



গণপ্রজাতন্ত্রী বাংলাদেশের সংবিধান

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THE Preamble of the 1972 Constitution of Bangladesh envisaged and emphasised the core ideals for which Bangladesh as a nation struggled for national liberation. These core lofty ideals were nationalism, socialism, democracy and secularism- known as four basic principles of the Constitution. These four principles are also called poll stars, goal or ideology of the state and “these goals should not be deviated at any event” as has been aptly opined by the apex court. We have seen to our dismay that these ideologies of the nation have been turned into silly matters of pull and haul by the military dictators in the abysmal constitutional discourse of the country. It is claimed that the 15th Amendment has restored these four principles in the Constitution. However, this write up evaluates that this claim is marred by the contradictions in changes with hindsight. Apparently the 15th Amendment has restored in the preamble the four principles of nationalism, socialism, democracy and secularism. However, this restoration is to be examined in view of other changes in the preamble and Part-II of the Constitution. First, while secularism has been restored as a state policy, insertion of “Bismillah-ar-Rahman-ar-Rahim”, retaining 'Islam' as state religion and granting indirectly a fundamental right to association on the basis of religion in article 38 will have bewildering effect on secularism. Secularism and state religion are self-

contradictory and these two concepts cannot go hand in hand. However, the reality is that our Republic has lost its secular character; it is now with a hybrid polity- a fusion of Islam and secularism- an ideological hotchpotch which is hardly based on any democratic principle. Second, by the 15th Amendment 'Islam'-based politics has been given a new lease of life. Article 2A and 12 are contradictory both in terms and philosophy, although both the concepts have been given the status of basic structure of the Constitution. The irony is that this 'internal contradiction of the Constitution' between secularism and 'Islam' as state religion has been maintained by a traditionally secular party Awami League. It is likely that this will open a floodgate for recognition of 'Islamist' parties in the political discourse of the country. Third, in fact secularism received so far three upside down setbacks: first, “absolute trust and faith in the Almighty Allah” was substituted for secularism by General Ziaur Rahman; second, further blow to secularism was received when General Ershad inserted 'Islam' as State religion in the Constitution; and third, the 15th Amendment has now given another death blow to secularism by reviving it and at the same time retaining 'Islam' as state religion and putting “Bismillah-ar-Rahman-ar-Rahim” in the beginning of the preamble. History dictates that our political leaders have miserably failed to steer the nation in accordance with these four ideologies. Nationalism coined with “Bangalees” has since its adoption in the original

Constitution been one of fundamental points of difference and divergence between mainstream political forces in the country. This sensitive politics of nationalism has entered into its third chameleonic phase (the first phase being 'Bangalee nationalism' (1972-1975); second phase being 'Bangladeshi nationalism' (1975-2011)) with “Bangalee-Bangladeshi” hybrid nationalism by the 15th Amendment despite the apex court's ruling on reviving the original provision of secularism. Thus 'Nationalism' as a fundamental principle in the Constitution has lost its character and instead of being an ideal goal for the nation, it has now been turned into a silly political matter of pull and haul at the hand of political parties for their vested interest. Likewise, socialism received a setback with the political change over in 1975. Socialism was amended by General Ziaur Rahman with qualification to mean 'social and economic justice'. In the same way, democracy as an ideology did not have any opportunity to flourish because of weak leadership. The first blow to democracy was hit by the 4th Amendment with one party dictatorship introduced by the very party which pioneered national freedom and the Constitution making. The second blow was stricken by General Ziaur Rahman and then by General Ershad through imposition of Martial law and putting the Constitution, the supreme law of the country, in subordination of martial law. Democracy had a fresh lease of life after 12th Amendment in 1991 but again it was pushed to the ground by the then BNP Government and the



