

Bangladesh Quota Reform Movement 2018 and Rawls's 'Positive Discrimination'

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"The world's poor and marginalized may hope for more, but they cannot be denied any less"
(Miller, 2007, p. 279)

1. Introduction

In today's globally interconnected world filled with suffering, inequality, and injustice, the significance of every social justice movement cannot be overstated. These movements, which are collective efforts by individuals from various backgrounds, operate outside formal institutions and are organized with specific goals. They employ opposing discourses and tactics to achieve political aims (Dinerstein and Deneulin, 2012, p. 587). 'Social justice' in this context refers to achieving equality of participation through economic redistribution, cultural recognition, and political representation, as Fraser and Mladenov (2016, p. 1237) quoted. A 'social justice movement' thus represents a joint effort to ensure equal and fair participation for all members of society, aligning with Rawls's concept of 'logical priority' (Rawls, 1958, p. 167). Heilinger also supports Rawls's view by emphasizing that prioritizing the needs and unmet basic rights of the disadvantaged is more important than concerning oneself with the moral innocence of the advantaged (Heilinger, 2020, p. 15).

Social justice movements, with their philosophical standpoints seeking to uphold justice for people regardless of material success, have the potential to inspire hope and extend their impact globally. However, questions may arise about the contribution of social movements to social justice and whether they consistently aim for positive social change. This essay will explore these questions, with a focus on the negative aspects of social justice movements that may give rise to such dilemmas, using the 'The Quota Reform Movement 2018' in Bangladesh as a case study. Bangladesh adopted Rawls's 'rule of priority', which involves preferential treatment for the marginalized to protect and promote social justice. This campaign resulted in its complete elimination.

In this paper, I will first explore how Rawls's idea of 'reasonable/positive discrimination' is present in Bangladesh's legal system. Then, I will analyze the replication of Nozick's concept of 'limited statehood' in the Quota Reform Movement 2018, which opposed this 'equitable' arrangement. Finally, I will examine the impact of the 2018 social movement, focusing on its regressive outcomes and how they align with social and global justice perspectives.

2. Legal Framework of Bangladesh Reflecting Rawlsian Vision of 'Positive Discrimination'

American jurist John Rawls, in delineating 'justice' as a "complex of liberty, equality, and reward for services contributing to the common good" (1958, p. 166), emphasizes the 'logical priority' given to the least-advantaged individuals in society to ensure the greatest possible benefit. This harmonious conception can be termed as the rule of 'priority' or 'positive discrimination' in the redistribution of opportunities, which is evident in the legal provisions of Bangladesh that prioritize women, disabled persons, ethnic minorities, and others. As Winant argues, the historical and colonial context of race and patriarchy has shaped relationships at both micro and macro levels, resulting in structural, institutional, and discursive inequalities toward women, disabled individuals, and ethnic minorities, rendering them disadvantaged (in Kothari, 2006, p. 9).

The Constitution of Bangladesh allows the State to create special provisions for women, children, and other disadvantaged groups by redistributing property or providing job opportunities to advance benefit¹ and secure their adequate representation in the Republic's service². Following the liberation, the government introduced the 'Interim Recruitment Policy'³ with a reserved quota system that allocates 25%, 10%, 10%, 5%, and 1%, respectively, for children of war-affected freedom fighters, women, residents of the least developed and overpopulated districts, ethnic minorities, and persons with disabilities to ensure equitable representation and distribution. Additionally, the Constitution reserves fifty seats in parliament exclusively for women, along with three hundred elected members⁴, recognizing women's participation. The Supreme Court of Bangladesh accepted Rawls's argument for affirmative action for the marginalized by interpreting 'equality' to include a constitutional preference system as the principle of 'reasonable classification' and 'legitimate discrimination' based on the varying needs of the least-advantaged⁵. Furthermore, Bangladesh follows Rawlsian progressive taxation by exempting female and disabled taxpayers up to BDT three and four lakh⁶, respectively, while imposing higher taxes on others to establish balanced and equitable redistribution.

