposal will require apportioning all seats in Parliament into three groups. In the first term, 1/3 of all seats/constituencies will be chosen by lottery and reserved for women for a period of one term. All candidates within those constituencies must be women and they will be directly elected by the voters.

In the second term, a second and different 1/3 of seats will be reserved for women from the constituencies that were previously unreserved. Through direct elections, this second third of the total seats will be filled by women.

The same process occurs in the third term with the remaining seats. The cycle repeats itself until it is deemed no longer necessary. In this way, each seat in Parliament will be reserved for women 1/3 of the time on a rotating basis.

Under this proposal, women may also run for election to the non-reserved seats. The most effective women representatives, with strong grassroots connections, may also win against men. In this way, the overall representation of women will be higher than 1/3 and can approach the ideal 50/50 representation, ensuring that women's voices are heard.



The rotating system has much attractiveness. First, it will put in place **a** built-in mechanism for empowering a new generation of women leaders by allowing them to be directly elected from a specific constituency and getting the opportunity to nurture the constituency for future elections. The proposal will allow within three terms the election of at least one woman MP from each constituency, and thus the empowerment of a minimum of 300 to 450 women leaders, depending on the total number of MPs. It will particularly open opportunities for women from the grassroots to express their leadership and be elected on their own in the future, making the reservation system unnecessary in the long-run.

Secondly, it will avoid overlapping responsibilities and make the women MPs accountable to the people, not to the party bosses. Such accountability will be consistent with the basic tenet of parliamentary democracy and also Article 65(2) of our Constitution which requires Members of Parliament to be elected from "single territorial constituencies by direct election."

Thirdly, this proposal will adhere to the democratic principle of direct elections. It will in the process allow the women MPs to have the same powers and responsibilities as their male counterparts, making our political system inclusive.

Fourthly, the proposed system will make competence and "electability" of women as primary criteria for nomination as opposed to connections to and lobbying ability with the party high command. In such a situation, the political parties will search for and nominate the best candidates, creating opportunities for true leaders to represent women.

In the final analysis, because of the need to nominate competent women, this proposal will prevent the women seats in Parliament from being used as a patronage tool. This may in turn reduce political corruption and lessen dynastic influence in our political system.

It must be pointed out that guaranteeing significant women's presence in Parliament is not enough; women must be given the freedom to voice their opinions and concerns so that they can work in a bipartisan manner on issues important to them. In the present condition, Article 70 of our Constitution prevents MPs from being the voice of their constituencies and vote against the wishes of the party. This single constitutional provision makes a mockery of our claim that Parliament represents the people. A critical step in this respect is to abolish Article 70 to ensure that every MP, including the woman MP, is free to vote his or her conscious thinking primarily of the people, not of the party. This must, however, be accompanied by bold political reforms, ensuring the practice of democratic norms in party as well as national politics.

### Concluding remarks

It is clear that if we are to solve our problems of widespread poverty and malnutrition, which is the source of chronic persistent hunger, we must find ways to empower women, ensure their equality and create opportunities for them. This will in turn require their political empowerment significantly involving them in the political arena so that their voices are heard and their concerns reflected in the policy and decision-making processes. Guaranteeing a significant proportion of seats for women in the Parliament is an important step in that direction.

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