



Law and Our Rights



OUR Constitution, as it was adopted in 1972, had proclaimed secularism as one of the four fundamental principles of State Policy and Article 38 specifically prohibited organisations based on religion. The separation of state and religion of the 1972 Constitution, as we know, was gradually removed.

In 1977, a new formulation of Article 8: "(1) The principles of absolute trust and faith in the Almighty Allah..." and "(1A) Absolute trust and faith in the Almighty Allah shall be the basis of all actions" replaced the initial Article 8. The prohibiting part of Article 38 was also deleted. This new Article 8 came about through Proclamations Order No 1 of 1977 of the then Military Government and this was subsequently made part of the Constitution by the "blanket ratification" of the 5th Amendment to the Constitution in 1979. Later, in 1988, the 8th Amendment to the Constitution inserted a new Article 2A into the Constitution to provide that: "The state religion of the Republic is Islam..."

The new Article 2A is one of the seven articles of Part I of the Constitution. These seven articles are the formal signifiers of our Republic. These articles, as it were, indicate the primary characteristics and aspects of our Republic differentiating it from other countries. Article 1, for example, states that Bangladesh is a unitary, independent, sovereign Republic to be known as the "People's, Republic of Bangladesh." The first signifier that is established by the Constitution is the name of our country.

Similarly Article 3 provides: "The state language of the Republic is Bangla." Other articles in this Part I of the Constitution choose the national anthem (*Amar Sonar Bangla*), describe the national flag (red circle on a green background), identify the national flower (*Shapla*) and situate the capital of our Republic (Dhaka). In this Part I of the Constitution, Article 2A provides, as already mentioned, that the state religion of the Republic is Islam.

Reading Part I of the Constitution one clearly familiarises oneself with the symbols and physical/geographical contents which constitute and delimit our country from other countries. These symbols provide for our own distinct and separate identity — we have a capital (Dhaka), a national flower, (*Shapla*), a defined ter-

Can We Equate the Constitution With the Creator?

ritory, etc. The inclusion of Islam as 'the state religion' in this milieu of national symbols, in the company of national anthem, flora and flag, surely, it seems to me, reduces Islam to merely one of the many nationalistic and even egoistic identifiers (since nationalism, even in a sympathetic reading of this particular post eighteenth century phenomenon, is often an institutionalised, engineered, and symbolised emotion rooted in collective perception of superiority, distinctiveness and dissimilarity from other collectives) of our state.

We have, at least from a literal reading of the Constitution, clearly situated and equated Islam with other earthly (Dhaka, *Shapla*) and man/woman-made piece of symbolic material (flag) and accidental mode of expressions (*Bangla*, for a language is an accidental by-product of social interaction, devoid of rationality or logic in terms of origins of initial words in use in any given language). Is Islam merely a nationalist sentiment to be placed at par with and as one of our essential signifiers? Surely a religion, and certainly more so for Islam, is more than a nationalist symbol to be proclaimed as one of the many other signifiers of a modern nation state.

There is, obviously, no doubt that the vast majority of the people of our country are committed to Islam. However, should this religious commitment be equated with a flower or colours? Islam has been made to share a place with a song and a city as well, and the issue is whether for a devout believer these symbols are equatable with each other. For a devout believer, can his/her belief be reduced to the level of a national signifier? It certainly cannot and should not. Unfortunately, the Constitution simply implies so.

At another level, the symbols, signifiers and sign posts of national and individual identities are often changeable constructs. A quarter of a century ago the nomenclature of our citizenship (Bangladeshi, as now provided in Article 6 (2) of the Constitution and which was, incidentally, not the same in the 1972 version

of the Constitution) was different (Pakistani) and so were the other identifiers and symbols (territory, flag, national anthem etc). We have changed all those in 1971 and changed them violently, assertively, boldly and very proudly. We had changed these in earlier times also (1947).

Is putting Islam in this company and level of changeable and contemptuously discardable constructs an appropriate mode of expression or

the Constitution is hardly less troubling. As already indicated, Article 8 (1A) states "Absolute trust and faith in the Almighty Allah shall be the basis of all actions." (emphasis added).

The state, through its various organs, performs and undertakes innumerable actions. But the assertion that absolute trust and faith in the Almighty Allah is the basis of all these actions by the state raises a host of troubling questions.

