

# **Mandating Corporate Directorship for Women in Bangladesh: Options and Challenges**

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## **Introduction**

Ensuring women participation in economic decision making and making women empowered in all spheres of life has been a great concern throughout the world. In 1975, first women conference was held at Mexico and therefore, the year of 1975 was declared as 'women year'. Subsequently in the year of 1980, the objective of education, health and employment to women was accepted in the second women conference held in Copenhagen. Later on, in the declaration of fourth women conference held in 1994 at Jakarta, the distribution of power and the gap between women and men in decision making process were recognized.<sup>1</sup> Bangladesh has always been a part of these conferences and signatory of international instruments for women rights such as the Convention on Elimination of Discrimination against Women (CEDAW). To follow such commitments, the National Women Development Policy has been passed in 2011 adopting a comprehensive approach towards women empowerment. A national work plan with short term, medium term and long term plan has also been taken for the the implementation of this policy.<sup>2</sup>

One of the major targets set up in the policy is to ensure women involvement in economic decision making.<sup>3</sup> Accordingly, the national work plan has set the target of achieving women representation in all public and private organizations. Therefore, in the absence of any provision in the Companies Act 1994 or in the Bank Companies Act 1991 of Bangladesh ensuring women's mandatory participation in corporations, the encouragement of appointment of women at least at the rate of 20% in the corporate board especially of banks, insurance, and financial institutions

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1 For details, the third conference was held in 1985 at Nairobi where the strategy for women development on the basis of equality, development and peace was granted.

2 Ministry of Women and Child Affairs, Bangladesh <<http://www.mowca.gov.bd>> [last accessed on 27 March 2016],

3 National Women Development Policy 2011 (Bangladesh), Clause 23.

is one of the action plans of the government.<sup>4</sup> Such initiative is not only be helpful to achieve the government target but also makes Bangladesh internationally competitive since opening the glass door of boardroom for women is the new demand of the present-day corporate governance law.

Previously, the corporate boards are found to be male dominated and there have been very few female directors in the board.<sup>5</sup> However, since the incorporation of mandatory quota provision for female directors in the Norwegian law in 2009, many European countries are found to adopt the similar provisions in their national legislations. Even the United States and Australia have also accepted the provision of board diversity in terms of gender. Such trend is not only limited to the western countries rather India, Malaysia, and the United Arab Emirates, have adopted the similar provisions subject to respective customizations.

This paper aims at examining the prospect of adopting mandatory quota provisions in Bangladesh for women in the corporate board in view of the experience of the countries which have already adopted such provisions. Furthermore, it also attempts to analyze the possible contradiction of such quota system with the existing legal and socio-economic environment of Bangladesh. Finally, some recommendations on effective provisions for ensuring women representation in the corporate board are formulated in light of the aforementioned issues.

However, given the Companies Act 1994 of Bangladesh does not have any provision of supervisory board, the quota system of various countries for non-executive directors of the supervisory board is not taken into account for this paper. Moreover, the board diversity is considered only from the gender perspective. As a result, the board diversity in terms of age, educational and professional background, ethnicity, and life experience are not taken into account for this paper.

This paper is organized in five major parts, which begins with the introduction of existing corporate governance structure under the relevant laws of Bangladesh, followed by the arguments for quota system for women from both public and private sectors' point of view. Next part focuses on the legislations of the other countries adopting quota provision and their success rate. The later parts examine whether Bangladesh would get benefited by adopting such provision and if yes, whether such provision would go in contradiction with the spirit of existing legal regime and socio-economic conditions of Bangladesh. Subsequent to these, some

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4 National Work Plan for Implementation of National Women Development Policy 2011 <<http://www.mowca.gov.bd>> [last accessed on 27 March 2016], p. 56;

5 Diana Bilimoria, 'Board Committee Membership: Effects of Sex-Based Bias' (1994) 37(6) *The Academy of Management Journal* 1453.

recommendations have been drawn in light of the present experience of other countries followed by the conclusion.

## 2. Corporate Governance Structure under the Companies Act 1994

The Companies Act 1994 establishes a three tier corporate governance structure. These are the shareholders, the board of directors (BoD) and the manager. In terms of relationship, shareholders are the mass group of people who actually hold share of the company and in return they are entitled to *inter alia* distribution of profit,<sup>6</sup> attend the annual general meeting,<sup>7</sup> voting rights in meetings.<sup>8</sup> On other hand, the board of directors is comparatively small group of shareholders elected by the other shareholders at the general meeting and is entrusted with the duty of management of the company's business.<sup>9</sup> The last tier of corporate governance is the manager. The term 'Manager' is defined in the law as a person liable for the whole affairs of the company under the superintendence, control, and direction of the board.<sup>10</sup>

In the board, the minimum number of directors required for a private limited company is two whereas a public limited company must have at least three directors.<sup>11</sup> The director is appointed among the member of the company in the general meeting.<sup>12</sup> Apart from being a member, in order to be a director of a company irrespective of the company being private or public limited companies, the proposed director must hold a qualified amount of share in the company.<sup>13</sup> Besides, the amount of this qualification share is to be determined in the articles of association (AoA) of the company.<sup>14</sup> The philosophy behind the incorporation of such requirement is to ensure that the director himself also has some stake in the company which may encourage him for the betterment of the company and moreover company's management is better to be entrusted upon an insider one rather than an outsider.

Such provision for shareholder director signifies that no independent director (or outside director) is allowed to be appointed under the Companies Act 1994 since the director must be a member of the company and hold a minimum qualification share as required by the AoA even though nominated director is allowed to be appointed. The difference between the nominated director and the independent director is that a

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6 The Companies Act 1994 (Bangladesh), Clause 97 to the schedule.

7 Ibid. Sec 81.

8 Ibid. Sec 85.

9 Kelli A Alces, 'Beyond the Board of Directors' (2011) 46 *Wake Forest Law Review* 783.

10 Above n 6, Sec 2 (1) (k).

11 Ibid. Sec 90.

12 Ibid. Sec 91 (1) (b).

13 Ibid. Sec 97.

14 Ibid. Sec 97 (1).

nominated director is appointed by the resolution of the holding company to sit as a director at the board of the subsidiary company and exercise all the powers of the holding company which it may use if it were an individual shareholder<sup>15</sup> whereas an independent director is the one who is not a previous employee or a shareholder of the company.<sup>16</sup> He is appointed from the job market based on their qualifications and experience in the respective field like the other corporate official e.g. chief executive officer or senior managers.

However, the independent director is required to be appointed for the banks under the Bank Companies Act 1991<sup>17</sup> and for the public limited companies under the Corporate Governance Guidelines<sup>18</sup> issued by the Securities and Exchange Commission. The minimum number of independent director is be 1/5<sup>th</sup> of the total number of directors.<sup>19</sup> The term “independent director” is defined as a director who is not a shareholder, has no any connection with the management of the bank and has no direct or indirect interest with the bank or any person involved with the bank in present or in future.<sup>20</sup> He is allowed to give his opinion only for the interest of the bank.<sup>21</sup> The minimum number of independent director is three when the total number of directors is more than 20 whereas at least two independent directors are to be appointed in case of a board having less than 20 directors.<sup>22</sup> Permission from the Bangladesh Securities and Exchange Commission is required before appointing independent directors of a bank.<sup>23</sup>

Similar to the provision of holding qualification shares at the time of appointment or within the specified time after appointment,<sup>24</sup> the appointed director becomes disqualified if his shares fall below the minimum qualification shares or he fails to pay on call in respect of his shares.<sup>25</sup> In addition to this requirement of minimum qualification share, other standard qualifications are also required such as soundness of mind, majority age, solvent and/or having no pending adjudication against his

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15 Ibid. Sec 86.

