

According to the Bangladesh court, while secularism is one of the constitution's fundamental principles, Islam is nonetheless the state religion

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As Bangladesh court reaffirms Islam as state religion, secularism hangs on to a contradiction.

Bangladesh's avowedly secular Awami League government, the Islamist party Jamaat-e-Islami and the fundamentalist group Hefazat-e-Islam have almost nothing in common.

Yet, the drama this week over a High Court hearing pertaining to a legal writ, which seeks to challenge a provision in the constitution that deems Islam as Bangladesh's state religion, shows that these three parties agree on at least one thing – the need to retain this provision.

A few days before Monday's hearing, the Hefazat organised protests across the country [1]. "We will save our religion even at the price of our blood," chanted the group's supporters. A Hefazat leader was quoted as saying: "If Islam gets scrapped as our official religion, we will unleash an all-out movement even if blood has to be shed."

Hefazat-e-Islam attained prominence in April 2013 for its ultra-fundamentalist list of 13 demands [see below], which included passing a law that would hand down capital punishment to those who malign Islam.

On the day of the hearing, the Jamaat-e-Islami called a one-day nationwide strike protesting the "deep-rooted conspiracy to rid the country of religion by removing Islam as the state religion" [2]. Many key leaders of the Jamaat have in recent years been convicted in connection with war crimes committed in 1971.

Swift dismissal

Ideology is clearly behind the demands of the Hefazat and the Jamaat. As for the Awami League government, its position on the constitutional provision, which it was due to support in court, seems anchored in practical politics – not wanting to risk provoking domestic fundamentalist forces and losing political support.

According to Professor Anisuzzaman, who translated the official Bengali version of the constitution, the government is simply concerned that "those who are in favour of state religion do not vote against the government".

As it turned out, however, none of these disparate groupings had anything to worry about. On Monday, it only took a few minutes for the three judges to dispose of the challenge on technical

grounds. The petitioner's lawyers did not even get the chance to argue before the judges ruled [3] that the Committee against Autocracy and Communalism – the organisation which had filed the writ – did not have the locus standi, or the right to be heard in the court.

The court's reasoning was not clear to those present. However, additional attorney general Murad Reza claimed [4]: "It was rejected on the ground that the committee under which the petition was filed in 1988 had no legitimacy as it was not a registered body... [T]his committee was never registered with the government. The citizens filed the petition under this committee's banner; they did not sign it individually."

Challenge to secularism

To understand the current state of affairs, one needs to go back to the original constitution adopted in 1972, which stated both in its preamble and in Article 8 that "nationalism, socialism, democracy and secularism" shall be the "fundamental principles" of the constitution.

"The founding fathers of the country wanted to have a secular nation," said Professor Anisuzzaman. "And all of us during our liberation war subscribed to that and Bangladesh was founded on that basis."

However, things changed after the assassination of independence leader Sheikh Mujibur Rahman in 1975. Four years later, while General Ziaur Rahman was in power, parliament passed an amendment to the constitution that radically altered the position of secularism.

Right at the beginning of the constitution, even before the preamble, the amendment added the text "In the name of Allah, the beneficent, the merciful". And in the preamble, the amendment replaced the word "secularism" with the words "absolute faith and trust in almighty Allah".

In addition, the amendment of Article 8 removed the word "secularism" as a fundamental principle, replacing it with "absolute faith and trust in almighty Allah shall be the basis of all actions."

Another amendment

Ziaur Rahman was assassinated in 1981. A year later, Lieutenant General Hussain Muhammad Ershad came to power. In 1988, in an apparent attempt to shore up his waning authority, an Ershad-controlled parliament passed the eighth amendment which introduced Section 2A to the constitution. It stated: "The state religion of the republic is Islam, but other religions may be practiced in peace and harmony in the Republic."

Almost immediately, a writ challenging the constitutionality of Article 2A was filed by the Committee against Autocracy and Communalism, represented by 15 eminent academics and civil society leaders.

"Our liberation was for a democratic secular country, not for an Islamic one," said Subrata Chowdhury, the lawyer for the petitioners.

The writ argued that the Article was "violative of the indissoluble character and basic structure of the Republic of Bangladesh as proclaimed in the constitution" and was therefore "ultra vires of the Parliament and is null and void and of legal effect".

The petition, however, did not proceed further as lawyers at that time were focused on another legal challenge to a separate provision of the amended constitution, which had sought to break up the high court.

“The state religion case was not taken up then as senior lawyers said that this was not the time for this case and felt that the courts were not ready to interfere in this matter,” said Subrata Chowdhury. The case collected dust.

