

Fifteenth Amendment to the Constitution of Bangladesh: Reflections on the “Spirit of 1971”

Pushpa Gautam¹

Abstract

The Fifteenth Constitutional Amendment adopted by the Awami League Government in 2011 had as its objective the restoration of secularism, socialism, Bengali nationalism and democracy as the basic principles of the Constitution of Bangladesh. These were the high ideals evolved and cherished by the progressive people of Bangladesh during their struggle for independence from the oppressive Pakistan regime and these ideals formed the foundational principles of the sovereign nation state of Bangladesh when it emerged fifty years ago in 1971. Despite laying such foundation, the communal and political forces averse to these ideals gained ascendancy under the auspices of the autocratic regimes of two military men. Tacit and open appeasement of these forces, especially the fundamentalist political Islam, continued even after formal restoration of democracy in 1991 under the compulsion of electoral politics. The present article looks into the implications of the Fifteenth Amendment and its effect on restoring the spirit of the Liberation Struggle. It mainly finds that the retention of Islam as state religion by the Fifteenth Amendment, even while restoring secularism as a basic principle and state policy in the Constitution, may be necessitated by the compulsion felt by the Awami League for engaging in practical politics of precluding the scope for fundamentalist groups to exploit the religious sentiments of the people, but this compromise has not helped and will not help to save the country from descending into the hold of the anti-secular communal forces.

Keywords: Liberation War, Fundamental Principles, Secularism

Introduction

In March 2021, Bangladesh celebrated the Golden Jubilee of its independence from Pakistan. Fifty years back on 26th March 1971 the founding father of

¹ Jawaharlal Nehru University, New Delhi. E-mail: pushpgtm@gmail.com

Bangladesh, Bangabandhu Sheikh Mujibur Rahman, had declared the country's independence from Pakistan as an immediate and resolute reaction to the previous night's horrific massacre of thousands of Bengalis in East Pakistan by the West Pakistan army. Thereupon, from March to December 1971, the people of Bangladesh waged a heroic "Liberation War" against the oppressive regime of Pakistan, which culminated in the emergence of Bangladesh as a new nation state in post-colonial South Asia on 16th December 1971. In the fifty years of its independent trajectory, the new nation underwent the trauma of coming under undemocratic regimes hoisted on it by autocratic military rulers. During this autocracy (1975 to 1990), the country lost all of the four basic foundational principles — democracy, Bengali nationalism, secularism and socialism — which were evolved and strengthened during the time of the Liberation War. Though democracy was restored in 1991, it did not result in the immediate re-establishment of these original foundational principles.

The Fifteenth Amendment to the Constitution of Bangladesh which was enacted in 2011 by the Awami League-led Government, after its historic electoral victory with more than 2/3rd majority in the elections of 2008, is considered a milestone in reversing the setbacks of the past. The fiftieth year of independence of Bangladesh also coincides with the tenth year after the passing of the Fifteenth Amendment. The present article is a reflection on the foundational principles of the formation of Bangladesh, their unfortunate suppression during the period of the military regimes and the status of their revival through the passing of the Fifteenth Amendment to the Constitution of Bangladesh.

Spirit of Liberation War and Political Development

The newly emerged state of Bangladesh got the unique distinction of a Muslim-dominated secular country with all the trappings of a modern liberal democratic state. This was manifested in the Constitution that the independent Bangladesh adopted on 4th November 1972. It reflected the ideals and principles namely democracy, secularism, socialism and the Bengali national identity, which were evolved and asserted by the political leaders of Bangladesh during the Liberation War. All these four principles together constituted a total antithesis to the reality of Pakistan as it was experienced by the Bengali people and they formed an integral part of the Spirit of the Liberation War.

Unfortunately, just after a few years of the inception of the Constitution, the hope for Bangladesh's steady emergence and development as a vibrant democratic state by following the high ideals incorporated in its Constitution was thwarted with the introduction of drastic changes in the original Constitution through the Fourth Amendment in January 1975. By this amendment, the democratic parliamentary form of government based on a multiple party system was replaced with a strong centralized presidential form of government which was authoritarian in character on the basis of a single party. All the executive powers were concentrated in

