

**From 'Secular' to 'Islam secular' Bangladesh:
*Mapping the Constitutional Trajectories through Law, Religion, and
Performing Arts***

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Dedicated to the fond memories
of my beloved niece
Sasheen Husain
(2000-2020)

Abstract

This thesis studies the constitutional and legal transformation of Bangladesh from a secular democracy (1972) to a secular state with Islam as the state religion, 'Islamosecularism' (2011). The state claims this self-styled secularity to be congruent to the sensibility of its majority Muslim citizenry, with no practical impact on the legal system. However, Islamists, secularists, as well as others not bracketed by those labels consider this religious-secular identity as an aberration. The majority Muslim attribute driven by cultural essentialism reinforces the stereotypes of 'peace-loving Muslims', 'raging Islamists', and 'anti-Islamic liberals'. This thesis argues that the state invokes the binary of 'Islamism v Secularism' to shield its political convenience and divisive role. In order to deconstruct these static identities, the thesis studies performing arts as a field of contesting identity markers of the people of Bangladesh. Different genres of performing arts, both religious and non-religious, portray day-to-day lived relations of people, their hopes, aspirations, and ethos. Therefore studying performing arts in conjunction with the political and legal trajectories leading to Islamosecularism allows this thesis to comprehensively map the changing public sphere in Bangladesh. It identifies how Islamosecularism directly impacts the society and legal system and how Islamists and secularists are constituted and rooted in Bangladesh. The thesis concludes that Islamosecularism though not tantamount to theocracy, erodes the constitutional guarantee of equality and dignity for all citizens regardless of religious belief. While the thesis does not aim to provide a way out from the crossroad of Islamosecularism, it attempts to transcend the boundary of otherness by engaging with divergent performing arts.

Résumé

Cette thèse étudie les transformations constitutionnelles et législatives qui ont fait passer le Bangladesh d'une démocratie laïque (1972) à un État laïc dont l'Islam est la religion d'État, soit une « Islamo-laïcité » (2011). L'État avance que cette conception unique de la laïcité s'accorde à la sensibilité de sa population,

majoritairement musulmane, et n'a aucun effet concret sur son système judiciaire. Cependant, les islamistes, les partisans de la laïcité, ainsi que tous ceux qui ne se retrouvent pas dans ces appellations, considèrent que cette étiquette de « religion laïque » est une aberration. L'attribution d'une majorité islamique engendrée par un essentialisme culturel renforce les stéréotypes de « musulmans amoureux de la paix », « d'islamistes violents » et de « libéraux islamophobes ». Cette thèse entend démontrer que l'État invoque la dichotomie « islamisme contre laïcité » pour protéger son assise politique et continuer de diviser pour régner. Elle a également pour but de déconstruire l'identité figée du peuple bangladais grâce à l'étude des arts de la scène comme une remise en cause de cette identité. Plusieurs formes d'arts de la scène, religieux ou non, dressent un tableau des relations humaines, des espoirs, des aspirations et de l'éthos de ce peuple au quotidien. Ainsi, l'étude de ces arts de la scène dans le cadre des décisions politiques et judiciaires ayant mené à l'adoption d'une Islamo-laïcité nous permettra de dresser un portrait exhaustif de la vie publique au Bangladesh. Nous déterminerons comment l'Islamo-laïcité influence directement la société et le système judiciaire, et comment islamistes comme partisans de la laïcité sont représentés et implantés au Bangladesh. Nous concluons enfin que l'Islamo-laïcité, même si elle ne constitue pas une théocratie, écorche la promesse constitutionnelle d'égalité et de dignité pour tous les citoyens, quelles que soient leurs croyances religieuses. Bien que cette thèse ne vise pas à présenter une solution pour s'extraire de l'Islamo-laïcité, elle essaye de dépasser les obstacles de l'altérité en s'intéressant aux arts de la scène.

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INTRODUCTION

Islam secularism: The Politics of Identity

The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions. [Article 2A]

The principles of nationalism, socialism, democracy and secularism, . . . shall constitute the fundamental principles of state policy. [Article 8(1)]

The unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism. [Article 9]

-The Constitution of the People's Republic of Bangladesh

This thesis studies the standoff between secularism and Islam as the State Religion in the Constitution and the legal system of Bangladesh. The thesis focuses on the intersections of law, religion, and performing arts in the public sphere to understand the impact of the religious-secular constitutional framework. Can Bangladesh endorse Islam as the state religion and yet claim to be secular? Does the guarantee of 'equal status' and 'equal right in the practice' of all religions on a par with Islam ensure equal rights and dignity of all citizens? Can the present constitutional scheme ensure cohesiveness and unity in national life?

In 2016, the Supreme Court of Bangladesh declined to answer these questions in a constitutional challenge to the state religion provision citing lack of a *locus standi* of the petitioners.¹ In 1972, Bangladesh endorsed a secular constitution but was ripped off secularism during its infancy (1977).² In its eighteenth year (1988), Bangladesh endorsed Islam as the state religion.³ In its fortieth year (2011), by the *Fifteenth Amendment* to the Constitution, the country was transformed into a secular state *with* Islam as the state religion, *Islam secularism*.⁴ Under a newly inserted eternity clause, the provisions relating

¹Maher Sattar and Ellen Barry, "In 2 Minutes, Bangladesh Rejects 28-Year-Old Challenge to Islam's Role", *New York Times* (March 28, 2016) online: New York Times <<http://www.nytimes.com>>.

²Under the *Proclamations (Amendment) Order, 1977* (Proclamation Order No. I of 1977). This martial law proclamation was later validated as the *Constitution (Fifth Amendment) Act, 1979* (Act No. I of 1979). The Supreme Court of Bangladesh declared the amendment *ultra vires* in 2010.

³*The Constitution (Eighth Amendment) Act, 1988* (Act No. 30 of 1988).

⁴*The Constitution (Fifteenth Amendment) Act, 2011* (Act No. XIV of 2011) [*Fifteenth Amendment*].

to secularism and state religion have been protected from future amendments.⁵ The constitutional challenge against the un-amendable structure of Islamo-secularism in 2016 was in fact a revived challenge against the state religion provision enshrined in 1988. The original challenge and the revived challenge therefore addressed markedly different constitutional frameworks.⁶ Nine years down the road following the *Fifteenth Amendment*, it would be fair to comment that the newly dubbed religious-secular nature of the constitution, the rationale behind it, and the implications remain understudied.

The limited research published on the subject takes vividly opposing positions. A reading compliant with the government policy claims this provision to be a token recognition of the religious sentiment of the majority Muslim population, without any practical implication on the rights or status of all citizens.⁷ The alternate reading is critical of the state religion/ Islamo-secularism provision and more open to a call for constitutional scrutiny.⁸ However, drawing a discord between secularism and the religious faith of the majority Muslim population and attributing this discord to the rise of fundamentalist politics is commonplace.⁹

In other words, the ‘majority Muslim’ identity becomes the key factor in identifying secularism as a threat to national cohesion. However, by the same coin of majority identity, Islam as the state religion is regarded inconsequential. This finding is counter-intuitive since Bangladesh had a secular constitutional framework for only a brief time as opposed to decades of state-sponsored Islamization. The process of Islamization in Bangladesh has

⁵Art. 7B inserted by the *Fifteenth Amendment) Act*, sec. 7.

⁶Ridwanul Hoque, “Constitutional Challenge to the State Religion Status of Islam in Bangladesh: Back to Square One?” I-CONnect: Blog of International Journal of Constitutional Law (27 May 2016) online: <<http://www.iconnectblog.com>>. The author also noted that the invalidation of state religion provision by the Supreme Court is unprecedented internationally.

⁷S M Masum Billah, “Can Secularism and State Religion Go Together” (2014) 15 ELCOP Yearbook of HR 32.

⁸Shah Alam, “The State-Religion Amendment to the Constitution of Bangladesh: A Critique” (1991) 24 (2) Law and Politics in Africa, Asia and Latin America 209-225 (the author argues that alteration such as inserting a state religion to the constitution may be done through a referendum alone). Eusef Robin Huq, “The Legality of a State Religion in a Secular Nation” (2017) Wash. U. Global Stud. L. Rev. 17 (1) 245-65 (the author notes that the Court’s silence on an issue of public importance ‘speaks volumes’).

⁹For instance, Joseph T. O’Connell, “The Bengali Muslims and the State: Secularism or Humanity for Bangladesh?” in Rafiuddin Ahmed ed, *Understanding the Bengal Muslims: Interpretive Essays*, (New Delhi: Oxford University Press, 2001) 179-208.

been studied with great detail and aptitude with reference to the rise of extremist outfits.¹⁰ This stream emphasizes the peace-loving nature of the Muslim majority and the syncretic identity of the people. However, there is no meaningful exchange between constitutional studies and research in other branches of social science.

The process of Islamization is more often than not side-stepped in the discussion of constitutional provisions. Similarly, the constitutional assembly debate, parliamentary debates, and judicial decisions on the intersection of law and religion in shaping the 'national identity' are missing from the Islamization discourse. While both streams of researchers take 'identity' as a point of departure, it is overwhelmingly either a Muslim majority identity or a syncretic identity. Notably, the Constitution also emphasizes 'language and culture' as the core identity markers for national unity and cohesion.¹¹

The duality between and among religious, cultural, and linguistic identities signals the existence of a divided public sphere, which cannot be grasped by the binary formulation of Islamism v Secularism alone. This thesis argues that the excessive reliance on any singular identity marker of the citizens undercuts the history and politics of identity building in Bangladesh. As a result, Islamo-secularism is portrayed as an outcome of public demand rather than religion-based politics.

The thesis examines the impact of Islamo-secularism in the public sphere by bringing state-sponsored Islamization and religion-based politics to the center. In doing so, the thesis studies performing arts as a public space for political contestation. By exploring the

¹⁰Aminur Rahman, "Communalism and Nationalism in Bangladesh" (2007) 42(6) JAAS, 551, Razia Akter Banu, *Islam in Bangladesh* (Netherlands: E. J. Brill, 1992), Ali Riaz, *God Willing: The Politics of Islamism in Bangladesh* (Oxford, UK: Rowman and Littlefield Publishers, 2004), Ali Riaz and C. Christine Fair eds, *Political Islam and Governance in Bangladesh* (USA & Canada: Routledge, 2011), Ali Riaz, "The Politics of Islamization in Bangladesh" in Ali Riaz ed, *Religion and Politics in South Asia* (USA and Canada: Routledge, 2010), Ali Riaz, *Islam and Identity Politics among British-Bangladeshis: A Leap of Faith* (New York: Manchester University Press, 2013), Abul Barkat, "Political Economy of Fundamentalism in Bangladesh" (2013) 51 (14) *Mainstream*, Abul Barkat, "Economics of Fundamentalism and Growth of Political Islam in Bangladesh" (2006) 23 (2) *Soc Sci Rev*, DU Part -D 1, Ali Riaz, *Islamist Militancy in Bangladesh* (USA & Canada, Routledge, 2008), Abul Barkat, "Islamic Militants in Bangladesh: An Analysis on the Basis of 30 Case Studies" in Berger Maurits, S. and Abul Barkat ed, *Radical Islam and Development Aid in Bangladesh: Preliminary Study* (Netherlands: Netherlands Institute for International Relations, 2007) 23.

¹¹Art. 9, *Constitution of the People's Republic of Bangladesh*.

hitherto untapped vein of performing arts in its political, historical, and legal context, the thesis goes beyond the binary formulation of ‘enraged Islamists’ and ‘anti-Islamic liberals’ fighting over the place of religion in society. It rather argues that state-sponsored Islamization feeds an imagined risk regime for Islam, which acts as the backdrop for contestation between the Islamists and secularists. In order to contain the imagined risk, the Islamists not only resort to violence but also delegitimize linguistic and cultural roots. In the process, they reimagine identity postulates and build an alternate historical narrative through performing arts. The fragmentation materializes in negotiating and renegotiating identities through performances: political, legal, judicial, artistic, and being in society with *others*.

By analyzing the trajectories of secularism in its political, historical, and cultural context, this thesis characterizes Bangladesh’s constitutional framework as to state-religion relationship. While the endeavor is not intended to provide a way out from the crossroads of Islamo-secularism, it intends to project ‘where we are headed to’ with persistent exploitation of religious identity by the stakeholders. By taking performing arts as the field of interaction between conflicting identities, it aims to transcend the reductionism created by emphasizing a singular identity marker.

I. Situating Islamo-secularism: Bangladesh and Beyond

The existence of divergent models of secularism or diverse frameworks for separation of state and religion has been long recognized by scholars.¹² Secularism can encompass models such as French *laïcité*, the absolute banishment of religion from the public sphere to state and church separation in the United States, or disestablishment of religion without state-religion separation such as in India.¹³ Each of these models merits consideration in its particular historical context. In a Bangladeshi context, this thesis does not imagine

¹²Craig Calhoun et al, *Rethinking Secularism* (Oxford University Press, 2011), [Rethinking Secularism] and Michael Warner, Craig Calhoun & Jonathan VanAntwerpen, *Varieties of Secularism in a Secular Age* (Harvard University Press, 2013).

¹³Craig Calhoun, “Introduction” in Craig Calhoun et al, *Rethinking Secularism*, *ibid* at 9 and Rajeev Bhargava, “Rehabilitating Secularism” in Craig Calhoun et al, *Rethinking Secularism*, 92 at 106. [Bhargava, Rehabilitating Secularism]

secularism to create a public space devoid of religion, rather establishing state neutrality in religious matters.

Comparing the divergent frameworks of secularism and their effectiveness is challenging because none of them are immune from debates. For example, despite state and church separation, the United States' official motto, "In God We Trust", is debated.¹⁴ Similarly, some scholars regard the principled distance model in India to better promote equality by differential treatment of various religions, while some argue that it is not a secular model at all.¹⁵ The French model is criticized for its inability to protect minority religious rights in a multi-religious context.¹⁶

The rapid and drastic changes made to the state-religion relationship in Bangladesh erode the scope for a characteristic identification, which may then be compared with other models. The numeric denomination of majority and minority religious followers as a defining character for comparison is futile, even in a South-Asian context. Pakistan is an Islamic Republic with a majority Muslim population that enforces Sharia and yet is unable to protect minority sects within the Muslim population, let alone other religions.¹⁷ During the nine-month liberation war in 1971, Pakistan launched genocide to sanitize the Bangladeshi population of its religious impurity and 'Hindu influence' and was aided by religion-based political parties in rape, mass killing, and arson.¹⁸ Mindful of the horrors of religion-based politics, the original Constitution of Bangladesh enshrined secularism and a

¹⁴Michael Lienesch, "In God We Trust: The U.S. National Motto and the Contested Concept of Civil Religion" (2019) *Religions* 10(5) 340.

¹⁵While strict neutrality requires the state to equally engage with or refrain from all religions, principled distance requires different levels of state engagement or disengagement in matters of different religions guided by state commitment to the principles of liberty and equality. Bhargava, "Rehabilitating Secularism", *supra* note 13, at 106-7, Amartya Sen, *The Argumentative Indian: Writing on Indian History, Culture and Identity* (USA: Picador, 2006) 295-96, and Shabnum Tejani, *Indian Secularism: A Social and Intellectual History, 1890-1950* (USA: Indiana University Press, 2008) at 10. Deepa Das Acevedo, "Secularism in the Indian Context" (2013) 38 (1) *Law & Society Inquiry* 138-167 maintains that the Indian Constitution is not secular because it regulates the citizens' private lives.

¹⁶Stéphanie Hennette Vauchez, "Is French Laïcité still Liberal? The Republican Project under Pressure (2004-15)" (June 2017) *HRL Rev.* 17 (2) 285-312.

¹⁷Rajeev Bhargava, "Inclusion and Exclusion in India, Pakistan, and Bangladesh: The Role of Religion" (2017) 1(1) *IJHD* 69 at 81.

¹⁸Anthony Mascarenhas, *The Rape of Bangladesh* (Delhi: Vikas Publications, 1971) at 6-24.

ban on religion-based politics.¹⁹ Over the years, Bangladesh, despite shifting definitive gears towards Islamism with the apparent aim to appease its majority Muslim population, has failed to ensure the life and liberty of its religious minorities, minority sects within Islam, as well as critics of religion.²⁰ Instead, it has swamped the public sphere with debates of hurting religious sentiment, leading to menaces ranging from frivolous prosecution, arson to mob lynching.²¹ The Indian constitution, unlike the original constitution of Bangladesh, does not place a ban on religion-based politics, which arguably carries the potential of integrating religious right-wing parties to mainstream politics rather than further ghettoizing them. Despite having a secular constitution and being the largest democracy in the world, India is undergoing a lurking threat of right-wing Hinduism undermining the rights of both inter-religious and intra-religious minorities.²²

India, Pakistan, and Bangladesh presented with religious majority-minority situations chose religion-centric and secular frameworks quite different from each other with differing degrees of consequences. Bangladesh has never pursued a secularization model, or state control of religion, as was the case in Iran or Turkey. Drawing a parallel with those countries despite the Muslim majority population without acknowledging the contextual difference is bound to fail.

Stahnke and Blitt have analyzed constitutional provisions of predominantly Muslim inhabited countries and categorized them into: i) Islamic Republics; ii) those declaring Islam as the state religion; iii) secular; and iv) not heeding any official recognition to Islam.²³ The authors concluded that the mere existence of a state religion in the

¹⁹The Constituent Assembly Debates, II (16), 3-4 November 1972 at 702 and Preamble, articles 8, 12 and 38 of the original Constitution.

²⁰Ali Riaz, *How did we Arrive Here?* (Dhaka: Prothoma Prokashon, 2015).

²¹Court Correspondent, "Digital Security Act: DU teacher sued over comments on religion", *The Daily Star*, (26 October 2020) online: The Daily Star <www.thedailystar.net>; Anisur Rahman Ladla, "Bangladesh opens probe into mob lynching of 'mentally ill' man accused of blasphemy", *bdnews24.com* (31 October 2020) online: *bdnews24.com* <<https://bdnews24.com>>; and Masud Alam, "Hindu household vandalized, torched in Comilla", *Dhaka Tribune* (1 November 2020) online: Dhaka Tribune <www.dhakatribune.com>.

²²*Supra* note 17, at 82.

²³Tad Stahnke & Robert C. Blitt, "The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries" (2005) 36 (4) *Geo. J. Int'l Law* 36 (4) 947-1078.

constitution does not imply that other rights guaranteed to citizens do not compare fairly to the international human rights standards. However, they also observed that the constitutional text alone might not reflect a country's prevalent human rights practice.

I maintain that the fairness, effectiveness, or impact of any constitutional provision can be understood only in the contextual setting or in action, not in the abstract. Stahnke and Blitt, in their 2005 study, identified Bangladesh as a predominantly Muslim country with Islam as a declared state religion. Today, they would have faced difficulty in placing Bangladesh under any of their four categories due to the peculiarities of Islamo-secularism.

I use the term Islamo-secularism, as the hyphenated space remains open to multiple interpretations. It may be taken to show the apparent discord between the two or an attempt to bridge incongruent concepts, as well as a metamorphosis. I have borrowed the term from Erdag Göknar, who describes the faith-state unity of the Ottoman Empire in Turkey in the following words:

At the height of the Ottoman classical age political power was expressed in the formula *din ü devlet*. The dual formula had its corollary in law, where secular law (*kanun*) and religious law (*seriat*) coexisted. Politically and legally, the empire was what might be termed as an Islamosecular state.²⁴

The Arabic equivalent of *din ü devlet* is *din wa dawla*, which means expanding religion to the exercise of state power.²⁵ Can Islamo-secularism be understood the same way in Bangladesh to establish faith-state unity? Especially when the state is claiming to keep religion at bay by holding on to secularism but at the same time endorsing a state religion.

While Islamist political parties in Bangladesh aspire for a *sharia*-based state, the ruling party or the proponents of Islamo-secularism, despite creating an environment conducive

²⁴Orhan Pamuk, *Secularism and Blasphemy: The Politics of the Turkish Novel* (New York: Routledge, 2013) at 133. Goknar studies Pamuk's literary work as a means to accessing "concealed cultural, historical, and literary contexts" in Turkey. In his words, "we shouldn't overlook the fact that the political story is always inflected by its cultural corollary. Pamuk's work sheds light on various unacknowledged cultural contexts between tradition and modernity, from Sufism to Ottoman legacy and from Istanbul cosmopolitanism to secular nationalism" in Julie Poucher Harbin, "Erdag Göknar: The Modern Turkey's Islamosecularism through the Lens of Pamuk's Novels", *Islamic Commentary*, (9 April 2014) online: <www.tirnscholars.org>.

²⁵Timothy A van Aarde, "The Relation between Religion and State in Islam and Christianity and the Rise of ISIS", *In die Skriflig* 52(1), a2244. [https:// doi.org/10.4102/ids.v52i1.2244](https://doi.org/10.4102/ids.v52i1.2244).

for such aspirations, shy away from espousing it fully. The Prime Minister (*PM*) of Bangladesh while countering Islamists' claim for a *sharia*-based state has insisted on Islamic tenets in running the country on several occasions:

Our government is working for protection and propagation of all religions. We will govern the country according to the directives provided by our beloved Prophet Muhammad in the Medina Charter.²⁶

The *PM* also reiterated that her government will not enact laws based on the *Quran* or *Hadith* but will not contravene them. This is a catch 22 for national governance because not contravening provisions of the *Quran* or *Hadith* in many cases would mean abiding by them. For example, a women's policy ensuring equal inheritance, divorce, and custody rights for women may not be enacted or enforced in Bangladesh if strict adherence to the *Quran* and *Hadith* is maintained. One author has mentioned drawing non-communal ethos from the Medina Charter instead of the Constitution as an effective "Islamic" twist to religious freedom.²⁷ However, the Medina Charter was drawn in the context of ensuring peace between the migrants and the local religious minority groups on the condition of political loyalty. It is one thing to cite instances of peaceful coexistence of multi-faith groups from any religious tradition (in this case Islam), but quite another to refer to a treaty with religious overtone as a guiding policy in response to Islamist claims of a *sharia*-based state.²⁸ Therefore, Islamo-secularism in Bangladesh brings faith and state closer and opens avenues for aspirations to create a complete unity of the two.

Bhargava has distinguished religion-centric states from secular states with connection and disconnection at the levels of: i) ends; ii) personnel or institutions; and iii) law and policy. While a theocratic state is based on the connection at all three levels, a state with an established religion, despite not being run by religious personnel and/or institutions,

²⁶Kaler Kantha Desk, "Desh Chalbe Medina Sanad Onujayee" (The country will be run according to Medina Charter) *Kaler Kantho* (23 March 2014) online: Kaler Kantho <www.kalerkantho.com> (translation by author).

²⁷Mubashar Hasan, "Religious Freedom with an Islamic Twist: How the Medina Charter is used to Frame Secularism in Bangladesh", LSE South Asia Centre (13 June 2016) online: <www.blogs.lse.ac.uk>.

²⁸Medina Charter is considered as the first modern constitution as it provided for the governance of Medina and maintenance of peace among its religious groups, including protection of life and property of the minorities. To emphasize its religious overtone is not to undermine its political significance, but the Charter itself provided that any ambiguity as to the provisions had to be resolved with resort to Allah or the Prophet.

pursues a common end primarily defined by religion and shapes the laws and policies accordingly.²⁹ Despite its promises to secularism, Bangladesh has shown a definitive tilt towards an established religion.

This thesis uses the term Islamo-secularism and religious-secularism interchangeably, but different meanings have been attributed to religious-secularism. For example, in the context of Iran, Ghobadzadeh has argued that there is a growing realization among clerics that autocratic Islamic State or faith-state unity is harmful to both religion and state.³⁰ Instead of delaminating the differences between Islam and secularism, they claim that Islam is compatible with secularism, and separation of state and religion best protects both. This interpretation is entirely different from the ground reality in Bangladesh. Islamo-secularism or religious-secularism in Bangladesh indicates the proximity of the state and religion instead of separation. Under Islamo-secularism, the self-proclaimed liberals act as apologetic seculars, whereas the Islamist political parties propagate secularism as antithetical to Islam. The Islamists do not rest with the government appeasement and zero in on their demand for a *sharia*-based state coupled with exclusion or purification of local language, culture, and traditions.

The problem with such a reading is that the religious-ethnic identity of a group or community is not easily severable. Bangladeshi Muslims cannot be conceived as a community entirely divorced from its socio-territorial roots. This excessive reliance on 'religious identity' can also be questioned from a historical perspective. In 1947, during the partition of India and Pakistan, the Muslims of Bangladesh (the then East Bengal) embraced their religious identity. Soon after the emergence of Pakistan as an Islamic Republic, the Bangalees emphasized their 'language-based identity', and eventually, Bangladesh emerged as a People's Republic against the autocratic rule of Pakistan. It would be out of place to argue that on any of those occasions, they completely forewent either their religious or

²⁹Bhargava, *Rehabilitating Secularism*, *supra* note 13, at 96.

³⁰Naser Ghobadzadeh, *Religious Secularity: A Theological Challenge to the Islamic State* (New York: Oxford University Press, 2015).

linguistic identity.³¹ In independent Bangladesh, however, successive military regimes relied on Islam as providing a 'distinct identity' to the people of Bangladesh, to differentiate them from the Bengali speaking community in West Bengal, India.³² The fear of reunification with the 'Hindu majority India' was cultivated as the *raison d'être* for abolishing secularism and Bangalee identity from the Constitution. As Sen points out, an exclusive religious categorization amounts to reductionism and trivialization of the people:

People see themselves - and have reason to see themselves in many different ways. For example, a Bangladeshi Muslim is not only a Muslim but also a Bengali and Bangladeshi, typically quite proud of the Bengali language, literature, and music, not to mention the other identities he or she may have connected with class, gender, occupation, politics, aesthetic taste and so on. Bangladesh's separation from *Pakistan was not based on religion at all, since a Muslim identity was shared by the bulk of the population in the two wings of undivided Pakistan*. The separatist issue related to language, literature, and politics.³³ (emphasis added)

The emergence of Bangladesh as a People's Republic proves that exclusive reliance on religious identity separated from its socio-territorial root cannot unite a nation. The trajectories of state-religion relationship in Bangladesh leading to Islamo-secularism redefines and renegotiates the identity postulates, which were once considered resolved. The construct of the Islamo-secular identity in Bangladesh is unique, and as such, not adequately explained by a reference to the majority Muslim identity, as often proposed.