If we were to focus on only

state in incarcerating Nazrul Islam without any reason based on absolute trust and faith in the Almighty Allah? When police, even properly and following all the relevant rules and regulations such as sanctions of the magistrate etc, fires gun shots at demonstrating public or enraged mob, this act of firing and consequent killings are surely actions by the State. Can the state claim that such actions, again is based on absolute trust and faith in the Almighty Allah?

The constitutional formulation clearly implies this as it is clearly written in the Constitution that all actions are so based. Such examples of state actions can obviously be multiplied, almost ad infinitum. The irreconcilability of such state action with the constitutionally proclaimed assertion of absolute trust and faith in the Almighty Allah as the basis of such actions is too glaring to be pushed aside as unimportant. Perhaps, hiding like the proverbial ostrich, we are hoping that no one is noticing that our Constitution has become a repository of national hypocrisy and our trust and faith in the Almighty Allah has become a mere rhetorical formulation, perhaps a cliché.

Ideally, it may be infinitely better for all of us if all actions of the government were actually and really based on trust and faith in the Almighty Allah. But that is not the case in hundreds of instances. More so since the state does employ a number of persons (eg, Hindus and Christians) whose religious beliefs are not compatible with absolute trust and faith in the Almighty Allah. So when such an employee of the state is performing an action in the name of the state, is he/she undertaking that action on the basis of this Article 8 (1A)? Clearly not, as doing so would imply denial of his/her religion.

Lastly, Article 7, which is one of the most important articles as well as the cornerstone of our Constitution, particularly so in view of the landmark decision in *Anwar Hossain Chowdhury v Bangladesh*, IX (A) 1989 BLD (Spl), popularly known as the 8th Amendment Case, boldly and reassuringly pro-

by Shahdeen Malik

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assertion of religious beliefs? We have omitted, adopted, discarded and included Islam in our constitutional documents in the past — Islam was not there in the Government of India Act 1935; it was adopted in the Pakistan Constitutions of 1956 and 1962; discarded from our 1972 Constitution; and included again in the Constitution in 1988. Our Treatment of Islam in and out of Constitutional documents surely diminishes Islam to merely one of the many nationalistic symbols. Should such be an acceptable attitude of believers?

Another religious aspect of

one aspect of state actions — human rights violations by state, the hypocrisy, if not absurdity, of the assertion embodied in Article 8 (1A) becomes uncomfortably clear. Without delving in to degree, frequency or other quantitative qualifiers of such violations, it can easily be asserted that our state, like all other states, does violate human rights of citizens. The fate of Nazrul Islam, the young man who languished in Sathkhira jail for twelve years, easily comes to mind as one incident of such violations. Nazrul Islam was illegally in jail as a result of state action. Was this particular action of the

claims that: "(1) All power in the Republic belong to the people..." (emphasis added.) A literal reading of this important article also raises a troop of uneasy questions vis-a-vis sovereign authority of the people and that of the Creator. Needless to say, the relationship between the sovereignty of people which is essentially a nineteenth century construct and the sovereignty of the Creator has not been adequately addressed by Muslim theology, except in some grotesque assertions of Moududi or official ideology of some of the present day absolute monarchies in the Middle East. Probably none has thought through the implications of the assertions contained in Article 7 and their relationship with Article 2A.

Instead of a concluding paragraph or two, I may end by quoting a few sentences from *Emile*, the book on education by Rousseau. *Emile* was first published in 1762, and promptly burned at the foot of the great stairway of the Palais de Justice in Paris (as were his many other books including *Social Contract*). It was said that it was not enough to burn the book, that the author should be burned too. We know that Rousseau did not have to share the same fate as his books; he died a natural death in 1778. *Emile* was written in the form of advice and suggestion for teachers of young boys; what should be taught and how.

I am aware that many of my readers will be surprised to find me tracing the course of scholar through his early years without speaking to him of religion. At fifteen he will not even know that he has a soul, at eighteen even he may not be ready to learn about it. For if he learns about it too soon, there is the risk of his never really knowing anything about it.

"We must believe in God if we would be saved. This doctrine wrongly understood is the root of bloodthirsty intolerance and the cause of all the futile teaching which strikes a deadly blow at human reason by training it to cheat itself with mere words."