the hands of the President. Bangladesh was effectively transformed into a constitutionally authoritarian state with no place for independent political parties and freedom of press to voice any kind of opposition to the government. The single party system, the locus of all executive powers in a single person, curtailment of civil and political liberties and absence of an independent judiciary with adequate powers to enforce civil liberties and fundamental rights all bespoke of a classical authoritarian state. The authoritarian transformation brought about by the Fourth Amendment, as Rounaq Jahan observed, formalised the informal powers of Mujib by making him the head of the state, the head of the government, and the head of the only party that was allowed to be formed. Moreover, the new political system emphasised on the unity of the party and administration, rather than on the principle of separation of powers and checks and balances (Jahan, 2005, p. 158). Some critics have described the whole development as the 'transformation of Mujib from a democrat to a dictator' (Chakrabarti, 1978, p. 228). Lawrence Ziring is of the opinion that the change to the single party system was not meant for promoting national development and unity as stated by Mujib but was only to serve his personal dictatorship (Ziring, 1992, p. 105). In fact, some close aides of Mujib were not in agreement with him regarding the matter of introduction of a one party system (Kamal Hossain, Interview, 9 January 2015; Dhaka). Whatever the situation prevailed in the country, Mujib who championed the struggle for democratic values and constitutionalism, chose a dictatorial path to handle it. He thus, virtually turned the Constitution of Bangladesh, and the democratic government into an authoritarian system and ultimately, paved a way for the military dictators to destroy the secular spirit of the Constitution.

Later, the Fifth Amendment of the Constitution introduced by General Ziaur Rahman in April 1979 removed from the Constitution all of its essential principles which reflected the spirit of the Liberation War. "Secularism" as a fundamental principle of state ideology was removed from the Constitution and in its place the words "absolute trust and faith in *Almighty Allah*" was substituted. The ethno-linguistic based "Bangalee" national identity was replaced by the religion-cum-geography based "Bangladeshi" national identity. Religion-based political parties were now allowed to function freely. The goal of establishing socialism was abandoned by diluting the relevant provisions in the Constitution. Article 10 of the original Constitution which provided for establishment of a "socialist economic system" was replaced by an unrelated pledge for "participation of women in all spheres of national life". The provisions in Article 42 and 47 were amended to establish the right of private property, which could be now nationalised or acquired in future only with compensation. Thus, though the word "socialism" was retained in the Constitution, the Zia regime indicated its preference for a capitalist path of economic development (Huq, 1986, p. 64).

General H.M. Ershad who usurped the state power in March 1982 followed the same authoritarian and anti-democratic policies of his predecessor Zia. He placed the Constitution in abeyance and declared Islam as the state religion

of Bangladesh. Both Zia and Ershad received support from the entrenched interests in Bangladesh's military establishment and bureaucracy and also from an emerging capitalist class (Sarker, 2008). The most damaging aspect of the policies pursued by the autocratic regimes in their efforts for seeking support and legitimacy for their rule is the re-emergence of religionist parties and organizations and the communalization of Bangladesh society.

In 1991, though, democracy was formally restored in Bangladesh, following the end of the Ershad regime as a result of a nation-wide popular movement in the country. But, the conduct of politics since then has been marked by a high degree of unhealthy confrontation between the two main political parties - Bangladesh Nationalist Party (BNP) and Awami League (AL). The kind of confrontational politics engaged in by these parties has led to the severe weakening of democratic institutions in the country. The Parliament has been dysfunctional and devoid of meaningful debates on account of the frequent boycott of the sessions by the opposition or even the absence of any meaningful opposition in the House as one or the other main parties resorted to the boycott of the elections.

Enactment of the Fifteenth Amendment

The Ninth Parliamentary election held under the military backed Non-Party Caretaker Government (NCG) in December 2008 was a turning point in the history of constitutional and political development of Bangladesh. The victory of AL along with its alliance partners with more than a two-third majority paved the way for the adoption of the Fifteenth Amendment to the Constitution which sought to restore the original basic principles of secularism, Bangalee nationalism and socialism in the Constitution. Additionally it also sought to strengthen the democratic politics in the country through the abolition of the NCG system and introduction of new provisions intended to prevent the repetition of undemocratic and extra-constitutional capture of political power by the military or anyone else. The AL Government that came to power in 1996 did not have the two-third majority, which was required to bring about constitutional amendments to restore the original Constitution of 1972 in the absence of political consensus among parties on issues of secularism, Bangalee national identity and socialism. After the restoration of democracy in 1991, the only issue on which all political parties came to an agreement and consensus was on restoring the form of government from the presidential to parliamentary system which was achieved through the Twelfth Constitutional Amendment enacted by the Parliament elected in 1991 with the BNP running the Government. After the enactment of the Twelfth Amendment, the two main political parties of Bangladesh, the AL and BNP, have been at loggerheads on the issues concerning secularism, socialism and national identity. The BNP which came to power in 1991 in alliance with the Islamist party of Jamaat-e-Islami was opposed to secularism. It instead favoured