II. Performing Arts as the Field of Contest between Identity Postulates

The relationship between state and religion in Bangladesh has been non-linear, to say the least. For example, secularism and the ban on religion-based politics have been inserted, deleted, and amended, and the state religion provision has been modified. The present framework of Islamo-secularism has been premised on the grounds of religious sentiment and on the notion that the rights or liberties of citizens will not be harmed. It is true that the current framework of Islamo-secularism has not *per se* altered rights and freedoms otherwise guaranteed in the Constitution. But the claims of religious sentiment in favor of

³¹Rafiuddin Ahmed, *Introduction*, *supra* note 9, at 4.

³²"State Religion Gives Distinct Identity: Ershad", *The Daily Observer*, (9 June 1988).

³³Amartya Sen, *Identity and Violence: The Illusion of Destiny* (New York: W. W. Norton and Company, 2006) at 15.

the state religion or its harmlessness can be tested only when the constitutional text is put into its context or in practice.

This is where the thesis borrows the analogy of law as performing arts, music, and drama.³⁴ Law or legal interpretation, like performing arts, involves a triangular relationship among the legislator (creator), legal professional (performer), and persons affected (the audience). Both law and performing arts are performed in the presence of an audience; both carry persuasive value and create meaning and impact for the audience. This brings into question how the preferences of the audience may shape the performance and how the performance in turn may impact the audience.³⁵ In the context of Islamo-secularism, this thesis examines the resultant public sphere to determine if the targeted audience (citizenry) of the legal performance is inclusive or exclusive in relation to the diverse identity markers.

The analogy of law as performing arts is significant from another aspect. When faced with the dilemma between authenticity and a changed context, a performer may alter, redact, or decide not to perform the original version of a text. In the case of law, the judges/legislators may alter or redact a provision while interpreting or amending a law, provide a purposive interpretation, or declare an issue non-justiciable. Therefore, either legal or artistic, performance carries a responsibility to deliver authentically before the audience. The question, therefore, becomes, whether the responsibility was met in the given context, rather than whether the best interpretation of the text was given.³⁶ This thesis applies the yardstick of 'responsible performance' to determine the efficacy of the legal and judicial framework of Islamo-secularism in protecting the rights and liberties of all citizens.

Besides the *analogy* of law as performing arts, this thesis also studies performing arts as the *field* of interaction between law, religion, and identity in a deeply divided public sphere under Islamo-secularism. The general notion that the religious or political right avoids art

³⁴J.M. Balkin and Sanford Levinson, "Law as Performance" in Michael Freeman & Andrew D. E. Lewis eds, *Law and Literature* (Oxford University Press, 1999).

³⁵J.M. Balkin and Sanford Levinson, "Law and Music: Performance Notes on "The Banjo Serenader" and "The Lying Crowd of Jews"" (1999) 20 Cardozo L. Rev. 1513 at 1518.

³⁶*Ibid.*

activism is changing globally and this is particularly true in the case of Bangladesh. Once considered to be the “exclusive preserve of the secularists” the cultural sphere is now contested by Islamists.³⁷ By analyzing the content of secularist and Islamist performing arts, this thesis teases the contentious legal issues of ‘religious hurt’ and ‘hate speech’. The differential treatment of the secular and Islamist public sphere under the Islamo-secular legal framework with regard to these areas of contention reveals the impact of Islamo-secularism in homogenizing the public sphere.

In Manderson’s view, the essence of responsible interpretation lies in the dialogue between the text and its context, the backward-and-forward movement between the past and the changing world to which the law responds.

The dialogue between present and past - between the original text and the multiple variants to which we are forced by the plentitude and diversity of life’s challenges to respond - does not just go one way. . . . We live our life through a rear-view mirror, never knowing what we meant and where we have been until after it has happened.³⁸

The analogy of law as performing arts and studying performing arts as a field of contest between law, religion, and identity provide the context (practice) for the constitutional text of Islamo-secularism. In characterizing Islamo-secularism through its backward-and-forward movement, this thesis also considers the dialogue between past and present in contesting genres of performing arts that shape the public sphere.

III. (Alternative) Frameworks to Study Islamo-Secularism

Identifying the impact of Islamo-secularism in everyday life through performing arts is a key focus of this thesis. As such, direct interaction with people regarding perceptions of religion, community, rituals, as well as changes to modalities and messages of performing arts, seemed promising. Therefore, at the initial stage of the thesis, I developed ideas and strategies for gathering both qualitative and quantitative data. The methods included a survey questionnaire, focused group discussion, and personal interview. They were aimed

³⁷Ali Riaz and Abu Naser, “Islamist Politics and Popular Culture” in Ali Riaz & C. Christine Fair, eds, *Political Islam and Governance in Bangladesh* (New York: Routledge, 2011).

³⁸Desmond Manderson, “Desert Island Disk: Ten Reveries on Inter-Disciplinary Pedagogy in Law” (2008) 2 L & Human 255.

at covering different age groups, urban and rural populations, as well as researchers and policymakers.

I developed a survey questionnaire to be administered among university students in four public universities. The survey included questions on identity preference (religion/ethnicity), observance of religious rituals, participation in secular festivities, sources and medium of entertainment, membership in religious, political, or cultural groups, and if/how they wished the state to uphold their religious belief or lack of it.³⁹ For focused group discussion, I identified four localities, two for their cultural significance and two for being known as Islamist strongholds.⁴⁰ I planned to interview religious clerics during field trips, and vendors of Islamist literature and audio/ videocassettes. I had also planned for in-person interviews with judges, lawmakers, researchers, rights activists, performers, and educators. Observing performances and festivals was also integral to the plan. Within this framework, qualitative and quantitative data gathered from the field would have supplemented secondary materials and legal provisions in building the corpus of the thesis.

A year into the thesis in 2015, I went to Bangladesh to spend the dry or winter season known as the time of festivities.⁴¹ The idea was to gather research materials, network, obtain the research ethics approval, and conduct the empirical part of the research. Bangladesh witnessed series of killings of bloggers, foreigners, and non-Muslim clerics in 2015. Shortly before my arrival, Ansar Al-Islam, an Islamist militant outfit, declared their

³⁹I modeled the questionnaire after the questionnaire administered by Aziz-al-Ahsan for his doctoral thesis titled "Islamization of the State in a Dualistic Culture: The Case of Bangladesh" completed under the Political Science Department, McGill University in 1990 among 100 Muslim students of the University of Dhaka regarding their identity preference. A comparison of the results would have at least partially accounted for shifts in identity preference, if any.

⁴⁰I identified Lalan Akhra (hermitage of the followers of *baul* singer and philosopher Lalon Sai) in Cheuria, Kushtia, and the music academy established by the Indian Classical Music maestro Ustad Alauddin Khan named after him in Brahmanbaria for the field trip. I also identified Pirajpur from where the Islamist leader Delwar Hossain Saydee was elected in national election twice, and Hathhajari in Chittagong where Hefajat-e-Islam, a faith school based Islamist party, has its stronghold.

⁴¹The Victory Day (December 16), the International Mother Language Day (February 21), the Independence Day (March 26), and the Bangalee New Year (coinciding 14 April) all are during the dry season. Harvesting is over by the winter season; as such, it is also a time for village fairs, traditional folk theatre, and live performances.

next target groups, most of the descriptions mirroring my intended interviewee list.⁴² I sensed an atmosphere of fear and censorship previously unknown. As I decided to wait to assess and reflect on the situation, public performances continued to be canceled or restricted for security reasons. The situation was perplexing, as the government continued to deny the involvement of international militant networks, as well as blamed the slain bloggers for crossing the limits of freedom of expression. Attack on an *Ahmadiyya* mosque and a Hindu temple made the situation even worse. Countrywide screening measure was reportedly adopted for ensuring the security of foreigners. Many of my intended interviewees were also placed under police protection. I became wary of two things, maintaining a low-key while obtaining various permissions and doing the actual fieldwork without risking the security of others or myself. Being a non-believer of religion was an additional consideration. On a final balance, I decided not to pursue empirical research.

The decision led me to the search for an alternate framework for studying the impact of Islamo-secularism through performing arts. In my search, I moved from a data-centric analysis to a content-based analysis. It appeared to me that the value statement, reasoning, and methods of persuasion adopted by secularist and Islamist performing arts and the laws regulating them might provide insight as to the effect of Islamo-secularism in the public sphere. This framework required interpretation of laws, judicial decisions, and performing arts as they relate to the state-religion relationship.

In order to supplement the analysis of the constitutional amendments, a total of five national newspapers have been scrutinized for news items and editorials related to secularism, Islamism, and nationalism.⁴³ The genres of performing arts and their variations are many; to narrow them down to comparable genres and to identify what pieces to study was crucial. Islamists in Bangladesh increasingly use social media platforms to circulate

⁴²"Ansar Al Islam's Next Targets" *The Dhaka Tribune* (2 November 2015) online: The Dhaka Tribune <www.dhakatribune.com>.

⁴³Among the five dailies *Dainik Sangram*, *Dainik Ittefaq*, and the *Daily Observer* were vetted from 1972 to the present, while two later publications, the *Daily Star* and the *Prothom Alo*, were vetted from 1991 and 1998, respectively.

nasheeds or *jihadi* songs, dramas, and *w'az* (non-Friday sermons).⁴⁴ *W'az mahfils* are sermons on matters of religious importance accompanied by storytelling, occasional chanting, singing, and close-ended audience interaction. Although *w'az mahfil* and *nasheed* do not strictly qualify as performing arts, the two genres have been frequently equated with performances.⁴⁵ Similarly, in terms of secular performing arts, the genres studied are group theater and songs.

As a rule of thumb, the selected genres of performing arts in both secularist and Islamist spheres have been studied to the extent to which they touch the intersection of law, religion, and identity. The materials for each genre have been narrowed down based on: i) the relevance of the content; ii) popularity among the audience; and iii) authenticity of the sources. The number of productions of a group theatre, as well as esteem of the playwright/ director, and theatrical review have been considered to assess the popularity or significance. For identifying Bangla songs, this thesis has classified two broad categories: i) songs that have historically gained popularity during mass uprisings in Bangladesh, and ii) *Baul* songs, a genre performed by mystic minstrels who do not subscribe to rigors of institutional religion. In the case of Islamist performing arts, political influence and news reports have been considered to determine the popularity of the lyricists/ singers and speakers to be studied.

As the genres mentioned above are predominantly in Bangla, with the use of some Arabic and Urdu in *w'az*, the thesis heavily relied on translation. With regard to *w'az* and theater, I have used literal translation. However, in the case of songs, I have resorted to both translation and interpretation to convey the meaning. While secular dramas and songs are available in written format, I had to transcribe the *w'az*, as well as *jihadi* songs, with a few exceptions.

⁴⁴*Supra* note 37, at 136.

⁴⁵Syed Jamil Ahmed, "Hegemony, Resistance and Subaltern Silence: Lessons from Indigenous Performances of Bangladesh" (2006) 50 (2) *The Drama Review* 72. Naeem Mohaiemen, "Smash Palace" (3 November 2008) *The Daily Star*, online: [The Daily Star <www.thedailystar.net>](http://www.thedailystar.net).

Switching to this content-based framework allowed me an advantage over the empirical research method. While in the previous framework, performing arts was merely an interpretive tool, with the new framework the content of the selected performances became the direct source of my study similar to the legal sources. The content-based interpretation, in my opinion, provides a more profound sense of the portrayal of self and other in identity formation through performing arts. This method has helped me transcend the disciplinary boundaries and address the intersection of law, religion, and performing arts in a meaningful way.

IV. Delineating Self, Other, and State in Islamo-secularism

The legal framework under Islamo-secularism has not been adequately studied to address the complex and contested process of national identity building. An exaggeration of public sentiment for or against Islam or secularism often hinders an impartial analysis of the role of state and non-state actors involved in the process. Devine and White, based on qualitative empirical research conducted in two villages in Bangladesh, concluded that the constitutional amendments and rise of religious extremism are issues of macro politics and cannot be accepted as proof of the desire of the Muslim majority people.⁴⁶ In this reading, people's wishes and worldviews are not regulated by religion alone but primarily by interaction with social and economic relations. Therefore, besides the macro-political analysis of identity building, this thesis studies the lived relationship of diverse identity markers through the interaction between secular and Islamist performing arts and their content, messages, providers, and audience.

This thesis is divided into five chapters. Chapter I and II deal with the legislative and political history of Islamo-secularism and its concomitant divided public sphere in Bangladesh. Chapter III and IV examine genres of secular and Islamist performing arts touching on identity, nationhood, self, and the other. Chapter V focuses on judicial decisions

⁴⁶Joe Devine & Sarah White, *Religion, Politics and Every Day Moral Order in Bangladesh, Religion, and Development* (2009) Working Paper 40, Department for International Development.

regarding constitutional amendment pertaining to the relationship of state and religion, as well as the regulation of the secularist and Islamist public spheres.

Chapter I analyzes the three trajectories of secularism in Bangladesh, namely a narrow construct of secularism (1972-1975), the policy of Islamization (1975-2011), and Islamo-secularism (2011-present). The analysis shows how the state promotion of Islamism has created a divided public sphere, where the secularists espouse an ethnicity-infused identity and the Islamists draw on a religion-infused monolithic identity. Chapter II focuses on key trends of identity formation in the territory now marked as Bangladesh during the British colonial era, Pakistan era, and independent Bangladesh. The chapter explores the shifts between deeper self-identification with religious or linguistic identities during political turmoil and how the shifts impacted the corollary genres and modalities of literature and performing arts.

Chapter III examines select genres of secular performing arts in Bangladesh as an expression of resistance against the process of Islamization and communal politics. The chapter analyzes dramas and songs touching on religious rigors, religion-based politics, war crimes, and the place of religion in society. The chapter attempts to answer whether the critique of religion or religion-based politics in secular performing arts has the effect of slandering Islam, as it is often argued.

Chapter IV examines select genres of Islamist performing arts and their mobilizing effect against the secular public sphere. Although the genres studied in the chapter cover the entire gamut of *sharia*, the chapter focuses on religion-based politics, secularism, the meaning of being a Bangalee/ Bangladeshi Muslim, and the portrayal of the secularists and free thinkers.

Chapter V analyzes the role of Islamo-secularism in perpetuating a divided public sphere from a legal perspective. The chapter focuses on the legislative and judicial performances in regulating the secular and the Islamist performing arts. The growing importance attached to 'religious sentiment' in determining the scope of free speech, defamation of

religion, and hate speech has been studied to understand if Islamo-secularism protects equality for all or homogenizes others.

When a difference is viewed as diversity, it opens avenues for conversation and negotiation between conflicting identity claims. When a difference is hurriedly marked as opposition, it calls for homogeneity and as a necessary concomitant the urge to discipline dissent by force. This thesis projects the trajectories of secularism in the 'rear-view mirror' of the changing public sphere. The contest between the alternate public spheres is not dialogic or merely argumentative, but rather hostile. The language of force that permeates the public sphere today is a direct result of the constitutional and legal trivialization by the state of its people's identity.

CHAPTER I

The Trajectories of Islamo-Secularism and a Divided Public Sphere

“A duck and a porcupine, no one knows how,
(Contrary to grammar) are a durcupine now.”¹

Sultana Kamal, an eminent human rights activist, quoted these verses from Sukumar Ray’s nonsense rhyme to describe the coexistence of Islam and Secularism in the Constitution.² The rhyme imagines how animals would have struggled with their conflicting traits if two different species shared one physical existence.³ Like Ray, Kamal wondered how Bangladesh could be a secular state *with* Islam as the state religion in complete disregard of the differences between the two (as a duck and a porcupine put together). Well, the two coexist as the lawmakers allowed themselves the freedom to subvert common understanding (grammar), thereby introducing the metamorphosis of Islamo-secularism. Ironically, Golam Murshid, a renowned columnist noted in 1972, that if the early signs of religious tokenism continued to persist, Bangladesh might turn to an “Islami Secularism” instead of a secular democracy.⁴

Ray’s “*durcupine*”, Kamal’s attribution of the *durcupine* to Islamo-secularism, Murshid’s “Islami Secularism”, all took place independent of each other but aimed at predicting behavioral changes in the context of an imposed intersection. Following their footsteps, this chapter examines Islamo-secularism as the *durcupine*, a metamorphosis marked with contradictory characteristics. The chapter analyzes the legal and political process that led to the formation of this metamorphosis and its impact on the public sphere. The chapter argues that **i)** Islamo-secularism did not emerge out of public demand, rather as a political

¹Sukumar Ray, “Khichuri”, *Abol Tabol* (Kolkata: U Ray and Sons, 1923), translated by, “Mish-mash” in Michael Heyman eds, *The Tenth Rasa: An Anthology of Indian Nonsense* (New Delhi: Penguin Publishing, 2007) at 17 (underlines added).

²Kamal made the said remark at a seminar organized by the National Human Rights Commission of Bangladesh in observance of the International Human Rights Day, 2015. Staff Correspondent, “Freedom of Expression: ‘Shrinking Space’ Worries People in Bangladesh”, *The Daily Star* (11 December 2015) online: The Daily Star <www.thedailystar.net>. The news report did not quote the specific attribution of ‘durcupine’ to Islamo-secularism; but I was present at the event as the keynote speaker.

³The dilemma is aptly portrayed in these verses “The whaleplant is in doldrums; he isn’t really full of glee; While elephants loves the jungle, whale yearns for the sea.” Translation by Ifte Chowdhury, *Sukumar Roy: A Translation of Selected Poems*, online: <<http://people.tamu.edu/~i-choudhury/Abol%20tabol.pdf>>.

⁴Golam Murshid, “Dharmanirapekshata o Bangladesh” in Anwar Ali, ed, *Secularism* (Dhaka: BPL, 2015) 57 at 69.

ploy of the ruling elites, and **ii)** similar to Ray's imaginary species suffering from an identity dilemma, the public sphere under Islamo-secularism in Bangladesh is marked with duality and agitation.

Part I of the chapter provides an overview of the trajectories leading to Islamo-secularism by summarizing the constitutional changes from 1972 to 2011. Part II focuses on the original intent of the framers of the Constitution in enshrining secularism to ensure strict separation of religion and politics as a breakthrough with the religious nationalism of the Pakistan era. Part III discusses the three trajectories and challenges of secularism leading to Islamo-secularism. Part IV shows that the state promotion of religion-based politics has induced sectarianism, placed the Islamists vis-à-vis the secularists, and brought a characteristic change to the public sphere.

I. Islamo-secularism: The Standoff Between Secularism and State Religion Islam

The Constitution of the People's Republic of Bangladesh was based on four fundamental principles of Nationalism, Secularism, Democracy, and Socialism, the "high ideals" which inspired the people of Bangladesh in the 1971 liberation movement.⁵ The seed of Bangalee nationalism sown through the Language Movement (1948-1952) became the most powerful stride behind the liberation movement.⁶ Bangalee nationalism carried in its womb a promise of inclusive and secular identity, aptly portrayed in the song verse which made it to posters and slogans of protest rallies: "The Hindus, Buddhists, Christians and Muslims of Bengal, We are all Bangalees."⁷

⁵The Constitution of the People's Republic of Bangladesh, 1972, Preamble and art. 8. See the Constituent Assembly Debate: Sheikh Mujibur Rahman, II (1) (12 October 1972) 20; Dr. Kamal Hossain, II (1) (12 October 1972) 24; Syed Nazrul Islam, II (4) (19 October 1972) 117 & Tajuddin Ahmed, II (12) (30 October 1972) 390.

⁶Despite Bangalees being the linguistic majority in Pakistan, it was declared in 1948 "Urdu and Urdu alone would be the state language of Pakistan." Anthony Mascarenhas, *The Rape of Bangladesh* (Delhi: Vikas Publications, 1971) at 16-19. The students busted into a protest against the declaration, which continued until 1952. On February 21, 1952, the Pakistani administration fired and killed students for leading a procession violating a curfew. Pakistan was compelled to recognize Bangla as the official language alongside Urdu and English.

⁷By lyricist Gouriprasanya Majumder, Jagoroner Gan, *Gonosogramer Ganer Sonkolon*, Jagoron Songskriti Chorchha o Gobeshona Kendro, at 18 [translated by author]. Debdash Chakrabarty designed the poster.

The language movement paved the way for a marked departure from the communal politics and religious façade of Pakistan. Islam was used not only to economically oppress the people of Bangladesh (the then East Pakistan) but also to legitimize the genocide of 1971 by naming the liberation movement a “conspiracy of *Kafirs* (idolaters).”⁸ *Awami League* (AL), under the leadership of Sheikh Mujibur Rahman had won the national election in 1970, but the West Pakistani rulers, instead of handing over power, launched a genocide on the unarmed people of Bangladesh on March 25, 1971.⁹ The then East Pakistan wing of *Jamaat-e-Islami* (JI) opposed the liberation movement to save “Islam”, and the supporters joined the rank and file of the *Razakar*, *Al-Badr*, *Al-Shams*, etc. allied forces to act as local collaborators of the Pakistan Army.¹⁰ The Bangalee military and para-military forces, the Hindus, the Awami Leaguers, college and university boys, including “militant” girls and the “militant” intellectuals were the chief targets of the genocide.¹¹ Two days ahead of victory following the blueprint of the Pakistan army, the *Al-Badr* forces went from house to house searching for Bangalee intellectuals, killed and dumped them into mass graves.¹²

With a determination to never repeat the horrors of religion-based politics and oppression by the state, secularism, along with the three other founding principles, was enshrined in the Preamble and art. 8 as “fundamental principles.” According to art. 8, the fundamental principles along with the principles enshrined in articles 9-25, though not judicially enforceable, formed the basis of the work and functioning of all three organs of the state, executive, legislative, and judiciary.¹³ The principles of secularism were included in different articles through an assurance of equality and non-discrimination, freedom of

⁸Muhammad A Hakim, “The Use of Islam as a Political Legitimization Tool: The Bangladesh Experience, 1972-1990” (1998) 6 (2) *Asian J Pol Sci* 98 at 102. See also Ali Riaz, “The Politics of Islamization in Bangladesh” in Ali Riaz ed, *Religion and Politics in South Asia* (London: Routledge, 2010) 45 at 45 [Islamization].

⁹*Supra* note 6.

¹⁰Ajit Bhattacharjea, *Dateline Bangladesh* (Bombay: Jaico Publishing House, 1971); Sen Gupta, *History of Freedom Movement In Bangladesh 1947-1973: Some Involvement* (Calcutta: Naya Prokash, 1974) [Gupta]; and Serajul Islam Chowdhury, “Shohid Buddhijeebider Porichoy o Amader Kaj” in Serajul Islam Chowdhury ed, *Koto Mulyo Loibe Ihar?* (Dhaka: Bidya Prakash, 2011) 161 at 165 [Koto Mulyo?].

¹¹*Supra* note 6, 116-17.

¹²Gupta, *supra* note 10, 438-442.

¹³Art. 8 (2) read, “The principles set out in this Part (part-II which lists fundamental principles derived from the four high ideals) shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.” [Text in parenthesis supplied]

religion, prohibition on communalism, religion-based politics and persecution, uniform education, and international relations based on the universal fraternity of mankind.

Art. 12, while elaborating the meaning of secularism, provided for the i) elimination of communalism; ii) bar to granting political status to *any* religion; iii) preventing abuse of religion for political ends, and iv) *any* form of discrimination or persecution based on religious identity.¹⁴ The proviso to art. 38 prohibited the formation of any union or association using religion for political purposes.¹⁵ Art. 27 granted all citizens equality before the law, and art. 28 prohibited discrimination based on religion, race, caste among others. Art. 39 (1) guaranteed freedom of thought and conscience. Art. 41 (1) provided the right to profess, practice, and propagate religion and the right to establish or maintain religious institutions, regardless of the religious community or denomination subject to law, public order, and morality. In terms of education, art. 17 made it incumbent for the state to establish a “uniform, mass-oriented and universal system of education”. Art. 41 (2) provided that no person should be required to receive religious instructions or participate or attend any religious ceremony other than his/her own. The Constitution also outlined principles of international relations based on principles of respect for national sovereignty and equality, non-interference in internal affairs, and respect for international law.¹⁶ In sum, the Constitution, in words and essence, created a clear separation between state and religion.

Unfortunately, in independent Bangladesh, abuse of religion was perpetuated and “legalized” through constitutional amendments. In a series of violent bloodsheds in 1975, the Father of the Nation and the most prominent leaders of the ruling party *AL* were assassinated, and the country entered into a military rule for fifteen years with pseudo-

¹⁴Art. 12 reads, “The principle of secularism shall be realized by the elimination of- (a) communalism in all its forms; (b) the granting by the State of political status in favor of any religion; (c) the abuse of religion for political purposes; (d) any discrimination against, or persecution of, persons practicing a particular religion.”

¹⁵A paragraph having a qualifying clause after the general clause of any article of the Constitution is called a proviso. Art. 38 provided the right to form association or union subject to reasonable restrictions imposed by the law.

