

Where do we stand now, constitutionally?



Our parliament is yet to amend the Constitution in line with the Supreme Court verdict, while the verdict itself is in the full force of the law. What, then, is our constitutional position now? And how we are going to put all the questions, speculations and confusions brewing around this at rest?

M. SHAH ALAM

It is becoming increasingly clear that it is not as easy for the government to address the post-Fifth Amendment judgement situation as was thought by many. The task has been further complicated by the Seventh Amendment judgement. There is speculation that the State-Religion part of the Eighth Amendment can also be challenged.

True, the power to amend any constitution exclusively lies with the parliament. It is equally true that the verdict of the

apex court has the force of law and is binding on any individual or institution in the country. Our parliament is yet to amend the Constitution in line with the Supreme Court verdict, while the verdict itself is in the full force of the law. What, then, is our constitutional position now? And how we are going to put all the questions, speculations and confusions brewing around this at rest?

At first glance the issue appears to be more of procedural nature than substantive, because considering the imperative-ness of the apex court's verdict it only

remains for the government to take necessary steps to implement the verdict. One way to do it is to make necessary gazette notification to reinstate the restored provisions and reprint the Constitution.

However, the Fifth Amendment has been declared void subject to many connotations. The necessity to take a huge number of condoned and cancelled provisions of the Constitution into consideration with their chain reactions, though characteristically procedural in nature, possesses great substantive value. This is a unique situation.

The Bangladesh Constitution was never repealed, but suspended. The military rulers who suspended the Constitution revived it in full measure only after they provided validity to their acts and actions by way of amendments made by the parliaments elected under special circumstances. The Supreme Court functioned under military rulers,

and condoned their acts and actions.

Now, for the first time, the apex court has given a landmark judgement that the military rulers' coming to power and their acts and actions were illegal. However, many of their acts and actions had to be condoned for understandable reasons.

The judgement would restore many of the features of our original constitution of 1972 and the ideals of our war of liberation. The task of the government after the judgement has few parallels and precedents in history.

This explains why accomplishing the task may prove bumpy. Conventional constitutional jurisprudence may not be of much help here. A unique situation has to be dealt with uniquely, setting precedents rather than taking a cue from any past precedents.

Under the extraordinary constitutional situation in which Bangladesh finds itself now, two distinct approaches for its possible resolution are identifiable. First is that

the government is under an obligation to take the judgement into full cognisance and correctly put the relevant provisions in the body of the Constitution by practiced administrative mechanism, i.e. gazette notification. Second is for the Parliament to amend the Constitution based on the judgement, or in other words, to implement the judgement by amendment.

Both approaches are legally tenable. It is now more a question of the government's political choice as to how it would proceed. However, one cannot escape the thought that had the party in power not commanded two-thirds majority in the Parliament and the opposition had not cooperated, how would it move with amendment approach? In that case gazette notification would be the only option, for the verdict of the apex court cannot remain unattended to.

Whatever the method employed by the government, it will have to face the socio-political consequences of the judgement or the purported amendment. Contrary to what many may think, it is unlikely that it would be less onerous for the government to ride on the apex court's judgement and implement it executively.

It is also clear that the government does not want to see the full impacts of the judgement realised, if the judgement is interpreted in a strict sense. This especially relates to use of certain Islamic terms in the Constitution, religion and religion-based parties. Of course, the government, by dint of its two-thirds majority, has the option to obviate such impact by amendment.

The judgement is in full force; the expected amendment is waiting. What is our constitutional position now? Hypothetically speaking, should a case now come before the Supreme Court which requires reference to the impugned provisions of the Constitution, which law

would be referred to -- pre-judgement provision of the Constitution or the relevant portion of the judgement? The situation warrants taking of prompt measures, legislative or executive. Constitutional uncertainties ought not to persist for long.

Considering the uniqueness of the situation and the fact that the details of the judgement would need to be ascertained in concrete words before they could be inserted in the text of the Constitution, and also that some of the impacts of the judgement the government would like to obviate, can the above two methods be combined?