Let us beware of proclaiming the truth to those who cannot as yet comprehend it, for to do so is to try to inculcate error. It would be better to have no idea at all of the Divinity than to have mean, grotesque, harmful, and unworthy ideas: to fail to perceive the Divine is a lesser evil than to insult it.

Landscape

Summons Against Maulana

The Chief Metropolitan Magistrate issued a summons against Maulana Obaidul Huq on May 4, whereupon he was ordered to return summons on June 4, 1995. Sayed Mahbubur Rahman and Adilur Rahman Khan were advocates for the petitioner, Abdullah Hil-Quyyum, leader of the Ganatantrik Chhatra Oikya (Democratic Students Union).

Maulana Obaidul Huq has been the Khatib of Bangladesh's main mosque, the Baitul Mukarram for the last 10 years, leading prayers at the mosque and conducting religious service.

However, very recently, some of his actions and statements have caused a stir among the people of the country. First of all, he became convener of the Shammilito Shangram Parishad (United Action Committee) a coalition of 13 religious political parties, formed in June, 1994. He started speaking against Qadiani Muslims, and NGOs, and began supporting the introduction of a blasphemy law. Then, at a Shammilito Shangram Parishad public rally held on 29 July 1994, the Khatib, Obaidul Huq, declared that some Western-educated people had betrayed Pakistan in 1971 and were responsible for its division. The 'Pir' (Holy man) of Charnonay, Maulana Sayed Fazul Katrim stated that since the Constitution of Bangladesh hands the sovereignty of the state and the power to the people and not to God, it cannot be obeyed.

Thus on the 2nd of August 1994, two separate cases were filed against the Khatib and the Pir, under Section 505A of the Penal Code. This Section states: "Whoever —

a) by words, either spoken or written, or by signs or by visible representations or otherwise does anything, or b) makes, publishes or circulates any statement, rumour or report.

Which is, or which is likely to be prejudicial to the interests of the security of Bangladesh or public order, ... shall be punished with imprisonment for a term which may extend to seven years or with fine, or with both."

On the next day, the Khatib refuted his allegations, stating that he had said that a section of so-called intellectual and educationists is, after 23 years of independence, treacherously trying to hand over Bangladesh to India. He also said that he had no affiliation with any political party and never indulged in any politics. He, however, admitted his association with the Shammilito Shangram Parishad. Despite these means of self defence, there was a countrywide movement asking for the trial and punishment of the Khatib. — ASK

Sexual Harassment Outlawed in Schools, Workplaces

The Philippines now has a law against sexual harassment. For the proponents of Republic Act 7877 or the Anti-Sexual Harassment Act of 1995, getting the law passed was a race against time and a last-ditch effort to break through ingrained biases.

But finally, the bill was passed February 9. The bill's passage came after two years of consciousness-raising, lobbying and monitoring of legislative developments by both government and private sector groups.

The new law covers the workplace as well as the school and training environments. Those who are liable are persons who have the "authority, influence and moral ascendancy over another," and who seek sexual favours.

Sexual harassment is committed in the workplace when sexual favour is made as a condition in the hiring, reemployment or continued employment of an individual or in granting favourable compensation, terms, conditions, promotions or privileges.

Discrimination against the employee as a result of her/his refusal to grant sexual favours, and the creation of an intimidating, hostile or offensive environment for the employee also constitute harassment.

In schools or in a "training environment," sexual harassment is committed when: it is done against one who is under the care, custody or supervision of the offender; it victimizes one whose education, training apprenticeship or tutelage is entrusted to the offender; and sexual favour is made a condition to giving passing grades, granting honors and scholarships or paying a stipend, allowance or other benefits.

The teacher or trainers liability is present whether or not the object accepts the request, demand or requirement. The law makes it the responsibility of companies, schools and training-related sites to educate everyone involved on sexual harassment. Preventing harassment and resolving complaints are also the responsibility of the employer and the school management.

Those found guilty may be imprisoned from one to six months and/or fined P10,000 to P20,000.

— Depthnews Young Asia

Aussie Criminals Face Harsher Penalty

Criminals in Australia's New South Wales province have been warned that they could spend the rest of their lives in jail if convicted of a third serious crime.

The state's new Labor Premier, Bob Carr, whose party squeezed into power on a tiny majority in March provincial elections, says he will give priority to new legislation designed to curb serious crime.

The plan is similar to the "three-strikes-you're-out" law (the phrase is a baseball metaphor) unveiled by United States President Bill Clinton in last year's State of the Union address.