Two decades on

Fast forward to 2010, when in an entirely separate case, the country’s appellate division upheld a ruling of the high court that the fifth amendment of the constitution – the one passed in 1979 when Ziaur Rahman was in power – was illegal.

Given the circumstances, the lawyers who had filed a case against General Ershad’s 1988 amendment, which introduced the new provision about Islam as the state religion, thought that the political and legal climate was now more conducive to a successful challenge. They dusted off their petition from 1988 and returned to court.

In June 2011, the high court passed an order asking the government to explain why the 1988 amendment should not be declared to be “ultra vires the constitution and without lawful authority”.

However, before the court could take up the case, another constitutional amendment – the 15th – was passed by the Awami League government.

Passed at the end of June that year, it could have provided a perfect opportunity for the government to remove the provision labelling Islam as a state religion. However, although the government brought back into the constitution the original four fundamental principles including secularism, and emphasised the equal status of religions, it added a new provision which retained the wording on state religion.

As a result, in December 2011, the lawyers had to return to the high court, and obtain a supplementary order asking the government why this new provision, brought in by an Awami League government, was not unconstitutional.

It was these orders which came before the high court on Monday – where the court took a very different view on the locus standi of the petitioner than the court had five years earlier, resulting in the case being summarily dismissed.

What next?

Not all is lost for those committed to challenging the state religion provision within the constitution.

The petitioner’s lawyers can seek to appeal the decision on locus standi to the appellate division. However, perhaps more significantly, because the case was not dismissed on the merit of the arguments, a new writ could be filed by those whose locus standi is irrefutable.

Since 2011, there remains an apparent contradiction within the country’s current constitution – which states that whilst one of its fundamental principles is secularism, Islam is nonetheless the state religion.

At some point, this contradiction within the constitution will need to be resolved. However, for now, it acts as a metaphor for the strongly conflicting views held within the country on the relationship between the state and religion.

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Scroll.in. Apr 02, 2016 · 08:00 am:

<http://scroll.in/article/807070/meet-the-four-indian-writers-in-the-running-for-2016-commonwealth-short-story-prize>

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The 13-point demands of the Hifazat-e-Islam in Bangladesh

1. Reinstate the phrase "Absolute trust and faith in the Almighty Allah" in the Constitution as one of the fundamental principles of state policy
2. Pass a law providing for capital punishment for maligning Allah, Islam and Prophet Muhammad (Peace Be Upon Him) and smear campaigns against Muslims
3. Stop all propaganda and "derogatory comments" about Prophet Muhammad (PBUH) by the "atheist leaders" of the Shahbagh movement, bloggers and other "anti-Islamists;" arrest them and ensure stern punishment to them
4. Stop attacking, shooting, killing and persecuting the Prophet-loving Islamic scholars, madrasa students and people united by belief in Allah
5. Release all the arrested Islamic scholars and madrasa students
6. Lift restrictions on mosques and remove obstacles to holding religious programmes
7. Declare "Qadianis" non-Muslim and stop their publicity and conspiracies
8. Stop foreign cultural intrusions including free-mixing of men and women and candlelight vigils, and put an end to adultery, injustice, shamelessness, etc in the name of freedom of expression and individual
9. Stop turning Dhaka — the city of mosques — into a city of idols, and stop setting up of sculptures at intersections, colleges and universities
10. Scrap anti-Islam women policy and education policy and make Islamic education mandatory from primary to higher secondary levels
11. Stop threatening and intimidating teachers and students of Qawmi madrasas, Islamic scholars, imams and khatibs
12. Stop creating hatred among young generations against the Muslims by misrepresentation of Islamic culture in the media
13. Stop anti-Islam activities by NGOs, evil attempts by Qadianis and conversion by Christian missionaries at Chittagong Hill Tracts and elsewhere in the country.

* <http://www.thehindu.com/todays-paper/tp-national/the-13point-demands/article4590494.ece>

Footnotes

- [1] <http://www.en.prothom-alo.com/bangladesh/news/99259/Hefazat-protests-petition-against-state-religion>
- [2] <http://bdnews24.com/bangladesh/2016/03/27/jamaat-e-islami-calls-strike-over-state-religion>
- [3] <http://www.aljazeera.com/news/2016/03/bangladesh-court-upholds-islam-religion-state-160328112919301.html>
- [4] <http://www.dhakatribune.com/bangladesh/2016/mar/29/hc-rejects-writ-state-religion>