16 Investopedia <<http://www.investopedia.com/terms/o/outsidirector.asp>> [last accessed on 31 March 2016].

17 The Bank Companies Act 1991 (Bangladesh), Sec 15 (9) (incorporated by amendment to the Bank Companies Act 1991 in 2013).

18 The Corporate Governance Guidelines dated 07 August 2012, Securities and Exchange Commission (Bangladesh), Clause 1.2 <[http://www.dsebd.org/pdf/Notification\\_on\\_20CG-070812-Amended.pdf](http://www.dsebd.org/pdf/Notification_on_20CG-070812-Amended.pdf)> [last accessed on 31 March 2016].

19 Ibid. Clause 1.2 (i).

20 Above n 17, Explanation to sec 15 (9).

21 Ibid.

22 Ibid.

23 Above n 18.

24 Above n 7, Sec 97 (1).

25 Ibid. Sec 94 (1) (d).

solvency.<sup>26</sup> The scope of these qualifications are always open ended since any other additional grounds can be incorporated under the AoA.<sup>27</sup>

Further, upon appointment of the directors, the board acts as a collective unit in order to discharge its duties towards the company. The board manages the company's business as its prime duty.<sup>28</sup> It is responsible to take the business decisions for the company except the excessively major ones which require the votes from the shareholders at their general meeting under the Companies Act 1994.<sup>29</sup> Such business decisions include company's business operation plan, investment proposals, annual financial budget, financial accounting plan, profit distribution plan, loss recovery plan, basic management system etc.<sup>30</sup>

However, since directors work usually part time for the company, it is not possible for the directors to take care of the day to day management of the company.<sup>31</sup> Therefore, managers and senior managements are appointed to undertake this responsibility. The management is also responsible for management of the whole affairs of the company.<sup>32</sup> And the board is entrusted with the responsibility to monitor the management. Its effective oversights ensure effective performance of the management in discharging their duty to maintain day to day business as well as the whole affairs of the company. Apart from monitoring, the board of directors is also responsible to provide directions and guidance to the management in managing company's affairs.<sup>33</sup>

In addition, whether the directors are doing their duties effectively is determined by their reporting to the shareholders. In other words, since the shareholders are not directly involved with the business of the company and it is the directors who conduct the business, directors are required to report to the shareholders about the company's performance on periodic basis and act as an information mechanism to the shareholders for the company's affairs at the general meeting of the shareholders through various reports such as annual report, balance sheet, profit and loss accounts etc. moreover board of directors submits reports regularly to the shareholders at the general meeting.<sup>34</sup>

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26 Ibid.

27 Ibid. Sec 94 (2).

28 Above n 9.

29 Above n 9, Clause 72.

30 Jiang Yu Wang, *Company Law in China: Regulation of Business Organizations in a Socialist Market Economy* (2014 Edward Elgar, Cheltenham, the United Kingdom) 169.

31 Above n 9.

32 Ibid. see also above n 7, Sec 2 (1) (k).

33 Above n 7, Sec 2 (1) (k).

34 Ibid. Sec 184.

Moreover, it is the duty of the directors to ensure the compliance of the company with the relevant laws and regulations, otherwise penalty has been imposed upon them. Such as failure of the directors of a public limited company to hold statutory general meeting within the stipulated time may cause them fines.<sup>35</sup> Directors are also required to act as a record keeper of the company. The detail minutes of the annual general meeting<sup>36</sup>, directors meeting<sup>37</sup>, extraordinary general meeting,<sup>38</sup> lists of the members, charge or mortgage created over the assets of the company<sup>39</sup> etc. are required to be maintained in the record book and directors are entrusted with this duty.<sup>40</sup>

In performing these duties, the directors as well as the management are required to maintain two core standards such as duty of care and duty of loyalty. The duty of care is also known as the duty of good management. Under this standard, the directors and the management are bound to act in good faith as a reasonable prudent person with the belief that his action is in the best interest of the company.<sup>41</sup> On the other hand, the duty of loyalty includes avoidance of conflict of interest with the company, abuse of power and position at the corporate board.<sup>42</sup>

### 3. Women in Corporate Board

In the current legal regime of corporate governance, opening the glass door of the boardroom for female is one of the prominent issues. In the European Union, the law is being under consideration for mandatory quota system for female in the corporate board.<sup>43</sup> When the bill for quota system was being considered by the Dutch Parliament before an enactment is made, questions on capacity of women to be in the top of a management and/or sit in a board, discriminatory action (though this may be termed as a positive discrimination), unnecessary interference on independence of corporation, orthodox view on women contribution for home making and childcare to make its own charters were raised.

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35 Ibid. Sec 83 (11).

36 Ibid. Sec 81.

37 Ibid. Sec 96.

38 Ibid. Sec 84.

39 Ibid, Sec 159.

40 Above n 6, Clause 75.

41 Above n 30, 209.

42 Ibid. 202; see also Legal Information Institute, Cornell University Law School<[https://www.law.cornell.edu/wex/duty\\_of\\_loyalty](https://www.law.cornell.edu/wex/duty_of_loyalty)> [last accessed on 31 March 2016].

43 MijntjeLuckerath-Rovers, 'Gender Quota in the Boardroom: the Dutch Approach' (2015) 20(1) *Deakin Law Review*75; see also SandeepGopalan and Katherine Watson, 'An Agency Theoretical Approach to Corporate Board Diversity' (2015) 52(1) *San Diego Law Review*24.

These views were counter argued by the legislators and enacted mandatory quota system in the Netherlands. Similar challenges were faced by most of the countries' pioneers who first came forward with the demand of the provisions of mandatory quota for women in corporate boards. They argued their demand from two perspectives: one from the government (or public) point of view and finally the company's point of view (i.e. the private sectors' view). In other words, these two sets of arguments are from the legislator's perspective and the subjects' perspective.

### 3.1. Social Justice Arguments

The social justice argument is mostly based on gender equity ensuring women participation in decision making process. A Chinese saying supports this when it says that women hold the half sky. It implies that any progress be it macroeconomics growth or whatever cannot be imagined without women participation in the decision making process. The social justice argument requires representation of both sexes in the corporate governance like the voting rights of the female as a matter of democratic practice.<sup>44</sup> The European Union also relied on the argument of necessity of full economic participation of women in democracy while adopting the mandatory quota system. While vetting the mandatory quota law, a Norwegian minister of the ministry of Children, Equality and Social Inclusions said that "if we neglect the need to empower women, we pay for that neglect by weakening our country's economic growth."<sup>45</sup>

1. Gender Equity: Despite the fact that almost half of the population is women, their representation is significantly to low in corporate governance. Therefore, with the objective of giving equal opportunity to the backward section of the population in order to ensure gender equity, such quota system is justified.
2. Equal opportunities: The logic of equal opportunity denotes to the argument of social justice. At the time of enactment of the first legislation providing mandatory quota system in the corporate board, the Norwegian state secretary said that women's influence for decision making process is important for the growth of national wealth as well as the economy as a whole.<sup>46</sup> Since today's women are educated, their participation in labor market and competence should be provided with opportunity to contribute to the nation.
3. Equal representation: The moral argument for equal representation is also based on social justice. The presence of women in board provides more just and equitable outcome for the society as a whole. It has been argued that as a

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44 Ibid.