¹⁶Art. 25.

civilian parliaments in between.¹⁷ The autocratic regimes tried to build on an anti-Indian image and supply a “separate national identity” to distinguish themselves from the *AL* regime.¹⁸ During the First Martial Law regime (1975-79), secularism was excluded from the Constitution.¹⁹ Art. 12 and proviso to art. 38 were omitted so as to uplift the ban on religion-based politics. Secularism was replaced with “Absolute Trust and Faith in Almighty Allah” making it the basis of all state actions.²⁰ An Islamic verse, “Bismillah-Ar-Rahman-Ar-Rahim”, meaning “In The Name of Allah, The Beneficent, The Merciful” was introduced atop the Preamble.²¹ During the Second Martial Law regime (1982-1990), the *Eighth Amendment* inserted art. 2A stylized after the Pakistan Constitution and made Islam the state religion of Bangladesh.²²

The restoration of democracy in 1992 did not reverse the cycle of Islamization of the Constitution or the legal system. In 2009, *AL* bagged a landslide victory with the promise to boost the spirit of liberation and to eradicate militant extremism.²³ In 2010 the Supreme Court (*SC*) declared the *Constitution (Fifth Amendment) Act* unconstitutional. The decision struck down the replacement of Secularism with absolute trust and faith in Allah, the inclusion of Islamic verses, and the repeal of the ban on religion-based politics.²⁴ The decision automatically revived the Preamble and arts. 8, 9, 12, and 38 in their original form. As the state religion provision (art. 2A) was inserted through the *Eighth Amendment*, the revival meant Bangladesh has both secularism and Islam as the state religion. *AL* created a special committee for reporting necessary amendments to the Constitution on the

¹⁷The Father of the Nation was assassinated in a military coup on August 15, 1975. The leadership of *AL* was arrested and confined at the Central Jail. On the eve of November 3, 1975, the four national leaders Tajuddin Ahmed, Syed Nazrul Islam, Capt. (Rtd.) Monsur Ali and A H M Quamruzzaman were assassinated while incarcerated. Lawrence Ziring, *From Mujib to Ershad: An Interpretive Study* (Karachi: Oxford University Press, 1992) at 115-16.

¹⁸Hakim, *supra* note 8 at 108.

¹⁹Vide the *Proclamations (Amendment) Order, 1977*, Proclamations Order No. I of 1977.

²⁰By the insertion of art. 8(1A), which read, “Absolute trust and faith in Almighty Allah shall be the basis of all actions”. The *Constitution (Fifth Amendment) Act*, Act No. I of 1979. [*Fifth Amendment*]

²¹*Supra* note 19.

²²“The state religion of the Republic is Islam but all other religions may be exercised in peace.” The *Constitution (Eighth Amendment) Act*, Act No. XXX of 1988. [*Eighth Amendment*]

²³Election Manifesto of Bangladesh Awami League, 2008.

²⁴*Hossain v Bangladesh*, CPLA No. 1044 and 1045 of 2009.

basis of public consultation.²⁵ It was expected that the remnant state religion provision of the *Eighth Amendment* would be omitted, and the original Constitution will be restored. In short, the *Fifteenth Amendment* did not bring back the Constitution to its original dispensation.²⁶ Secularism was restored in both Preamble and art. 8, and art 12 was revived in its original form. “Bismillah” was retained with a slightly modified text. Islam was reinstated as the state religion, but with a stunt of giving equal accord to all other religions. A comparison of the *Fifth*, *Eighth*, and *Fifteenth Amendment* will make the illusionary changes clearer:

Fifth/ Eighth Amendment	Fifteenth Amendment
“Bismillah-Ar-Rahman-Ar-Rahim” in the Name of Allah, the Beneficent, the Merciful. (Fifth)	“Bismillah-Ar-Rahman-Ar-Rahim” in the Name of Allah, the Beneficent, the Merciful. In the name of the Creator, the Merciful.
Omitted proviso to art. 38: No person shall have the right to form, or be a member or otherwise take part in the activities of, any communal or other association or union which in the name or on the basis of any religion has for its object, or pursues a political purpose.	Proviso to 38 restored in altered form: No person shall have the right to form, or be a member of the said association or union, if- (a) it is formed for the purposes of destroying the religious, social and communal harmony among the citizens; (b) it is formed for the purposes of creating discrimination among the citizens, on the ground of religion, race, caste, sex, place of birth or language; (c) it is formed for the purposes of organizing terrorist acts or militant activities against the State or the citizens or any other country; (d) its formation and objects are inconsistent with the Constitution.
Article 2A: Eighth Amendment The state religion of the Republic is Islam but all other religions may be exercised in peace.	Article 2A: The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of Hindu, Buddhist, Christian and other religions.

Table 1: Fifth, Eighth, and Fifteenth Amendment Compared

²⁵Preface to the Constitution.

²⁶Act No. XIV of 2011.

Wherein art. 38 in its original form put an absolute ban on religion-based politics; the amended article only limited such use on the ground of communal hatred, discrimination, extremism, or inconsistency with the Constitution. The new art. 2A and the opening verse of the Constitution are revised versions of the unconstitutional insertions during the autocratic regime. These provisions suffer from superfluity and also stand in direct contradiction with the overall scheme of the Constitution.

This apparent demise of secularism in Bangladesh has been widely attributed to the religious sentiments of the majority of Muslims and overarching piety among the people.²⁷ To ascertain the plausibility of such a claim, it is important to understand the original intent and contextual analysis of the inclusion of secularism in the Constitution.

II. Secularism, Freedom of Religion and Prohibition on Religion-based Politics: Reconciliation and Discords

The Constituent Assembly Debate shows that the framers spent the maximum amount of time deliberating on the four fundamental principles rather than specific articles.²⁸ They perceived secularism as an ideological departure from the religious nationalism of Pakistan. Dr. Kamal Hossain, the then Law Minister, in his Draft Constitution Bill Placement Speech summarized the principles of secularism as enshrined in the Constitution:

Secularism is another fundamental principle of our Constitution. We have seen the horrific outcomes of communalism. We have also seen how power mongers abuse religion. The Constitution has ensured freedom of religion for the individual. At the same time, all sorts of communalism, grant of special status by the state to any religion, and use of religion for political purposes have been prohibited. Therefore, in our society, there can be no space for sectarian or religion-based political institutions.²⁹

It appears that the framers were more cautious about defining the features of communalism and excluding them from the constitutional framework, rather than

²⁷Staff Correspondent, “*Bismillah and State Religion Islam Retained: Caretaker Government Removed*”, *The Daily Inqilab* (21 June, 2011).

²⁸Abul Fazl Huq, “Constitution making in Bangladesh” (1973) 46 (1) *Pacific Affairs*, 59.

²⁹Draft Constitution Bill Placement Speech, Second Session (Second Meeting), 2 (1) 12 October 1972, at 24-25 (translation by author).

explicitly explaining secularism as a principle. Sheikh Mujibur Rahman, the Leader of the Assembly, mentioned, “[s]ecularism does not mean the absence of religion but equal rights accorded to all religions. [. . .] No one will be allowed to exploit religion for political purposes. If anyone does that, I firmly believe that people will revolt against it.”³⁰ He also made it clear that secularism was not intended to be assertive, all citizens would enjoy the freedom of religion, but the government would not push laws curtailing freedom of religion.³¹

The deliberations by the Assembly members can be classified into three main categories: **A)** secularism as a departure from religion-based nationalism of Pakistan, **B)** secularism as a rooted political ideology in the historical context, and **C)** consistency between the prohibition on religion-based politics and freedom of religion. In addition to these three categories, this part will also discuss **D)** the main challenges for secularism as identified by the intellectuals to assess the later implementation of the principle by the Government.

A. Departure from the Religious Nationalism of Pakistan

The framers emphasized that the central ethos of the Pakistan constitution was religion-based nationalism, which failed to protect the Bangalees. A division between the religious majority and minority was created by establishing Pakistan as an Islamic Republic under the 1956 and 1962 constitutions, by limiting the presidential post to Muslims alone, and by providing separate electorates for the followers of different religions.³² This division paved the way for unimaginable oppression by the state using a religious cloak,³³ especially on the religious minorities.³⁴ The West Pakistanis waged war against the people of Bangladesh in the name of religion, but it did not prevent them from raping women of Bangladesh.³⁵

³⁰Sheikh Mujibur Rahman, Prime Minister and Leader of the Assembly, Speech on Draft Constitution, Second Session (Second Meeting), 2 (1) 12 October 1972, at 20 (translation by author).

³¹Second Session (Fourth Meeting), 2 (17), 4 November 1972, at 702.

³²Gour Chandra Bala, Second Session (Fourth Meeting), 2 (10), 26 October 1972, at 355.

³³Humayun Khalid, Second Session (Fourth Meeting), 2 (7), 23 October 1972, at 201 and Mir Hossain Chowdhury, Second Session (Fourth Meeting), 2 (10), 26 October 1972, at 361.

³⁴Abdul Karim Bepari, Second Session (Fourth Meeting), 2 (11), 26 October 1972, at 378.

³⁵Sardar Amjad Hossain, Second Session (Fourth Meeting), 2 (5), 20 October 1972, at 157-58.

As a lesson from the past, the kind of oppression and injustice were never to be allowed in Bangladesh and as such secularism was adopted to leave no room for exploitation.³⁶ The Constitution ensured equality for all, irrespective of religious belief.³⁷ No divide along religious lines was created among the Bangalees rejuvenated by the Bangalee nationalism.³⁸ Secularism was adopted “to protect religious freedom, to ensure freedom from oppression in the guise of religion, and to free the people from religious illusion.”³⁹ The members negated the propaganda of integration to India by explaining, “[t]his is not Hindustan, and this will not be Pakistan again, this country is Bangladesh - independent sovereign peoples’ Republic; this much has been established.”⁴⁰ On a final note, the leader of the Assembly Sheikh Mujibur Rahman said, “[f]or 25 years, we have witnessed waging with peoples’ fate, oppression, fraud, killing, and injustice in the name of religion. Religion is sacred. The sacral cannot be exploited as a political tool.”⁴¹

B. Secularism as a Rooted Political Ideology

It was mentioned several times in the Constituent Assembly that all the four fundamental principles embodied the aspirations of the people. The framers were aware that some fractions were highlighting the stride of religious nationalism and communal riots in the pre-partition era (prior to 1947) to rule out secularism as an external imposition. They mentioned that the long struggle of 25 years during the Pakistan regime clearly reflected peoples’ hopes and aspirations, and those aspirations were endorsed in the constitution as fundamental principles.⁴² They mentioned that during the partition (of India and Pakistan), the leaders misled people by abusing religious sentiment, and violent riots ensued.⁴³ However, immediately after the partition when Pakistanis tried to create a religious divide between the Hindus and Muslims have vehemently protested⁴⁴ and sacrificed their lives,

³⁶Abul Rauf Chowdhury, Second Session (Fourth Meeting), 2 (10), 26 October 1972, at 326.

³⁷Khondoker Abdul Hafiz, Second Session (Fourth Meeting), 2 (7), 23 October 1972, at 192.

³⁸*Supra* note 32.

³⁹*Supra* note 34 (translation by author).

⁴⁰*Ibid.*

⁴¹Second Session (Fourth Meeting), 2 (17), 4 November 1972, at 702 (translation by the author).

⁴²M. Mansur Ali (Communication Minister), Second Session (Fourth Meeting), 2 (5), 20 October 1972, at 146.

⁴³A. H. M. Quamruzzaman, Second Session (Fourth Meeting), 2 (10), 26, October 1972, at 299-300.

⁴⁴Fazlur Rahman, Second Session (Fourth Meeting), 2 (10), 26 October 1972, at 306.

struggling against communalism.⁴⁵ In the process, it was also proved that “no country or nation can build on religious identity alone. A nation or country is built on the totality of aspirations, geographic integrity, humanity, history, and tradition. Therefore, the people of Bengal are an integrated nation, and religion or class cannot create a divide in this unity.”⁴⁶ They argued that secularism was not being introduced anew; people earned this in their fight against fanatics to end the abuse of religion.⁴⁷ They were confident that the people had shown their support for the four principles in their struggle under the leadership of the *AL* for decades.⁴⁸ *AL* had proved its promise for secularism by deducting “Muslim” from its name in 1955.⁴⁹ Secularism was deeply tied to the other fundamental principles, and as such, without accepting secularism, nationalism, democracy, and socialism could not be realized.⁵⁰

C. No Contradiction Between Prohibition on Religion-based Politics and Religious Freedom

Art. 12 made it incumbent for the state to eliminate communalism, religion-based discrimination, preferential treatment of any religion, and abuse of religion for political ends. As a first step in realizing the principle, the Constitution while guaranteeing freedom of association, prohibited the formation of religion-based political association or union vide the proviso to art. 38.⁵¹ This provision was in conformity with art. 41(1) subjecting the freedom of religion to *law, morality, and public order*. This gave rise to the question of whether prohibiting religion-based politics amounted to violating religious freedom. The framers responded to this by referring to the horrific past Bangalees have faced due to the religious divide. Peoples’ fundamental rights were compromised for decades by abusing religion and promoting communalism.⁵²

⁴⁵*Supra* note 42, at 150.

⁴⁶Syed Nazrul Islam, Industrial Minister and Deputy Leader of the Assembly, Second Session (Fourth Meeting), 2 (4), 19 October 1972, at 127-28.

⁴⁷Tajuddin Ahmed, Second Session (Fourth Meeting), 2 (10), 26 October 1972, at 397.

⁴⁸*Supra* note 46, at 118.

⁴⁹*Ibid* at 117.

⁵⁰*Ibid* at 127.

⁵¹As a directive principle, art. 12 needed a *modus operandi* in the form of binding laws capable of judicial enforcement.

⁵²M Shamsul Huq, Second Session (Fourth Meeting), 2 (10), 26 October 1972, at 351.

Religion has been used in this country in a horrid manner. [...] it has been abused. Three million people have been killed in the name of religion. People were shot dead in the 1952 Language Movement in the name of religion. It is doubtful whether religion has been abused like this in any other country. This sort of abuse takes place whenever religion is used for political purposes.⁵³

The framers stressed that the people of Bangladesh opted for a democratic and egalitarian system, convinced of the obstacles abuse of religion can pose in the advancement of the nation. Democracy means equality for all, and in democracy, religion cannot be influenced by political propaganda.⁵⁴ The constitution guaranteed freedom of religion to everyone, but at the same time, it prohibited the use of religion for political or personal ends.⁵⁵ The restriction on the use of religion in politics was placed for the sake of secularism.

The way right to property had to be compromised for the sake of socialism; the same way abuse of religion in politics has been prohibited maintaining freedom of religion. If this provision is accepted, it will not infringe freedom of religion in any manner. Where freedom of religion is accepted as a fundamental right, this minor infringement does not amount to an assault on any religion.⁵⁶

The framers noted that secularism would ensure freedom of religion for everyone by rooting out communalism⁵⁷ and eliminating abuse of religion.⁵⁸ By inserting the restriction on religion-based politics, they made it clear that the religious cloak was not to be used to suppress the misdeeds committed by the state ever again.⁵⁹

D. Challenges for Secularism in Bangladesh

In order to assess the success or failure of secularism in Bangladesh, it is essential to see how the intellectuals perceived the challenges for secularism at the given time and how political actions differed from such understanding. Before the adoption of the Constitution at a symposium held at the Rajshahi University in 1972, intellectuals and students

⁵³*Supra* note 46 (translation by author).

⁵⁴*Ibid.*

⁵⁵Khandaker Mushtaq Ahmed, Second Session (Fourth Meeting), 2 (7), 23 October 1972, at 180.

⁵⁶*Supra* note 46 (translation by author).

⁵⁷*Supra* note 52.

⁵⁸Humayun Khalid, *supra* note 33.

⁵⁹*Supra* note 55.

deliberated on the principle of secularism. I will keep this discussion very brief to highlight the key points.

The speakers emphasized that secularism ought to be discussed in the “real political context” rather than as a vague political ideology or “hypothetical possibility”.⁶⁰ As each society experienced secularism through distinct social and political developments, the peculiarities of the given society needed special consideration.⁶¹ In the Bangladeshi context, the struggled past of religious nationalism defined the practical necessity of secularism.⁶² Although the colonial-style oppression by Pakistan accelerated the unity of the Bangalees under the banner of language-based nationalism in a short time, the struggle might not have changed the mindset of the entire population overnight.⁶³ Taking into account the 14% people voting for the Islamist parties in the 1970 election, the constitutional scheme of secularism needed to be mindful of both the history that led to the adoption of secularism and the political undercurrent that might run against the ideology.⁶⁴ A complete hands-off approach to religion might allow co-religionists of different religious communities to unite and exert pressure on the government.⁶⁵ As such education system needed to provide a universal understanding so as to make people aware of their social roles overcoming communal interests.⁶⁶ The state needed to enact laws in order to avoid conflict between the believers of different religions and stop the abuse of religion.⁶⁷ Therefore, it was the general understanding that the lofty principle of secularism would need to be detailed into laws and policies.

The constitutional scheme, though not based on a policy of secularization, was intended to mark a breakthrough with the religious nationalism and communal politics of Pakistan. As such, the framers struck a bottom line: prohibiting the use of religion for political ends to

⁶⁰Abdur Razzaq, *supra* note 4, at 44.

⁶¹*Ibid.*

⁶²Zillur Rahman Siddiqui, *supra* note 4 at 51.

⁶³*Supra* note 4 at 63.

⁶⁴*Ibid.*, at 64.

⁶⁵Shah Mohammad Habibur Rahman, *supra* note 4 at 41.

⁶⁶*Ibid.*

⁶⁷Kazi Joan Hossain, *supra* note 4 at 25 at 31 and Jalaluddin Ahmed, *supra* note 4 at 37.

ensure equal rights of all citizens. The framers emphasized both the contexts that made secularism indispensable as one of the fundamental principles and the practical need for such adoption, i.e., stopping religion-based politics in Bangladesh. Therefore, the constitutional scheme required the state to create an environment for all citizens to thrive equally, to provide for a uniform and mass education system, and also to create legal protection to root out abuse of religion. The principle of secularism as enunciated in art. 12 demanded state neutrality in terms of religion or religious institutions rather than state promotion of religion.

III. The Trajectories and Challenges of Secularism in Bangladesh

It will not be an exaggeration to state that secularism in Bangladesh was defined by the mischief it sought to prevent: the use of religion in politics. How far the mischief could be prevented can be traced by following the three trajectories of secularism in independent Bangladesh. **A)** The *first trajectory* (1972-1975) was marked with religious tokenism and narrowing down secularism to anti-communalism in the face of opposition from the right-wing parties. **B)** The *second trajectory* (1975-2011), i.e., Islamization used religion to legitimize the usurpation of power, to rehabilitate the Islamist parties and to construct a religion-based identity replacing the ethnicity-informed identity. **C)** The *third trajectory* (2011-present) of Islamo-secularism is premised on the failure of the successive democratic regimes to restore secularism and the policy of appeasing Islamists for electoral gains.

A. Apologetic Secularism: Pitfalls of the National Identity Building (1972-1975)

The framers of the Constitution envisioned Bangladesh as a secular democratic republic based on Bangalee Nationalism as the shared common value. However, the pitfalls of the Bangalee ethnicity-based secular identity became evident in the nascent stage. *First*, the framers did not foresee the risk of treating the majority ethnicity-based Bangalee identity and the citizenship as one and dubbed all citizens as Bangalees despite the ethnic

diversity.⁶⁸ The secular democracy was highly clinging to the principle of nationality and denied rights of ethnic and linguistic minorities at the very outset.⁶⁹ *Second*, though the Constitution in letter and spirit embodied secularism, the political leaders faltered in their explanation and implementation of the ideology.

The second of the issues had two aspects to it: **i)** a linguistic fault-finding by the left-wing parties that the Bangla word “*dhramanirapekshata*” made of “*dharma*” (religion) and “*nirapekshata*” (neutrality) fell short of “Secularism”. A more appropriate translation would be “*ihajagatikata*” (temporality) or *ihaloukikata* (materiality), and **ii)** a political propaganda from the right-wing political parties that secularism would diminish the role of Islam in the society and the state would actively pursue anti-Islamist policies or secularization.

The Constitution provides that in the case of ambiguity, the Bangla text of the Constitution will prevail.⁷⁰ As in common parlance, *nirapekshata* means neutrality, many implied that secularism or *dharmanirapekshata* in the Constitution meant neutrality accorded to all religion or mere non-communalism, as such not separation of state and religion.⁷¹ Etymologically, *dharmanirapekshata* comes from “*apeksharahita*”, which means not necessitated, without association or indifferent (with/ to religion).⁷² While “*ihajagatikata*” reflects the philosophical aspect of secularism, its political aspect lies in separating state from religion in order to create equal rights for all citizens irrespective of religious belief.⁷³

⁶⁸Ali Riaz, *God Willing: The Politics of Islamism in Bangladesh* (Oxford: Rowman & Littlefield Publishers Inc., 2004) at 24, 31-32 and Anisuzzaman, “Bangalee o Bangladesh” in Anisuzzaman ed, *Bangalee o Bangladesh* (Kolkata: Mitra and Ghosh Publishers Pvt Ltd, 1421) [Anisuzzaman, “Bangladesh”] 9. See also Constituent Assembly Debate, 2 (9) 25 October 1972, at 290-96. There are at least 47 ethnic identities distinct from the Bangalees, with the concentration of 13 communities in the Chittagong Hill Tracts region and small pockets of ethnic communities dispersed in the plains. See *A Brief Account of Human Rights Situation of the Ethnic Minorities in Bangladesh* (Thailand: Asian Indigenous Peoples Pact, 2007) at 7.

⁶⁹“We are a community living in the 54 thousand square miles, with the same language, who have the same understanding of life but with different religions. We are living as a compact nation. No one would be able to destroy this oneness.” (translation by author) *Supra* note 46 at 127.

⁷⁰The proviso to art. 153.

⁷¹Riaz, “God Willing”, *supra* note 68, at 140 citing Tazeen Murshid, *The Sacred and the Secular* (Calcutta: Oxford University Press, 1995) at 5; and Anisuzzaman, “Amader Mukti Songram o Songbidhaner Mulniti” *supra* note 68, 106 at 112.

⁷²Anisuzzaman, “Dhormorashtro, Dhormonirapekshata o Rashtrodhormo”, *ibid*, 127 at 139.

⁷³Serajul Islam Chowdhury, “Ondhokarer Biporite Shongskriti” in *Koto Mulyo*, *supra* note 10, 150 at 151.

As such “secularism”, as elucidated in the original Constitution, meant the place of religion in personal belief and practice, the freedom and right in the exercise of religion, and at the same time, state neutrality and non-association with *any* religion or religious institutions.⁷⁴ In this sense, *dharmanirapekshata* was the more refined encapsulation of secularism as enshrined in the Constitution.

Of the two opposing poles, instead of engaging in dialogue with the secular leftist parties, the government chose to woo the right-wing parties. This not only led to a narrow view of secularism but also increased religious tokenism, ultimately jeopardizing state neutrality in terms of religion.

i. Increasing ideological Gap with the Left

The Constituent Assembly was constituted by the members elected to the Pakistan National Assembly and the East Pakistan Provincial Assembly in the elections of 1970 and 1971.⁷⁵ The leftist parties, which had boycotted the 1970 election, but had participated in the liberation movement, recommended a coalition government, which was left unheeded.⁷⁶ The Constituent Assembly was formed with *AL* members exclusively and a lone opposition member of *NAP* and one independent member, hindering the opportunity for open debate and discussion of divergent views on the Constitution.⁷⁷ The responses following the publication of the Draft Constitutional Bill on 12 October 1972 show that leftist political parties had a general consensus for the four fundamental principles. The differences evolved around the establishment of the Constituent Assembly and the contention that the articles of the Constitution did not adequately reflect the principles.⁷⁸

In the Constituent Assembly, members even passed remarks equating the left-wing and right-wing political parties:

⁷⁴*Supra* note 72.

⁷⁵*The Bangladesh Constituent Assembly Order, 1972* (Presidential Order No. XXII of 1972). For detail on the constitution of the Assembly, see, *supra* note 28 at 60, 68.

⁷⁶*Supra* note 17 at 82.

⁷⁷*Supra* note 28 at 70.

⁷⁸*Ibid.*

We had overcome the disastrous time when the rulers intended to infringe public order by inducing communal hatred among Bangalees. Now we are talking about secularism. However, we are at risk from the zealots. The agonists and atheists are attacking us, and the zealots are also attacking us. They are spreading misleading news against us.⁷⁹

This wholesale branding of the left-wing political parties as non-believers or atheists signaled a red flag for the egalitarian constitutional framework *AL* was espousing.⁸⁰ *AL* further aggravated its gap with the leftist parties by taking resort to rigging in the first Parliamentary election to secure an overwhelming majority, despite predictions of a decisive win.⁸¹ The left suffering from ideological divide could not stage meaningful resistance, and some radical factions were severely repressed, leaving no space for mitigating the differences.⁸²

ii. Apologetic Secularism and Policies Favoring the Right

In facing the right-wing propaganda of secularism being anti-Islam, the leaders repeatedly stated that secularism was not commensurate to the absence of religion and it meant equal dignity accorded to all religions.⁸³ Some intellectuals also asserted that people of Bangladesh despite being devout are non-communal, and secularism would ensure everyone's right to religion.⁸⁴ Somewhere in the repeated assertions on the equal dignity of all religions, the leaders missed bringing home the message that secularism treated religion as a personal issue without state interference.⁸⁵ It did not mean atheism or confer any duty on the state to "dignify" religion, nor did it mean non-communalism alone.⁸⁶

⁷⁹Md. Mizanur Rahman Chowdhury, Second Session (Fourth Meeting), 2 (11), 27 October 1972, at 343 (translation by the author).

⁸⁰Serajul Islam Chowdhury, "Dharma Nirapekshata o Banglar Modhyabitto" in Anup Sadie ed, *Bangaleer Dharmanirapekshatabad*, (Dhaka: Kotha Prakash, 2012) 98 at 118.

⁸¹Rounaq Jahan and Inge Amundsen, *The Parliament of Bangladesh: Representation and Amendability*, CPD-CMI working Paper Series, 2012 at 7.

⁸²A stand as to shooting on sight was declared. See, Serajul Islam Chowdhury, "Juddhaporadhider Bichar Korte na Parar Tatporjo" in *Koto Mulyo*, *supra* note 10, 167 at 170.

⁸³Jatin Sarkar, "Dharmanirapeksha Rashtro-Rashtranirapeksha Dharma" *supra* note 80, 86 at 86.

⁸⁴Kabir Chowdhury, "On the occasion of independence day discussion at the Bangla Academy" *The Daily Azad* (30 March 1972).

