

The disagreements over presidential power and state religion

Two constitution reform commission members on their differences



VISUAL: ANWAR SOHEL

In Bangladesh, a ceremonial President once built a road through a wetland, ignoring objections from state institutions. It may become even more difficult for such institutions to disregard the wishes of an elected President. As a result, an elected and empowered presidency could contribute to the weakening of state institutions.

SHARIF BHUIYAN AND FIROZ AHMED

As members of the Constitution Reform Commission, we, Sharif Bhuiyan and Firoz Ahmed, submitted two written notes to the Commission—one dated November 23, 2024, on strengthening the office of the President, and another dated December 31, 2024, on the inclusion of “Bismillah” and a state religion in the Constitution. In those notes, we set out our shared views, which differed from those of the majority of the other Commission members.

The note on the office of the President was submitted at a time when the majority of the Commission favoured strengthening that office in two ways: first, by providing for the direct election of the President; and second, by conferring specific powers on the office. We differed from that view. Our views led to further discussions on the matter and were eventually adopted by the Commission.

Although our views on religion were not accepted, they contributed to the subsequent discussions and helped bring about certain changes in the Commission’s final recommendations.

unbridled power and to create a balance of powers, two main lines of reasoning have been discussed by the Constitution Reform Commission. The first is to address the concentration of power through several legal and institutional measures. The second is, in addition to these measures, to establish a system of power-sharing by strengthening another office parallel to the Prime Minister’s office.

1. The proposal to reduce the unilateral power of the Prime Minister through legal and institutional measures has two components:

a. Constitutionally reducing or limiting the Prime Minister’s unilateral authority. Specifically, a large part of this can be achieved by repealing or reforming Article 70 of the Constitution. Making the Parliament bicameral would also effectively further reduce the Prime Minister’s power. In addition, the Prime Minister’s authority can be regulated by setting term limits, making it mandatory that one person cannot simultaneously hold the positions of party leader and Prime Minister, and through several other such measures.

b. By strengthening state and

the possibility of the presidency evolving into a new centre of power cannot be ruled out.

b. Due to the President’s intervention, the regular functioning of a Prime Minister elected by Parliament may be obstructed, disrupted, or delayed. A solution to this may be possible, but it would require the creation of various legal mechanisms and good intentions, both of which are largely dependent on individuals.

c. The tendency of fragmentation of political parties and public distrust may both increase due to the President’s non-cooperation and adverse role. This is related to the enhanced significance of the presidency resulting from its direct election, as described in paragraph 2(a) above. Various state forces, as well as some members of the public, may consider direct election to legitimise the President’s expanded authority.

In such a situation, the Prime Minister would not only have to face opposition within Parliament but also contend with the President and the forces aligned behind him. This could become a source of political instability.

d. A real concern is that in

provides time, connections, and opportunities to exert influence, which is why there is concern.

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uphold equality, the Prophet refrained from asserting his special status despite the objections of his companions, since such an assertion primarily applied within his own community.

6. The example of several Western European constitutions that include a state religion has been raised in the discussion. It has been argued that this has not turned them into theocratic or undemocratic states.