The legal structures and jurisdiction of Bangladesh can be seen as reflecting Rawlsian 'difference principle', which promotes positive discriminatory approaches. This can be viewed as "institutional arrangements and associated policy reforms remedying both long-standing wealth inequality and lack of recognition" (Fraser, 1998, p. 98).

¹ Article 28(4), Constitution of the People's Republic of Bangladesh, 1972.

² Article 29 (3) (a), *ibid.*

³ The Government of Bangladesh Establishment Division, Memorandum No. Estt./RI/R-73/72-109 (500), (1972), September 5, 1972.

⁴ Article 65 (3), Constitution of the People's Republic of Bangladesh, 1972.

⁵ *Sheikh Abdus Sabur v. Returning Officer*, 41 DLR (AD) (1989) 30.

⁶ Bangladesh Income Tax Ordinance, 1984.

3. The Quota Reform Movement 2018 in Bangladesh Reproducing Nozickian Conception Of 'Minimal State'

As per Rawls, although the quota system can be seen as a justifiable means to achieve the important policy goals of fair representation and participation in the civil services of Bangladesh, a movement gained momentum, with a significant part of the community demanding the abolition of this privilege. They advocated a shift to a merit-based "competitive qualifier" system (Uddin and Chowdhury, 2016, p. 2). The Bangladesh General Students' Rights Conservation Council initiated this movement on February 17, 2018, which spread throughout the country by April 8, 2018 (Dhaka Tribune, 2018a, n.p.). Over time, the movement turned more violent, leading to road closures, sporadic attacks, arrests, and students repeatedly demanding that the government preserve and protect equal rights and not take away their rights in any way possible (Dhaka Tribune, 2018b, n.p.). Initially, the movement started with an appeal for reform, primarily focusing on the emotional aspect of the Freedom Fighters' quota rather than practical considerations. Eventually, it led to the absolute abolition of the system. In line with this, the Cabinet of the Government of Bangladesh issued a notification on October 03, 2018, eliminating the quota reserve system. The prime minister reaffirmed this decision on July 30, 2019.

The movement repeatedly emphasizes that the state should only protect and uphold equal rights and criticizes the government's "rule of priority," instead of opting for a competitive approach, as a violation of "equality" norms. This claim can be seen as relevant to Robert Nozick's concept of "limited statehood." Nozick views the state as a "night watchman," (1974, p. 26) with a minimal role of protecting individual rights and punishing those who violate them. He argues that individual rights cannot be violated, taken away, or redistributed, even for the greater good, and that any attempts to enforce "equality" or equal distribution are considered arbitrary – aligning with the 2018 movement. Similar to Nozick, Patomaki also supports achieving everything through a competitive and rational exercise of equal rights (Patomaki, 2008, p. 13), resembling the logic of the 2018 movement. Although Nozick opposes economic redistribution, his views remain relevant to the quota reform movement, as it also opposes the redistribution of employment opportunities, highlighting economic issues.

4. The 2018 Social Justice Movement in Bangladesh Challenging the Way to Social and Global Justice

This section focuses on the questions raised at the beginning of the paper regarding the impact of social justice movements. While it is often assumed that social movements always strive for positive and progressive social change in the name of 'justice', there are instances where they may lead to undesired, negative, and regressive outcomes that challenge social and global justice. For example, the 2020 'Stop the Steal' online social movement in the U.S. spread false accusations to delegitimize the presidential election process, leading to the January 06

insurrection (Frenkel, 2020, n.p.). Likewise, the 'Anti BDS Campaign' in the U.S. supported Israel through an anti-boycott movement, resulting in fundraising efforts that were used to attack Palestine and cause significant violence, disrupting social and global justice (Cannon, 2019, p. 30).