and promoted continuance of Islamisation and Islamic identity of the country. As a result, during the time of the BNP Government from 1991 to 1996, the anti-secular Islamic forces consolidated their influence (Lintner, 2004, p. 414-15). Regarding the national identity the BNP stood for “Bangladeshi” national identity in opposition to the ethno-linguistic based “Bangalee” national identity championed by the AL. “Bangladeshi” national identity put emphasis on the Islamic religious affiliation of the vast majority of the people of Bangladesh and their distinction in this respect and in the geo-political separation of Bangladesh from the West Bengal of India (Bhardwaj, 2011, p. 20-21). The BNP also did not favour socialism but instead pursued the capitalist economic development path which had been inaugurated in Bangladesh by the founder of the BNP General Ziaur Rahman. Thus, it was not at all expected that a Constitutional Amendment like the Fifteenth Amendment to restore the principles incorporated in the original Constitution would be enacted during the immediate aftermath of the formal restoration of democracy in 1991 till 1996 when the term of the BNP Government came to an end and also during the period between 2001 to 2006 when also the BNP was running the Government in Bangladesh.

Abolition of the NCG System

The two years preceding the general elections of December 2008 was a period of when political power was again usurped by the military establishment, though indirectly. The military usurpation of power was facilitated by the NCG system. Though it is true that the NCG system had gained appreciation from wider sections of people and the elections conducted under it had been hailed as free and fair by many international observers, it is a bitter truth that it had given scope for its misuse during 2007-2008 and opportunity for the military to undemocratically usurp political power indirectly through the interim NCG headed by Fakhruddin Ahmed, who had started exercising extra-constitutional powers instead of holding the elections originally planned for January 2007 (Datta, 2009, p. 25).

In view of this background, a major consideration for the AL Government in amending the Constitution through the Fifteenth Amendment was the abolition of the NCG system. The Supreme Court of Bangladesh on 10 May 2011 in the Thirteenth Amendment case had declared the NCG as unconstitutional and against the principle of democracy, which facilitated the task of the Government in doing away with the NCG system through the Fifteenth Amendment. M. Amir-ul-Islam, who was one of the *amicus-curiae* in this case, stated during an interview the author had with him that NCG cannot substitute the Election Commission, which should be built up as a strong and impartial institution of democracy (Interview with Amir-ul-Islam, 2015). Justice A.B.M. Khairul

Haque, who was the principal author of the judgment in the case told this author that giving the reins of Government in the hands of unelected people even for a short period is negation of the democratic spirit and principle and therefore “we declared it unconstitutional” (Interview with Justice Haque, 2015).

The abolition of the NCG promptly faced criticism from the opposition parties led by the BNP, which even boycotted the next elections held in 2014 throwing the nation again into political turmoil and creating an awkward situation of there being virtually no opposition to the Government formed by the AL. The AL’s electoral ally Jatiya Party had to serve as the name-sake opposition in the parliament even while some of its elected members served as Ministers in the Government a clear paradox to existing parliamentary norms. The political instability and confrontations over the issue of NCG that Bangladesh witnessed since the restoration of democracy in 1991 is a testimony to the fact that the political parties in Bangladesh have not learnt to operate and follow normal and decent rules of democracy whereby an opposition party gracefully accepts defeat and then engages in constructive cooperation with the Government for the next few years. There is high disregard for basic democratic principles in Bangladesh.

Restoration of Secularism

The Fifteenth Amendment restored the word “secularism” in the Preamble and in Article 8 of the Constitution, thus reiterating secularism as one of the fundamental Principles of State Policy. It removed the words “Absolute faith and trust in Almighty Allah” from the Constitution. The Amendment did not remove the status of Islam as state religion as provided in Article 2A, which was introduced in 1988 by the Gen Ershad through the Eighth Amendment. However, the Fifteenth Amendment has amended Article 2A to additionally provide that “the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions”. The Article 12 of the original Constitution had made clear that secularism will be realized in practice through the “elimination of (a) communalism in all its forms; (b) the granting by the State of political status in favour of any religion; (c) the abuse of religion for political purposes; (d) any discrimination against, or persecution of, persons practicing a particular religion.” This Article had been omitted from the Constitution by Ziaur Rahman through the Fifth Amendment. The Fifteenth Amendment has reinstated this Article showing the AL’s firm commitment to secularism.