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President of the Republic in 2007 followed by emergency and military intervention for two and half years. Struggle always followed to restore democracy by the opposition parties and once democracy or democratic environment piped through the widow of the Republic, it was again destroyed by the party in power for the party interest or power expectation. It was the Awami League which pioneered movement for free and fair election under CTG and ultimately it was achieved with huge enthusiasm. Ironically it is now Awami League which gave, by 15th Amendment, the death-blow to CTG, an instrument of free and fair election- one of key components of democracy. The changes that have been brought into the preamble raises one important question from constitutional jurisprudence: Does the

insertion of “Bismillah-ar-Rahman-ar-Rahim” in the preamble amount to destroying basic structure of the Constitution? It remains to be seen how the judiciary reconcile this distorted secularism in view of the judgment in the 8th Amendment and also of the 5th Amendment cases in which the apex court held categorically that the preamble is not only a part of the Constitution, it now stands as an entrenched provision that cannot be amended by the Parliament alone. Ironically the parliament has not only made this distortion but also made all the provisions of the preamble 'eternal clause'. We will have to patiently wait how the apex court comes forward with its judicial activism.

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RIGHTS ADVOCACY

The minority protection

ESHITA TASMIN

PURNIMA rape case”, this is probably one of the most famous case about which everyone is aware. On 8th October 2001, Purnima Rani Shil, a 15 year Hindu girl was gang raped by 25-30 men. It was an incident on 2001 after the election took place. It was nothing but a nasty political ploy to harass Purnima's family just because they were supporter of a specific political party. After the gang rape, the young girl was mentally shocked and totally shattered down. Even after passing many years her family was not finding any hope to get justice, Purnima's family was being threatened, they were offered bribe to withdraw the case. But the young girl did not lose hope and finally on 2011, 11 accused were sentenced to life imprisonment and the court also fined tk 1 lac for compensation to the victim's family. From 2001 to 2011, it was quite long journey to get the desired decision from our judicial system. Purnima had to hold her patience tightly. Because on 14th October 2001 Purnima, herself filed a case in the magistrate court and on 2004 even after the passing of almost three years no hearing was made. The judges and sometimes the PP (public prosecutor) were absent on a regular basis whenever the date of the hearing was fixed. But the young girl was brave enough to show her courage. She could have compromised with money or with the situation but she did not do so. She kept full rely on our judicial system. She did not consider herself as girl from minor community but the young girl had full belief that she will not be deprived. Article 6(2) of the constitution of the People's Republic of Bangladesh provides that “the citizens of Bangladesh shall be known as Bangladeshi”, but we the Bangladeshis love to be called as “Bangalee” rather than “Bangladeshi”. It is because of our mentality, a mentality which inspires us to be introduced with our culture, our custom, our traditions and our heritages. We celebrate “Pohela Boishakh” in a manner as Eid, still we are maintaining “Halkhata”, we are observing

“Nobanno Uthoshob”, we welcome each seasons with separate stiles and different passion. When these has becoming our identity, our state practice, than how come in special circumstance or in special areas a group among us become so resist which just does not go with our “bangalee” image! According to Article 9 of the constitution (part 2, the fundamental principle of state policy) absolute trust and faith in the almighty Allah shall be the basis of all action but meanwhile we do believe that a man can be believer of a particular religion but we should have equal respect for the people of all other religion. If we go through our fundamental rights, ensured by the constitution than we can realize how nicely and wisely our rights (of all citizens of all religion) have been protected. Article 27 ensures “equal protection of law”, article 28 prohibits, “discrimination on the grounds of religion”. Article 41 is the ultimate provision which shall always be focused. Article 41 provides-“every citizen has the right to profess, practice or propagates any religion and religious community or denomination has the right to establish, maintain and manage its religious institution”. But we are just unable to practice this provided provision in the promised manner. Because from 1971 till now we have shown our inefficiency to protect our minor communities. And the recent attack on Ramu has just reflected our same old “racist” mentality. British ruler's presence in Indian sub-continent was for about 350 years and they ruled us about 190 years. That long period of time was good enough to get our nerves. In 1905 the first partition of Bengal was made for the administrative purpose. And finally in 1947 the whole world saw the birth of two nation called India and Pakistan. The great leader GANDHI said-“Leave India to God. If that is too much then leave her to anarchy”. The partition of India had shown the biggest riot ever in this sub continent based on religion. Women were raped, people were looted. Not only the whole country was divided but the division of Bengal and Punjab brought a serious riot which took lives of unlimited Muslims, Hindus and Sikhs. Even when we see the history of our libera-