Similarly, the 2018 movement aimed to establish normative "equality" while maintaining the existing "equitable" framework for the well-being of the disadvantaged as the opportunity cost. This raises questions about the impact of social movements in ensuring social justice. However, it could also be argued that the movement was advocating for "equal human rights," which are the most common and safest defenses. Any prejudice towards women, people with disabilities, ethnic minorities, etc. was completely unintentional. This context rightly goes as Baxi says,

"[T]he notion of harm as unintentional act or omission is deeply problematic for disassociating agency from harm; if the harm is unintentional (whether commission or omission) then this amounts to an example of causeless effect, which in turn ends up in human rights 'impunity' for many agents of harm who are themselves harm-specialists." (2016, P. 26)

In reply to this, it is truly relevant to quote Baxi again,

"[I]n a capitalist and market society economy where exploitation is the rule and emancipation is a utopia, the 'human right in the form of equality to a free competition' signifies a right to cause harm to innocent and vulnerable ones". (P. 23).

In addition, the assertion made in 2018 about the movement in Bangladesh contradicts social and global justice by neglecting fair treatment for women, disabled individuals, and ethnic minorities. This can be supported with practical examples.

4.1 A Social Movement Taking Women Back to the Agonistic World, Frustrating Social Justice

The regime of capitalist development is observed to be sustained by the tactic of "divide and rule," in which people are manipulated in the name of 'human rights' and 'equality.' The body becomes the medium through which capitalism enforces its agenda (Mohanty, 2003, p. 514). Body politics, at the core of developmental policies, has historically revolved around issues of gender equality and human rights. This historical legacy continues with the emergence of the 'family wage' and the 'welfare state,' which structurally and technically perpetuated the perception of women as permanent housewives and dependent on male counterparts. This was achieved by positioning men as the primary breadwinners responsible for sustaining the family while creating an artificial crisis between reproduction and wages. This manipulation was executed through body politics while claiming to promote an 'equal' division of labor (Fraser, 2015, p. 91).

Fraser argues that societal issues can be alleviated only through 'redistribution' and 'recognition' (1998, p. 99). The quota reform movement 2018, by eliminating existing 'redistributive' systems entirely, can contribute to capitalistic politics by potentially leading to women being confined to their households, thus reducing their opportunities for work outside the home. This reflects a long-standing colonial-patriarchal notion that resists women's progress outside the house, instead positioning them as primarily responsible for domestic duties as mothers/wives, or for the welfare of others (such as disabled individuals or ethnic minorities) - whom they often consider subservient - while viewing themselves as belonging to a superior 'identity'. This 'hierarchical logic' is central to modern views on gender, race, and sexuality (Lugones, 2010, p. 742). Appiah addresses this as 'gendered essentialism' and 'stereotypical' identity crises (2018, p. 25). This psychological inconsistency is further highlighted in World Bank data, shown in the table below, which indicates that the male employment rate in services consistently increased with little impact from the quota system. In contrast, the female service rate declined in 2019 just after the system, which contained positive discriminatory approaches, was abolished.

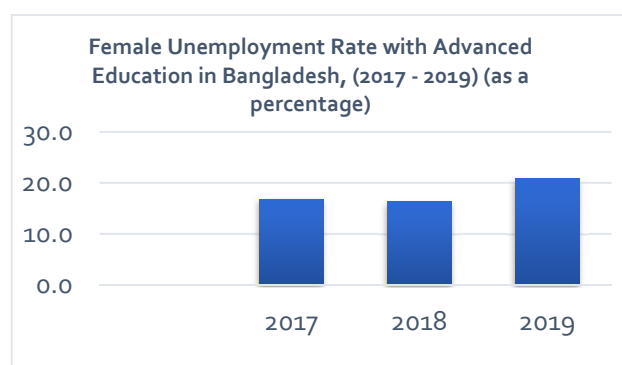
Table 1: Male and Female Employment Rate in Services in Bangladesh, (2016 -2019) (as a percentage)

Year	Employment Rate in Services	
	Male	Female
2016	43.1	20.7
2017	45.5	23.4
2018	46.3	24.8
2019	47	23.8

Source: Data Bank, World Development Indicators (<https://databank.worldbank.org/source/world-development-indicators>)

Moreover, the following diagram focuses on the 'increasing' female unemployment rate in 2019 in comparison to the 'decreasing' trend of 2017 to 2018 when the 'equitable setting' was present.