⁸⁵*Supra* note 60, at 45.

⁸⁶*Supra* note 80 at 98.

This apologetic interpretation of secularism proved to be a vital setback in reflecting secular principles within the legal framework. *First*, most laws of the Pakistan regime remained in force with minor changes.⁸⁷ The lack of reform could be discounted, taking into account the retention of the British era laws in both India and Pakistan, but certain abstentions, retentions, and revisions made it difficult. The state abstained from enacting an anti-discrimination law to give legal effect to the principles of the arts. 12 (secularism), 27 (equality), and 28 (non-discrimination). The “enemy property” law of Pakistan used for expropriating properties of migrant Hindus was continued with the name of “vested property”.⁸⁸ Not only the state retained control over the Hindu property expropriated prior to 1971, but also new orders were issued, leading to new eviction, which made Hindus “enemies” in their own land.⁸⁹ The provision of personal laws being guided by religious laws was retained instead of enacting a uniform civil code fearing right-wing opposition.⁹⁰ *Second*, the exemption of the local collaborators of 1971, apart from those charged with murder, rape or arson, manifested a shift towards right-wing pressure groups.⁹¹ *Third*, failure to reformulate the education system and continuance of *madrassah* education failed the promise of a uniform and mass education system.⁹² Though the *madrassah* education was noted as the “legacy of the Pakistani days”, the fate of the system was left to the decision of the Education Commission, which retained the system.⁹³ These dubious

⁸⁷Under the *Laws Continuance Enforcement Order, 10 April 1971*, the continuity of the legal order was preserved by according legality to laws in force in Bangladesh prior to 26 March 1971 subject to consequential changes. Later the continuity was preserved under art. 152 of the Constitution as the Laws Continuance Enforcement Order was repealed with the commencement of the Constitution. In effect, only minor changes were made regarding nomenclature rather than substantial changes to the laws.

⁸⁸For relevant legal provisions, see the Bangladesh (Vesting of Property and Assets) President's (Order No. 29 of 1972), the Enemy Property (Continuance of Emergency Provisions) (Repeal) Act (XLV of 1974), the Vested and Non-Resident Property (Administration) Act (XLVI of 1974) and the Vested and Non-Resident (Administration) (Repeal) Ordinance 1976 The Ordinance, (No. XCII of 1976).

⁸⁹Riaz, “God Willing”, *supra* note 68, at 65-71. Although the parliament enacted the Vested Property Return Act 2001 (Act No. XVI of 2001) to enable the Hindus to reclaim their land, there is no record to demonstrate legal remedies being ensured.

⁹⁰*The Muslim Personal Law (Shariat) Application Act*, (Act No. XXVI of 1937).

⁹¹Riaz, “God Willing”, *supra* note 68, at 97-99. Bangladesh had to release the 192 captured Pakistani officers pursuant to a tri-party treaty among India, Pakistan, and Bangladesh. This created a moral bar in trying the local collaborators of the Pakistan Army. See also Hiranmay Karlekar, *Bangladesh: The Next Afghanistan?* (New Delhi: SAGE Publications, 2006) at 49-50.

⁹²There was a demand for reforming *madrassah* education. Staff Reporter, “Demand for Elimination of Madrasah Education: Abul Hashem at BCL Discussion Session” *The Daily Azad* (30 March 1972).

⁹³While inaugurating a three-day joint conference of the *Madrassah* Teachers Association and Islamic Education Reforms Committee, the Prime Minister noted that the existing *madrassah* system hardly helped in

decisions accorded primacy to right-wing politics at the outset but could not contain the mounting propaganda of Islam being at risk in Bangladesh.

iii. Religious Tokenism instead of Strict Neutrality

A direct political implication of the apologetic interpretation of secularism was the state “promotion” of religion instead of indifference to religion.⁹⁴ Sheikh Mujibur Rahman, on his return from detention in Pakistan in 1972, at the same breath, mentioned Bangladesh as the second largest Muslim state and announced that the state would not be based on religious identity.⁹⁵ He also led a prayer immediately after the adoption of the Constitution.⁹⁶ The ambiguity was also visible through the national media allotting time for reciting religious texts of the Hindus, the Buddhists, the Christians, and the Muslims.⁹⁷ In 1974, Bangladesh became a member of the Organization of Islamic Conference (*OIC*), joined the Islamic Summit in Lahore, and showed support for the Arab cause.⁹⁸ The Foreign Minister of Bangladesh identified *OIC* as an indomitable force against imperialism and oppression.⁹⁹ The Islamic Academy banned in 1972 was revived as the Islamic Foundation¹⁰⁰ and fund for *madrassah* education was increased.¹⁰¹ The cabinet members emphasized the significance of the ideals of the Prophet and the Quran in eradicating social

developing human faculties required for the changing reality. The PM advised the Ulema to keep religion above all controversies and refrain from using it as an instrument for political gains. Religion, he cautioned, by no means be utilized as a weapon of exploitation. Staff Correspondent, “Religion Should not be Used for Politics: Recast Madrasah Education” *The Bangladesh Observer* (31 March 1973).

⁹⁴Serajul Islam Chowdhury, “Somoyer Kache Itihaser Dabi”, *Koto Mulyo*, *supra* note 10, 23 at 25 and *supra* note 82, at 112.

⁹⁵Anisuzzaman, *Bangladesh* *supra* note 68, at 38.

⁹⁶Hakim, *supra* note 8 at 106.

⁹⁷*Ibid*, at 140.

⁹⁸Hakim, *supra* note 8 at 106 and Riaz, “God Willing”, *supra* note 68, at 33.

⁹⁹“Dr. Kamal Hossain at Sixth Islamic Foreign Ministers Conference at Jeddah”, *The Daily Ittefaq* (23 July, 1975). See “Islamic Confce. [sic] Adopts Dacca Proposal on Food”, *The Daily Observer*, (July 20 1975).

¹⁰⁰*The Islamic Foundation Act, 1975* (Act No. XVII of 1975). The purpose of the Act was “founding, managing and assisting mosques and Islamic centers, academies and institutes, undertaking research on the contributions of Islam to culture, science and civilization, propagating the basic Islamic ideals of universal brotherhood, tolerance and justice and promoting studies and research in Islamic history, philosophy, law and jurisprudence and to provide for matters connected therewith.”

¹⁰¹Hakim, *supra* note 8 at 106.

problems, forming an egalitarian society, and the role of the Islamic Foundation in fostering ties with Islamic countries.¹⁰²

Starting with this “neutral” promotion of religion the state entangled rather than distancing itself from religious tokenism and institutions, gradually tilting towards Islamism.¹⁰³ The ethnicity-based secular identity saw its final blow when *AL* compromised democracy by dissolving all political parties and established one-party presidential rule under the name and style *BAKSAL* in 1975.¹⁰⁴ The freedom of the press and other civil liberties were suppressed by an emergency declaration from the year before.¹⁰⁵ Still reminiscing the glorious independence, the intellectuals were caught off-guard with the authoritarianism of the regime and could not find appropriate avenues to voice against the encroachment of secular values.¹⁰⁶ Any dissent to the government policies was marked as “anti-secular”, “anti-liberation”, and “pro-Pakistan”.¹⁰⁷ Despite the strategy of appeasing right-wing parties, *AL* Government was marked as pro-Indian and anti-Islam. The propaganda that Islam was at risk under secularism heightened to a level that it was said that people could not exercise Islam during 1972-1975.¹⁰⁸

From the above, it is clear that abstention to reshape the legal system in light of the constitutional provisions, reducing secularism to non-communalism, and promoting

¹⁰²The Finance and Planning Minister Tajuddin Ahmed in a religious gathering of a Bar Association called for following the ideals of the Prophet and creating a unified society irrespective of race, religion and color. On the same occasion, Cooperative and Local Governance minister said Islam could be truly practiced in independent Bangladesh. If people understood Quran in its proper light a lot of social problems would be reduced. See “Follow the Ideals of the Prophet (Tajuddin)”, *The Daily Azad* (29 April, 1972). The Labor, Social Welfare and Cultural Minister Yusuf Ali said Islamic Foundation could foster ties with Islamic Countries by figuring out similarities between culture and tradition of Bangladesh with Muslim states. Yousuf Ali, “Islamic Foundation will strengthen Muslim Fraternity: Yousuf Ali”, *The Daily Ittefaq* (6 August, 1975).

¹⁰³Riaz, “God Willing”, *supra* note 68 at 74.

¹⁰⁴Ali Riaz, *Islamic Militancy in Bangladesh: A Complex Web* (London: Routledge, 2008) at 11.

¹⁰⁵Naeem Mohaiemen, *We Wish to Inform You: A History of Censorship in Bangladesh (1972-2012)*, (1 April 2013) online: <blogs.cuit.columbia.edu>. Circulation of only four national dailies, two in English and two in Bangla was allowed.

¹⁰⁶Riaz, “God Willing”, *supra* note 68, at 92-94.

¹⁰⁷Dina Mahnaz Siddiqui, “Political Culture in Contemporary Bangladesh: Histories, Ruptures and Contradictions” in Ali Riaz & C. Christine Fair, eds, *Political Islam and Governance in Bangladesh* (New York: Routledge, 2011) 7 at 11.

¹⁰⁸Anisuzzaman, “Samprodayikotar Vabadorsho” in *Samprodayikota o Dharmanirapekshata* (BPL: Dhaka, 2015) 9 at 12.

religion rather than maintaining neutrality, all were geared toward negating the make-belief risk the regime posed for Islam in Bangladesh. Nevertheless, it all ran counter-productive and failed secularism to an extent. The slow Islamization already in place became institutionalized after the assassination of the AL leadership.¹⁰⁹

B. Islamization as a Legitimization Tool for the Autocratic Regime

The military takeover following the assassination of Sheikh Mujibur Rahman suffered from both internal and external legitimacy crises. To remedy this lack of legitimacy, the successive Martial Law Administrators brought Islam to the forefront. The coup that killed Mujib also installed Khandaker Mushtaq Ahmed, Mujib's close associate and a cabinet member, as President for a period of three months before a counter-coup took place.¹¹⁰ Though three years back in the Constituent Assembly Mushtaq said that "religious garb would not be allowed to cloak state action in Bangladesh", he took an anti-secularist stance to impress the Islamist forces both internal and external.¹¹¹ Saudi Arabia recognized Bangladesh immediately after his usurpation of power.¹¹² He also sent a message to the Prime Minister of Pakistan assuring normalization of relations.¹¹³ He started the use of "Bismillah" to initiate state action or speeches.¹¹⁴ The two subsequent martial law administrators, Zia (1975-1981) and Ershad (1982-1990) took his express policy of Islamization further, which heightened on a par with the increase of the legitimacy crisis.

i. The Bangladeshi Muslim Identity (1975-1981)

In order to negate the ethnicity-based secular identity of Bangalee Nationalism, Zia's regime took resort to the majority religion. This opposition helped them to get support from Islamic countries and also formed the basis of their hegemonic claim of "Bangladeshi

¹⁰⁹Ahmed Rafique, *Bangladesh: Jatiyotabad o Jatirashtrer Somoshya* (Dhaka: Anannya, 2000).

¹¹⁰*Supra* note 9 at 107.

¹¹¹*Ibid.*

¹¹²*Ibid.*

¹¹³"Waiting for the beginning of a New Chapter of relationship between Bangladesh and Pakistan", *The Daily Ittefaq* (27 August, 1975).

¹¹⁴*Supra* note 109, at 180-81.

Muslim” identity as distinct from “Bangalee Hindus” of West Bengal.¹¹⁵ General Ziaur Rahman, who was both the Chief Martial Law Administrator and President, frequently visited Islamic countries, established an Islamic University, made Islamic studies mandatory in schools, set up a *Madrassah* Education Board and a Division of Religious Affairs, and increased incentives for Islamic research.¹¹⁶ All public offices displayed Islamic verses, and official greetings were issued only for major religious celebrations of the Muslims, and the radio television broadcasted *Azaan* (call for prayers).¹¹⁷

To legitimize the process of Islamization and to give permanence to the Bangladeshi identity, Zia amended some basic features of the Constitution through martial law proclamation.¹¹⁸ Secularism was outright excluded from both the Preamble and art. 8 and was replaced with “Absolute trust and faith in Almighty Allah”. Art. 8(1A) was added to distinguish the provision of Absolute trust from the other fundamental principles, by designating it as the basis of all state actions.¹¹⁹ Socialism was also redefined to mean and include economic and social justice.¹²⁰ Art. 9 recognizing Bangalee nationalism as “the unity and solidarity of the Bangalee nation, which, deriving its identity from its language and culture, attained sovereign and independent Bangladesh through a united and determined struggle in the war of independence, shall be the basis of Bangalee nationalism” was substituted.¹²¹ Art. 6 was also amended to the effect that the “citizens of Bangladesh shall be known as Bangladeshis.”¹²²

Notably, there was no debate as to the Bangalee and Bangladeshi identity before 1975. During the liberation movement when the Bangalees took the streets, chanting slogans, “Rise! Rise! Bangalee Rise”, “Who am I? Who are you? Bangalee! Bangalee!” or “Joy

¹¹⁵*Ibid* and *supra* note 9, at 108.

¹¹⁶*Supra* note 9 at 108.

¹¹⁷*Ibid* and Riaz, “God Willing”, *supra* note 68, at 36.

¹¹⁸*Supra* note 19.

¹¹⁹*Ibid*, art. 3.

¹²⁰*Ibid*, art. 2.

¹²¹*Ibid*, art. 4.

¹²²*Supra* note 22, s. 3.

Bangla”¹²³ it never created a doubt as to which Bengal people were referring to.¹²⁴ The identity was further entrenched by the geographic reference, “*Tomar amar Thikana, Padma, Meghna, Jamuna*” (the deltaic region comprising the three major rivers in Bangladesh as Bangalee’s abode). Furthermore, the pangs of pain that Bangladesh underwent for the language right and self-determination made it distinct from West Bengal in all respects.¹²⁵ During the liberation war, even people of Kolkata referred to the refugees as “people of *Joy Bangla*” and often asked, “Have you come from *Joy Bangla*”?¹²⁶

The Bangalees of the West Bengal reside in India and the Bangalees of the East in East Pakistan and later Bangladesh; it had always been as simple as that. Therefore, the amendment was a deliberate attempt to tilt toward a religion-based identity, more clearly visible from the provision of establishing a peaceful relationship with the Islamic States.¹²⁷ The change of citizenship was clearly not intended to accommodate the distinct identity of the ethnic minorities, as Zia’s regime was well known for severely repressing them.¹²⁸ The change of nationality could not bring home different ethnic identities and also relegated religious minorities to second-class citizens.

Alongside these changes, the ban on politics was carefully lifted; this resurfaced *AL*, but at the same time rehabilitated the political parties collaborating with Pakistan, e.g., *Jamaat-e-Islami Bangladesh (JIB)* and *Nizam-e-Islam*.¹²⁹ Zia outlawed all proceedings against the war criminals facing trial.¹³⁰ To add a civilian semblance to his rule, Zia floated a political party, namely National Front in 1977 and later Bangladesh Nationalist Party (*BNP*, 1978), with

¹²³In Bangla “joy” means victory. “Joy Bangla” was the slogan denoting the aspiration of Bangladesh as a free land for Bangalees.

¹²⁴Anisuzzaman, “Bangladesh”, *supra* note 68, at 117-18 and Kabir Chowdhury, “Bangaleer Atmoporichoyer Shongkot” in Mustafa Nurul Islam ed, *Banglaeer Atmo-Porichoy*, 233 at 242.

¹²⁵Kabir Chowdhury, *ibid*.

¹²⁶Anisuzzaman, *supra* note 124.

¹²⁷Amended art. 25. The principle of foreign relations was amended to include “the state shall endeavor to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity”.

¹²⁸Anisuzzaman, “Shadhinota o Somskriti” in *Songskriti o Songskriti Kormi* (Bengal Publications Limited: Dhaka, 2013) 25 at 30.

¹²⁹Riaz, “God Willing”, *supra* note 68 at 36 & Karlekar, *supra* note 91 at 52.

¹³⁰*Ibid*.

leaders coming from all political parties, even the left-wing political parties.¹³¹ *BNP* was made of a “strikingly heterogeneous crowd with no obvious ideology in common”, except for grievance against the *AL*.¹³² The *BNP* manifesto noted that “religious beliefs and love for religion are great and imperishable characteristics of the Bangladeshi nation”.¹³³ After winning a national election with massive rigging, Zia’s *BNP* accorded legitimacy to all the changes made to the Constitution by the Fifth Amendment.¹³⁴

Thus, the artificial divide between the Bangalee and the Muslim identity was given a legal shield in the sham of protecting the sovereignty of the State. The features were given permanence by adding a requirement of a referendum for the purpose of amendment.¹³⁵ There is not much public information on the parliamentary debate on the amendment as a whole or exclusion of secularism in particular. However, it is notable that even within a Parliament formed with ties of convenience, 35 members walked out on the ground of non-distribution of the Bill to elicit public opinion.¹³⁶

The exclusion of secularism and the inclusion of provision of peaceful international relations with Muslim nations drastically diminished the nature of the state as a secular democracy. This special protection to Islamic identity or majority Muslim people was uncalled for and was definitely driven by political interest.¹³⁷ The collaborators of the Pakistani regime and Islamist leaders made it to the cabinet and became confidants of the President.¹³⁸ Following the footsteps of *AL*, all dissent to the regime was branded as pro-Hindu, pro-India, and anti-Islamic.¹³⁹ To sum up, Zia’s regime turned the legal nomenclature of Bangladesh from a Secular Republic to a country leaning towards Islamic Republicanism.

¹³¹*Supra* note 109 at 181.

¹³²*Supra* note 106.

¹³³*Supra* note 9, at 108.

¹³⁴*Supra* note 81 at 8.

¹³⁵*Supra* note 22, s. 30.

¹³⁶They also observed that by integrating the Martial Law Orders to the Constitution the Bill would perpetuate martial law in name of lifting it. “5th Amendment Bill Passed: First Act of 2nd Jatiyo Sangsad”, *The Daily Observer* (6 April 1979).

¹³⁷*Supra* note 108, at 185.

¹³⁸Riaz, “God Willing”, *supra* note 68 at 140.

¹³⁹*Supra* note 107.

ii. State Religion Islam: A Final blow to Secularism (1982-1990)

After Zia's assassination and a brief period of civilian rule (1981-82), martial law again took grip under the leadership of Lieutenant General H. M. Ershad. Ershad also validated his regime (1982-86) by floating the National Front in 1985 culminating in *Jatiyo Party (JP)*, 1986) and by enacting the Constitution *Seventh Amendment*.¹⁴⁰ He tried to earn legitimacy with the Islamist parties by promising a robust stand for establishing "Islam" in society and culture.¹⁴¹ The ideals of the front included "Independence, Sovereignty, Bangladeshi Nationalism, Democracy, Islamic Idealism and Progress of the Society, to establish religious values in the society".¹⁴² The ideals formed a mirror image of the Zia regime, and together they reflected Pakistan's legacy of military autocracy and theocracy.¹⁴³ Religion-based politics was ingrained in the state mechanism to establish Muslim nationality.¹⁴⁴ As an outward reflection of the policy, the head of the state, Ershad, started delivering sermons in Friday congregations, visited *pirs* (spiritual leaders) and shrines.

In order to understand the *Eighth Amendment*, the political developments before and after the 1986 parliamentary election have to be noted. The opposition political parties *BNP*, *AL*, and *JIB* claimed lifting of martial law and restoration of fundamental rights before the election.¹⁴⁵ *AL*, under the leadership of Sheikh Hasina, unilaterally joined the election leaving *BNP* in surprise, but could not make much headway due to electoral malpractice.¹⁴⁶ The *AL* soon boycotted the Parliament, and in fear of a "garrison state" taking permanence, the opposition parties continued agitating in the streets.¹⁴⁷ Two years to the election, Ershad announced another national election in 1988 but failed to quell the discontent of the opposition. As such, the "state religion" bill of 1988 was perceived as the last trump card of the General to retain power in the face of mass protest.

¹⁴⁰Act No. I of 1986.

¹⁴¹Riaz, "God Willing", *supra* note 68 at 37.

¹⁴²*Supra* note 109 at 182.

¹⁴³*Ibid.*

¹⁴⁴*Ibid* at 182-83.

¹⁴⁵*Supra* note 17 at 189-96.

¹⁴⁶*Ibid* at 194.

¹⁴⁷*Ibid.*

a. Projecting Islam as a New and Distinct Identity

The inclusion of Islam as the state religion in the Constitution through the *Eighth Amendment*, 1988 took the state one big step away from secularism and towards Islamization. Ershad stated that the inclusion of Islam as the state religion reflected the aspiration of the majority Muslim people and provided a distinct identity while fulfilling the ideological gap created by the exclusion of secularism. Following the passage of the Bill, he was seen commenting on the Amendment from shrines, at Friday congregations, and *madrassah* inaugurals.

<p>State Religion Gives Distinct Identity: Ershad, The Daily Observer, 9 June 1988</p> <p>“President Hussain Muhammad Ershad said the recognition of Islam the religion of the bulk of the population, as the state religion would enable us to live as a nation with distinct identity.”</p> <p>“He said the adoption of Islam as the state religion through the Eighth Amendment Bill by Parliament had fulfilled the long-cherished aspiration of the people.”</p> <p>“He said the people achieved nationhood, independence and sovereignty with the establishment of the independent Bangladesh through a Liberation War and now the recognition of Islam as state religion had added another <i>feather</i> to the distinctive national identity. The Bill foiled conspiracies against our religion and nipped attack on our distinctive identity and sovereignty.”</p> <p>[The speech was delivered at the Zaker Manjil (Shrine of Pir Sahib of Atroshi Hazrat Shah Sufi Moulana Hasmatullah Nakshabandi Mujadadi)]</p>
<p>Islam gives us distinct Identity: Ershad, The Daily Observer, 22 June 1988</p> <p>“It was not the <i>end</i> but the <i>beginning</i> of the journey to establish firmly the values and teachings of Islam and ideals of the Prophet in social and national life.”</p> <p>“He said in 1972, the Constitution of the country included secularism as one of the state principles but it was removed in 1975. After that, there was a <i>vacuum</i> in this field and now with the adopting of Islam as the State Religion, we had an identity.”</p> <p>[Speech delivered while inaugurating a Madrasah]</p>
<p>Islam will bring peace and prosperity to the nation, The Daily Inqilab, 4 June 1988</p> <p>The people have realized that freedom is possible in the way of Allah and the prophet. The growing number of people attending mosques for namaz proves that.</p> <p>[Friday congregation address]</p> <p>The Daily Inqilab, 11 June 1988</p> <p>During Friday congregation at <i>Lalbagh Shahi Mosque</i>, the President said efforts should be taken so that the teachings, ideals, and principles of Islam are reflected in the state and social periphery. No law inconsistent with the Quran and Sunnah will be passed in the country.</p>

Table 2: The President Preaching from Shrines and Mosques

Echoing Ershad, the members of the ruling party said that the *JP* was not using religion for political purposes and was merely heeding the wishes of 90% of the people. They argued that the liberation war was fought for national identity and an independent land, but the war was not against Islam.¹⁴⁸ They said that Islam being the most non-communal religion, there was nothing in the bill to infringe communal harmony.¹⁴⁹ They claimed art. 2A allowed followers of other religions to observe their own religion.¹⁵⁰ Islam as the state religion was projected as non-consequential as the selection of other symbols, such as the national flower, bird, and flag.¹⁵¹ They claimed that *AL* did not oppose Islamic Republicanism during the Pakistan regime and secularism was not on *AL*'s agenda even in 1970-71. Therefore, the ideology of secularism was not ingrained in the soil, rather an imposition from India.¹⁵²

b. Opposition within the Parliament

In favor of the acceptability of Islam as the state religion, it is often argued that the bill was unanimously passed by the Parliament.¹⁵³ However, some members walked out of the session and there was a fierce debate in the Parliament for and against the bill. During the discussion on the bill, *The Daily Ittefaq* published lead news with double headings reflecting the core arguments of the opposition and the government.¹⁵⁴

There was a visible protest in the House against the bill with the main contentions that the bill, if passed, will a) create division along communal lines and harm national unity, b)

¹⁴⁸Jafar Imam, "Islam is not against the Spirit of Liberation", *The Daily Inqilab* (5 June 1988).

¹⁴⁹Sheikh Shahid, "State Religion Bill", *The Daily Ittefaq*, (02 June 1988).

¹⁵⁰*Ibid.*

¹⁵¹*Ibid.*

¹⁵²Bazlul Huda, *supra* note 148.

¹⁵³"Islam State Religion: 8th Amendment Bill Passed with 254-0 vote in the National Parliament", *The Daily Inqilab*, (8 June 1988).

¹⁵⁴"State Religion Bill will harm national unity: Opposition" and "8th Amendment Bill is a reflection of aspiration of 90% People: Government" *The Daily Ittefaq*, (2 June 1988). "The Fundamental Rights of other Religious Communities will not be Violated: Government" & "The Government has Tied Islam to State Boundaries: Opposition," *The Daily Ittefaq* (7 June 1988). "The Sovereign and Distinct Identity of Bangladesh will be Established: Government" & "State Religion Bill has Reinstated the Two-nation Theory: Opposition" *The Daily Ittefaq* (8 June 1988). *The Daily Inqilab* also ran columns for and against the Bill (9 June 1988 & 10 June 1988).

induce Islamist political parties to extremism, c) serve as a political ploy, and d) make Bangladesh fall back to the religious nationalism of Pakistan.