Yet, the Fifteenth Amendment’s retention of Islam as state religion while at the same time reinstating “secularism” as state policy in the Constitution is a clear contradiction in terms. This is seen as the AL’s compulsion to engage in practical politics of not wanting to antagonizing people with strong religious

sentiments and thereby lending strength to Islamist and fundamentalist forces, and losing political support (Bergman, 2016). Supporters of AL are divided in their opinion about the decision to retain the state religion provision in the Constitution. A view among those who approve of the decision is that, keeping Islam as state religion is just a symbolic acknowledgement of the reality that Bangladesh society is predominantly Islamic and that “state religion” need not necessarily be taken to mean “state’s religion” (Billah, 2013). Besides, despite the state religion provision, the secularity of the Constitution is ensured by the preambular statement and the clause in Article 2A that “the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions” and also by the provisions in the reinstated Article 12. According to Jahid Hossain Bhuiyan (Bhuiyan, 2017, p. 856), a Muslim-majority country like Bangladesh cannot be faulted for its commitment to Islam provided that it follows Werner Menski’s “plurality sensitive” perspective (Menski, 2015) and recognizes equal rights for religious minorities and provides strong and effective mechanism to protect those rights, which has been done in law by the Fifteenth Amendment.

Yet, there are many critics of the AL’s official position on state religion who are otherwise supporters of the AL, including many freedom fighters, cultural and women activists and civil society groups who constitute the vanguard of the nation’s secular ethos. According to them, the state religion provision is in sharp contradiction to secularism and the spirit of the Liberation War (Habib, 2011). According to Bangladesh Mahila Parishad, a women’s human rights organization established in 1970, the spirit of non-communal and democratic equality of the Constitution of 1972, achieved through the Liberation War, has been destroyed due to retaining Islam as the state religion in the Constitution (The Daily Star, 2011). Another pro-secular organization, the Committee against Autocracy and Communalism had filed a writ petition in the High Court of Bangladesh way back in 1988 challenging the provision of state religion status to Islam. This challenge had given rise to heated political tensions and confrontations over the role of Islam in the country (Mahmood, 2016) with the Islamist and fundamentalist right-wing parties trying to provoke parochial religious sentiments of the gullible common people of Bangladesh. The Islamist party of Jamaat-e-Islami called a nationwide strike to protest “the deep-rooted conspiracy to rid the country of religion by removing Islam as the state religion” on the day when the High Court was hearing the case on 28 March 2016 and the fundamentalist group of Hefazat-e-Islam organized protests across the country a few days before the court’s hearing (Bergman, 2016). The court summarily rejected the challenge on the technical ground of the petitioner organisation’s lack of locus standi whereupon the Jamaat-e-Islami withdrew its protest strike, resulting in the diminishing of social

and political tensions. The reduction of such tensions on the question of state religion is of “higher public interest” which is, according to Werner Menski, what has been the consideration of the AL, rather than a desperate effort to stay in power, in deciding to retain Islam as state religion. According to Menski, the approach adopted by the AL will help to strengthen the cohesion of the nation as there seems to be no other “constructive” way forward (Menski, 2015).

Thus, it appears that the Fifteenth Amendment has in effect restored secularism in the Constitution even with the retaining Islam as state religion as a symbolic measure to reflect the predominant religious ethos of Bangladesh and to preclude scope for religious fundamental groups in exploiting the religious sentiments of the people of Bangladesh. But this assessment is not to discount the importance of the views held by the pro-secular forces and observers who are critical of the provision of state religion. The critics have pointed out that the supposed compromise with the Islamist parties for the sake of political stability and “higher public interest” is in effect a capitulation to the political Islamists who have been growing from strength to strength ever since the assassination of the Father of the Nation, Mujibur Rahman, and the removal by Ziaur Rahman’s Fifth Amendment of the prohibition of religious parties contained in Article 38 of the original Constitution. Article 38 as amended by the Fifteenth Amendment has in effect retained the freedom allowed by Ziaur Rahman for religious based parties to operate though with certain conditions meant to safeguard the religious, social and communal harmony. This along with retention of Islam as state religion is an indirect granting of fundamental freedom (Article 38 belongs to the Fundamental Rights chapter in the Constitution) for religious parties to operate which has had a bewildering and self-contradictory effect on secularism, undermining the foundational fabric of the Constitution (Halim, 2014, p. 93-94). This has emboldened the religionist parties and fundamentalist groups to continue to undermine the secular ethos originally envisaged in the Constitution and to communalise the polity and society. This is exemplified by the incident of the removal of the statue of a blindfolded woman in a sari holding sword in one arm and the scales of justice in the other, representing the Greek deity of fairness and justice from the premises of the Supreme Court of Bangladesh as it was objected by the fundamentalist organization Hefazat-e-Islam on the ground that Islam does not allow idols (Tripathi, 2017). Islamic extremist militancy and violence was manifested in several gruesome incidents that took place before and after the Fifteenth Amendment. To cite some glaring examples, ten people were killed on 14 April 2001 when the militants attacked a cultural programme celebrating the Bengali New Year Day which they deemed “unIslamic” (Dawn, 2014). On 17 August 2005, the militant outfit Jama’atul Mujahideen Bangladesh detonated bombs in hundreds of places (The Daily Star, 2019) in support of their