VISUAL: ANWAR SOHEL

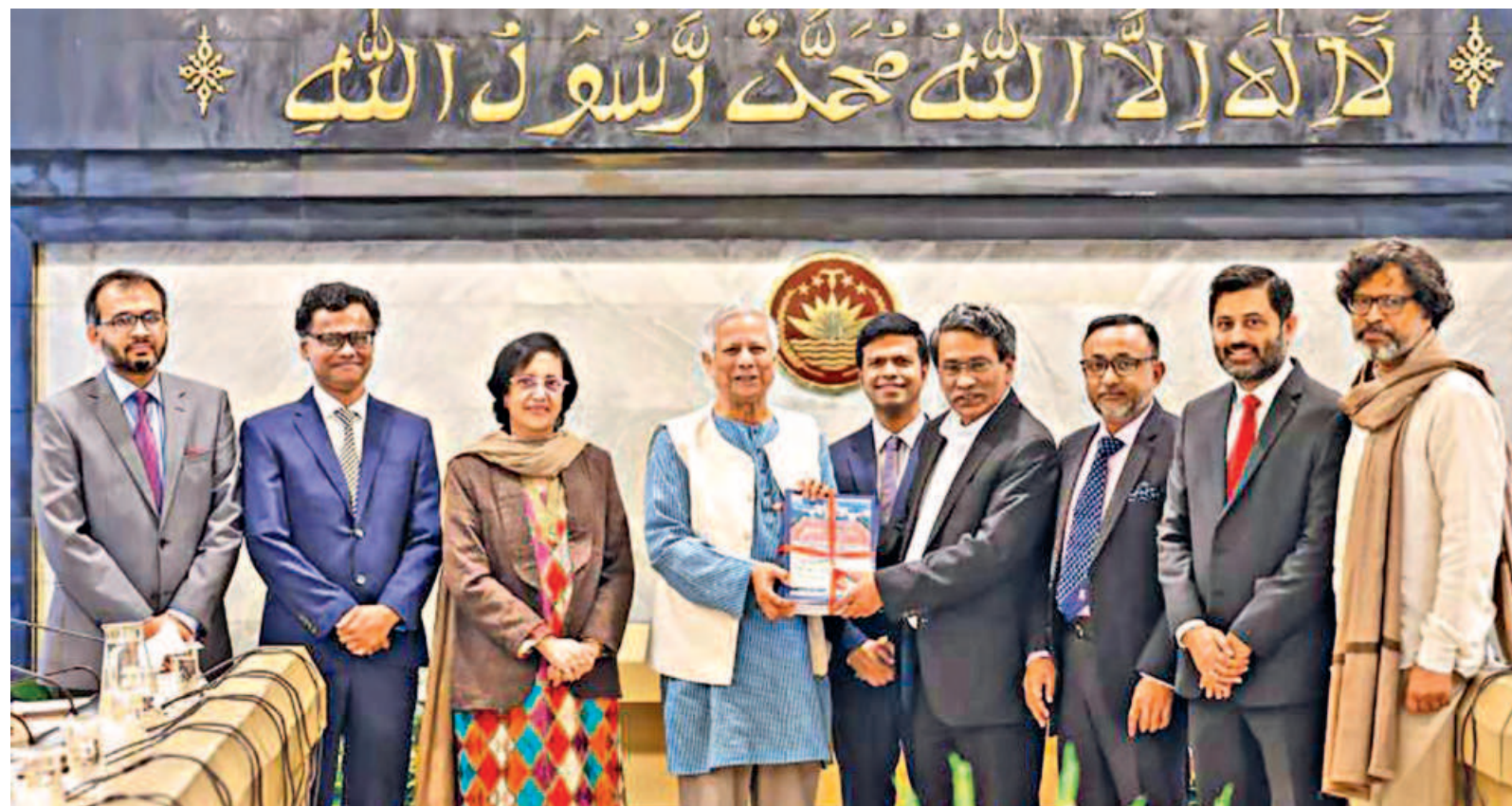


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The Constitution Reform Commission, led by Professor Ali Riaz, officially submitted its final report to Chief Adviser Professor Muhammad Yunus on January 15, 2025.

Further, based on those discussions, the Commission’s report states that the Commission’s members were unable to reach a unanimous decision on this matter.

Since the notes may be of interest to the general public as well as to researchers in political science and constitutional matters, we are presenting English translations of both notes below.

1
November 23, 2024

THE RISKS OF CREATING A PARALLEL POWER CENTRE TO LIMIT THE PRIME MINISTER’S UNLIMITED AUTHORITY

There is no doubt that the concentration of power in the hands of the Prime Minister has given rise to constitutional authoritarianism in Bangladesh. By disempowering state institutions, gradually eroding the culture of accountability, and strengthening the bureaucracy, the office of the head of the executive branch has continually accumulated power decade after decade. Ultimately, this has played a central role in creating the structural conditions that led to elections without voting rights and the emergence of fascism.

To end the Prime Minister’s

constitutional institutions and freeing them from the Prime Minister’s control, it is possible to bring the Prime Minister under accountability, ensure the unfettered exercise of the people’s voting rights, and create an environment where corruption becomes more difficult. In that case, the executive branch would no longer have exclusive authority over appointments, transfers, and decision-making within these institutions.

2. On the other hand, the second proposal does not discard the first proposal. Rather, alongside it, to balance the Prime Minister’s power, the introduction of an elected President—who would carry out certain specified constitutional responsibilities, help counterbalance the Prime Minister’s unilateral authority, and prevent the concentration of power—has been proposed.