tion war in 1971, the Pakistani Army's target was we “the Bangalees” but the Razakar's focus was to attack the minors. Most of the Razakars were dreaming to kill all the minor groups(especially Hindus).one of the witness, “Abbas Uddin Ahmed” who is the 7th prosecution witness against S.Q. Chowdhury testified in the International Crimes Tribunal-1 that up to 60/70 Hindus were killed in one single day. This is nothing but the blind aggression in the name of religion. The independence is not the personal achievement of a specific group of people. Muslims, Hindus, Buddhists, Christians all equally participated in the war. All gave same afford, equal sacrifice than why do a group of people always attack the minors in name of religion?! 88% Muslims are currently residing in Bangladesh. But we strongly believe that only 2% among them have been trying to make differences and showing their religious racism. The Ramu attack is witnessing the same old story. Buddhists are one of the most gentle and peaceful religious community. Buddhism is one of the most humanism influential religions. During 6th and 10th century this religion contributed a great impact on the ancient civilization of Bangladesh. Currently Buddhism is the third largest religion in Bangladesh with about 0.7% population. After all these facts the angry Muslim group attacked in Ramu and at least they burnt 12 temples, damaged 50 houses. And the issue was some photo tagged on a social network named “face book”. The attackers claim that photo tag was about our Prophet (pubh) which hurt their religious sentiment. Now the question is what religion they are talking about?! Does Islam allow us or encourage us to do all these violent activities? When our beloved prophet (pbuh) was selected as the ruler of Medina (currently a city of Saudi Arabia) he signed a treaty between himself and the Jews, Christians and pagans of Medina which is called the “Charter of Medina”. The constitution was drafted by the Prophet (pubh) and the constitution ensured the security of all communities, religious freedom, the



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security of women, a judicial system for resolving judicial dispute and all other necessary provision which made the Medina Charter the best ever men made constitution. When the Prophet (pbuh) showed us the right way to live peacefully with the people of all other religious community, than how could we disobey him!! Yes, we definitely disobeyed him by attacking the non Muslims time to time. Islam means peace. The peace which a human being can acquire by submitting his will to almighty Allah. Than how the Muslims can do these type of misconducts, violence, and crime!! Once a mistake is made, it will be called mistake but when it will be repeated than it will become a crime and not a mistake. “Mistakes”, “misconduct” and “misconception” about Islam is a great obstacle for us to practice Islam in a right manner. The mentioned activities are conducted by a group of people who are misusing, in fact abusing our religion to achieve their political goal. One of such another incident is needed to be mentioned. During 1992-1993, a biggest religious riot took place in India regarding “Babri Mashjid”. Almost 900 people were killed in that riot (575 Muslims and 275 Hindus, 45 unknown and 5 others). To take the revenge of Muslim killing during the riot, a

group of Bangladeshi Muslim attacked on the Hindus of Bangladesh. Lots of shops and houses of Hindu families were destroyed and burnt. Few Hindu women were raped. This was nothing but an awful situation. Because, India is our nearest neighboring country. India is the country which has helped us tremendously during our liberation war by providing shelter, food, and war training and so on. Just because of the attack on Muslims in India, we are torturing our Hindu people with the justification that Hindus are mainly originated from India!! This is nothing but deviation from sanity. This incident, the Ramu attack, all these will lead us to a drastic situation in front of the whole world. It will do nothing but fully ruin our image in the whole world community. We have to get out of this mean mined mentality. We have to ensure security and protection of our minority communities. Otherwise in front of the whole world the Muslims will be defamed again and again. This is the time to wake up and boost ourselves with positive vibes, ignore the negative influence and show the world that we the Bangalees treat people with humanity and we hate to discriminate on the basis of religion.

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