To repeat, the Parliament's amending power is exclusive. On the other hand, the Supreme Court is the guardian of the Constitution, having the exclusive power to declare not only any ordinary law unconstitutional but also any law amending the Constitution, if such amendment violates its basic structures.

The situation demands that the government combine the methods, first, by declaring unequivocally the imperativeness of the judgement, clarifying and concretising its provisions, and then also declaring its intention, if any, to amend certain provisions revived by the judgement.

Although it may appear unique, this can be done by an amendment act of the Parliament. This will resolve the dichotomy of the two, shorten the time for constitutional readjustments, and uphold the respective powers of the Parliament and the Supreme Court. In addition, some constitutional issues not covered by the judgement, but long discussed in the community, can be considered in the same amendment act.

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Mission MDG

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ANDREW MITCHELL

Next week leaders from around the globe will meet in New York for the UN Millennium Development Goals (MDG) Summit. The actions they take over these three days could hold the key to creating a stable, successful future for millions of the world's poorest people.

The MDGs were agreed 10 years ago with a palpable sense of urgency. Something needed to be done to save the lives of mothers dying needlessly in childbirth, to get the millions of children missing out on an education into school, to fight the spread of killer diseases and first and foremost to halve the number of people living in poverty across the world.

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The Summit takes place in the tailwind of the global financial meltdown. In this difficult economic climate the temptation is for nations to pull back from the international commitments they have made. It is a temptation that the UK government is determined to resist. The new coalition government has been clear -- we will keep the promises made to the world's poorest people, and maintain our commitment to reducing poverty around the world.



But aid is only part of the story. Trade and investment are the engines of economic growth, offering the only sustainable way out of the grinding poverty that afflicts nearly a billion people across the

globe. Boosting private investment and enterprise in the developing world has the potential to help us meet every single one of the MDGs. People with secure jobs and fair wages have the opportunity to lift

themselves out of poverty.

UK goes to the Summit putting women and girls at the forefront of its efforts. Investing in them will reap dividends. How can countries propel themselves towards sustainable economic growth when 50% of its talent are not given the opportunity to make a contribution? Every day about 1,400 women die in pregnancy or childbirth, nearly all of them in the developing world. This cannot be allowed to continue. UK will be making a huge effort at the Summit to bring an end to this daily tragedy and will be pushing other governments to do likewise.

In Bangladesh, for instance, we are working with the government, international donors and civil society organisations to stop the terribly high rate of more than 12,000 women dying each year from complications relating to pregnancy. That's more than one every hour.

Through our aid, over the last three years almost 350,000 pregnant women have received quality antenatal care; more than 100,000 births have taken place with skilled attendance; and almost 100,000 newborns have received immedi-

ate skilled care. The scale of the challenge remains large, but by improving the quality of health services we can start to ensure that pregnancy is no longer a life threatening condition.

And what of the 2,000 deaths a day -- mostly children, the vast majority preventable -- from malaria worldwide? The disease leaves only tragedy in its wake -- families suffering, countries robbed of future talent and huge burdens on health services already at breaking point. It is right that tackling malaria is also right at the top of UK's agenda for the summit.

Everyone of us has an interest in meeting the MDGs, but they can only be met with the determination of governments, charities and businesses, civil societies and citizens. UK has been a world leader in tackling the MDGs, and we have been working night and day over the past few months to make sure next week's summit is a success. We now urge others attending the summit to join UK in agreeing a course of action that will meet the MDGs by 2015, setting us on the path to eradicating poverty once and for all.

Andrew Mitchell is UK Secretary of State for International Development.

Be tolerant we must

Therefore, regardless of our colour, background, creed, and our individual or communal battles, we must not hate. We must not criticise without knowing, we must not be hurtful without understanding and, above all, be tolerant we must.

NABILA RAFIQUE

TERRY Jones, a pastor in the State of Florida, recently announced that his church comprising of about 50 people would commemorate 9/11 by burning the most sacred, revered, loved, object and the very centre and source of Islam and its jurisprudence -- the Quran.