Under the proposed Repeat Serious Offenders Act, Judges will be told to apply the harshest penalty for those found guilty for a third time of offences such as rape, murder, armed robbery and drug-trafficking.

The courts will keep the discretion to apply lesser penalties where judges see fit, but judges will have to explain their reasons for making such a decision.

The move to tighten penalties came to a head in March when Liberal Premier John Fahey said that if re-elected he would build more jails to house any increase in the jail population as a result of the new laws.

Fahey said: "The legislation will require that the courts make the protection of the community their overriding concern when dealing with repeat offenders."

He also promised that the Judicial Commission, the judges' watchdog, would be expanded "to reflect victims' interests."

Carr not only endorsed his opponent's proposals but added that in the case of major convictions there would be no alternative to a life sentence.

The crime uproar followed the release of a rapist, Fred Many, after serving eight years of a 20-year jail term for the rape and attempted murder of a 15-year-old girl.

Many crime victims have enthusiastically endorsed the proposed legislation as long overdue. Many victims who have spoken out are members of the Homicide Victims Support Group.

Leading Sydney newspapers are also supportive. The vociferous clamour for action is in danger of drowning out the other side of the argument.

Ken Buckley, vice-president of the New South Wales Council for Civil Liberties, warns that the "three strikes and you're out" legislation is "a dangerous over-reaction that could easily herald the return of the death penalty."

"They'll build lots and lots of jails," says Buckley. "They're going to have to build geriatric wards in the jails now, because life means life."

— Jeff Curran from Sydney, Gemini News.

Judges Turning to Crime

CARACAS, May 18: When Venezuelan police caught a woman judge allegedly taking a bribe from a defendant, her first reaction was to hurl more than one million bolivars (5,860) in ill-gotten cash out of her 20th floor flat.

But it was not just banknotes that went out the window.

The incident, dubbed "the night it rained money" in the press, has further eroded what little faith remained in Venezuela's notoriously crooked judicial system.

The government hopes Judge Melida Aleksic Molina's trial will be a test case showing its new commitment to stop the rot within the judiciary, which most analysts say has worsened rather than improved in 37 years of democracy. Judicial sources say many unethical judges, shaken by the Aleksic Molina case, are terrified that the spotlight will turn on their own shady dealings.

It is common for judges to embezzle funds and take bribes or "favours" to speed up cases, to "lose" crucial documents, or to swing decisions in one direction or another, the sources say. Justice Minister Ruben Creixems told Reuters there were 2,400 formal allegations pending against many of Venezuela's nearly 1,300 judges for corruption, incompetence or failure to perform their duties.

Although various judges have been investigated and dismissed in the past, none have been jailed for their crimes in four years at Venezuela's anti-corruption court. Judge Edith Cabello de Requena has presided over only one successful prosecution of a crooked colleague — a judge caught stealing money set aside for children in state custody, who fled the country to avoid prison.

"It's depressing for the honest judges to hear of these [corruption] cases. We feel ashamed and discouraged,"

Cabello De Requena said in an interview, adding that despite public perceptions, not all judges were corrupt. "It's a generalization that damages the system and our democracy."

Although corruption among judges is winning the headlines, lawyers, legal assistants and secretaries are often the real culprits. "People test your capacity to be corrupted with a small gift at the beginning like a bottle of perfume," said one judge's legal assistant.

"If you accept, the gifts get bigger," he said, adding that he has rejected bribes "on a daily basis" ranging from cash and a flight to the Caribbean island of Aruba to a hen, bags of fruit and even half a dozen pairs of shoes. One judge he worked for accepted a free flight to the provinces every weekend from a businessman eager to curry his favour.

Corruption has been depressingly familiar to Venezuelans in other areas as well. Their former President Carlos Andres Perez was impeached in 1993 and is under house arrest for an alleged 17 million currency swindle. His predecessor Jaime Lusinchi, who lives in Costa Rica, faces arrest back home on accusations he embezzled state funds to buy 65 jeeps for political supporters.

The government of President Rafael Caldera, whose clean image and anti-corruption stance helped catapult him to power last year, admits the judiciary is in crisis.