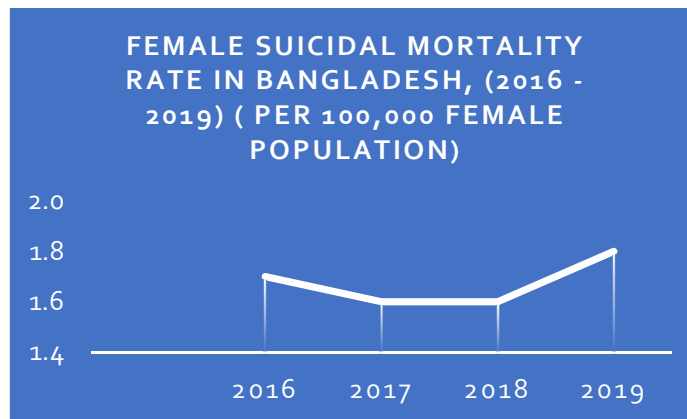
Diagram 1: Female Unemployment Rate with Advanced Education in Bangladesh, (2017 – 2019) (as a percentage)



Source: Data Bank, World Development Indicators (<https://databank.worldbank.org/source/world-development-indicators>)

Furthermore, the drastic reduction of employment opportunities due to the nullification of this 'priority rule' was compounded by the impact of COVID-19 on the job market. This made women more vulnerable, dependent, and victims of an increased rate of sexual harassment and domestic violence (ESCAP, 2021, p. 18), leading to a higher tendency towards suicidal thoughts. The chart below illustrates the growing tendency of females towards suicidal thoughts in 2019.

Diagram 2: Female Suicidal Mortality Rate in Bangladesh, (2016 – 2019) (Per 100,000 Female Population)



Source: Data Bank, World Development Indicators (<https://databank.worldbank.org/source/world-development-indicators>)

Thus, the 2018 movement, without nurturing social justice, opens up new doors of injustice to women, who are one of the major beneficiaries of this system, by taking them back again to the antagonistic world. The same depiction is almost present in other least-advantaged sections, which were also prioritized with this 'logical priority' principle.

4.2 A Social Movement Contradicting the Theoretical and Practical Foundations Of Global Justice

In today's interconnected world, the extensive interconnections, interactions, and interdependence among individuals, institutions, and countries have made it difficult to focus on single individual issues. Instead, most of these have become global issues, calling for global justice (Heilinger, 2020, p. 3). Thomas Pogge also views injustices as deliberately produced, interconnected, foreseeable, and avoidable (2011, p. 9) and advocates for concerted worldwide support through global justice movements (p. 16). Therefore, the anthropogenic era intensifies the global distributive justice responsibilities to create a balanced world through social cooperation. This is particularly important for women, people with disabilities, religious and ethnic minorities, and other marginalized groups who have suffered due to social and global structural injustices for a long time. Beitz suggests that,

“[I]f social co-operation is the foundation of distributive justice, then one might think that international economic interdependence lends support to a principle of global distributive justice similar to that which applies within domestic society” (1999a, p. 279).

Therefore, Rawls's inability to apply the 'difference principle' globally for the progress of marginalized individuals can be seen as addressed by Pogge and Beitz's concept of global justice (Baxi, 2016, p. 16).

Fraser supports an integrated 'universal caregiver/care-receiver' model based on this global justice perspective. This model would involve liberalizing workfare conditionality, potentially going beyond literal equality by establishing logical priority rules. These rules would help dispel the misconception of viewing women and disabled people as inferior or defective men (Mladenov, 2016, p. 1238). By doing so, global justice movements could be strengthened, particularly in their efforts to address inequalities and injustices faced by marginalized groups. Therefore, the Quota Movement 2018 contradicts these theoretical foundations of global social justice by completely undermining existing equitable and redistributive legal priorities for disadvantaged communities.

For instance, feminism, historically linked to social justice movements, has always worked to protect women's rights. This includes advocating for equal legal rights as well as addressing gender and class issues within the context of capitalism and imperialism. The contributions of 3rd world feminists from the global south have been particularly impactful. One prominent feminist organization, ATTAC, now advocates for justice for women in Global South countries by promoting inclusive and improved work opportunities and environments. Global justice forums have also been dedicating seminars, round tables, and plenary sessions to address these issues (Jossin, 2020, n.p.).