45 SandeepGopalan and Katherine Watson, 'An Agency Theoretical Approach to Corporate Board Diversity' (2015) 52(1) *San Diego Law Review*33.

46 Ibid. 25.

corporate citizen, it is also a social responsibility of the company to comply with social norms and values through gender equality which can be ensured through equal representation of genders in its governance.<sup>47</sup>

### 3.2. Business Case Arguments

It has been argued that state should not interfere with the appointment of directors in any corporate board rather it should be left with the private sector to determine whether they want to have a diverse board or not.<sup>48</sup> This argument is based on the distinctive nature of public and private sector and the independence of private sector to choose their business strategy should not be intervened in the name of social justice. Business case arguments can be the counter logic for this case.

1. Diversity of Board: The business case argument says that having representation of each sex ensures the diversity in board and it is eventually beneficial to the company's business. Such improvement of board's performance would encourage the companies to have more diversified board. It was commented by one of the legislators of Scotland that "if a board better reflects the people it serves, it will be better equipped to make decisions affecting them and so improve its performance."<sup>49</sup> Since 70% of purchasing decisions are taken by women, there is a need that the board should also have the capacity to think like those 70% consumer decisions.<sup>50</sup> Therefore a gender diversified board prevents the group thinking of the "one gender dominated" board and helps to take more effective business decisions.
2. Market Signal: Not only understanding the stakeholders, having women in corporate board also sends a signal to the market that the company values women representation and empowerment.<sup>51</sup> Such approach also distinguishes the company from the others in the market showing that it emphasizes social justice.<sup>52</sup> Based on a study over 290 largest companies of the world, it was

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47 Caspar Rose, 'Does Female Board Representation Influence Firm Performance? The Danish Evidence' (2007) 15(2) *Corporate Governance: An International Review* 404, 405.

48 Ibid.

49 'Women on Board: Quality through Diversity, Scottish Government Consultation on the Introduction of Gender Quotas on Public Boards', (Scotland Government 2014) (online) available at <http://www.gov.scot/publications/2014/04/1438/296931> [last accessed on 30 March 2016].

50 Above n 45, 36.

51 Stephen Bear et al., 'The Impact of Board Diversity and Gender Composition on Corporate Social Responsibility and Firm Reputation' (2010) 97 *Journal of Business Ethics* 207.

52 Above n 45, 20.



found that sales and earnings of the companies having at least one female director are higher than the companies having no women directors.<sup>53</sup>

3. **Share Price Performance:** One of the key ways to measure the performance of the board is the share price of that company in stock market. In a study by the Credit Suisse in 2012, correlation between the share price and return on equity performance and the inclusion of at least one woman on the board was established.<sup>54</sup> Gender diversity is also inspected by the investors of the capital market. For example, the CalPERS in the US and the Amazon in Europe include gender diversity as an investment criterion.<sup>55</sup>
4. **Group Thinking:** A corporate board acts as a team in taking decisions for the company. In a board meeting, the directors give their individual oversights and but take the decisions collectively. Therefore, the board acts as a crowd following the highly cohesive individuals (i.e. all male member board) often just to avoid conflicts.<sup>56</sup> However, since the women are typically outsiders<sup>57</sup>, they are more prone to question objectively and independently which eventually prevents the group thinking in the boardroom.
5. **Improved Governance:** Long criticized weakness of stereotype corporate boards are undertaking excessive risks, unreasonable hike of compensation package for senior managers, predominance of board culture focusing value to short-term gains etc.<sup>58</sup> On the other hand, the findings of empirical study showed that firms under women leadership has been proved to be more risk aversion and focused to long-term sustainable projects.<sup>59</sup> The statistic shows that companies with 40% women directors have taken less credit than the companies with a lower representation of women when compared with the whole business community.<sup>60</sup>

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53 Viviane Reding, 'The Tug of War over the Women Quota' (2012 European Commission, Munich).

54 Credit Suisse, 'Gender Diversity and Corporate Performance' (2012) <[http://www.calstrs.com/sites/main/files/file-attachments/cspi\\_gender\\_diversity\\_and\\_corporate\\_performance.pdf](http://www.calstrs.com/sites/main/files/file-attachments/cspi_gender_diversity_and_corporate_performance.pdf)> [last accessed on 30 March 2016].

55 Stephanie N Shelter, 'Women on Corporate Boards: Non-Quota Initiatives to Increase Board Gender Diversity in the US' (2014) 5(1) *Grove City College Journal of Law and Public Policy* 23.

56 Above n 55.

57 Ibid.

58 StijnClaessens and Burcinyurtoglu, 'Corporate Governance and Development: An Update' (International Finance Corporation, 2012).

59 Darren Rosenblum and DariaRoithmayr, 'More than a Woman: Insights into Corporate Governance after the French Sex Quota' (2014-2015) 48 *Indiana Law Review* 889, 916.

60 Maria Pilar, GraciaGuikarro and Ana ClavoAbril, 'Breaking the Glass Ceiling: Women in Boardroom' (Spain, 2013)

6. Process of Decision Making: It is established that men alter their behavior in presence of women.<sup>61</sup> Therefore, the boardroom environment positively changes when there are women directors rather than when there are all male directors. Moreover, women are found to take decisions considering the interests of multiple stakeholders and tend to be cooperative and collaborative.<sup>62</sup> The empirical research also supports that women are more “detail oriented” and more “methodical” than men with more reasoned argument which positively changes the decision making process of the board even though there is no significant effect on the decision itself.<sup>63</sup>

### Initiatives for Women Representation in Corporate Board

The following figure<sup>64</sup> shows the percentage of board seats held by women as of 2014:



Among the countries given in the above figure, Norway, Finland, France, the Netherlands and Spain adopted mandatory quota and the United Kingdom, the

<[http://www.paulhastings.com/genderparity/pdf/Gender\\_Parity\\_Report.pdf](http://www.paulhastings.com/genderparity/pdf/Gender_Parity_Report.pdf)>[last accessed on 30 March 2016].

61 Above n 59, 899.

62 Chris Bart and Gregory McQueen, ‘Why Women Make Better Directors’ (2013) 8 *International Journal of Business Governance & Ethics* 93, 96-97.

63 Supra Note 59, p. 911-912;

64 Catalyst, ‘Women on Board’ (2014) <<http://www.catalyst.org/knowledge/women-boards>> [last accessed 30 March 2016].

United States and Australia adopted directory mode encouraging the companies for their voluntary initiatives to appoint more women in their boards.

#### 4.1. Mandatory Quota System

The European Union suggested to have mandatory quota system for its member states. Currently less than 18% of the board members of 610 largest companies in twenty eight EU member states is held by women even though the trend shows the increase in number.<sup>65</sup> However, the trend shows in the above figure that the countries having the legislation on mandatory quota have largest percentage of growth<sup>66</sup> whereas the United Kingdom is an exception to this trend.<sup>67</sup>

Even though Finland has adopted mandatory quota system, it does not set up any percentage of quotas for the companies to be achieved rather it requires at least one man and one woman in the board of directors, therefore the achievement rate is higher than the other countries which has given the percentage of representation to be ensured by the companies.<sup>68</sup> On the other hand, even though Spain has adopted percentage of quota to be achieved, the achievement of such target is quite lower than the countries adopting directory mode because of weaker enforcement mechanism of Spain.