The opposition members said that in 1972, *AL* divided people along the ethnic line by imposing Bangalee identity; *BNP* created division by rehabilitating war criminals; and *JP* is further dividing the people across religious identity and creating an obstacle for national unity.¹⁵⁵ State religion can neither establish Islam nor is it necessary to make people Muslims anew.¹⁵⁶ The recognition of Islam as the state religion would harm equal recognition of all citizens and will destroy peace and stability in the name of religion like the Pakistan regime.¹⁵⁷ The state should instead make provisions to end communalism.¹⁵⁸ The government was making Islam the state religion without ensuring food and clothing for the people to evade responsibility by referring to the will of God.¹⁵⁹

c. Protest Outside the Parliament

Political parties and major alliances, cultural organizations, women's rights organizations, and student alliances protested against the bill through strikes, torch processions, and rallies.¹⁶⁰ They were of the opinion that the *Eighth Amendment* was passed for political interest. They believed that the state religion provision deviated from the spirit of liberation and 1952 and would create division along religious lines. Two civil society movements arose to confront the autocratic regime's decision to impose a state religion: one the 'Resistance Committee Against Autocracy and Communalism' (*RCAAC*) and the other Hindu, Buddhist, Christian Unity Council (*HBCUC*). The leaders of the *RCAAC* opined that both the fifth and eighth amendments hit the spirit of the liberation war and attempted to reestablish religion-based nationalism that people negated through the liberation

¹⁵⁵Abdus Sattar Master, *Ittefaq*, *ibid.*

¹⁵⁶Mokhtar Ahmed & Moslem Uddin, *ibid.*

¹⁵⁷Mokhtar Ahmed, *ibid.*

¹⁵⁸Nur-e-Alam Jiku, *ibid.*

¹⁵⁹Rabbiul Hasan, *ibid.*

¹⁶⁰"Protest against Religion Bill Continues", *The Daily Observer* (10 June 1988), "Programme for tomorrow's 6-hr Hartal", *The Daily Observer* (11 June 1988), "Protest Against state Religion Bill", *The Daily Ittefaq* (1 June 1988), "Demand to Scrap State Religion Bill", *The Daily Ittefaq* (2 June 1988), "Silent Procession of University Teachers", *The Daily Ittefaq* (3 June 1988) & "Rallies against Eighth Amendment: 20 injured, several Vehicles Damaged", *The Daily Observer* (9 June 1988).

war.¹⁶¹ They said that the colorable change was made to divert attention from the mass movement against the autocratic regime. In a joint statement, the archbishops stated that Bangalee nationalism mitigated the gaps between different religious identities, and the bill foiled the unity by granting special status to a single religion.¹⁶²

The reactions of the major political parties were curious. Though vowed to remove the autocratic regime, *BNP* said they were the last resort for the devout and nationalist people.¹⁶³ *AL* chief Sheikh Hasina promised to scrap the bill once in power as it dishonored the spirit of liberation.¹⁶⁴ She noted that the bill had the potential of dividing the nation like the two-nation theory of Pakistan and encouraging communalism and fundamentalism.¹⁶⁵ *JIB* said that the Government passed the bill to camouflage its anti-people activities rather than to establish Islamic rule in the country.¹⁶⁶

The bill received some positive appraisal at home and abroad from vested corners.¹⁶⁷ Ershad boastfully stated the devout people of the country would not let anyone scrap the amendment.¹⁶⁸ He marked the strikes against the bill as against Allah, his Prophet, and Islam and stated that no one could retain power without Allah's will.¹⁶⁹ Be it God's will or

¹⁶¹*The Daily Observer* (11 June 1988).

¹⁶²"Equal Dignity should be accorded to all Religion" *The Daily Ittefaq* (03 June 1988).

¹⁶³"There is no Alternative other than BNP for the Devout and the Nationalists", *The Daily Ittefaq* (6 June 1988).

¹⁶⁴"We will Scrap the State Religion Bill whenever the Opportunity Comes: Sheikh Hasina", *The Daily Inqilab* (10 June 1988); and "Hasina's call to People: Force Govt to scrap eighth Amendment", *The Daily Observer* (10 June 1988).

¹⁶⁵*Ibid.* Declaration of Islam as state religion would not bring any qualitative change unless the laws of the Quran and Sunnah were established in the country.

¹⁶⁶*Ibid.* The Naeb-e-Ameer (chief) of Dhaka City unit of *Jl*, Mr. A. T. M. Azharul Islam said that *Jl* had been fighting for the establishment of Islam through the restoration of democracy. Jamaat to fight for Ousting Government (date not archived); and "Uncompromising to unseat the Autocratic Government", *The Daily Observer* (16 June 1988).

¹⁶⁷"The representatives of about 60 Muslim and non-Muslim countries who attended the three-day international peace conference held in Bagdad recently highly appreciated the efforts of President Ershad in declaring Islam as the state religion of Bangladesh and renaming the Red Crescent Society in Bangladesh." Religious Affairs Minister Al-Haj Maulana M. A. Mannan, "Move to make Islam as state religion praised" *The Daily Observer* (7 June 1988). "The National Ulema Front hailed the passage of state religion bill as it has fulfilled the aspirations of 95% People", *The Daily Inqilab* (8 June 1988).

¹⁶⁸*The Daily Inqilab* (11 June 1988).

¹⁶⁹*Ibid.*

people's, Ershad had to step down from office in 1990, as the mass protest reached momentum.

C. Troubled Democracy: Compromising Secularism in favor of State Religion

In order to revive the Parliamentary election scheme, it was necessary to make special arrangements with the consensus of all parties. As such, Justice Shahabuddin Ahmed was made the temporary President, and the Parliamentary system was restored for the election.¹⁷⁰ The leaders of the *RCAAC* and *HBCUC* contended that revival of democracy without eliminating state religion provision or other repressive laws, such as the enemy property laws, did not constitute true democracy with equal rights of all citizens. This was also a denial of the struggle that the people of Bangladesh undertook to overthrow the autocratic regime irrespective of religious identity.¹⁷¹ The contention proved to be accurate as the restoration of democracy tragically *i)* prized Islamism through electoral politics (1991-2008), *ii)* compromised a promise to revive secularism (2011), and *iii)* created the metamorphosis of Islamo-secularism (2011-2020).

i. Islamists as the kingmakers in Electoral Politics and a Hope for Reversal

When democracy was finally restored in 1991, every party used religion to its own accord as much as possible.¹⁷² *BNP* spearheaded propaganda that *AL*, if made to the parliament, would eliminate "Bismillah" from the Constitution. To negate this contention, Sheikh Hasina appeared in electoral posters with *hijab* and prayer beads, went to pilgrimage, and loaded her speech with Islamic pleasantries.¹⁷³ *BNP*, despite winning the highest number of seats (140) fell short of the minimum requisite (150) and tied up with *JIB* (18) to form a

¹⁷⁰*The Constitution (Eleventh Amendment) Act, 1991* (Act No. XXIV of 1991); and *the Constitution (Twelfth Amendment) Act, 1992* (Act No. 28 of 1991).

¹⁷¹"Islam cannot be state religion after the 12th Amendment (restoration of democracy)" *The Daily Ittefaq*, (April 24 1992).

¹⁷²The electoral posters of the parties were almost same: *La ilaha illallah, Naukar malik tui Allah* (There is no God but Allah, and Allah is the Owner of the boat); *La ilaha illallah, Dhaner shishe Bismillah* (There is no God but Allah, and Allah willing, vote for the paddy sheaf); *Vote diley pallay, Khushi hobe Allah* (Allah would be pleased if you vote for scale). See, Ali Riaz, "God Willing", *supra* note 68 at 39.

¹⁷³*Ibid*, at 38-39. See also Enayetur Rahim, "Bengali Muslims and Islamic Fundamentalism: The Jama't-i-Islami in Bangladesh", Rafiuddin Ahmed ed, *Understanding the Bengal Muslims: Interpretive Essays* (New York: Oxford University Press, 2001) 237 at 254.

coalition government.¹⁷⁴ Similarly, in 1996, *AL* (146) formed the government by befriending *JP* (32), *JSD* (1), and was supported by *JIB*, which left *BNP* earlier on an allegation of subverting the electoral promise of running the country according to Islamic principles.¹⁷⁵ *AL*, once vowed to scrap the state religion bill, went to power by making an alliance with *JP* and taking support from the anti-liberation *JIB*. These ties of convenience made it impossible for *AL*, the self-proclaimed pro-liberation and secular party to undo the constitutional amendments on state religion and faith clause. The left-wing political parties also lost credibility by entering into occasional ties with *JP* and *AL*.¹⁷⁶

BNP was able to get back both *JP* and *JIB* and formed a four-party alliance with *Islami Oikko Jot (IOJ)*, a militant Islamic group before the 2001 election. Khaleda Zia declared that the alliance stood united for the sake of Islam and will win by a two-thirds majority, which they did (216).¹⁷⁷ The indiscriminate attack on religious minority constituencies by *BNP* patrons following the election¹⁷⁸ shook the conscience of the nation, and during the regime, Islamist militancy saw its height.¹⁷⁹ Despite all these, Sheikh Hasina ahead of the election, signed a memorandum with the *IOJ* to introduce blasphemy, legalize private Islamic faith schools and declare *Ahmadis* non-Muslim if voted to power, which was later shoved under the carpet in the face of protest.¹⁸⁰ The political disagreement and unrest ahead of the 2007 election led to a takeover by a military-backed caretaker government under the garb of a prolonged emergency (2007-2008) and deferred the general election by two years.¹⁸¹

¹⁷⁴Ali Riaz, "God Willing", *supra* note 68, at 6, 41 & *supra* note 81 at 10.

¹⁷⁵Riaz *ibid*, at 42-44 & Rounaq *ibid* at 12.

¹⁷⁶Serajul Islam Chowdhury, "Koto Mulyo?" *supra* note 10, 9 at 11.

¹⁷⁷Riaz, "God Willing", *supra* note 68, at 3-4, 49-57.

¹⁷⁸*Ibid*.

¹⁷⁹See *supra* note 104.

¹⁸⁰Riaz, "God Willing", *supra* note 68, at 20.

¹⁸¹In 1996, *BNP* introduced the intervening caretaker government provision in the Constitution through the *Constitution (Thirteenth) Amendment Act* (Act No. I of 1996) to be headed by the last retired Chief Justice. In its second term in power, *BNP* increased the tenure of the justices of the *SC* so as to manipulate the next *CTG*. As the *AL* and *BNP* conflict mounted over the *CTG* with no solution in sight, the military intervened. Ali Riaz, *How Did We Arrive Here?* (Dhaka: Prathama Publishers, 2015) at 96, 100-101, 106. [*How Did?*]

AL, in its 2008 Election Manifesto, in stark contrast to the agreement with *IOJ* clearly stated that “use of religion and communalism in politics will be banned”,¹⁸² “terrorism and religious extremism will be controlled with an iron hand”,¹⁸³ and “trial of war criminals will be arranged.”¹⁸⁴ The Grand Alliance, under the leadership of *AL*, won 262 seats in the Parliament, beyond the two-thirds majority required to amend the constitution.¹⁸⁵ The question remained whether *AL* would fulfill the electoral promise.

ii. The promise to Revive Secularism and ban Religion-based Politics Compromised

After winning the election, *AL* expressed its willingness in no uncertain terms to reintroduce the original Constitution and to revert to secularism.¹⁸⁶ On July 21, 2010, a fifteen-member “Special Committee”,¹⁸⁷ was formed to review the past constitutional amendments and report to the Parliament recommending necessary changes.¹⁸⁸ All members of the Committee except three were from *AL*. The remaining three were also members of the Grand Alliance, Hasanul Haq Inu (*JSD*), Anisul Alam Mahmud (*JP*), and Rashed Khan Menon (*WP*). *BNP* denied the invitation to join the committee terming it as a political farce and *JIB* was not invited as the war crimes trial was already underway.¹⁸⁹ On 5 June 2011, the Committee submitted 51 recommendations, whereas Hasanul Haq Inu and Rashed Khan Menon gave a note of dissent as to three points, namely retention of the state religion, *Bismillah*, and religion-based politics.¹⁹⁰ During the cabinet meeting, only the Planning Minister A K Khandakar opposed the state religion provision. In response, the *PM* said that “[m]any things have changed with time. We have to accept Islam as the state

¹⁸²S. 5 (iv), *supra* note 23.

¹⁸³*Ibid* s. 5 (i).

¹⁸⁴*Ibid*.

¹⁸⁵*Supra* note 81 at 11, 13.

¹⁸⁶Shantanu Majumder, “Secularism and Anti-secularism” in Ali Riaz and Mohammad Sajjadur Rahman eds, *Routledge Handbook of Contemporary Bangladesh* (Routledge, 2016) 40 at 43.

¹⁸⁷Chapter 27 of the Rules of Procedure provides for constitution of special committees on matters of public importance with participation from opposition parties.

¹⁸⁸Preface to the Constitution. Shakhawat Liton & Rashidul Hasan, “Constitution Amendment, 15-Member JS Body Formed Without BNP”, *The Daily Star* (22 July 2010).

¹⁸⁹Staff Correspondent, “15-strong constitution committee formed”, *bdnews24.com* (22 July 2010) online: *BDnews24.com* <www.bdnews24.com>.

¹⁹⁰“Bismillah and State Religion Islam Retained: Caretaker Government Removed”, *The Daily Inqilab* (21 June 2011).

religion. The people of this country want Islam to be the state religion. [. . .] Islam as the state religion does not offend other religions as it disapproves disrespect of other faiths.”¹⁹¹ As the Islamo-secularism Bill was finally passed in the Parliament, the *JSD* and *WP*, with other leftist parties, launched protest movements.¹⁹²

The pro-liberation and secular party *AL* not only retained religion-based politics but also mingled its apologetic secularism (duck) with the autocratic regime’s Islamization (porcupine). It also accorded finality to the metamorphosis of Islamo-secularism (*durcupine*) by dubbing it as one of the non-amendable features of the Constitution.¹⁹³ This amounted to a compromise not only as a deviation from the election manifesto but also for labeling the change as a wish of the majority of people without any proof of the same. It is worth remembering that the same majority of people had fought against the religion-based nationalism of Pakistan; the same majority did not oppose secularism as a fundamental principle (1972); the same majority dethroned the proponent of state religion in a mass movement (1992); and the same majority elected *AL* despite their promise to eliminate religion-based politics, extremism, and trial of war criminals (2008).

Although *JIB* appeared as the kingmaker after the revival of democracy, *JIB* or any other Islamist party did not get prominence from the popular vote instead from the rivalry between *BNP* and *AL*.¹⁹⁴ In the 2008 election, *JI* won 2 seats out of the 38 constituencies it had contested with only 4.6% of the total vote.¹⁹⁵ *IOJ*, the other Islamist party, could not secure a single vote in the four contested constituencies.¹⁹⁶ The marginal difference of total vote between *BNP* and *AL* in the national elections of 1991 (*AL* 30.08%, *BNP* 30.81%), 1996 (*AL* 37.46%, *BNP* 33.61%), and 2001 (*AL* 40.13%, *BNP* 40.97%) do not provide a definitive

¹⁹¹The Prime Minister reminded A K Khandakar that while being part of the Ershad government he did not oppose state religion. *Ibid.*

¹⁹²Staff Correspondent, “WP, JSD to clear their Stance Today,” *The Daily Star* (2 July 2011) online: The Daily Star <www.thedailystar.net>.

¹⁹³Art. 7B has been added to the effect that certain enumerated features of the Constitution cannot be amended.

¹⁹⁴Rahim, *supra* note 173 at 252.

¹⁹⁵Frances Harrison, *Political Islam and the Elections in Bangladesh* (London: New Millennium, 2013) at 50.

¹⁹⁶*Ibid.*

indication that *BNP* reaped massive benefit from its alliance with *JI* or *IOJ*. Indeed the 2008 election indicates to the contrary (*AL* 49%, *BNP* 33%).¹⁹⁷

In effect, only a few Islamist parties, including the *Awami Olama League (AOL)*, purporting as the Islamic wing of *AL*, made a hullabaloo during the deliberation on the state religion. They claimed that inserting secularism in the constitution would mean equating 3% people of other faith with 97% Muslims.¹⁹⁸ They demanded that the government reflected the aspiration of the majority of Muslims on the question of state religion and faith in Allah rather than the leftists.¹⁹⁹ They reasoned that secularism was not even there in the Declaration of Independence of 10 April 1971.²⁰⁰

The Proclamation of Independence referred to Bangladesh as a People's Republic, which marked the difference with Islamic Republicanism of Pakistan. Moreover, during the Liberation War, the government in exile repeatedly asserted that Bangladesh would be a secular country.²⁰¹ Contrary to the claims of the military autocrats and religious rights, *AL* protested against the Islamization of Pakistan, but ironically it failed to uphold secularism in independent Bangladesh.²⁰² While the leftist parties were not even allowed to hold a procession against Islamo-secularism, the religious right was out and aloud with a 30-hour strike.²⁰³ Indeed, in 2011, *AL* while heeding the right-wing political parties, again

¹⁹⁷Figures taken from *supra* note 81.

¹⁹⁸"Secularism should be excluded from the Constitution retaining Faith in Allah, State Religion, and Bismillah: Awami Olama League" *The Daily Inqilab* (date not archived).

¹⁹⁹"80 states have state religion provision; Bangladesh will also have Islam as State Religion," *The Daily Inqilab* (date not archived).

²⁰⁰*Supra* note 198.

²⁰¹Anisuzzaman, *supra* note 68, 34.

²⁰²Sheikh Mujibur Rahman's speech during the debate on separate electorate based on religious identity in East Pakistan is also notable:

One of my friends has stated that they will regard the minorities with equal treatment. I ask how will you do that when you have changed into an Islamic Republic? We fought for the Republic of Pakistan rather than the Islamic Republic. We wanted Hindu, Muslims, Buddhists and Christians all to be equal in politics-state to be established in truth and equity. We have made the head of the state Muslim, Islamic Republic of Pakistan and have thus created two nations. Moreover, if we go for separate electorate what will be the fate of the state? *Ibid*, 33-34.

²⁰³Staff Correspondent, "Cops foil Left Parties' Procession: 5 Injured in Baton Charge," *The Daily Star* (01 July 2011) online: The Daily Star <www.thedailystar.net> & Staff Correspondent, "Twelve Parties Call Hartal for July 10-11" *The Daily Star* (1 July 2011) online: The Daily Star <www.thedailystar.net>. *BNP* also extended

compromised its ethos of the past. The party General Secretary quite aptly termed politics as an “art of compromise and possibilities”.²⁰⁴

iii. Is Islamo-secularism Secular? The Political Art of Compromise and Possibilities

Can the state claim that it treats all citizens equally when the Constitution expressly designates the majority’s religion as the state religion? Can a state claim being secular when its mainstream politics is increasingly shaped by religious tokenism and an active promotion of religion-centric politics? Can communal harmony and national cohesion be achieved within such a constitutional framework? Can the state religion provision be regarded as merely ornamental as it provides co-equal status to other religions? The UN Special Rapporteur on Freedom of Religion and Belief seems to answer all of them in negative on the 2016 report on Bangladesh:

A secular State and a religious society can harmoniously exist together. But a secular State cannot at the same time be a religious State, i.e. a State proclaiming an official State religion. Although Article 2A, after proclaiming Islam as the State religion, goes on declaring that the Government shall ensure equal status and equal rights of other religions, the contradiction remains.²⁰⁵

The government, in its response, has submitted that the ‘state religion’ provision is a manifestation of respect for the majority and that equal rights of other religions have also been recognized.²⁰⁶ Moreover, art. 2A or the state religion provision as a directive principle holds interpretive value alone and cannot supersede the fundamental right of non-discrimination on religious grounds, which is enforceable in courts.

In the Fifth Amendment case, the SC unanimously held that the removal of art. 12, the proviso to art. 38 and replacement of secularism with “Absolute Trust” defaced the Constitution by destructing the basic features and transformed “secular Bangladesh” into a

support to the strikes, see, Staff Correspondent, “BNP, Allies to go for Simultaneous Agitation” *The Daily Star* (3 July 2011) online: The Daily Star <www.thedailystar.net>.

²⁰⁴Staff Correspondent, “Constitutional Amendment: AL Not Fully Happy,” *The Daily Star* (3 July 2011) online: The Daily Star <www.thedailystar.net>.

²⁰⁵Report of the Special Rapporteur on Freedom of Religion or Belief on his Mission to Bangladesh, UN General Assembly (22 January 2016) A/HRC/31/18/Add. 2, online: <www.ohchr.org>.

²⁰⁶Report of the Special Rapporteur on freedom of religion or belief on his mission to Bangladesh: comments by the state, UN General Assembly (19 February 2016) A/HRC/31/18/Add. 4, online: <www.ohchr.org>.

theocracy.²⁰⁷ Given the Fifth Amendment decision, it is inconceivable how the state religion provision can *coexist* with secularism without altering any of the basic features of the Constitution. The obiter of the same judgment read:

... it should be remembered that the purpose of a Constitution is not to describe the tenets of a particular religion but as an Instrument creating the high institutions of the Republic and its relationship with its people. A Constitution upholds and guarantees such dignity to the people of the Republic with its own rights and also its obligations to the Republic in a broader sense but the religion of a particular section or sections of people shall neither required to be highlighted nor be interfered within an ideal and model democratic form of Republic. The Constitution of such a Republic would never contain or refer to a particular faith but leave such faculties with the people themselves. Bangladesh was dreamt of as a secular country, as such its Constitution was framed on that ideal, but any change from such a basis would constitute a change of the basic structure of the Constitution.²⁰⁸

Maybe this obiter was intended to serve as a guideline for the legislative or judiciary in negating the state religion provision of the *Eighth Amendment*. The *Fifteenth Amendment* and the aftermath indicate that both have failed to decipher the guideline.

As the lawmakers found that granting special status to a particular religion to be inconsistent with secularism [art. 12(b)], they were compelled to revise art. 2A. Mahmudul Islam, the former attorney general of Bangladesh, explained the pretentious equality of the provision in one fine line: “Islam being given the status of State religion, the consequent inconsistency is not removed by saying that the State shall ensure equal status and equal rights in the practice of other religions”.²⁰⁹ The same is true for the double-layered opening verse of the Constitution praising “Allah” and the “Creator” separately.

The claim that the Constitution should appeal to a particular religious group, as forwarded by the government, itself violates the semblance of equality of the Constitution. The sequencing of the religions in art. 2A according to the number of followers *prima facie* evidences the risk of categorizing citizens. Moreover, as the right to peaceful practice of all religions has been recognized in the Constitution, the additional provision of state religion

²⁰⁷*BMIW Ltd. v. Bangladesh*, 2006 (Special Issue) BLT (HCD) at 230.

²⁰⁸*Ibid* at 45.

²⁰⁹Mahmudul Islam, *Constitutional Law of Bangladesh*, 3rd Edition (Dhaka: Mallik Brothers, 2012) at 68.

degrades the Constitution from its Secular underpinning and reveals the existence of contesting political interests. The broad scope left open for religion-based politics under art. 38 violates the very foundation of art. 12(c) which prohibits the use of religion for political purposes.

Islamism thwarts the very purpose of secularism in Bangladesh, preventing abuse of religion in politics. The endorsement of a particular worldview by the state or institutions of authority “does not automatically reflect the view of the majority, especially where democratic institutions are not in operation”.²¹⁰ Given the weak institutional democracy in Bangladesh, the retention of state religion and its later modification cannot be attributed to the people. *BNP*, *JIB*, and *AL* once denounced the state religion provision enshrined by *JP*. Only *AL* framed its opposition in terms of being true to the original constitution and the spirit of the liberation war. However, *AL* when tasked with the facelift of the constitution chose politics as an “art of compromise and possibilities”.

Who was the audience of this performance, whose interest was compromised in the process, and what possibilities arose from the performance? These are some critical questions. An anecdotal reference may be helpful in this regard. One of *AL*’s senior leaders mentioned that the state religion was retained for strategic reasons and will be removed when the time comes.²¹¹ His party members reprimanded this statement. Another party member remarked that had they altered the status of Islam in the constitution *BNP*, *JIB*, and other conservative parties would have branded *AL* as anti-Islam.²¹² The compromise was made considering this “political reality”. It appears that the audience of the performance was not the people, and hence the question of pleasing the religious (or any other) sentiment of the people does not arise. By narrowing down its audience to a tiny fraction of the people, the state has opened the possibility for a hegemonic majority identity.

²¹⁰Murshid, *supra* note 71, at 4.

²¹¹Gabriel Samuels, “Bangladesh considering dropping Islam as state religion, according to senior minister”, *Independent* (15 November 2016) online: < www.independent.co.uk/ >.

²¹²Kamran Reza Chowdhury, “Bangladesh: Ruling Party official Defends Remarks on Islam as State Religion”, *Benar News* (29 November 2016) online: < www.benarnews.org/ >.

The three trajectories show that the major challenge of secularism in Bangladesh was not the sentiment of the mass as often cited. If there was any challenge, it was from the right-wing political parties alone. Instead of affronting them with a precise concept of secularism, the state has sided with them and promoted them, often jeopardizing the rights of the common people. In this process not only the public sphere has been fragmented giving rise to chains of otherness, but it has also undergone a fundamental change. Wherein previously the public sphere was largely secular in its nature and content, it is now swamped with Islamism. The contests between the Secularists and Islamists now define the changing landscape of the public sphere in Bangladesh.

IV. The Changing Landscape of the Public Sphere in Bangladesh

Through the three trajectories of secularism leading to Islamo-secularism, the Islamists successfully did away with the initial ban and soon became the 'kingmakers'. Despite the continuous drive for Islamization, Bangladesh's largely secular public sphere kept the quest for secularism and equality alive. However, the secularists were left alone to confront the Islamists single-handedly and were more often than not jeopardized by the election equations.

The confrontation was marked with an onslaught on the stakeholders of the secular public sphere (literary figures, artists, students, intellectuals), their modalities (cinema halls, cultural programs, monuments), coupled with calls for censorship and prosecution. Following the insertion of Islamo-secularism and the *Shahbag Movement* 2013 (demanding capital punishment for war criminals), the machete attacks, bombing, and gunshots reached an unparalleled scale targeting an ever-widening new "categories" and "sub-categories" of people. The concomitant political and legal developments in Bangladesh favoring Islamism are now geared towards a very narrow identity marker of nationality and citizenship, giving rise to fragmentation and chaos in the public sphere.