In our view, the introduction of an elected President may create the possibility of the following crises and complications in the future:

a. If the President is directly elected, that position would be the only office in the state elected by direct popular vote. This could create a sphere of power parallel to the Prime Minister’s. Even if the President is not directly elected by the people but is instead elected through an electoral college at any level outside Parliament,

many countries, military intervention in politics occurs, centred on the ceremonial office of the President. If the presidency derives its legitimacy from a popular vote, this tendency may increase further for obvious reasons. The Prime Minister is responsible for many unpopular day-to-day actions, whereas the President is free from such responsibilities.

As a result, the presence of a parallel office often prevents the Prime Minister from navigating difficult periods and instead subjects the Prime Minister to multifaceted pressures beyond politics. At the same time, the culture of overcoming political pressure and resolving national crises through compromise among political parties may be delayed or weakened by the President’s increased constitutional power.

Besides, the office of the President may emerge as a point of mediation, with both positive and negative consequences.

e. The office of an elected President may also emerge as a major obstacle to the independent development of state institutions, as well as a new source of corruption, nepotism, lobbying, and pressure. A President who is not required to participate in policymaking or to remain regularly accountable to Parliament bears comparatively less responsibility and risk. Additionally, such a position

to the weakening of state institutions.

In this way, if a parallel presidential office is empowered, the possibility of weakening the elected office of the Prime Minister in Parliament and thereby creating space for undemocratic governance cannot be ruled out. All the risks described above are potentially high.

However, it is also important for the state to restrain the Prime Minister’s power. A more effective solution may be to legally limit the Prime Minister’s authority, ensure his accountability to Parliament, and promote the development of state institutions and agencies. If this path is adopted, it can also be expected that accountability across the three branches of the state, as well as a culture of political compromise among parties, will gradually strengthen.

2
December 31, 2024

ON THE MENTION OF “BISMILLAH” AND THE STATE RELIGION IN THE CONSTITUTION

On this issue, opinions have varied. We are setting them out in writing to avoid repetition, with the hope that this will facilitate discussion.

1. Granting special status to the religion of the majority will create a sense of inequality and indignity among those in the minority. This is contrary to the promise of our Constitution to ensure equality and human dignity for all.

2. The religion of the majority is already well established in society. Mentioning it separately will carry significance regarding the state’s orientation and convey a particular message.

3. A large section of religious scholars has argued that keeping the state and religion separate helps preserve the dignity of religion and serves as a safeguard against its exploitative use.

4. Religion belongs to the respective communities, while the state belongs to all. The state should accordingly be viewed as a collective institution. The Constitution is the supreme law of the state and an expression of the collective aspirations of the people. However, state religion has no real legal significance and is not a collective aspiration, not even of the majority.

5. The Medina Charter may be cited as an example, where no supremacy of any particular community was declared. Rather, it emphasised the collective dignity of all. Similarly, in the Treaty of Hudaibiyyah, in order to

However, in reality, they were initially states defined by religious identity, where people of different religions or sects had to live under oppression and discrimination. Over time, through various reforms, these conditions were abolished, and those constitutional and legal provisions became inoperative. It may be noted that these states were shaped by centuries of bloody religious wars—particularly conflicts among religious sects—which account for this specific reality. Bangladesh has had little experience of such religious wars. Rather, the history of this region has generally been one of tolerance and equal respect.

7. It has been argued that Islam has shaped the distinct identity of our geographical region. While there is truth to this, it presents only a partial picture. From the medieval period, Islam has played a significant role in the development of agricultural and popular society in this region, but other religions have contributed in similar ways as well. Even during the Mughal era, when this influence was particularly prominent, other religious communities were equally involved and played important roles in the development of culture and civilisation.

8. The proposal of a state religion would send a wrong message in terms of international relations as well.

9. It has also been argued that without the mention of a state religion, there would be no practical difference between Bangladesh and neighbouring India; it would be the same as if it were a province. In response to this view, our position is that, as stated in paragraph 7 above, while Islam has played a distinctive role in shaping the cultural identity of the people of this land, other religions have also contributed in similar ways. Collectively, these influences have created a shared cultural identity that distinguishes it from the rest of the world and makes it unique among states.

10. If we aim to move toward nation-building and the formation of a collective national identity, then we must focus on building a strong state by ensuring equal dignity for all religions and cultures and by guaranteeing their own rights to develop.

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