After international criticism, several warnings from senior American officials, including Hilary Clinton, US Secretary of State, Robert Gates US Defence Secretary, General David Petraeus, the US commander in Afghanistan, Mr. Jones eventually announced his plans to back out, and urged his supporters to do the same.

This threat to burn a Quran to commemorate 9/11 has outraged people all over the world, and seriously hurt and disturbed the minds of many sound-headed, decent, free-thinking human beings -- both Muslims and non-Muslims alike. It is even more of an act of shame

and gross indecency, especially considering the fact that this has happened in the holy month of Ramadan when Muslims pray, fast, re-find themselves and dedicate their time for their Creator.

Though the plan has been cancelled and the Quran has not been burnt, I regretfully believe the essence of this event is very much alive and breathing. This is not just an act of an insane "fringe figure" craving to seek attention, and teasing security enforcement officials.

This event is but the latest of series of events evidencing a consistent and live phenomenon, more commonly known as Islamophobia, which is fueled and itself fuels deep rooted intolerance and hatred towards and by Muslims across the world -- especially since September 11, 2001.

Thomas Hammarberg, one of the members of The Council of Europe Commissioner for Human Rights, noted in an article in June 2008 that there has been increasing physical attacks on Muslims, including their places of wor-

ship, and destruction of property since 9/11. Women wearing hijab have also been targets of harassment and abuse.

Human Rights First, a human rights organisation, published in a report in 2008 instances of grievous physical attacks on individuals in US, UK, Denmark, Belgium, France, Russia and Serbia. Unfortunately, Islamophobia, baptised as "War on terror," is also practiced by many nations at a government level as well.

A note on this sinister madness is incomplete without condemning those who defile the name of Islam. On the issue of the Quran burning, some people, in my knowledge, are of the opinion that Muslims have brought this upon themselves by creating the wrong examples of what Islam truly stands for. Indeed the unstoppable suicide bombings, kidnapping, gun battles in the name of a peaceful religion engenders and fuels this hate against Muslims by others.

Al-Jazeera, in a recent report on the Taliban suicide bombers, showed men in a congregation singing songs of their intended death and, as they call it, their martyrdom. They are also reciting the Quran and saying their prayers as if they are true, believing Muslims. When Muslims themselves fail to distinguish such acts as being antithetic to Islam, how can non-Muslims do the same and

believe Islam for what it really stands for.

These acts of counter and reciprocated aggression, intolerance and hatred have led us to face and hear about these painful realities of today. Being miles away from Ground Zero in New York and also from the conflict zones we are left with the media to form our own inadequate perceptions about these issues. I say inadequate because these perceptions are created without tolerance and are devoid of consideration for truth.

No one should be happy hearing either about an American or Israeli soldier getting killed by Taliban, a Palestinian refugee camp getting blasted, young Muslim men being horded off to secret torture cells, and most significantly burning of either the Bible or the Quran.

We recently commemorated the tenth year of the 9/11 attacks. Every year since then families across Afghanistan and Iraq have also commemorated the deaths of their loved ones. Lamis Andoni, an independent analyst, wrote in one of her articles about an American peace activist, Kate Kelly, who said: "The drones which hover over potential targets in Afghanistan, Pakistan and Yemen create small 'ground zeroes' in multiple locales on an everyday basis."

Even through these bloodbaths in Afghanistan, Iraq, Pakistan, and Palestine continue we must be tolerant and strive



and aspire to educate ourselves on the importance of tolerance.

The fact that the recent Quran burning issue has received such huge international condemnation confirms the ultimate good senses of all. We must understand and believe that nothing good comes out of hate. It is a three dimensional sword which injures and hurts every way, with its every turn. Hate

is the breeding ground of all pain.

Therefore, regardless of our colour, background, creed, and our individual or communal battles, we must not hate. We must not criticise without knowing, we must not be hurtful without understanding and, above all, be tolerant we must.

Nabila Rafique is a lawyer, writer and researcher.