In what follows, this part addresses: **A)** how the secular public sphere landed on a direct conflict with the Islamists on its quest for secularism, **B)** the new wave of attacks against

the secular public sphere alongside minorities, and **C)** how this heightening conflict is widening the ambit of the Islamist public sphere.

A. The Secular Public Sphere and Unfinished Quest for Secularism

As mentioned before, the restoration of democracy in 1990 did not abolish state religion, and instead of ensuring trial of war criminals made them the kingmakers. This section will analyze how the demand for the trial of war criminals in 1992 and the *Shahbag Movement*, 2013 echoed the quest for secularism among the people of Bangladesh. These movements show that the political parties used public sentiment to their advantage when needed but ultimately favored the right-wing parties.

i. The “Kingmakers” Settle Scores with the Secular Public Sphere: The 1992 Peoples’ Tribunal and the Materialization of the Conflict

After *BNP* formed the government with *JIB* in 1991, *JIB* declared its *de facto* leader *Ghulam Azam* as the official chief. *Ghulam Azam* was the mastermind of the collaborators of the Pakistan Army in 1971. He was allowed to return to Bangladesh in 1978 during Zia’s regime, with a Pakistani passport.²¹³ The intellectuals started questioning the moral ground of a war criminal acting as the chief of a political party in a representative democracy. They were soon joined by students and cultural activists. 101 Supreme Court judges, professors, veterans of the 1971 war, journalists and artists formed the *Ghatak Dalal Nirmul Committee* in 1992 to track down the killers and collaborators of 1971.²¹⁴ With the participation of political parties (*AL* and other leftist factions) and cultural bodies, the protest heightened with a new coordination committee under the leadership of Jahanara Imam.²¹⁵ The movement was hugely successful in gaining public support. It staged a Peoples’ Court (*Gana Adalat*) for the trial of *Ghulam*. Despite stoppage of public

²¹³*Supra* note 68 at 52 and Rahim, *supra* note 173, at 249.

²¹⁴*Ibid* at 53-56.

²¹⁵The coordination committee was named as National Coordination Committee for the Realization of the Spirit of Liberation and Banning of Killers and Collaborators of 1971, *ibid* at 54. Jahanara Imam is a writer and an activist. Her memoir of 1971 ‘*Ekattorer Dinguli*’ is considered a seminal depiction of the history of 1971. She was the mother of the freedom fighter Shafi Imam Rumi and supported the guerilla fighters during the war.

transport throughout the country by the *BNP* government, five lakh people attended the trial.²¹⁶ Though the *BNP* government pressed sedition charges against twenty-four citizens connected to the trial, it later backed down and signed a pact to try *Ghulam*.²¹⁷

The *JIB* started a smear campaign naming the activists of the Peoples' Trial as traitors working for India. It launched brutal attacks on activists, *Ahmadis*, and Hindu communities. *JIB* also named two renowned intellectuals as apostates and called for their execution.²¹⁸ In 1990, *JIB* had used its spokesman, *Dainik Sangram* to spread a rumor about Babri Mosque abolition and induced its followers to attack Hindu residences, businesses, and places of worship.²¹⁹ After the actual abolition of the mosque in 1992, the rampant attacks were repeated at the behest of *JIB*.²²⁰ The protection of minority communities became a primary concern for the activists demanding trial of war criminals, and driven from one direction to another the movement lost the momentum it had once reached.²²¹

The rise of the *JIB* in particular and the Islamists in general in the democratic era posed a great challenge for the civil society and the public sphere as the religious and ideological others were constantly being meted out.²²² From 1991, the Islamist leaders, hand in hand with local elites, started to issue and execute religious edicts (*fatwas*) on rural women on the grounds of immoral conduct.²²³ NGO offices, officials, and beneficiaries also came under their target.²²⁴ In 1993, the government banned *Lajja* (Shame), a novel by the feminist writer Taslima Nasrin written in the backdrop of the 1992 killings of the Hindus, and the Islamists immediately called for a bounty on her head.²²⁵ During 1990-1995 the Islamists not only attacked the minorities, women, NGOs, or activists, they took legal avenues on their own and as government allies to make the secular and progressive forces accountable

²¹⁶*Ibid.*

²¹⁷*Ibid* at 55.

²¹⁸Riaz, "God Willing", *supra* note 68, at 105.

²¹⁹Anisuzzaman, "Samprodayikotay Protyabartan", *supra* note 108, 19 at 24.

²²⁰*Ibid.*

²²¹Riaz, "God Willing", *supra* note 68, at 105.

²²²Muntasir Mamoon, *Bangladesh: Rajneeti, Dharma o Moulo Jangibader Bikash* (Dhaka: Shamay, 2016) at 60-61 and Rahim *supra* note 173.

²²³*Supra* note 93 at 57.

²²⁴*Ibid.*

²²⁵*Supra* note 105 and Karlekar, *supra* note 91 at 55-56.

for their words and actions.²²⁶ The *BNP* Government sided with the Islamists by taking legal measures against the secular public sphere.

Despite these red alerts of the rise of extremist politics, the pro-secular and liberal *AL* made ties with *JIB* and vowed not to enact any laws contrary to the injunctions of Islam.²²⁷ This arrangement provided a conducive environment for the Islamists even during the *AL* regime of 1996-2001. In 1997, *ICS*, the student wing of *JIB*, held an open gathering where Delwar Hossain Saydee said that the *apostates* are creating an anti and pro-liberation divide.²²⁸ The *IOJ* attacked an NGO for organizing a Victory Day concert in Brahmanbaria in 1998, injuring 150 students and ransacked *NGO* offices and government buildings for three consecutive days.²²⁹ In 1999, *HuJIB* (a Taliban-inspired movement) attempted to murder poet Shamsur Rahman in his residence.²³⁰ The same year eight people died in an attack in an *Ahmadiyya* Mosque and a shrine in Faridpur.²³¹

The secular public sphere severely protested the rape, arson, and killing of Hindus following the 2001 election.²³² In response, the *BNP* government charged three journalists Shahriar Kabir, Priscilla Raj and Saleem Samad, and historian Muntasir Mamoon for sedition.²³³ The cultural activists and intellectuals were threatened over the phone that the mass graves like 1971 were waiting for them, followed by delivery of burial attires to their residence.²³⁴ A Catholic church in Baniyachar of Gopalganj was bombed with ten casualties.²³⁵ As the *HCD* declared *fatwa* to be illegal, the government alliance member *IOJ* called a strike where seven people were killed, and a policeman lynched.²³⁶

²²⁶Karlekar, *supra* note 91 & Sara Hossain, "Apostates, Ahmadias and Advocates: Use and Abuse of Offences against Religion in Bangladesh" [2004] *Women Living under Muslim Laws*.

²²⁷*Supra* note 222 at 65.

²²⁸*Ibid* at 66.

²²⁹Riaz, "God Willing", *supra* note 68 at 89 -90.

²³⁰*Supra* note 222 at 67.

²³¹*Ibid* at 69.

²³²*The Daily Ittefaq* (02 April, 2001) and *The Daily Janakantha* (04 October 2001).

²³³*Supra* note 222 at 99 & *supra* note 105.

²³⁴*The Daily Janakantha* (16 October 2001).

²³⁵*Supra* note 222 at 70.

²³⁶*Supra* note 105.

In 2001, *HuJIB* massacred the Bangalee New Year Celebration in Ramna, which has been taking place since 1962.²³⁷ In 2002, Delwar Hossain Saydee said that courts would not be allowed to control *fatwa* instead *fatwas* will control the court. He also said that all sculptures in the country except those worshiped by the Hindus would be demolished.²³⁸ In 2002, four cinema halls were simultaneously attacked in Mymensingh, following an earlier attack on a cinema hall in Satkhira the same year by *HuJIB*.²³⁹ In 2003, Islamist parties, including the *IOJ*, again spearheaded the anti-*Ahmadiyya* Campaign with 'excommunication', 'house arrest' and occupation of property.²⁴⁰ In 2004, Humayun Azad was attacked during the Ekushey Book Fair, a week after Saydee demanded a ban on his book "Pak Sar Jamin Sad Bad" a satire on the religion-based nationalism of Pakistan.²⁴¹ The same year an *AL* rally in Dhaka was grenade attacked, with sixteen dead on the spot and over two hundred injured.²⁴² In 2005, Bangladesh was swept by a wave of horror as it came under simultaneous attack in 63 districts by the *JMB*.²⁴³ The *JMB* had earned repute for detaining and torturing radical lefts for long but was tagged as media propaganda by the government all along.²⁴⁴

The intervening military-backed caretaker government (2007-2008) was also sympathetic to the Islamists. While all political gatherings remained banned under the emergency, the Islamists were allowed to launch a protest against the Women Policy.²⁴⁵ In the 2008 election, while contesting, *AL* promised to try war criminals and revert to the original Constitution. The intellectuals and cultural activists who voiced against *AL*'s 2007 memo with the *IOJ* welcomed the decision. *NGOs* and cultural organizations led door-to-door

²³⁷Muktadir Rashid & Robiul Islam, "Mufti Hannan, 7 Others to Die" *The New Age* (24 June 2014) online: The New Age <<http://newagebd.net>>.

²³⁸*Supra* note 105.

²³⁹ "Bombs Hit Cinemas in Bangladesh", BBC News (7 December 2002) online: BBC UK <www.news.bbc.co.uk>.

²⁴⁰*Supra* note 105.

²⁴¹*Ibid.*

²⁴²Karlekar, *supra* note 91 at 65.

²⁴³Star Report, "459 Blasts in 63 Districts in 30 Minutes," *The Daily Star* (18 August 2005) online: The Daily Star <www.thedailystar.net>.

²⁴⁴*Supra* note 222 at 117-26.

²⁴⁵Jyoti Rahman, "Lessons from the Women Development Policy Debacle", in *Forum* Vol 3 Issue 6, 2008 online: The Daily Star <www.thedailystar.net> & "DGFI Became Militants' Buddy" *The Daily Star* (16 September 2011) online: The Daily Star <www.thedailystar.net>.

campaigns in villages for not voting war criminals and Islamist leaders.²⁴⁶ Commentators observed that the promise to try war crimes and curb extremism gave *AL* reign over the youth.²⁴⁷ Once again, after benefiting from the secular public sphere, Sheikh Hasina-led *AL* decided to appease the Islamists by retaining Islam as the state religion in the Constitution.

ii. The 2013 *Shahbag* Movement: Revival of the Secular Public Sphere

The absence of massive protest on the adoption of Islamo-secularism was interpreted as a finality given by the people towards state religion.²⁴⁸ The assumption fast changed with the rise of the *Shahbag* movement. On 5 February 2013, the International Crimes Tribunal-2, Bangladesh, convicted Abdul Quader Molla alias the “Butcher of Mirpur”, a *JIB* leader with life imprisonment for five counts of crimes against humanity committed during the Liberation War of 1971.²⁴⁹ Bangladeshis seemed to be heartbroken and shocked that *Molla*, who was found guilty of killing civilians and intellectuals, was not awarded capital punishment and was pictured in the media showing a victory sign with his index and middle finger.²⁵⁰ The crux of the matter lay in the International Crimes (Tribunals) Act, 1973, which allowed the defense to appeal against the verdict of the Tribunal to the SC, but not the prosecution.²⁵¹ Starting with few activists of *Bloggers and Online Activists Network*, hundreds and thousands of protesters took over the *Shahbag* intersection of the capital Dhaka the same eve claiming an amendment of the law ensuring “parity of arms”.²⁵² By the following day, the movement reached not only all districts of Bangladesh but also the Bangladeshi Diasporas worldwide.

²⁴⁶Elora Shehabuddin, Bangladesh Civil Society and Islamist Politics, *supra* note 107, 91-114.

²⁴⁷*Supra* note 222 at 177.

²⁴⁸*Ibid* at 179.

²⁴⁹Two International Crimes Tribunals were constituted under the *International Crimes (Tribunals) Act, 1973* (Act No. XIX of 1973) [*ICTA*] in 2009 for the trial of those suspected of having committed war crimes, crimes against humanity and genocide during the liberation war of 1971. For a brief summary on Quader Mollah’s Conviction, see “Summary of verdict in Quader Mollah case”, *The Daily Star [of Bangladesh]* (February 6 2013) online: The Daily Star <www.thedailystar.net>.

²⁵⁰The highest punishment under the *ICTA* is the death penalty, which is also the maximum punishment under ordinary penal laws in Bangladesh. *Shahbag* was claiming that if under the law of the land, an ordinary murderer gets death row, it is sheer injustice for a war criminal to have life imprisonment for the magnitude of the crime in question. Kamran Reza Chowdhury and Udisa Islam, “The V-sign that Led to Qader Molla Downfall”, *The Dhaka Tribune* (13 December 2013) online: The Dhaka Tribune <www.dhakatribune.com>.

²⁵¹S. 21, Act No. XIX of 1973.

²⁵²For more on the *Shahbag* Protest, see Tamanna Khan, “The battle is on”, 12 (8) *The Star Weekend Magazine* (20 February 2013) online: The Daily Star <www.thedailystar.net>.

Despite this unprecedented scale of mass participation and day-night road blockade at *Shahbag*, the protest remained non-violent and peaceful. The protesters invoked the symbols of 1971 through songs, posters, poems, slogans, and street art. They held candle vigils, silent processions and aired balloons with letters to the martyrs.²⁵³ It appeared that despite years of distortion of history, the “common memory” had enabled the youth to communicate with and unite all generations regardless of age and class. Apart from the free and fair trial of war criminals, *Shahbag* claimed a ban on *JIB*, its financial and educational affiliations, a ban on religion-based politics, and the removal of state religion from the Constitution. *JIB* started a smear campaign against *Shahbag*, tagging the movement as an adulterous gathering and a den of drugs and alcohol. The *ICS* created havoc by attacking both protesters and monuments around the country.²⁵⁴

Soon a blogger was killed on his way to *Shahbag*, and Islamist parties started distributing alleged blasphemous content generated by the assassinated blogger in an attempt to ignite religious violence across the country.²⁵⁵ *Hefajat-e-Islam* (*HI*, composed of teachers of Islamic faith schools), a relatively unknown Islamist party at the time went on to blemish *Shahbag* as a blasphemous campaign of atheists and apostates. The smear campaign was successful, as the crowd started thinning, and it all boiled down to an issue of the spirit of liberation *v* Islam. The *Shahbag* movement brought forth a complex relationship between law, religion, public sphere, common memory, resistance, counter-narratives, social change, and opportunistic politics. Nevertheless, like all other public issues in Bangladesh, it quickly got dubbed into the binary of *pro-liberation v pro-Islam, Bangalee v Muslim, and Secularism v Islamism*.

²⁵³ See, Adnan Arsalan, “Shahbag Movement 2013” (10 February 2013) Online: You Tube <www.youtube.com/watch?v=g2Jjd_N3KA4> and ProBangladeshis, “The Most Beautiful Video You’d See about Shahbag” (1 March 2013), online: You Tube <www.youtube.com/watch?v=wCcQ1ngTvXo>.

²⁵⁴ Star Report, “Attacks, rampage in major cities: Gonojagorn Monchos Vandalised” *The Daily Star* (23 February 2013) online: <www.thedailystar.net>.

²⁵⁵ Staff Correspondent, “Killers Hacked Rajib First, then slit his throat: Police,” *Bdnews24.com* (16 February 2013) online: *BDnews24.com* <www.bdnews24.com> & Star Report, “Out with a New Trick? Youths, Law enforcers find Jamaat Turning Religious Sentiment against Shahbag Demonstration” *The Daily Star* (20 February 2013) online: *The Daily Star* <www.thedailystar.net>.

JP and *BNP* not only joined the *HI* in name tagging the *Shahbag* youths as atheists but also with moral and logistic support.²⁵⁶ The *AL* Government though initially hailing the *Shahbag* movement soon shifted to the policy of appeasing the Islamists. It increased punishment under the *Information and Communication Technology Act, 2006* for ‘hurting religious sentiment’,²⁵⁷ arrested four bloggers and also imposed restrictions on the *Shahbag* programs.²⁵⁸ On May 5, 2013, the *HI* took over Dhaka and created havoc by vandalizing shops, setting ablaze buses and even Islamic bookshops as the dusk neared.²⁵⁹ The *HI* was given permission to gather for the day, but their leader refused to issue a call off at the request of the *BNP* chief.²⁶⁰ With thirteen casualties throughout the day, the law enforcers drove out almost 350000 *HI* activists in the darkness of night; rumors about 25000 being killed were spread through social media.²⁶¹ Earlier on March 3, 2013, following a decision of Saydee’s death penalty, *JIB* men superimposed his face on the Moon, identifying him with divine power and ignited unprecedented violence.²⁶² Since then, online hoax became a popular means of igniting religious hatred and spreading violence in Bangladesh. After each verdict against their top ranks on the count of crimes against humanity, *JIB* vandalized and set ablaze public property, Hindu houses, and places of worship.²⁶³

²⁵⁶*Supra* note 282. “The Government is Protecting the Atheists: There will be Peoples’ Mancha Soon-Khaleda”, *The Daily Inqilab* (14 March 2013) & “War Against Those who Speak anti-Islam: Ershad,” *The Daily Inqilab* (7 March 2013).

²⁵⁷Act No. XLII of 2013 & Mohsinul Karim, “Punishment Increased in Amended ICT Act,” *The Dhaka Tribune* (20 August 2013) online: The Dhaka Tribune <www.dhakatribune.com>.

²⁵⁸Staff Correspondent, “Anti-Islam Comments: Four Bloggers Indicted” *The Daily Star* (9 September 2013) online: The Daily Star <www.thedailystar.net> & Mintu Chowdhury, “Ganajagaran’s Chittagong Rally Delayed” *The Daily Star* (12 March 2013) Bdnews24.com Online: BDnews24.com <www.bdnews24.com>.

²⁵⁹Star Report, “Hefajat Strikes Horror: Offices, Shops in downtown Dhaka burnt, looted; 3 dead; over 200 hurt” *The Daily Star* (6 May 2013) online: The Daily Star <www.thedailystar.net> & Rafiur Islam, “Islami book shops burnt” *The Daily Star* (6 May 2013) online: The Daily Star <www.thedailystar.net>.

²⁶⁰Staff Correspondent, “Last Minute Call Changes it All” *The Daily Star* (6 May 2013) online: The Daily Star <www.thedailystar.net>.

²⁶¹Shahrier Khan, “Shapla Chattar and the Act of Houdini” *The Daily Star* (8 May 2013) online: The Daily Star <www.thedailystar.net> and M Abul Kalam Azad, “Questions Aplenty: Odhikar Report on Hefajat Deaths,” *The Daily Star* (1 September 2013) online: The Daily Star <www.thedailystar.net>. To date *HI* has not been able to provide a list of deceased persons per its claim.

²⁶²Staff Correspondent, “Lie Worked Well: Photoshopped Pic of Saydee used to Instigate Bogra Violence” *The Daily Star* (4 March 2013) online: The Daily Star <www.thedailystar.net> & Bogra Correspondent, “Saydee on Moon: 361 Summoned for Violence,” *The Dhaka Tribune* (21 May 2014) online: The Dhaka Tribune <www.dhakatribune.com>.

²⁶³Ain o Salish Kendra, Violence Against Religious Minorities, 2013 Overview (8 January 2014) online: <www.askbd.org>. Star Report, “Jamaat-Shibir Strike Terror,” *The Daily Star* (13 December 2013) online: <www.thedailystar.net>.

As it appears, time and again, after each mass up-rise, the same pattern follows. The Islamists tag the activists as apostates and atheists, ask for a strict blasphemy law, and attack the activists and minority communities.

B. The New wave of Attacks against the Secular Public Sphere and the dubious stand of the Government

In the aftermath of the *Shahbag* Movement, a series of killings in their brutality has taken the country by surprise. In the four-year period between 2013-2016, Islamists have killed more than thirty people branding them as anti-Islam, with some narrowly escaped deadly attacks.²⁶⁴ The attacks can be categorized in the following ways: i) those branded as atheist bloggers/online activists (in most cases having connections with *Shahbag*);²⁶⁵ ii) publishers of one of the slain bloggers;²⁶⁶ iii) local organizers of the *Shahbag* movement;²⁶⁷ iv) professors having cultural ties;²⁶⁸ v) individuals charged for or alleged of hurting religious sentiment;²⁶⁹ vi) foreigners;²⁷⁰ vii) clergyman other than orthodox *Sunni*

²⁶⁴Star Online Report, "Motion Timeline: 29 Killings in 4 Years" *The Daily Star* (2 May 2016) online: The Daily Star <www.thedailystar.net>, Star Online Report, "Cops Link Major Killings to Hanging of war Criminals" *The Daily Star* (16 May 2016) online: The Daily Star <www.thedailystar.net> & Tribune Desk, "The Death Toll" *The Dhaka Tribune* (28 April 2016) online: The Dhaka Tribune <www.dhakatribune.com>.

²⁶⁵Ahmed Rajeeb Haider, was the first blogger killed during the *Shahbag* Movement on February 15, 2013. Avijit Roy, writer and blogger along with his wife Rafida Ahmed Bonna was hacked on February 26, 2015 on their way home from the Ekushey Book Fair. Avijit did not survive the attack. Oyashiqur Rahman Babu, blogger and online activist, was hacked to death on March 30, 2015 in Dhaka. Ananta Bijoy Das, science magazine editor and blogger, was killed on May 12, 2015 in Sylhet on his way to office. Niladri Chattopadhyay Niloy, blogger and *Shahbag* activist was hacked on August 7, 2015, in Khilgaon, Dhaka, at his rented residence. Nazimuddin Samad, a law student and online activist was hacked and shot dead on April 6, 2016.

²⁶⁶On October 31, 2015, two publishers of Avijit Roy's books Ahmedur Rashid Tutul and Faisal Arefin Dipon were attacked at their respective offices. Dipon died while Tutul along with two of his blogger friends Randipam Basu and Tareq Rahim survived the attack, Tareq was shot.

²⁶⁷Jagatjyoti Talukder, a Chhatra League leader and *Shahbag* activist was killed in Sylhet on 2 March 2013. Arif Rayhan Dwip, Student and BCL worker who was hacked at the BUET campus died on July 2, 2013. Ziauddin Zakaria Babu, college teacher and a *Shahbag* activist, was killed on December 9, 2013.

²⁶⁸AKM Shafiul Islam, Professor, Sociology Department of Rajshahi University and a patron of mystic singing was killed on November 15, 2014. Professor AKM Rezaul Karim Siddique of the English Department of the same university, a music lover and sitar player was killed on April 23, 2016.

²⁶⁹Anjali Devi Chowdhury, Chittagong Nursing Institute Teacher was killed on January 11, 2015. Nikhil Joarder, a tailor from the Tangail Upajila was hacked to death on April 30, 2016. He was released from a charge under s. 57 of the ICT Act, 2006 in 2012.

²⁷⁰On September 28, 2015, Italian NGO worker, Cesare Tavella was shot dead in Gulshan diplomatic area in Dhaka. Kunio Hoshi, a Japanese farmer was shot dead on October 3, 2015, in Kaunia, Rangpur. Italian doctor and pastor, Piero Parolari was shot in Dinajpur on November 18, 2015. He survived the attack.

*Muslims*²⁷¹ (pirs, pastors, priests, monks, Sufi preacher, Shia Imams), and viii) LGBT rights activists.²⁷²

On 24 October 2015, a *Shia* Mosque, *Hossaini Dalan* was attacked with homemade bombs during the preparation of the *Tajia* Procession.²⁷³ Spectators watching folk theater in the Kantaji Temple, Dinajpur, were attacked with homemade bomb injuring six on December 5, 2015.²⁷⁴ Three devotees were injured in a suicide bombing in an *Ahmadiyya* Mosque in Bagmara, Rajshahi, on December 25, 2015.²⁷⁵

Ansar al-Islam on behalf of Al-Qaeda in the Indian Sub-continent (*AQIS*) and *IS* have claimed responsibility for most of the killings and attacks.²⁷⁶ The GoB denies the presence of *AQIS* or *IS* in Bangladesh and maintains that the attacks were carried out by homegrown

²⁷¹Pir Taibur Rahman and his teenage son were killed at Khalishpur of Khulna on August 8, 2013. Pir Lutfar Rahman Faruque was killed in Dhaka in his residence with five others on December 21, 2013. Sheikh Nurul Islam Faruki, an Ahle Sunnah Leader and TV Presenter, was killed on August 27, 2014. Pir Rahmat Ullah and his assistant Abdul Kader Rahmat Ali was found throat slit in Chittagong on September 4, 2015. Khizir Khan, PDB ex-chairman was throat slit in Dhaka on October 5, 2015. Rahmat Ali, a shrine caretaker was shot dead in Kaunia, Rangpur on November 11, 2015. Luke Sarkar a pastor survived a throat slit attack in Iswardi Upajila, Pabna on October 5, 2015. Birendranath Roy, the President of local village temple was shot dead in Dinajpur on November 13, 2015. A Hindu Priest Jogeswar Dasadhikary of Debiganj Upazila, Panchagarh was shot to death on February 21, 2016. Another Hindu Priest Paramananda Ray was killed at Tungipara on April 22, 2016. A Buddhist Monk U Damma Oaing Cha was throat slit at a temple in Bandarban on May 14, 2016. A Sufi leader Mohammad Shahidullah was killed near Rajshahi Bangladesh on 6 May 2016. Abdur Razzak, a Shia preacher was hacked to death in Jhenidah on March 14, 2016. Moazzem Hossain, Muezzin of Shia Mosque was shot dead in Bogra, while three others were left injured on November 26, 2015.

²⁷²On April 25, 2016, Xulhaz Mannan, editor of the first LGBT Magazine in Bangladesh and a Theatre activist Mahbub Tonoy were hacked to death.

²⁷³Staff Correspondent, "Blasts Kill One at Hossaini Dalan" *The Daily Star* (24 October 2015) online: The Daily Star <www.thedailystar.net>.