##### 4.1.1. Norway

The first country in the EU which passed the legislation for mandatory quota system for women in the corporate board was Norway. In 2009, Norway parliament passed the law requiring the public companies to have at least 40% of their board members from Women.

Earlier to the incorporation of mandatory quota for women in corporate board in the Companies Act, similar provision though in modified version, was in place in the Gender Equality Act 1981 of Norway requiring at least 40% quota of each gender on publicly appointed boards, councils and committees.<sup>69</sup> Subsequently in 2003 mandatory quota system was incorporated in the Companies Act requiring the public

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65 European Commission, 'Gender Balance: Europe Is Cracking the Glass Ceiling' (2014) <[http://ec.europa.eu/justice/gender-equality/files/documents/140303\\_factsheet\\_wob\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/documents/140303_factsheet_wob_en.pdf)> [last accessed on 30 March 2016].

66 Ibid.

67 Above n 45.

68 The Corporate Governance Code 10 (2010) (Finland).

69 Alice Lee, 'Gender Quotas Worked in Norway: Why Not Here' (New republic, Sept 5, 2014) <<https://newrepublic.com/article/119343/impact-quotas-corporate-gender-equality>> [last accessed on 29 March 2016].

limited companies to have board of directors representing both sexes.<sup>70</sup> However such quota is not applicable if representation of either gender in the workforce is less than 20%.<sup>71</sup> Such mandatory quota requirement is backed by dissolution sanction under the legislation even though previously companies had the option of adoption quota voluntarily till 2005. However the compliance rate was not found satisfactory during that time which forced the legislator to enact law with the provision of sanction.<sup>72</sup>

The target for achievement of this quota was set by 2008. In terms of compliance rate, it was found that as of January 2008, only seventy seven companies out of four hundred fifty was in breach.<sup>73</sup> It can be assumed that the sanction for non-compliance boosted up the compliance rate among the companies.

#### 4.1.2. Spain

After Norway, Spain is the second state enacting the mandatory quota provision in corporate board for women. Spain relied on the argument of social justice and elimination of gender discrimination. The purpose of incorporating such quota in the law was stated to ensure equal treatment between man and women and eventually build a more democratic, fair and solidary society.<sup>74</sup> The law required the publicly traded companies having more than 250 employees to maintain 40% of female directors in their boards.<sup>75</sup> The timeframe to achieve this target was eight years i.e. by end of 2015.<sup>76</sup>

In addition to the statutory laws, the Stock Exchange Commission (SEC) also required the listing companies under its Good Governance Code to ensure constitution of their board having due gender composition on a comply or explain basis.<sup>77</sup> The National Securities Market Commission also issued circular providing

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70 In case of two or three directors in the BoD, both sex shall be represented; in case of four or five directors, each sex shall have at least two directors; for six to eight member board, the minimum representation will be of three; for nine member board, at least four directors must be from each sex and finally in case of more than nine, representation of each sex must be maintained by at least 40%, section 6-11 of Public Limited Liability Companies Act 1997 (Norway);

71 The Public Limited Liability Companies Act 1997 (Norway), Section 6-11.

72 AagothStorvik and Mari Teigen, 'Women om Board: The Norwegian Experience' (2010) (<<http://library.fes.de/pdf-files/id/ipa/07309.pdf>> [last accessed on 29 March 2016].

73 Ibid.

74 The General Equality Act (Spain), Art 1.

75 Constitutional Act 3/2007 for Effective Equality Between Women and Men (Spain);

76 Ibid.

77 Recommendation no 15 of the Good Governance Code 2006 (the Stock Exchange Commission, Spain); subsequently this recommendations became law in 2013, see also

detail content and structure of this report having the provision of mentioning the number of women directors in the board for past years and measures taken by the company to achieve the gender equality.<sup>78</sup>

However, unlike the legislation of Norway, there was no resolution of sanction rather Spain adopted the incentivized mode. Companies which have complied with the statutory requirements, were given incentives by a “corporate equality mark.”<sup>79</sup> On the other hand, pursuant to the requirements of SEC, duty to disclosure was imposed on the companies requiring them to give detailed disclosure in their annual corporate governance report on their compliance and/or explain as to their non-compliance.<sup>80</sup>

In terms of effectiveness of the incentivized method instead of sanction, it was found that the target of 40% mandatory quota for women was achieved by March 2015 whereas the timeframe was fixed by December 2015.<sup>81</sup> It means all the listed companies have at least 40% women directors in their board by March 2015 whereas it was only 12.3% in 2012.

#### 4.1.3. The Netherlands

Like Norway and Spain, in 2013, the Netherlands passed the similar law of 30% quota for women in corporate board or the supervisory board of the public limited companies only. Under the Civil Code, 30% of the total number of directors of the public limited companies was required to be appointed from female.<sup>82</sup> However, only the public limited companies meeting any of the two criterion of having value of assets exceeding a certain limit or net sales for financial year reaching certain ceiling or the average number of employees are required to comply with the quota requirement.<sup>83</sup>

In addition, “comply or explain” provision is adopted in the law to ensure the compliance. In case of failure to comply with the same, the companies are required to provide explanation in its annual report stating the reason for non-compliance,

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Order ECC/461/2013 Approving the Content and Structure of the Annual Corporate Governance Report (B.O.E 2013, 71) (Spain)

78 The National Securities Commission (Spain), Circular Resolution 4/2013 (12 June 2013).

79 Constitutional Act 3/2007 for Effective Equality between Women and Men (Spain), Art 50.

80 Recommendations of SEC, Good Governance Code (Spain)

81 European Commission, ‘National Factsheet: Gender Balance in Boards: United Kingdom’ (2013) <[http://ec.europa.eu/justice/gender-equality/files/womenonboards/womenonboards-factsheet-uk\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/womenonboards/womenonboards-factsheet-uk_en.pdf)> [last accessed on 30 March 2016].

82 The Civil Code (Netherlands), Article 2.397.

83 Ibid.

initiatives taken to meet the target and implementation plans to achieve the target in future.<sup>84</sup>

Although mandatory quota provision was adopted, the implementation result was not found satisfactory. A study conducted in August 2014 found only one company (out of 87 companies taken into account for the study) in compliance with the legal requirements of 30% quota whereas two companies were very close with >30%.<sup>85</sup> The study also reported the non-effectiveness of the “comply or explain” provision with 62% of the companies gave no explanation as to their non-compliance.<sup>86</sup>

Another distinction of the Dutch legislation from the other states accepting mandatory quota system was that the provision of the Netherlands’ Civil Code was passed for a provisional period and repealed on January 2016.<sup>87</sup> However, it is assumed that given the non-effectiveness of ‘comply or explain’ approach, mandatory sanctions would be taken as the next measure to ensure the compliance.<sup>88</sup>

#### 4.1.4. France

The French law requires the listed companies having at least 500 permanent employees and the balance sheet size of Euro 50 million must achieve 20% of women representation in its board by 2014 and 40% by 2020.<sup>89</sup> Sanctions against the non-compliance include revocation of non-compliant nominations, freezing board members’ fees etc.<sup>90</sup> In compliance, 30% of CAC-40 companies reached the target of 20% by 2010 which was even before the enactment of the law.<sup>91</sup> The percentage was increased from 9% to 18.3% since 2009 to 2013.<sup>92</sup> Therefore now, the timeframe for achievement of second phase of 40% of women representation in corporate board has been rescheduled to 2017 whereas previously it was 2020.<sup>93</sup>

#### 4.2. Directory System

Another set of countries are focused on voluntary initiatives of the companies to ensure women representation in their board rather than by compulsory requirement. They prefer to use the term “board diversity” to the term “quota”. The argument

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84 Ibid.