Reformers point the finger at the method of selecting judges, which they say is politically motivated and tests candidates' academic aptitude rather than their conduct. Other factors include the sluggish bureaucracy and vast backlog of cases, which leave clients desperate to resolve their cases by any means, and a general feeling of impunity.

The newly exposed corruption among judges has provided a final straw for many Venezuelans.

Milk Ads Put Babies at Risk

Indian consumer activists have taken baby milk manufacturers to task armed with watertight legislation, reports Priyadarshini.



NEW DELHI — Consumer activists in India have not slackened their guard against the improper marketing of breast milk substitutes.

A voluntary agency, The Association for Consumer Action on Safety and Health (ACASH), has lodged a criminal complaint against Nestle India Limited, a manufacturer of weaning foods and other milk formula products for infants.

In the complaint filed under the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992, the company was accused of failing to "observe fully the product labelling requirements as laid down in the Act."

ACASH bought Cerelac and Lactogen products to examine their labels. They found that these do not carry the mandatory warning that infant milk substitutes or infant food is not the sole source of nourishment for the infant.

Besides, the print is so fine — less than five millimetres — which is contrary to what the Act specifies.

Moreover, the advertisements for Cerelac, a cereal-based weaning food, seem to be promoting the product as an infant milk substitute and not merely as infant food. The ads which have appeared in various magazines advise mothers to start feeding Cerelac to babies at the age of four months.

Points out ACASH: "What it does is to wean babies away from the mother's milk at an age earlier than what is medically advised."

The Act defines infant food as any food to complement mother's milk to meet the growing nutritional needs of the infant after the age of four months.

An infant milk substitute, on the other hand, is defined by the Act as anything that replaces or tends to replace mother's milk. Cerelac becomes such a product by being promoted for use in the fourth

month, and should not be advertised at all, explains ACASH.

Dr Arun Gupta, a paediatrician and national coordinator of the Breastfeeding Promotion Network of India, agrees. "Since this product is advised to be used in the fourth month, it in fact becomes an infant milk substitute and hence a greater violation."

Another possible violator is Bonny Meal, also an infant food product, which is advertised in the main copy as intended "for babies over four months". But at the bottom of the page the ad states: "From the age of four months, provide your child with solid foods along with mother's milk." (Emphasis added).

The case gains greater significance in the context of a worldwide campaign to promote breastfeeding, the campaign is supported by the World Health Organization (WHO), United Nations Children's Fund (UNICEF), and government and non-government groups like the Breastfeeding Promotion Network of

India.

India had been a late joineer in the effort to check the bottle menace. The Infant Milk Substitutes Act was brought into force only in August 1993, a decade after UNICEF began the initiative.

But what the country brought into force was a watertight legislation. The Act prohibits the advertising of breast milk substitutes, the distribution of free samples to mothers, promotion of the product in hospitals, the giving of the products as gift or sample to health workers, and financial inducement to persons, commission on sales to employees or payments of any kind to health workers.

The government has empowered three voluntary agencies — ACASH, the Indian Council for Child Welfare and the Central Social Welfare Board — to make written complaints to the courts of law throughout India, should a violation of the Act occur. ACASH is a voluntary association of doctors, health professionals,

consumer activists, lawyers, educators and social workers.

Says Dr Gupta: "The Nestle case could be an effective warning to manufacturers to avoid misleading consumers by clever use of words."

The Act clearly provides that containers of infant milk substitutes or feeding bottles should carry legally prescribed information. Examples of words that have to be avoided are "recommended/approved by the medical profession", "full protein", "complete food" or "energy food".

The Act also provides that educational material on prenatal care or infant feeding for the purpose of promoting the sale of infant milk substitutes should not be used neither should postcards or placards on these topics be displayed in hospitals.

Violation of the Act can lead to a fine and/or imprisonment up to three years.

Meanwhile, the World Alliance for Breastfeeding Action (WABA) based in Penang, Malaysia has called on governments to include the protection and promotion of breastfeeding in the Platform for Action of the UN Fourth World Conference on Women, to be held in Beijing in September.

Besides its unique benefits to child and maternal health, breastfeeding increases women's confidence in their ability to meet the needs of their infants, and reduces dependence on medical professionals, according to WABA.

"Breastfeeding focuses attention on the need to ensure gender equality in the distribution of food and other resources within the household and community, (and)... challenges the male-dominated medical model and business interests that promote bottle-feeding," the Alliance adds.

Depthnews Asia