²⁷⁴Quamrul Islam Rubaiyat, "Bomb Blasts Near Kantaji Temple: 6 Hurt at Jatra Pandal, motive unknown" *The Daily Star* (6 December 2015) online: The Daily Star <www.thedailystar.net/>.

²⁷⁵Julfikar Ali Manik, "Suicide Bomber Strikes at Ahmadi Mosque in Bangladesh" *The New York Times* (25 December 2015) online: The New York Times <www.nytimes.com/>.

²⁷⁶SITE Staff, "Special Report: Terror Rising in Bangladesh" *INSITE Blog on Terrorism and Extremism* (26 April 2016) online: <www.news.siteintelgroup.com/>. AQIS claimed hunting down Niladri as enemy of Allah, Star Online Report, "Ansar-al-Islam Claims Responsibility for Niladri Murder" *The Daily Star* (8 August 2015) online: The Daily Star <www.thedailystar.net>. They also claimed responsibility for killing to teach a lesson to blasphemous people, "Ansar-al-Islam Claims Bangladesh Student's Killing" *The Aljazeera* (9 April 2016) online: The Aljazeera <www.aljazeera.com/>. AQIS also claimed responsibility of killing Xulhaz Mannan identifying his magazine as a cult compromised of gays and lesbians, Star Online Report, "Ansar Al Islam claims Kalabagan Twin Murders" *The Daily Star* (26 April 2016) online: The Daily Star <www.thedailystar.net>. "IS, claimed to have killed Professor Siddique for his call to atheism, Islamic State Claims it Killed Bangladeshi Academic", *The Guardian* (23 April 2016) online: <www.theguardian.com>. They also claimed killing of the tailor charged with blasphemy, Sugam Pokharel, "Tailor Hacked to Death in Bangladesh; ISIS claims Responsibility" *CNN World* (2 May 2016) online: CNN World <<http://www.cnn.com>>.

militants. They had attributed the killings to the banned militant outfit *JMB*,²⁷⁷ at the behest of *BNP* and *Jl*.²⁷⁸

The media, both national and international, maintains that the sources claiming responsibility for the attacks on social media or through e-mails could not be confirmed. The difference of target and patterns of killing involved in the attacks claimed by the *IS* and *AQIS* are readily distinguishable. *IS* started claiming responsibility from 15 September 2015 onwards with a fast-increasing death toll.²⁷⁹ Their main targets have been ‘people linked with Christian crusaders’ (foreigners) and priests, pastors through throat-slitting and gunshots, and places of worship of religious minorities and denominations through bombings.²⁸⁰ The *AQIS*, on the other hand, had opted for machete attacks on bloggers, activists, and intellectuals.

The response of the government to the killings is dubious. On the one hand, they maintained to have an “iron hand” approach against militant extremism, and on the other, they censured the secular public sphere for insulting Islam.²⁸¹ The rising death tolls were dramatically put to an end after the tragic incident at Holey Artisan Bakery, where five militants killed twenty-two people, mostly foreigners, on July 1, 2016, in a twelve-hour siege.²⁸² The crackdown and arrests following the incident have garnered some criticism,

²⁷⁷Staff Correspondent, “Are baba, IS ta kothay: Shwarashtromontree” *banglabdnews24.com* (28 April 2016) online: BanglaBDNews24.com <www.bangla.bdnews24.com> and Liton Haider, “Police Claims Defunct JMB Leading Murders in Bangladesh”, *bdnews24.com* (4 May 2016) online: BDNews24.com <www.bdnews24.com/>.

²⁷⁸Senior Correspondent, “BNP. Jamaat-e-Islami Behind Series of Killings to Destabilise Bangladesh, says Hasina” (25 April 2016) *bdnews24.com* online: BDNews24.com <<http://bdnews24.com/>>.

²⁷⁹INSITE Blog, *supra* note 278.

²⁸⁰*Ibid*.

²⁸¹Defying the external terrorist link allowed the government to arrest opposition activists in the name of anti-militancy drives. Following the hacking of an anti-terror unit cop’s wife, the police arrested more than a thousand people, including ordinary citizens, in an anti-militancy drive. See Farid Ahmed and Tiffany App, “Bangladesh arrests more 11,000 after wave of killings” *CNN World* (15 June 2016) online: CNN World <www.cnn.com> and “Bishop, activists critical of anti-militancy drive in Bangladesh” *UCANews.com* (14 June 2016) online: <www.ucanews.com>.

²⁸²The law enforcers rescued thirteen hostages, while the five militants died on spot. “Holey Artisan cafe: Bangladesh Islamists sentenced to death for 2016 attack” *BBC News* (27 November 2019) online: BBC News <www.bbc.com>.

but at the same time, marked a pause to the ever-growing list of people being brutally killed just for *being* who they are.²⁸³

C. The Divided Public Sphere and Rise of the Islamists

The political landscape of Bangladesh witnessed a new scale of violence following the *Shahbag* movement. The *BNP*-led alliance continued to unleash violence before the 2014 election during strikes and blockades,²⁸⁴ as *AL* proceeded without heeding the demand of reinstating the intervening caretaker government.²⁸⁵ Both *BNP* and *JIB* boycotted the 2014 national election, which led to a landslide victory for *AL* with 153 uncontested seats.²⁸⁶ *BNP* Chief Khaleda Zia could not contest in the 2018 national election, on the ground of moral turpitude as she has been serving seventeen years sentence in two graft cases.²⁸⁷ In 2018, the Election Commission canceled the registration of *JIB*, barring the party from contesting in the election.²⁸⁸ However, *JIB* members contested in the national election with *BNP*'s electoral symbol as well as independent members.²⁸⁹ With *AL* bagging 288 seats, the election results lacked credibility as allegations of widespread rigging and violence marred the voting.²⁹⁰ With the same party remaining in power for the third consecutive term with no active opposition party Bangladesh has turned to an authoritarian democracy. The notion that a lack of democratic institutions acts as a breeding ground for extremism has been proved true in the case of Bangladesh in the past years.

²⁸³Eighty suspected people were killed and more than three hundred arrested after the incidence. *Ibid*.

²⁸⁴ASK, *supra* note 263.

²⁸⁵In 2011 the *AD* decided the caretaker government system to be unconstitutional but opined that the Parliament may retain the system for two further national elections excluding the retired Judges as members of the CTG. In the Fifteenth Amendment, *AL* scrapped the caretaker government and reverted the original provision of election under the incumbent government ninety days before the dissolution of the Parliament under art. 123.

²⁸⁶"Bangladesh Ruling Party Sweeps Violent Votes" Al Jazeera (6 January 2014) online: Al Jazeera <www.aljazeera.com>.

²⁸⁷Tribune Desk, "Khaleda cannot contest election even if sentence stayed" *The Dhaka Tribune* (27 November 2018) online: Dhaka Tribune <www.dhakatribune.com> and "Khaleda Zia's family seeks extension on her suspended prison sentence" *The Hindu* (30 August 2020) online: The Hindu <www.thehindu.com>.

²⁸⁸Tribune Desk, "EC issues gazette finally cancelling Jamaat's registration as a political party" (29 October 2018) *Dhaka Tribune* online: Dhaka Tribune <www.dhakatribune.com>.

²⁸⁹"Plea seeks cancellation of 25 Jamaat men's candidacy" *The Daily Star* (26 December 2018) online: The Daily Star <www.dailystar.com>.

²⁹⁰Michael Safi, Oliver Holmes and Redwan Ahmed, "Bangladesh PM Hasina wins thumping victory in elections opposition reject as farcical" *The Guardian* (31 December 2018) online: The Guardian <www.guardian.com>.

In the past, questions of public importance in Bangladesh have given rise to secular alliances inclusive of all communities. For example, the *Chhayanaaut*,²⁹¹ *Udichi*,²⁹² the *Bangladesh Artists Unity for Freedom*,²⁹³ the *RCAAC*, *Sammilita Sangskritik Jot*, *Ghatak Dalal Nirmul Committee*, and *Shahbag Ganajagaran Mancha*. Anisuzzaman observed that the formation of *HBCUC*, an alliance based on religious minorities, indicated the return of majority-minority politics in the aftermath of the *Eighth Amendment*.²⁹⁴ The communal harmony was further jeopardized in the democratic regime when the Islamists took up the persecution of religious denominations and individuals holding unorthodox views after exhausting division across religious lines.²⁹⁵ In a prophetic remark, he said, “If Bangladesh cannot prevent communalism, it will not remain Bangladesh, probably it is not anymore.”²⁹⁶ True to his observation, the new political or cultural alliances emerging in Bangladesh are all Islamist in nature, demanding recognition of Arab norms and cultures in a society completely different in its history, tradition, and even in terms of its observance of Islam.

The Islamist parties *JIB*, *IOJ*, *HuJIB*, *JMB*, *HI*, and others though different in stripes collaborate with each other, and studies reveal *JIB* as the seedbed of most ideological undercurrent.²⁹⁷ The trial of war criminals, the execution of the leadership of *JIB*, and the subsequent cancellation of registration of the party have forced them to take a step back from the national scene.²⁹⁸ The Islamist parties have since then reorganized and regrouped, forging loyalties with the government.

²⁹¹Established in 1961 to protest against censorship on Tagore songs and other attributes of Bangalee culture by the Pakistan regime.

²⁹²A cultural organization formed in 1968 immensely contributing to the mass movements in Bangladesh during and after liberation.

²⁹³A performing troops formed by rebel artists during 1971, who travelled boarder areas and refugee camps to boost up the morale of the freedom fighters and the refugees.

²⁹⁴Anisuzzaman, “Samprodyaikotay Prottyabartan”, *supra* note 108, 19 at 24.

²⁹⁵*Ibid*.

²⁹⁶*Ibid* at 24-25 (translation by author).

²⁹⁷Riaz, *How Did?* *Supra* note 181 at 51-64.

²⁹⁸Salman Tareq Shakil, “Jamaater notun koushal” (Jamaat’s New Policy) *Bangla Tribune* (13 October 2017) online: *Bangla Tribune* <www.banglatribune.com>.

This indicates a strategy of facing Islamists with Islamists. One Immediate consequence has been obvious - the political discourse is now dominated by the Islamists [sic] agenda. There is no denying, this has long-term implications.²⁹⁹

In contemporary Bangladesh, Islamists seem to be the protagonists taking over the show and effectively driving both the legal nomenclature and Bangalee culture under the “Islamic” scrutiny. In 2016, both pro and anti-government Islamist parties were active in threatening to halt the country if the court declared the state religion unconstitutional.³⁰⁰ *Jl* declared a one-day strike, which was later withdrawn when the *SC* dropped the petition.³⁰¹ In a bid to bring Islamist parties closer, the *PM* said writing against religion is not freethinking but merely filthy words, and the government would not take responsibility for untoward incidents if people write against religion.³⁰²

The *IOJ*, which had left the 20-party alliance with the *BNP*, openly embraced the *PM*’s statement.³⁰³ The party said that the *PM*’s bold stand against the defamers of religion and in favor of religion was timely and praiseworthy and reflected the aspirations of the 92% people of Bangladesh. It proved Bangladesh’s unity against seditious, anti-Islamic, atheists, apostates, and evil circle of blasphemous elements.³⁰⁴ The *HI* also hailed the statement saying that the *PM* has finally acceded to the people and proved the justification of *HI*’s demand of death penalty for atheist bloggers three years back.³⁰⁵ The media reports

²⁹⁹*Supra* note 184 at 64.

³⁰⁰“Threats as Bangladesh Mulls Scrapping Islam as State Religion” *The Indian Express* (10 March 2016) online: *The Indian Express* <<http://indianexpress.com>>.

³⁰¹Senior Correspondent, “Jamaat-e-Islami Calls Strike Over State Religion” *BDnews24.com* (27 March 2016) online: *BDNews24.com* <bdnews24.com> and Star Online Report, “Jamaat-e-Islami withdraws Hartal after Islam Retained as State Religion” *The Daily Star* (28 March 2016) online: *The Daily Star* <<http://www.thedailystar.net>>.

³⁰²“Bangladesh Pm says writing against religion will not be tolerated”, *The Daily Star* (16 April 2016) online: *The Daily Star* <www.thedailystar.net>.

³⁰³“IOJ left 20 party alliance” *Banglabdnews24.com* (7 January 2016) online: *BanglaBDNews24.com* <bangla.bdnews24.com>.

³⁰⁴“Islami Oikko Jot happy with PM’s bold stand for Islam”, *BDnews24.com* (18 April 2016) online: *BanglaBDNews24.com* <www.bangla.bdnews24.com>.

³⁰⁵“Hefajat Chief praises PM’s speech”, *The Daily Kaler Kantha* (17 April 2016) online: *Daily Kaler Kantha* <www.kalerkantho.com>.

confirmed that the Islamists were drawing further away from the *BNP* and getting closer to the *AL*.³⁰⁶

In 2017, in the face of Islamists' demand, a localized statue of *Themis* was removed from the *SC* premises. While the Attorney General said that it was the *SC*'s decision, the *PM* had previously commented that she did not like the statue.³⁰⁷ The government also removed writings of non-Muslim authors from the national textbook curriculum resembling to the demands of *HI*.³⁰⁸ In 2017, the government also announced *Qawmi Madrassah's Dawra-e-Hadith* degree to be equivalent of post-graduate degrees in Islamic Studies and Arabic.³⁰⁹ The *Qawmi Madrassah* authorities hailed the *PM* as *Qawmi Janani* (Mother of *Qawmi*).³¹⁰ Bangladesh government also announced the setting up of five hundred sixty model mosques with Islamic cultural centers in the district, City Corporation, and upazilla areas.³¹¹

Political polarization in favor of Islamist parties is strongly evident in today's Bangladesh. When certain sections of the citizens, free thinkers, activists, and religious minorities are targeted victims of a hate campaign, the government is fanning the flame by Islamizing the public sphere. The encouragement of parties like *AOL*, *IOJ*, or *HI* by readily heeding their demands will only enable the Islamist parties to gather more strength. As the government tries to appease its Islamist audience, the duty of an authentic performance to its whole panoramic audience takes a backseat. The artful compromise might cost too dearly for the ordinary citizens by defining their lives in ways they did not ask for. The secular public

³⁰⁶Asad Zaman, "BNP not Getting Support from the Religion-based Parties" *The Banglanews24.com* (06 May 2016) online: BanglaBDNews24.com <www.banglanews24.com>.

³⁰⁷"Bangladesh Lady Justice statue removed after protest" *Al Jazeera* (26 May 2017) online: *Al Jazeera* <www.aljazeera.com>.

³⁰⁸"Bangladesh's secular activists concerned about textbook changes" *Deutsche Welle* (6 February 2017) *DW* online: <www.dw.com>.

³⁰⁹Staff Correspondent "Qawmi degree recognized" *The Daily Star* (12 April 2017) online: <www.dailystar.net>.

³¹⁰Tribune Desk, "PM Sheikh Hasina branded as "Mother of Qawmi" *The Dhaka Tribune* (4 November 2018) online: <www.dhakatribune.com>.

³¹¹The project was first announced to be funded by Saudi aid, but it is now being implemented under government funding. "Govt plans 560 model mosques to spread Islamic values" *The Daily Star* (24 April 2017) online: *The Daily Star* <www.dailystar.net> and Rejaul Karim Byron "560 Model Mosques: Govt to build them with own finances: Saudi funds not available" *The Daily Star* (26 June 2018) online: *The Daily Star* <www.dailystar.net>.

sphere will continue to be cornered by Islamist politics, militancy, and government actions, resulting in increased intolerance and hostility.

Conclusion

Bangladesh's constitution adopted secularism as a means to prevent religion-based politics. The exponents of secularism in their state action depicted secularism as mere anti-communalism, as opposed to the separation of state and religion. Once the framers lost sight of the original intent, the state entangled with religion rather than translating the principles of secularism into its legal framework.

The military regimes exploited religion to accord legitimacy from the internal and external political forces and not the *people*. They used rubber stamp parliaments to validate the exclusion of secularism and the inclusion of state religion. The democratically elected parties not only retained state religion but also made Islamists the kingmakers of Bangladeshi politics.

Islamism of the *Fifteenth Amendment* is different from the state religion of the *Eighth Amendment*. As opposed to a military regime, a democratically elected party propounded Islamism, the co-existence of state religion and secularism. Establishing Islam as the state religion and allowing religion-based politics have thwarted the core of secularism. Moreover, the *durcupine* of Islamism has been provided permanency in the Constitution.

Both military and democratic regimes have credited the state religion provision to the majority of Muslim citizens of the country. This narrative of majority identity is indeed tailored to appease a selective audience, the Islamist political parties. *BNP*, *JIB*, and other conservative parties identified *AL* as anti-Islamic. *AL* then also assumed the role of patron of Islamism. Under Islamism, Islamic tenets have become the determinant of public action (performance) by the government. Consequently, the public sphere is swamped with Islamism.

The process of Islamization was never left unchallenged by the vibrant public sphere whenever circumstances were ripe. Blessed with active state promotion, the Islamists now had their religious and ethnic others (minorities) and the ideological others (seculars) to deal with. The latter acted in uniting the people against the convenient political moves by invoking the “common memory” to reinforce the promise of secular and egalitarian Bangladesh. As such, it has been sympathetic to the causes of another “other” of the Islamists, i.e., religious and ethnic minorities.

Therefore, in the process of resisting Islamization and politics of convenience, the secular public sphere has become an enemy of the state (anti-national) and the Islamists (anti-Islam). While the Bangalee nationalism and state religion divided the nation across ethnic and religious lines, the metamorphosis of Islamo-secularism gave permanency to the divisions. It also accorded Islamism the height it needed to overshadow and engulf the public sphere with a narrow religious identity marker.

CHAPTER II

Religion-Making and Ethnicity: Performance and Judgment

The story of Bangladesh
Is an ancient one again made fresh
By blind men who carry out commands
Which flow out of the laws upon which nation stands
Which is to sacrifice a people for a land.¹

Islamists in Bangladesh demand to purge ‘impurities’ of the Bangalee culture and establish an Islamic way of life by strictly adhering to the *Quran* and *Sunnah*. By couching public debates in terms of the secular and the sacred divide, they create a call of action to protect Muslims and Islam. In a politically conducive environment, this make-belief risk regime is used to portray secular performing arts genres as *shirk* (polytheistic) and *bedat* (unlawful innovation) to make a case for acceptance of Islamist performances. Although the appropriation of the genres and modalities of the secular public sphere by the Islamists has garnered more visibility with the advent of the new media, the call for purification is not entirely new. Islamists invalidate the Bangalee culture in light of the *Quran* and the glorious past of the Muslim conquest of undivided India. The Bangalee culture that the Islamists consider as degeneration is prized as syncretism, evidence of religious harmony, and peaceful coexistence by the secularists. This chapter aims to locate the Islamists and secularists in their historical and cultural context to understand the portrayal of the self and the other in both secular and Islamist performing arts. For clarity of reference, Bangladesh is called Bengal or East Bengal during the Mughal and British period, distinguished from West Bengal (now comprising part of India).

This chapter argues that the discord between the Bangalee and Muslim identity postulates is constructed rather than a given. Part I of this chapter shows that during the formative years of Bangalee-Muslim emergence in Bengal, the elite and immigrant Muslims distanced the local Bangalee speaking Muslims as denigrates. Part II outlines how the Urdu-speaking Muslim literati in the British period exploited the same group’s religious sentiments to

¹Joan Baez, *Song of Bangladesh* (1971).

carve out Pakistan from India as a separate land for Muslims. Part III demonstrates that after the establishment of Pakistan, religious identity was again used to persecute the Bangalee mass. Part IV argues that although Bangalees exercised their right to self-determination through the independence movement, the persecution continues to haunt them.

I. The Bangalee-Muslim Identity Conundrum: Syncretism or Degeneration?

The origin and development of Muslim self-consciousness in the territory now comprising Bangladesh was tainted with a negative attitude towards the Bangalee language, tradition, and rituals.² The elite Muslims found comfort in establishing claims to an immigrant lineage rather than local rootedness. The Muslim society was divided between its urban immigrant class, the *ashraf*, and the rural cultivator and working class, the *ajlaf*.³ To elevate to the higher strata of the community, the elite Muslims often forged foreign ancestral lineage and distanced themselves from their local roots and cultural symbols.

Before the Turkish conquest of Bengal in the thirteenth century, Buddhism and Hinduism had existed side by side with intermittent persecution of the Buddhists by the *Brahmanic* rulers.⁴ The Muslim immigration from Northern India to Bengal was discontinued under the independent Muslim dynasties (1342-1574) until the Mughal conquest of Bengal in the fifteenth century.⁵ When the Mughals came to Bengal, they were well integrated with the Sufi and Persian traditions prevalent in Northern India.⁶ The Mughal rulers in Bengal did not attempt to proselytize the locals. The instances of intermarrying with the locals were a

²Rafiuddin Ahmed, "Introduction" in Rafiuddin Ahmed ed, *Understanding the Bengal Muslims: Interpretive Essays* (New York: Oxford University Press, 2001) 1 at 5-6.

³Tazeen M. Murshid, *The Scared and the Secular: Bengal Muslim Discourses, 1871-1977* (Calcutta: Oxford University Press, 1995) at 36-43.

⁴Asim Roy, *The Islamic Syncretistic Tradition in Bengal* (New Jersey: Princeton University Press, 1983) at 32-33. See also Golam Murshid, *Hajar Bochorer Bangalee Sanmskriti* (Dhaka: Obosar, 2006) at 52-54. The Buddhist religion prevailed in Bengal from 200-300 BC and was popular until the persecution of the Buddhist began in the seventh century. Buddhism and Hinduism existed side by side under the Pala dynasty (Buddhist variant) in the mid-eighth century. The subsequent Hindu Sen dynasty patronized Hinduism mostly. A large number of Buddhists migrated to Nepal, and some were adapted to the lower caste of the Hindu religion.

⁵Narayan Sarker, *Islam in India: Thirteenth to Nineteenth Century* (Calcutta: Ratna Prakashan, 1972) at 2, Richard M. Eaton, "Who are the Bengali Muslims? Conversion and Islamization in Bengal" *supra* note 1, 26 at 42-43 and Murshid, *supra* note 3 at 33.

⁶Eaton, *ibid* at 29-31.

handful. As the Mughals followed the principle of temporality in terms of state matters, they co-opted the pre-existing Hindu administrative officers to their rule.

Located far from the Muslim center of power in Northwestern India, Bengal was conceived to be a majority Hindu inhabited area. However, the 1872 and 1891 population census showed a Muslim concentration in the deltaic region; indeed, Bengal (East and West) had the majority Muslim population in India.⁷ The absence of proof of forceful conversion or foreign lineage made local Muslims' origin a riddle.⁸ Two theories of Muslim presence in Bengal resulted from this: i) the mass conversion of low caste Hindus and Buddhists to Islam, and ii) the theory of gradual settlement by migration. The British officials and upper-caste Hindus endorsed the mass conversion theory. The *ashraf* Muslims saw this claim as an attempt to denigrate their faith and debar them from their claim to a Pan-Islamic identity.⁹ The caste system was much more rigorous in Northern areas close to the Muslim center, yet no such conversion was evident. Therefore to assume en masse conversion in the Eastern area had no justification. Similarly, the village dweller Muslims could not be descendants of the migrants who were city-centric.

Eaton has linked the rise of Muslims in Bengal in the sixteenth century with the eastward expansion of the deltaic region and the Mughal land policy.¹⁰ In his opinion, the deltaic region did not come into contact with *Brahmanical* culture before the Muslim advent, and as such, class-stratification in Bengal was not as rigorous as in the Western Bengal. The movement of the delta required clearing of densely forested areas and bringing them under cultivation. The Mughal emperors provided flexible land tenure in many cases with a tax exemption for the purpose. The tenure came with the condition of establishing a mosque or a temple to be supported in perpetuity. Most of these pioneers taking up the forest clearing mission were Muslims, "petty mullahs, pilgrims returned from Mecca, preachers,

⁷Roy *supra* note 4, at 19 and *supra* note 2, at 28. See also Sufia Ahmed, *Muslim Community in Bengal 1884-1912* (Bangladesh: Oxford University Press, 1974) at 2.

⁸Eaton, *supra* note 5, at 31-32.

⁹*Supra* note 3, at 31.

¹⁰Eaton, *supra* note 5, at 34.

charismatic *pirs*, and local chieftains seeking tax-free land.”¹¹ As the locals joined these Muslim pioneers, the demography shifted towards a more visible population of Muslim cultivators. Therefore, in Eaton’s view, the immigrants from Northern India, the local Muslim cultivators, and the natural growth of the population accounted for the Muslim population in Bengal.

Roy also emphasized that the ubiquity of the cults of *pirs* (holy man) in Bengal provided the sense of security and assurance needed for the extreme natural hardships of the deltaic region.¹² The legends of the *pirs* were modeled after the Hindu deities, gods, and goddesses with charismatic powers. Khan discounts both Eaton and Roy’s accounts for lack of convincing evidence. He claims that saint veneration over four centuries was responsible for the huge population of Muslims in Bengal with a visible Persian and Sufi influence rather than a monolithic Arab Islam.¹³ Khan admits the presence of the *pir*, but not in the charismatic sense that Roy or Eaton attributes to them. *Pirs*, in his account, were religious pioneers who believed in mediation between Allah and the believer through the holy man. Bengal Muslims, however, were not even versed in Bangla, and were also not recorded to have significant mastery over either Persian or Urdu. However, the use of Persian words in naming Islamic rituals was noticeable among Muslims.

Whether it is through cults of *pirs* or saint veneration, it is evident that Islam in Bengal had spread through centuries by interaction with the local culture, ritual, and the language of Bengal.

[O]ne can at no point identify a specific moment of ‘conversion’, or any single moment when people saw themselves as having made a dramatic break with the past. [Footnote omitted] Islam in Bengal absorbed so much local culture and became so profoundly identified with the delta’s long-term process of agrarian expansion, that the cultivating classes never seem to have regarded it as ‘foreign’-even though some Muslim and Hindu literati and foreign observers did, and still do.¹⁴

¹¹*Ibid* at 34-36.