85 The Dutch Female Board Index 2014, <[www.tias.edu/docs/default-source/Kennisartikelen/femaleboardindex2014.pdf](http://www.tias.edu/docs/default-source/Kennisartikelen/femaleboardindex2014.pdf)> [last accessed on 30 March 2016].

86 Ibid.

87 Above n 43.

88 Ibid.

89 Law 2011-103 of January 2011 on the Balanced Representation of Women and Men on Board of Directors and Supervisory Boards and Equality Professional (France).

90 Article 1 of balanced representation of women and men on board of directors (France).

91 Above n 59, 899.

92 Kimberly Gladman and Michelle Lamb, ‘Women on Boards Survey, GMI Ratings’ (2013) <[http://www.boarddiversity.ca/sites/default/files/GMIRatings\\_WOB\\_042013.pdf](http://www.boarddiversity.ca/sites/default/files/GMIRatings_WOB_042013.pdf)> [last accessed on 30 March 2016].

93 Above n 59.

behind such voluntary initiative is that the appointment of directors should be based on merit rather on gender. During the consultation of the European Union for introducing mandatory quota system for all EU countries, it was commented that “a business environment (is) where the women can take their seat on merit and without the spectra of tokenism.”<sup>94</sup>

#### 4.2.1. The United Kingdom

Pursuant to the report of Lord Davies on “Women on Boards”, Corporate Governance Code of the United Kingdom was amended in 2010 to incorporate the quota for women in corporate board even though such quota is not mandatory. Therefore, the term ‘board diversity’ has been used rather than the term ‘quota’. With a view to ensuring corporate board diversity, apart from merit based objective criterion, due regards require to be given for the benefits of diversity including gender.<sup>95</sup>

On the contrary to the Norwegian legislation, the UK corporate governance code requires for disclosure only instead of any sanction for non-compliance. It requires the companies to add a new part in their annual report describing the process of appointment of board including the description of the board’s policy for gender diversity and implementation plan of the policy with the progress on achieving the objectives.<sup>96</sup> Since 2013, another duty to disclosure was imposed on the *Financial Times Stock Exchange*(FTSE) companies under the Companies Act 2006 requiring them to make a strategic report to their shareholders disclosing the gender based representation of board of directors, positions of senior managers and total number of employees.<sup>97</sup>

In addition to the major difference with the mandatory quota system, it has also been found that the UK code never stated about the optimum number of board members of each sex to ensure the diversity and it also did not give any time limit to reach the targeted diversity rather it kept the both open to be determined by the companies by their respective internal policies.

Even though the voluntary initiatives were encouraged in the UK, the statistic showed the highly satisfactory results. In 2004, only 9.4% of the directors in FTSE 100 was women whereas it increased to 12.5% in 2010. Even such increase occurred

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94 Consultation on Gender Imbalance in Corporate Boards in the EU, (Eur. Commission, May 28, 2012) < [http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528\\_en.htm](http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528_en.htm) > [last accessed on 29 March 2016].

95 The Corporate Governance Code (The United Kingdom), Section B.2.

96 Ibid. Section B.2.4.

97 The Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 (The United Kingdom), Section 414C.

before the amendment in the Corporate Governance Code in 2010. After the amendment, the women representation was increased to 20.7% in 2014<sup>98</sup> and now there is no all-male FTSE 100 boards since 2014.<sup>99</sup>

The reason behind the compliance even before the amendment of law was the media attention on economic importance of diverse boards and negative publicity of the companies for not making efforts to appoint more women in their boards.<sup>100</sup>

#### 4.2.2. Australia

Like the UK, Australia adopted recommendatory approach under its Corporate Governance Code. The diversity recommendations<sup>101</sup> under the code were issued in 2010 and made effective from 2011. At latest, this recommendation was amended in 2014. It was recommended for a listed company to have a diversity policy including the requirement of having gender diversity in its board, senior management and workforce. This policy was suggested to include the numerical target to be achieved, timeframe to achieve the target, measurable objectives for achieving gender diversity, key performance indicators measurable against the gender diversity objectives determined in the policy. This policy is required to be in line with the “Gender Equality Indicator” under the Work Place Gender Equality Act, 2012. Moreover, a separate committee was directed to be formed to prepare this policy.

Given the adoption of recommendatory approach, there is no question of sanction rather duty to disclosure was adopted by Australia. Under this duty to disclosure, first of all the company needs to publish its policy to the public (by way of its websites)<sup>102</sup> and finally, it was to disclose its achievement of the target set by itself in its policy and in case of failure to achieve the target within the timeframe which was also set by itself, the explanation of such failure.<sup>103</sup>

Now, in terms of effectiveness of these recommendations, it was found in 2013 that 98% of the 600 companies which were sampled for data collection, either had

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98 The Female FTSE Board Report 2014, Cranfield U., SchMgmt (March 26, 2014) <<http://www.som.cranfield.ac.uk/som/p21687/Knowledge-Interchange/Management-Themes/Leadership/Leadership-News/The-Female-FTSE-Board-Report-2014>> [last accessed on 30 March 2016].

99 Sean Farrell, Glencore, ‘Last All-Male FTSE 100 Board, Appoints Patrice Merrin as Director’ (June 26, 2014 the Guardian), <<http://www.theguardian.com/business/2014/jun/26/glencore-male-board-patrice-merrin-woman>> [last accessed on 30 March 2016].

100 Consultation on Gender Imbalance in Corporate Boards in the EU, Eur. Commission (May 28, 2012) <[http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528\\_en.htm](http://ec.europa.eu/justice/newsroom/gender-equality/opinion/120528_en.htm)> [last accessed on 29 March 2016].

101 ASX Corporate Governance Council, Corporate Governance Principles and Recommendations (3rded, 2014) <<http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>> [last accessed on 30 March 2016].

102 Ibid.

103 ASX Listing Rule 4.10.3 (Australia).



diversity policy or gave explanation for not having the same.<sup>104</sup> 86% of the sampled 186 companies established their measurable objectives against gender diversity. Apart from internal policy level changes, actual appointment of women directors in board of ASX 200 companies was increased from 3% to 15% in 2012 from its previous year and 18% in 2013 and as of February 2016, it has been increased up to 22.7% whereas for ASX 501+ group, it was increased from 8% in 2012 to 9% in 2013<sup>105</sup> but still twenty one ASX 200 companies do not have any women in their board.<sup>106</sup>

However, even though the statistic shows positive changes in terms of having policy or recruitment of women directors, some drawbacks were found in the policy itself. For example, most of the companies set their target up to the minimum level of requirement to reach their gender diversity.<sup>107</sup> It shows that unlike the UK, the mindset of the policy makers did not accept the business case arguments at all. Moreover, most of the measurable objectives and the key performance indicators are not actually measurable in terms of gender diversity.<sup>108</sup> Additionally, even though number of women directors increased, women were not appointed at the senior management level in proportion to the number of appointed women directors.<sup>109</sup>

#### 4.2.3. The United States

In the US, neither the quota is set nor is the term diversity defined rather it is left open ended for the subjective interpretation of each company. The law imposes a duty to disclosure upon the companies that if they have a diversity policy (which is even mandatory to have), it is to disclose how it has plan to implement the same.<sup>110</sup> Even the Security Exchange Commission (SEC) has no mandate to check whether such disclosure is made or not.<sup>111</sup> Pursuant to such lenient provisions, it was reported that 60% of the companies were not in compliance with this requirement of the

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104 KPMG, ASX Corporate Governance Council Principles and Recommendations on Diversity (2014) <<http://www.asx.com.au/documents/asx-compliance/kpmg-report-diversity-2014.pdf>> [last accessed on 30 March 2016].