In addition, there has been an upsurge in global justice movements advocating for the rights of disabled individuals with the slogan "there is no justice without disability" (Ford Foundation, 2021, n.p.). The 'We the 15' groups actively campaign for disability visibility, accessibility, and inclusion as part of this global justice movement (UNAOC, 2021, n.p.). Additionally, the 'Minority Rights Group International, comprising 130 partners across 60 countries, spearheads global justice campaigns to provide better education and employment opportunities for disadvantaged minorities and Indigenous people (Namati, n.d.). Amidst the COVID-19 pandemic, 'The Global Justice Chavurah' has established an online platform to support activists in developing countries, enabling them to continue advocating for ethnic minorities and indigenous communities (AJWS, n.d.). Furthermore, it is crucial to address the gender gaps in employment and education opportunities as they significantly impact food security (FAO, 2019, p. 24), which runs counter to global justice movements focused on poverty and food security.

Other transnational movements, like 'The Leap Manifesto', which focuses on social and environmental justice in Canada, also show solidarity to address injustices toward Indigenous peoples, women, and other marginalized groups (Mladenov, 2016, p. 1228). In 2010, similar to the quota reform in Bangladesh, the cuts to public services and their impact on disability policy

in the United Kingdom "have also been described as 'systematic retrogression' by disability organizations and a 'great leap backwards' by policy analysts" (p. 1232).

It can be rightly said that the 2018 movement in Bangladesh, which led to the complete abolition of the quota system - a system that provided privileges to disadvantaged groups, especially women, the disabled, and ethnic minorities - conflicts with the practical examples of global justice movements mentioned above. This helps to clarify that some social movements can have regressive outcomes and may not truly target social and global justice.

5. Conclusion

"Justice must not only be done, but must be seen to be done"⁷ (Lord Chief Justice Hewart)

The above legal principle followed by John Rawls supports the idea of 'positive discrimination' to benefit the least advantaged. Sometimes, strict equality may not lead to justice if it doesn't protect the disadvantaged. On the other hand, enacting 'equitable' policies that prioritize the disadvantaged groups might truly establish justice. In the legal framework of Bangladesh, this is reflected in the constitutional priority given to women, disabled individuals, religious and ethnic minorities in government services, reserved seats in the national parliament, and the progressive taxation system. Unfortunately, the Quota Reform Movement of 2018 hurt this priority-based quota system, leading to its complete eradication. Despite the initial claim to reduce the overall quota and exclude freedom fighters' quota, the movement ultimately forced the government to change the system completely.

The 2018 movement made impractical contributions that worsened the situation for disadvantaged communities during the COVID-19 pandemic. This is evident in World Bank data. In Bangladesh, there was a positive discriminatory approach to providing fair treatment based on need (Patomaki, 2008, p. 14). This approach allowed for the inclusion of underprivileged sections, and the existing list was not exhaustive as human needs historically change over time. Therefore, the failure of this system implies the failure of both individual agents and collective responsibilities to eradicate structural social injustices (Heilinger, 2020, p.1). This goes against global justice movements for women, disabled individuals, and ethnic minorities. Unfortunately, a counter-movement did not arise to protect the disadvantaged, as the spread of the "coronavirus and its mitigation overshadowed any other socio-political issues" (Pleyers, 2020, p. 2).

In summary, even though social justice movements are supposed to promote justice for the least developed members of society, significant events like the 2018 demonstrations in Bangladesh, which created sudden changes, challenge the very essence of social movements (Della Porta, 2020, p. 559). This suggests that social movements can sometimes have negative

⁷ *R v. Sussex ex parte McCarthy* ([1924] 1KB256, [1923] All ER Rep 233).

impacts and may work against the goals of social and global justice. The author's attempt to shed light on this uncommon perspective will only be successful if it raises awareness among young social activists and encourages them to work toward social and global justice, focusing on achieving fair and equitable outcomes.

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