demand for introduction of *Sharia* laws in the country (Harun, 2011). The present AL Government has been able to contain the militancy to a considerable extent, which shows its commitment to secularism. But apart from open militancy, there is a much greater threat of communalization which undermines the secular credentials of Bangladesh. This is evident, for instance, from the ability of the Islamic organizations like Hefazat-e-Islam to dictate the text book contents of the official education system, substituting the secular contents with religious material (Islam, 2017). This is over and above the manifold increase in the number of madrasas, both the Government aided *Alia* madrasas and the Qawmi madrasas run independently by religious organizations (Ahmad, 2020). Pro-secular groups have been demanding to do away with Qawmi madrasa education in the country as it is considered a breeding ground for Islamic terrorism, but the Government has not been able to accede to this demand and instead has decided to give the Dawrah-e-Hadith certificate, which the Qawmi madrasas confers on its pupils, official recognition as equivalent to Masters degree in Islamic Studies and Arabic (Bdnews24, 2017). In March 2013, radical Islamists made a 13-point anti-modern, anti-liberal and anti-secular demands wanting reinstate the phrase “Absolute trust and faith in the Almighty Allah” in the Constitution, demanding enactment of a law to provide death penalty for blasphemy, scrapping of laws on women’s rights, and prohibition on free mingling of men and women (Islam, 2018, p. 28).

In view of these developments, there is a strong case for doing away with the constitutional provision of according Islam the status of state religion for unequivocal assertion of secularism in the country. The secularism that was reflected in the spirit of the Liberation struggle is in fact the true secularism which keeps religion separate from the affairs of the state as historically emerged in Europe after the Age of Reason and Enlightenment through the clashes between ecclesiastical and temporal authorities and got entrenched in modern political consciousness following Jefferson’s “wall of separation between church and state” and Voltaire’s “privatization of religion” statements (Ahmad, 2020). The practice of respecting people’s age-old religious sentiments, as advocated by Bangabandhu while explaining his idea of secularism, is sufficient to account for any special significance of any religion in Bangladesh. The fact that Bangladesh is also home to strong cultural, social and political forces concerned with counteracting the anti-secular and anti-democratic forces needs to be appreciated. The hope for Bangladesh to attain maturity as a true democratic and secular state rests with these progressive forces who had in February 2013 led the famous Shahbag Movement. This grassroots secular movement was organized to demand death penalty for 12 leading war criminals and a ban on extremist outfits (Islam, 2018). It turned into a spectacular public show to uphold the spirit

and symbols of the liberation war by singing the national anthem and popular Bengali folk songs, reciting and chanting nationalistic poems and slogans such as *joy bangla*, holding candlelit vigils, using the national flag as headbands, and performing folk theatre etc. (Ahmad, 2020). This shows that the spirit of the Liberation Struggle is still abiding in Bangladesh; the majority of the people of Bangladesh remain opposed to Sharia law and other extreme Islamic practices (Lintner, 2004, p. 419). The AL Government has been able to send a number of war criminal to the gallows (Northeast Now, 2018) and apparently it has also been successful in containing Islamic militancy for the time being by arresting some members of different militant groups. But these governmental actions cannot substitute the concerted and conscious measures required to be taken to lend strength to and sustain a national community which continue to cherish and uphold the high secular and democratic ideals of the liberation struggle and the deeply rooted religious pluralism of the country.

Conclusion

In over all, the Fifteenth Amendment can be described as a modest attempt of the Hasina Government to bring back partially, if not fully, the democratic and secular character of the Constitution. Speaking in the Parliament, Prime Minister Hasina has rightly stated: "People had to suffer a lot in the past. But they will not suffer in the future, as we have been able to ensure people's empowerment through passage of the constitution amendment bill" (The Daily Star, 2011a). However, the principle of secularism, which had formed the basis of the spirit of the Liberation War, has been compromised seriously by retaining a particular religion as the state religion and allowing religion-based parties to function continuously. Allowing the anti-liberation religion-based parties, who collaborated with the Pakistani forces against the heroic people of Bangladesh during the liberation struggle, is considered a great setback to the people who wanted the state to be secular in essence by keeping its distance from religion. At the same time, despite compromising the original form of the state principles, the Hasina government's move might be considered as a ray of hope for the return of a secular and democratic polity in the country, though with some skepticism.

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