105 Ibid. 29.

106 Appointment to ASX 200 Boards, <<http://www.companydirectors.com.au/Director-Resource-Centre/Governance-and-Director-Issues/Board-Diversity/Statistics>> [last accessed on March 30, 2016].

107 Blackrock, 'Investment Management (Austl.) Ltd., Glacial Change in Diversity at ASX 200 Companies: Can Corporate Australia Escape the Imposition of Diversity Quotas?' (2012)[https://www.wgea.gov.au/sites/default/files/BlackRock\\_Glacial\\_Change\\_in\\_Diversity\\_at\\_ASX200\\_companies.pdf](https://www.wgea.gov.au/sites/default/files/BlackRock_Glacial_Change_in_Diversity_at_ASX200_companies.pdf) [last accessed on 30 March 2016].

108 Ibid. 4.

109 Ibid.

110 Proxy Disclosure Enhancements (2009), The Exchange Act (The Security Exchange Commission, the United States).

111 Above n 45, 45.

SEC.<sup>112</sup> only 16.9% of the companies had women representation in their board in the year of 2014.<sup>113</sup>

### **Why Bangladesh should adopt the Quota system**

As a member of the Convention on Elimination of Discrimination against Women (CEDAW) and signatory of other international instruments such as the Beijing Platform for Action 1995, its duty is to ensure women representation and participation in decision making process not only in government level but also in every sphere of life. Under article 11 of CEDAW, Bangladesh has undertaken to eliminate discrimination against women in employment on a basis of equality between men and women. However, it is argued that since there has been no bar on appointment of women, there is no question of discrimination. In fact, it is the mindset of the male dominated corporate world to appoint a male rather than a female.

Moreover, discrimination against women in workplace has been reported several times. Despite having equal qualifications and performance, a woman employee do not get the preference as a man employee gets both in terms of appointment and promotion.<sup>114</sup> Such actions are attempted to be justified by saying the maintenance cost of a female employee is higher than a male employee since females are required to be given more security; they have family responsibility and even during maternity leave, salary and other compensation packages are to be provided. Therefore, the companies are more interested to appoint and retain a male employee than a female one. On the other hand, many female employees leave their jobs because of the challenges they face at workplace.

It has been established by empirical studies that having women directors at the corporate board has brought positive changes to the work environment in order to eliminate the discrimination against women at workplace and retain the women employees at their jobs.<sup>115</sup> The logic behind such finding is that female corporate leaders are more prone to adopt flexible working hours and family life friendly

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112 Tamara S Smallman, 'The Glass Boardroom: the SEC's Role in Cracking the Door Open so Women May Enter' (2013) *Columbia Business Law Review*801;

113 The Catalyst, 'Quick Take: Women on Board' (2014) <<http://www.catalyst.org/knowledge/women-boards>> [last accessed on 30 March 2016].

114 The Financial Express, 'Gender Discrimination at Workplace' (12 October 2012) <<http://print.thefinancialexpress-bd.com/old/index.php?ref=MjBfMTBfMTJfMTJfMTV82XzE0NjU1NQ==>> [last accessed on 30 March 2016].

115 Above n 59, 903.

policies for the employees.<sup>116</sup> Moreover, having women in the top management motivates the other women employees to perform with the expectation of their advancement in the corporate ladder.<sup>117</sup>

Apart from the cases of discrimination at workplace in terms of appointment and/or promotion, harassment at workplace has also been a major prime concern for the stakeholders. It has been reported that many female bankers complained to Bangladesh Bank regarding sexual harassment at workplace and on protest, they were terminated on the excuse of poor performance.<sup>118</sup> Even though having women directors in corporate board is not the only effective solutions to prevent harassment at workplace, it is asserted that women representation in the board is helpful to avoid the incidents of harassment since women may better understand the problem of the other women.<sup>119</sup> It can be counter argued that most of the large manufacturing corporates have welfare officers and the human resource department who are predominantly female to listen the complaints from the female workers. However, having a female voice at the board would definitely perform better than a mere welfare officer or a full-fledged human resource department.

Besides, women participation in higher education has been increased gradually. Thirty one per cent of the students of the public universities (without national university) is female.<sup>120</sup> Therefore, creating equal opportunities for these qualified female is also the responsibility of the state. However, in appointing females on the top management and in the board, it is often argued that there is no enough qualified women to be recruited for these posts where the term qualification includes inexperience as well.<sup>121</sup>

However, since women have been away from the participating higher education for long time, it is quite normal that very minimum women would be found in the job market having enough experience for these posts. Therefore, if women are kept

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116 Lynne L Dallas, 'The New Managerialism and Diversity on Corporate Boards of Directors' (2002) 76 *Tulane Law Review* 1363, 1384-85.

117 Lisa Fairfax, 'Women and the "new" Corporate Governance, Clogs in the Pipeline: The Mixed Data on Women Directors and Continued Barriers to their Advancement' (2006) 65 *Maryland Law Review* 579, 602-05.

118 The Dhaka Tribune, 'Banks asked to Remain Cautious about Harassment of Female Bankers' (02 May 2015) <<http://www.dhakatribune.com/banks/2015/may/01/banks-asked-remain-cautious-about-harassment-female-bankers>> [last accessed on 16 March 2016].

119 Above n 117.

120 Louise Morley and Barbara Crossouard, 'Women in Higher Education Leadership in South Asia: Rejection, Refusal, Reluctance, Revisioning' (University of Sussex, 2014) <[https://www.britishcouncil.org/sites/default/files/morley\\_crossouard\\_final\\_report\\_22\\_dec\\_2014.pdf](https://www.britishcouncil.org/sites/default/files/morley_crossouard_final_report_22_dec_2014.pdf)> [last accessed on 31 March 2016].

121 Above n 55.

separated from participating the decision making process because of their inexperience which can be achieved through learning and development<sup>122</sup> it would be like “as if they (all-male leadership) are leaning down from above the glass ceiling to ask the women below shy they are not making it to the top which unconsciously communicates to these women that women are responsible for the lack of women at the top.”<sup>123</sup>

Further, when all the major countries including the USA, the European countries, and Australia have adopted provisions of either mandatory quota system (backed by sanction) or voluntary initiatives of the companies (backed by duty to disclosure), it is high time for Bangladesh as well to incorporate such provisions in its national law. India also adopted mandatory quota for at least one female director of public limited companies having three member board.<sup>124</sup> It is not only for the matter of gender equity, but also staying internationally competitive.<sup>125</sup>

In response to the international best practices, Bangladesh government has already taken its action plan to ensure the 33% quota for women in both public and private sectors at their respective decision making and management levels.<sup>126</sup> It has already adopted the mandatory provision of at least one woman director in the state owned financial institutions.<sup>127</sup>

#### *6. Does the Proposed Quota System contradict with the existing laws and socio-economic environment of Bangladesh*

While the quota system was proposed by the European Union, the UK argued against this system and stated that “[a] quota is alien to the British way of thinking and it would be anathema to British Culture.”<sup>128</sup> Now the question arises whether quota system also goes in contradiction with the Bangladeshi culture.

In response to this question, it can be said that the constitution itself permits the government to enact necessary laws giving special benefits to women, children and other backward section of the citizen for their respective advancement.<sup>129</sup> According to the Constitution of People’s Republic of Bangladesh, it is a fundamental policy of

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122 Ibid.

123 Avivah Wittenberg-Cox and Alison Maitland, *Why Women Mean Business* (John Wiley & Sons Ltd., 2009) 163-164.

124 The Companies Bill 2012 passed on 18 December 2012 (India).

125 Elizabeth Broderick, ‘Mandatory Quotas May be needed on Boards’ (2010) *Australia Financial Review* 63.

126 Above n 4, 70.

127 Ibid.

128 Above n 45, 37.

129 The Constitution of People’s Republic of Bangladesh, Art 28 (3).

the state to take necessary initiative to ensure the equal participation of women in the national life.<sup>130</sup> Therefore, the supreme law of the state allows the government to take action to ensure women participation in public and governmental affairs.

Furthermore, the equal rights of women in both state and public life is also guaranteed in the constitution.<sup>131</sup> Some people argue that when equal rights are protected in the constitution, then taking initiatives for women participation by way of giving special quota system, reserved seat, scholarships etc. go contrary to the spirit of the constitution itself. However, the constitution also empowers the state to make such laws necessary for ensuring women participation and empowerment.<sup>132</sup>

Getting empowered under the constitution, the state passed the National Women Development Policy in 2011. Under this policy it is the objective of the government to ensure reduction of gender discrimination and existing gap between the participations of man and woman in decision making process.<sup>133</sup> This initiative started with the government action of ensuring participation of woman in adoption of any policy and regulations.<sup>134</sup> This policy also aimed at increasing women employment and economic empowerment through institutionalization.<sup>135</sup>

### 6.1. Participation of Women in education

Stipend program for female students started on 1982<sup>136</sup> and is continuing till now. With the objective to increase the number of girl students and prevent drop out, the government continues this stipend program. Besides, full free studentship is offered for the girl students till the secondary level and the government has the aim to make this full free studentship till the graduation level for girls.<sup>137</sup> Special budget is allocated for women's education and the government has a plan to provide financial supports to promote women's education at all levels.<sup>138</sup> Women are also encouraged to pursue higher and professional studies. Creation of more and more career opportunities, ensuring participation of women in decision making are also included in the National Education Policy 2011.

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130 Ibid. Art 19.

131 Ibid. Art 28 (2).

132 Ibid. Art 28 (3).

133 Above n 3, Clause 23.1.

134 Ibid. Clause 23.2.

135 Ibid. Clause 23.5-23.10.

136 Janet Raynor and Kate Wesson, 'The Girls Stipend Program in Bangladesh (July 2006) *Journal of Education for International Development* 2.2 <[http://www.equip123.net/JEID/articles/3/Girls' Stipend Program in Bangladesh.pdf](http://www.equip123.net/JEID/articles/3/Girls%27StipendPrograminBangladesh.pdf)> [last accessed on 27 March 2016].

137 Above n 4.

138 National Education Policy 2011 (Bangladesh) <[http://www.moedu.gov.bd/index.php?option=com\\_docman&task=doc\\_download&gid=2046&Itemid=](http://www.moedu.gov.bd/index.php?option=com_docman&task=doc_download&gid=2046&Itemid=)> [last accessed on 27 March 2016].

## 6.2 Participation of Women in government jobs

Since the independence of Bangladesh in 1971, reserved seats were ensured for the women in government jobs. The same trend is still maintained. Along with the other quotas, 10% quota is reserved for women in the government job recruitment including both first class cadre and non-cadres.<sup>139</sup> Apart from the first class jobs, 15% and 20% are reserved for the women for second class and third class jobs respectively.<sup>140</sup> Again, the government has the target to increase this quota by 15% for first class jobs, 20% for second class jobs and 35% for third class jobs in future.<sup>141</sup>

## 6.3. Participation of Women in political activities

There were 45 reserved seats for women in the parliament. With the objective to increase the representation and participation of women, the government increased the number to 50 by the fifteen amendment to the constitution.<sup>142</sup> These reserved seats are distributed among the political parties in proportion to the number of seats held by them in the parliament.<sup>143</sup> This reservation is aimed at increasing by 33% of the total number of seats of the parliament.<sup>144</sup> Women participation is also ensured in the local government level as well. There are three reserved seats for women in Union Parishad under the Local Government (Union Parishad) Act.<sup>145</sup> Apart from reserved seats, direct election is held for these reserved seats of women.<sup>146</sup> Similar reserved seats are also found for the constitution of other local government units with the provision of direct election like City Corporations<sup>147</sup>, Pouroshova<sup>148</sup> and Upazila Parishad.<sup>149</sup> Such women representation is aimed not only at legislative or local government level, but also at the political party level. At least 33% women representation in the political parties is targeted<sup>150</sup> and this target is to be achieved by the way of ensuring 33% quota for women in each political party and such reservation is to be made as condition precedent for registration of political party

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139 Bangladesh Public Service Commission <<http://www.bpsc.gov.bd/platform/node/61.bpsc2012.pm>> [last accessed on 27 March 2016].

140 Government of Bangladesh, Report of Pay and Service Commission part 1, Cabinet Division, Dhaka, (1997); see also above n 4.

141 Above n 4.

142 Above n 128, Article 65 (3), Supra Note 128; the Constitution (Fifteenth Amendment) Act, 2011 (Act XIV of 2011) (Bangladesh), sec 23 (i).

143 The House of the Nations (Reserved Women Seats) Election Act 2004 (Bangladesh), Section 4.

144 Above 3, Clause 32.7.

145 The Local Government (Union Parishad) Act 2009 (Bangladesh), Section 10 (3).

146 Ibid. Section 19 (3).

147 The of the Local Government (City Corporations) Act 2009 (Bangladesh), Section 5.

148 The Local Government (Pouroshova) Act 2009 (Bangladesh), Section 6 (2) (kh) with cross reference to section 7.

149 The Upozilla Parishad Act 1998 (Bangladesh), Section 6 (4).

150 Above n 3, Clause 32.3.

under the Election Commission.<sup>151</sup> Besides the women representation, 30% quota is to be reserved for women at different committees in various levels of politics.<sup>152</sup>

#### **6.4. Encourage of woman entrepreneurship**

Under the national action plan for the national women development policy, there has been a plan for extending interest free loan to women to encourage women entrepreneurship. With this objective, the Bangladesh Bank (central bank) has issued its guidelines to the banks and the financial institutions making it mandatory to them to identify woman entrepreneurs and provide loan facilities to them.<sup>153</sup> At least 10% of the total small and medium enterprise (SME) loan is allocated for women and up to taka twenty five lacs loan is permitted for women without any security.<sup>154</sup>

#### **6.5. Participation of Women in public and corporate governance**

The government has already taken an initiative to appoint woman director in state owned financial institutions and it has also appointed woman as deputy governor of the Bangladesh Bank.<sup>155</sup> Further, the government has set its aim at reserving 20% quota for woman in offices regarding the economic sectors of the government such as the Bangladesh Bank, the Finance Department, the National Board of Revenue etc. to ensure women participation in economic decision making and eventual development in near future. The government also requires such 20% quota for all the banks and insurance companies at their decision making levels in the future.<sup>156</sup> For NGOs, it is usually required by their memorandum of association to have a certain percentage of women participation in its executive committee as well as the governing body. Besides, the national and local levels, the government has the target to ensure women participation at the international level. It has also set its target to set 30% quota for women at the United Nations and other international organizations and 50% quota at the organizations which directly work for woman affairs.<sup>157</sup>

In addition to the mainstream sectors as mentioned above, women are also encouraged to participate in the cultural development. To this end, woman directors of films and dramas are getting awarded by the government. Separate grants are being allotted to them as well. A special budget is also granted for woman sport players at national and district levels.<sup>158</sup>

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151 Above n 4, 87.

152 Ibid.;

153 The Daily Star, 'Loan to Woman Entrepreneur Made Mandatory (28 March 2015) <<http://www.thedailystar.net/business/banks-must-give-tk-50000-loan-woman-entrepreneur-each-year-74248>> [last accessed 24 March 2016].

154 Above n 4.

155 Ibid.

156 Ibid.

157 Ibid.

158 Ibid.

### **Incorporation of Gender Diversity in existing legal regime**

In view of the government initiatives to bring women in the mainstream economic sector, it implies that incorporation of quota provisions for female also falls within the agenda of the government. In order to ensure effective legal mechanism, following recommendations can be made:

**Mandatory or Directory provision:** as discussed earlier, it has been found that few countries like Norway, Netherlands, France, Spain etc. have adopted the mandatory system. And some countries like Australia, the United Kingdom, and the United States adopted directory system. However, in terms of implementation, the mandatory quota system is found to be more effective one. Therefore, it can be recommended that Bangladesh should also adopt the mandatory quota system rather mere a directory one.

**Optimum Threshold:** It has been stated that the benefits of having women director cannot be retrieved unless the optimum threshold has been reached. The reason behind such optimum threshold is that “majority can simply ignore a minority’s presence”<sup>159</sup> and consequently voice of only one female may not be heard in the boardroom. Failure to reach this critical mass may prevent the potential value of board diversity.<sup>160</sup> Therefore, the initiative of the Bangladesh government approach to appoint at least one female director at the corporate board for the state owned financial institution may not be an efficient one rather the number is required to be increased so that this one female director does not become a mere token director.<sup>161</sup>

**Criterion of the companies:** In view of the legislations of several countries, it has been found that the mandatory quota system has been introduced for only the public limited companies except few countries like France. Even in some cases, several criterion has been set up to make bound to recruit female directors in their board. These criterion are mostly in terms of number of employees, number of employees based on their gender, asset size, sales record etc. Therefore, Bangladesh should also adopt such filtering provisions based on these criterion since compelling all the companies specially small and medium size companies to have female directors may not be cost effective.

**Appropriate sanctions:** It is found from the case studies of different countries above that without appropriate and effective sanctions, such quota target cannot be achieved. Some effective sanction modes suggested by the EU are fines, judicially

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159 Above n 59, 905.

160 Sabina Nielsen and Morten Huse, ‘The Contribution of Women on Boards of Directors: Going Beyond the Surface’ (2010) 18 *Corporate Governance: An International Review* 136.

161 Katherine Giscombe and Mary C Mattis, ‘Leveling the Playing Field for Women of Color in Corporate Management: Is the Business Case Enough?’ (2002) 37(1) *Journal of Business Ethics* 104.



ordered nullifications or annulment of appointments in violation of quota rules, ban from participation of public tender, exclusion from government funds etc.<sup>162</sup>

Priority to women: The quota system of the Bangladesh government is under huge criticism. Therefore, the introduction of quota system in private sector would be more challenging and also not preferred. One of the loopholes of the Norwegian legislation was the requirement of appointment of women director even though the required qualifications were not met.<sup>163</sup> However, this was duly addressed in the proposed directives of the European Commission. It requires priority to be given to women when the qualifications are met by both male and female candidates and in order to ensure the transparency, appointment procedures are required to be disclosed if the company fails to meet the targeted percentage of women representation.<sup>164</sup>

Independent Director: Under the guidelines of 2012 of the Bangladesh Securities and Exchange Commission and the Bank Companies Act 1991, independent directors are required to be appointed. However, no provision ensuring the diversity of the board is found. Therefore, in order to incorporate women quota in corporate board, the provision needs to be amended. The recruitment or introduction of independent directors with the verities of gender, age, life experience, knowledge and expertise etc. can also ensure the board diversity.

Introduction of various motivational programs before enactment of laws: Though the debate was on fire since 1996, it was 2013 when the requirement of quota for women participation in the corporate governance was incorporated in the Dutch civil code. Therefore, expecting Bangladesh to introduce such quota system overnight would not be realistic. There has been several voluntary and motivational programs to encourage the companies to appoint women in the top management as well as in other corporate governance structure.<sup>165</sup>

Gradual Integration of Women into Corporate Board: Bangladesh has made its start towards the mandatory quota provision for female by requiring at least one female director at each state owned financial institution. Now such initiatives should be kept continuing to increase women participation at the decision making process of corporate sector. There are some countries which have introduced such provision for the state owned and publicly traded companies only such as Austria, Brazil, Canada,

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162 The European Parliament Legislative Resolution 2013 (the European Union), Article 6 (2), Recital 30.

163 Above n 59, 902.

164 European Parliament Legislative Resolution of 20 November 2013 on the Proposal for a Directive of the European Parliament and of the Council on Improving the gender Balance Among Non-Executive Directors of Companies Listed on Stock Exchanges and Related Measures, COM (2012).

165 Above n 43.

Denmark etc.<sup>166</sup>Therefore, next target of the government can be the other state owned companies as well.

### **Conclusion**

Provisions ensuring women participation in economic decision making and making women empowered in all spheres of life have been adopted in western and European countries. Now such practice is no more limited to the westerners; even India, Malaysia, and the UAE have adopted the similar provisions. Women representation in the corporate board is necessary not only from the gender equality perspective rather it is also supported by the empirical data that it improves the board room environment, brings positive changes in decision making processes and eventually enhances the corporate performance.

Bangladesh realizes that to bring the women to the decision making process is a sine qua non for the macroeconomic growth of the country. With a view to empowering women in line with its international obligations, it has committed to ensure women representation in all sphere of both public and private life. As a part of keeping such commitments, the Bangladesh government has taken initiatives to educate girl children since 1982 and at present near to 31% the students of higher studies is female.

To make women economically empowered, its high time to incorporate these women to the economic sectors as well, giving quotas for only public sector is not enough rather women should be brought to the corporate frontiers as well. Given this, the quota provision for women in the corporate board is the demand of time. However, mere enactment of new laws (or amending the existing ones) is not sufficient to achieve the targeted effects on macro economy of the country and micro economy of the company. Unless the critical mass of woman representation is achieved, introduction of quota for women board member would not bring any positive result. In order to achieve the critical mass, sufficient number of women should be appointed so that their voices are heard in decision making process. In addition to this, they should also get priorities in terms of training and capacity building to offset their less number of years of experience with the capacities developed. Moreover, the corporate mindset of male-dominated board is required to be changed which cannot be obtained by enactment of law rather than by gradual practice. When such mindset is changed, benefits of the board diversity can be observed.

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166 Above n 45.