¹²*Supra* note 4, 46-54.

¹³Akbar Ali Khan, *Bangladesher Swattar Onnesha: ekta procchonno jatir goti-prokritir onushondhan* (Dhaka: Bangla Academy, 2004) at 96-103.

¹⁴Eaton, *supra* note 5, at 42.

The *atraf* Muslim identity at the time was based on a lineage to North-West of India, if not Arab. Therefore a concept of 'pure' Islam in India was embedded in the Northwestern region of Delhi, Lucknow, Lahore, and Agra. The Ashraf promoted Persian and Urdu linguistic and literary imagination.¹⁵ The *ajlaf* Muslims had no access to the language or symbols of the high Islam so as to perform their religious duties and to distinguish themselves from their Hindu neighbors. They were scornfully avoided by the *ashraf*.

Mere translation of Islamic injunctions for the didactic and liturgical matters was not enough to account for the new worldview required of them. Therefore, a new genre of fiction in the lyrical style of the *Mangalkavya* (ballads in praise of Hindu deities) was written to introduce the legends of Islam to the Bengal Muslims and came to be known as *punthi* (manuscript). The *punthi* blended the Islamic legends with local myths, as equivalent to Hindu gods and goddesses, and in the local soil with Perso-Arabic loanwords.¹⁶ Although Roy seems to emphasize that the Hindu-Muslim otherness in these literary works was for the dominant object of making both look natural in the complex social milieu, in Sofa's opinion, this has led to religious hatred over time.¹⁷

In the purview of the orthodox view, this cultural composite or syncretic Islam has always been a sign of 'incomplete conversion' and degeneration. Roy redefined this argument with reference to 'great tradition' and 'little traditions' of the Bengal and how the contact shaped each other over time. Just as the Indo-Aryan great tradition had made contact with the little traditions of Buddhism and created a cultural composite, the exogenous great tradition of Islam came into contact with the indigenous little traditions of Hinduism/ Buddhism and created an acculturated tradition.¹⁸ Rather than an aberration of the original state of Islam, this 'syncretism' was the original state of Islam in Bengal, which only came to be questioned with the rise of revivalist Islam.

¹⁵*Supra* note 2, at 10.

¹⁶Ahmad Sharif, "Punthi Sahityer Itikotha" in *Shahitya o Shahityatatwa* (Dhaka: Bidyaproskash, 2011).

¹⁷Ahmed Sofa, "Bangalee Musolmaner Mon" in *Parabandha Sangraha Pratham Khanda* (Dhaka: Hawlader Prokashoni, 2014) 27-46.

¹⁸*Supra* note 4, at 6-7, 82-83.

II. The Muslim Identity formation during the British Regime

The Muslim identity formation during the British Era was driven by four related factors: **A)** the initial disadvantage suffered by Muslims under the British education and land policies, **B)** translation of the Hindu and Muslim class divide into a communal divide, **C)** the preferential treatment of the Muslims by the British to counter the Hindus, and **D)** the emergence of Hindu and Muslim communities as distinct nations.

A. A sense of Deprivation among the Muslims

The East India Company, the representative of the British Emperor, defeated the Mughal emperor Nawab Seraj-ud-Daula of Bengal in Plessey's battle in 1757. The Company replaced the Muslim Emperor, but the administration largely composed of Hindus was kept intact.¹⁹ With the introduction of currency, the Company monetized both the revenue collection system and education, which affected the Muslims negatively.²⁰ When English was introduced as the official language replacing Persian, the Hindus welcomed it, but the Muslims refused British education partly out of prejudice and primarily out of financial constraints.²¹

Under the new revenue system, individual farmers were responsible for paying rents to the Hindu *Zamindars*, who were supervised by the British collectors. Through a series of land settlements, the *Zamindars* were made the owners of the land and could evict the tenants at will.²² The peasants were also forced by the Company to Indigo plantation to meet the growing needs of the European industry. Furthermore, the adoption of English in the Court instead of Persian also affected the Muslims. Without access to education and employment, the Muslims lost any chance to upward social mobility. This alliance between the foreign rulers and the local feudal lords created Pandora's box for the tenants who had to borrow money to pay revenue and sell their homestead to avoid loan default. The Hindu tenants suffered equally under the process, and in many places, Hindus and Muslims fought

¹⁹*Supra* note 3 at 43.

²⁰*Ibid* at 44.

²¹Ahmed, *supra* note 8 -9.

²²*Supra* note 3 at 45-46

together against the Company and the *Zamindars*. But the sheer number of Hindu *Zamindars* and Muslim tenants was used to garner communal hatred.²³ The British education system portrayed the erstwhile Muslim rulers in Bengal as vile and immoral, which infuriated the new Hindu literati (*bhadralok*) with prejudice against the Muslims. The Bangalee Muslims started to lament for a past glory to which they had no share or access. The sense of deprivation, along with the apathy of their Hindu counterparts, created a fissure between the Hindus and the Muslims.

B. Revivalism and New Identity Consciousness

Both Hindus and Muslim communities experienced radicalized revivalist movements by the end of the nineteenth century and the beginning of the twentieth century. While the Indo-Aryan revivalism was city-centric, the Islamic revivalist movements were more focused on the rural base.²⁴ Researchers do not agree on the impact or acceptability of these movements among the people. More so, the religious agenda was often also packed in terms of the socio-economic relations making it difficult to determine whether the religious or the economic agenda had appealed to the mass.²⁵

The nineteenth-century Muslim revivalist movement was marked in two streams, *Wahhabism*, which gained momentum under Titumir in the Western Bengal, and the *Faraizi* movement in Bengal. The *Wahhabis* declared India *dar-ul-harb* (land of war) under the British, which calls for *jihad*. They believed in the oneness of Allah and followed the *Quran* and *Hadith* with no innovation. Titumir and his disciples opposed *pirism*, observance of death ceremonial, and the usurers. The *Wahhabi* movement antagonized the religious

²³Ahmed, *supra* note 7 at 106 and Suproakash Roy, *Bharoter Krishok Bidroho o Gonotantrik Songram* (Kolkata: Radical, 2012) at 183.

²⁴Ahmed, *supra* note 7 at 176 and *supra* not 5 at 49.

²⁵Asim Roy, "Impact of Islamic Revival and Reform in Colonial Bengal and Bengali Muslim Identity: A Revisit" in Asim Roy eds, *Islam in History and Politics: Perspectives from South Asia* (New Delhi: Oxford University Press, 2006) at 48, 52 and A. R. Mallick, *British Policy and the Muslims in Bengal: 1757-1856* (Dhaka: Bangla Academy: 1961).

leaders, landowners, Indigo planters, and usurers.²⁶ The British heavy-handedly contained the movement. Titumir died in 1831, and 800 *Wahhabis* were tried.²⁷

The *Faraizi* movement gained popularity in Faridpur during the period of 1838-1847 under Haji Muhammad Shariatullah and his son Dudu Miya. The Faraizis insisted on the mandatory performance of the *Farz*, or five pillars of Islam, namaz, zakat, fasting, faith, and performing the pilgrimage. They were strictly against the *pir-muridi* relationship. Strict avoidance of infidelity (*kufir*), polytheism (*shirk*), and innovation (*bedat*) were central to the movement. The prohibitions were extended to paying taxes to Hindu *Zamindars*, joining Hindu ceremonies, and *pir* worshipping etc.²⁸

The *ashraf* Muslims, the traditional religious institutions, *pirs*, and *mullahs* were opposed to these puritanical movements. The revivalist movements did not create any break between the great and little traditions in Bengal, as people continued to leave peacefully.²⁹ But by reworking the traditions, they were able to stir the public sphere and create awareness about the self, distinct from the other.³⁰

The British patronized the Hindu community to create a loyal native class educated to handle the bureaucracy of the empire. The Hindu literati equipped with western education formed their public sphere and sought to reform religious practices. Therefore the two streams of revivalism and reform went concurrently. The abolition of *Sati* (immolation of the Hindu widow), the Hindu widow remarriage, and new taxation rules had agitated the conservative Hindus. The Sepoy Mutiny started in 1857 in the garrison town of Meerut and spread across India except for Bengal. There was a rumor that the new cartridge for the Enfield rifle, which had to be beaten before use, was coated with grease made from pork and beef. From 1857-1858 the mutiny spread across India, where peasants actively supported the soldiers except for Bengal. The mutiny formed its own Court of

²⁶Roy, *supra* note 23 at 265-275.

²⁷*Ibid* at 280-82.

²⁸*Ibid* 291-295.

²⁹Roy, *supra* note 25 at 52

³⁰Javeed Alam, "The Composite Culture and its Histography" *supra* note 25 at 39-40.

Administration and installed the titular Mughal Emperor Bahadur Shah as the King of India.³¹ The concerted effort of this rebellion made the British wary of the possibility of a Hindu Muslim unity and brought significant changes in later British policies.

C. Preferential Treatment and Exclusive Identity

Both Hindu and Muslim elites felt the need for mobilization to negotiate with the British more systematically. For the Hindu elite, self-consciousness had reached the point of demanding control in the governance of the country. The Indian National Congress (*INC*) was formed with the representation of the elite Hindus under Allan Octavian Hume in 1885.³² The Muslims were yet to develop any political ambition. By the time they had formed Muhammadan Literary Society for the welfare of the Muslims and the National Muhammadan Association 1878.³³ Despite several approaches from the Congress, they declined to join the movement saying that the bulk of Muslims did not have the reflection or the ability to join the initiatives proposed by the Congress.

Although Hindu and Muslims fought the Sepoy Mutiny alike, the British became suspicious of the Muslims. This was also applicable to the Bengal Muslims even though they had not participated in the movement. The 1891 census made the British aware of the strong Muslim presence in Bengal and a force to be reckoned with. The later British policy to promote the Muslims of India was due to a parochial interest of creating a class opposed against the Hindus yet dependent on the British. Therefore, the British policy promoted *madrasah* education for Muslims when all denominational education was being discouraged.³⁴ The Muslims were given quota or special reservation in government services, ensuring mobility for lesser-qualified Muslims as opposed to their Hindu

³¹Ahmed, *supra* note 7 at 164-65 and Roy, *supra* note 23 at 347-48.

³²Serajul Islam Chowdhury, *Jatityotabad, Samprodayikota o Jonogoner Mukti: 1905-47* (Dhaka: Samhati Publishers, 2015) at 16.

³³Ahmed, *supra* note 7 at 176.

³⁴Murshid, *supra* note 3, at 59-60 and Ahmed, *ibid* at 11-18.

counterparts.³⁵ For all purposes, the Muslims were treated as a politically separated community based on their religious identity.³⁶

In a bid to further divide the Bangalee Hindus and the Bangalee Muslims, the partition of Bengal was planned and executed amidst protest on October 16, 1905.³⁷ The official reason stated for the partition was the administrative efficiency, but the actual reason was to weaken the unity of Bengal.³⁸ Under this scheme, the Hindu majority areas were grouped as the Western zone with Calcutta as capital, and the Muslim majority areas were grouped as Eastern zone with Dhaka as its capital. The Muslims initially rejected the idea on the grounds of linguistic affinity but later recognized the opportunity to flourish with the capital re-established in Dhaka.

The elite Hindus of both the Eastern and Western wing were opposed to the partition for different reasons. West Bengal saw the partition of Bengal as a way of weakening the demand for independence. The elite Hindus of the East Bengal had more than one concern; many of them, though settled in Calcutta, had their property and livelihood in the East.³⁹

The *Swadeshi movement* was launched demanding to reunite the two Bengals. On October 16, 1905, the day of the partition, a general strike was observed in Calcutta. People tied friendship knots between Hindus and Muslims. The symbols invoked in the *Swadeshi* movement, including the *sangkirtans* (praise songs), praise of *Shiva* (the warlord), and *Kali* (the goddess of power), exerted symbolism and Hindu myths.⁴⁰ In both Bengals, it was mainly an elite movement without any participation of the mass except for few exceptions.⁴¹ The popular *swadeshi* slogan '*Bande Mataram*' was adopted from Bankim

³⁵Murshid, *ibid* at 63.

³⁶Ahmed, *supra* note 7 at 18.

³⁷Murshid, *supra* note 4, at 299.

³⁸*Supra* note 32 at 14.

³⁹In a sense, the movement was stronger in the East by the Hindu Landlords who made the Muslims their comrades too, but communalism was yet to gain a stronghold. *Supra* note 7 at 160 and *supra* note 32 at 20, 29-30.

⁴⁰*Supra* note 32 at 17-18, 31.

⁴¹*Ibid* at 23.

Chandra Chattyopadhyay's *Anandamath*, which was criticized for the vilification of the Muslims.

Ramsey MacDonald observed the religious fervor of the *Swadeshi movement*, which was expressed through cultural mobilization:

"The Bengal idealized the entire India through the Swadeshi movement and translated nationalism into religion, music, poetry, fine arts and literature. Countless streams of religion are flowing to revive and thrive the nationalist spirit."⁴²

As a result of the *Swadeshi movement*, Bengal as a territory was reunited in 1911, but the possibility of unity among the Hindus and Muslims was buried once again.⁴³ Furthermore, the Capital of the British Empire was moved from Calcutta to Delhi, ultimately weakening the force of the Hindu *bhadralok*.

D. The Lahore Pact, 1940 and the Great Divide of India in 1947

In 1906 the All India Muslim League (*AJML*) was established to champion Muslim interests.⁴⁴ It was primarily constituted of the knights and *nawabs* interested in appeasing the British rulers and receiving preferential treatment from them. It was mainly inactive until Muhammad Ali Jinnah revived it in 1934.

A separate electorate for the Muslims was secured through cultivated plans of the Indian Council Act 1909 and 1919.⁴⁵ As Muslims swelled in number, the separate electorate and special reservation reduced the prominence of the Hindus to a minority. The diarchy imposed by the Government of India Act, 1935 vested the safety and revenue system to the British government and education and others to the Indians.⁴⁶

⁴²Quoted from Rameshchandra Majumder, "History of the Freedom Movement in India" (1963) vol II, Calcutta, p. 152, *ibid* at 32.

⁴³*Ibid* at 14.

⁴⁴*Ibid* at 60 and Murshid, *supra* note 3 at 170.

⁴⁵Murshid, *ibid* at 190.

⁴⁶*Ibid* at 165.

The expansion of the electorate created a need to mobilize the Muslims in Bengal. It was only in 1936 that Muslim League started functioning in Bengal.⁴⁷ The *Krishak Praja Party* (*KPP*) was established in 1914 with the middle class and upper-class elites of Bengal who were concerned about the rights of the tenants.⁴⁸ As opposed to Muslim League, the leadership of *KPP* represented a mixed group with contradictory interests. Its outlook was also secular. In the wake of the Government of India Act, some of the *KPP* leaders of the found greater interest in breaking away with *KPP* and joining the Muslim League to protect the interest of the Muslims.⁴⁹

However, *KPP* leader Fazlul Haq had easy access to the rural Muslims compared to other Muslim leaders. He became the Prime Minister with the support of the Muslim League, European Members, scheduled caste and some upper-caste Hindus. But the coalition made his hands tied to several compromises regarding the agrarian land reform. As his party withdrew support from him, he joined Muslim League in two years in 1937.⁵⁰ Therefore, by treating Hindus and Muslims as separate communities, the diarchy had weakened them both, unable to bring any meaningful change because of the horizontal and vertical divides.

Both *AIML* and *INC* were negotiating to attain governance of India. Poet Iqbal, while presiding the *AIML* Conference in 1930, first proposed a separate state for the four Muslim majority provinces of the Northwest.⁵¹ Bengal was not part of his original scheme, nor was the question of partition from India as a sovereign state there.⁵² Another Punjabi, Chowdhury Rahmat Ali, in his academic paper first coined the name Pakistan. He proposed for a sovereign state named Pakistan, taking after the initials of its intended provinces, Punjab (P), North-West of Afghan Frontier (A), K (Kashmir), I (Iran), Sindh (S), and TAN (Beluchistan). While this plan was never considered, the name came to be used for the new nation of Pakistan.

⁴⁷*Ibid* at 170.

⁴⁸*Ibid*.

⁴⁹*Ibid* at 171-72.

⁵⁰*Supra* note 32 at 312, 315.

⁵¹*Ibid* at 241.

⁵²*Ibid*.

The *AIML* claimed the Hindu and Muslim communities form two different nations, who cannot live side by side any longer. Congress, on the other hand, claimed oneness and unity of India, but Hinduism lay in the heart of this oneness. In 1940 Sher-e-Bangla A. K. Fazlul Haque formally pressed the Lahore Resolution, which was adopted in *AIML*'s Annual Council. The Resolution was obscure in terms of defining the nature of the proposed state apart from its emphasis on a 'separate homeland for Muslims of India'. The Resolution mentioned that the Muslim majority states "should be grouped to constitute independent states in which the constituent units shall be autonomous and sovereign." The question remained why sovereign states would need autonomy. The two-nation theory also posed a threat for Bengal and Punjab because they had an almost similar number of Hindu and Muslim populations. The Prime Ministers of Bengal and Punjab, respectively Fazlul Huq and Sikandar Hayat Khan, believed that there would be autonomy for Muslim majority states within a federation. No one thought of Pakistan as a centralized unitary state.⁵³ Jinnah later said the inclusion of 'states' was a typo and then failing to prove so argued that intention was important, not the wording.⁵⁴ Jinnah could not answer why religions other than Muslims and Hindus should not have their state or the fate of minority Muslims in majority Hindu provinces. The idea of a separate homeland for Muslims gradually gained popularity even in provinces where it was not welcomed initially.⁵⁵

In their stubbornness, *INC* and *AIML* refused the proposals of the Cripps Mission (1942) and the Cabinet Mission (1946), respectively.⁵⁶ The Cripps mission proposed for the transfer of power after World War. The framework proposed was India as a Union with Dominion status. After the war, a constituent assembly elected through the provincial assembly would frame a constitution. However, any province would have the right to opt-out after the Constitution is framed to adopt its own Constitution and federation. *INC*

⁵³*Supra* note 32, at 258.

⁵⁴*Ibid* at 259.

⁵⁵Murshid, *supra* note 184.

⁵⁶The Cabinet Mission noted that the Lahore resolution could not be acted upon without dividing Bengal and Punjab as non-Muslims formed 45 and 43 percent in Bengal and Punjab. The mission envisioned three separate groups, one large group with the Hindu majority states and two small groups of the Muslim majority. Each group could go into general election after framing constitutions, and they could alter groups after the election. *Supra* note 32 at 252-254.

rejected the Mission for two reasons; it wanted the immediate transfer of power and undivided India.⁵⁷ The *AIML* agreed to the deferment of transfer of power until the war, but the proposal was rejected for its inadequacy to recognize the demand of a separate land for Muslims. Gandhi issued a call for Quit India immediately after. The Cabinet Mission, on the other hand did recognize the communal divide. However, it maintained that the Lahore Resolution could not be acted upon without dividing Bengal and Punjab as both provinces had more than 40% minority population. Therefore, the Mission proposed three groups, one group of majority Hindu provinces and two groups of majority Muslim provinces (one in the West and one in the East). Under this proposal, after framing, the Constitution provinces would have the option to rearrange groups. Both *INC* and *AIML* rejected the proposal. Jinnah called for a strike styled as direct action. Calcutta city witnessed an unprecedented riot, and in June 1946, the British confirmed by a declaration that India would be divided.

INC and *AIML* became pioneers of the Hindu and Muslim identities. The Hindus and Muslims all recalled a golden past to create their 'imagined nationhood' based on the singular identity of religion. The worst sufferer of this imagined nationhood was Bengal and Punjab, where the number of Muslims and Hindus were almost equal. There was violent bloodshed, families torn apart, and endless miseries in the promised new homelands.

The history of 1905-1947 is of riots. Through the creation of the spate electorate, the urban *ashraf* saw an interest in bringing its peasant *ajlaf* closer. In order to establish nationhood based on religion, it was essential to spread the communal divide. Several modalities were employed to bridge the widening gap between the elites and the commoners. Among them were *bahas* or religious debates. These debates provided a discursive space for Muslims to socialize and exchange religious ideas with Muslims from neighboring villagers. Another effective means was the proliferation of cheap religious books named *nasihatnamas* (manuals of religious instructions) published from Battala, Calcutta. Besides emphasizing

⁵⁷*Ibid* at 246-247.

the Muslim identity, these didactic publications sought to establish unity with the Muslim world and openly proclaimed anti-Hindu sentiments.⁵⁸ The other important modality was *w'az-mahfil* or religious sermons seen in the late nineteenth century designed to strengthen Muslim communal solidarity and self-confidence. These called upon the Muslims to revive the true spirit of Islamization, change their lifestyle, and work ardently for the welfare of the (Muslim) community.⁵⁹ At the behest of the local clerics and religious figures, the *ashraf* took up the task of the nineteenth-century revivalists whom they had detested at the time.

However, it is worth mentioning here that despite mobilization along the religious line both the Hindu and the Muslim communities were heterogeneous, and in no way monolithic units. By the mid-nineteenth century, Bangla literature placed lived relations at its center instead of deities and dynasties. Therefore, *Rabindranath Tagore*, *Kazi Nazrul Islam*, *Sarat Chandra Chattopadhyay* addressed internal criticism of the religious communities and the need for communal harmony in their writings. Theater became prominent and political in West Bengal, as well as folk drama or *jatra* in Bengal. The Dramatic Performance Act, 1876, was enacted to regulate the theatre movement. Later the Bengal Places of Public Amusement Act, 1933, was also enacted to thwart the *jatra* movement in Bengal, which was made popular during the *Swadeshi* movement by *Mukunda Dash*. Several researchers engaged themselves in documenting the folk traditions in Bengal. In the 40s, People's song or songs of mass uprising also gained prominence as modalities of anti-British protests. Both Hindu and Muslim gentry and their peasantry also had reactionary art forms which beset hatred against each other.

III. Pakistan Era: Economic-Cultural Repression and Emergence of the Bangalee Identity

The two-nation theory premised on the idea of Hindus and Muslims of undivided India as two distinct and homogenous nations was fundamentally flawed and was soon evident through separatist movements in India and the demand for an autonomous East Pakistan.⁶⁰

⁵⁸*Supra* note 23 at 66-67.

⁵⁹*Ibid* at 67.

⁶⁰*Supra* note 32 at 242.

During the Pakistan regime (1947-1971), the people of Bangladesh (then East Pakistan) were discriminated against and oppressed as lesser Muslims for their language and cultural identity.

East Bengalis, who constitute the bulk of the population, probably belong to the very original Indian races. It would be no exaggeration to say that up to the creation of Pakistan, they had not known any real freedom or sovereignty. [. . .] In addition, they have been and still are under considerable Hindu cultural and linguistic influence. As such they have all the inhibitions of down-trodden [sic] races and have not yet found it possible to adjust psychologically to the requirements of the new-born freedom.⁶¹

The above excerpt is just one expression of the disgust the West Pakistani Urdu-speaking elites harbored for the Bangalees. During the time, East Pakistan became a colony of Pakistan for all practical purposes. It was also subjected to a policy of cultural assimilation through “racial, religious and cultural arrogance” of West Pakistan.⁶² The two wings of Pakistan had nothing in common apart from their majority Muslim population. Even within that narrow identity marker, the Bangalees did not qualify as ‘pure’ Muslims for the West. Therefore Pakistan regulated the linguistic and cultural expressions of Bangalees and attempted to sanitize Bangalee culture of alleged Hindu influences. This cultural essentialism, along with the refusal to recognize the political will of the Bangalees, led to the genocide in 1971.

A. The Language Movement, 1952

Soon after the independence of Pakistan, the Urdu-speaking central leaders and intellectuals of Pakistan declared that Urdu would be the state language of Pakistan, as Hindi was the state language of India. Despite being the lingua franca of the Western wing of Pakistan, Urdu was not a native language of any of the four provinces.⁶³ Only a few in the East spoke Urdu. The students and intellectuals of East Pakistan demanded that Bangla

⁶¹Ajit Bhattacharjea, *Dateline Bangladesh* (Bombay: Jaico Publishing House, 1971) at 18 quoting Mohammad Ayub Khan, *Friends, Not Masters* (New York: Oxford University Press, 1967) at 187.

⁶²*Ibid* at 21-26 & Anthony Mascarenhas, *The Rape of Bangladesh* (Delhi: Vikas Publications, 1971) at 6-24.

⁶³Jenefer Coates, “Bangladesh: the Struggle for Cultural Independence” (1972)1(1) *Index on Censorship* 17-35 doi:[10.1080/03064227208532144](https://doi.org/10.1080/03064227208532144).

should be the official language and medium of instruction in East Pakistan and for the central government Bangla should be one of the state languages alongside Urdu.⁶⁴

The movement was first spearheaded under the cultural organization *Tamaddun Majlish*, and was later joined by a host of organizations creating a larger platform under the name *Rashtrabhasa Sangram Parishad* (Language Action Committee) in December 1947.⁶⁵ In the February 1948 Constituent Assembly Session in Karachi, Dhirendranath Datta, a member of the East Pakistan Congress Party, moved an amendment motion to include Bangla as one of the languages of the Constituent Assembly and the West-Pakistani leaders opposed.⁶⁶ The movement gained momentum when Muhammad Ali Jinnah, the then Governor-General of Pakistan, on his visit to East Pakistan on March 19, 1948, reiterated that Urdu would be the only state language of Pakistan. From then onwards, till 1952, the Pakistani rulers not only reiterated the claim but also proposed that Bangla should be written in Arabic script.⁶⁷ February 21, 1952, was chosen for a general strike, organizing processions and demonstrations throughout East Pakistan to press the demand for Bangla as the official language of East Pakistan. As demonstrations were underway, the government imposed a curfew in Dhaka, banning all assemblies and demonstrations. As the students defied the curfew, the Police opened fire, killing and injuring many. The movement achieved its goal by forcing the Pakistan Constituent Assembly to adopt both Bangla and Urdu as the state languages of Pakistan in 1956.

The language martyrs' day became the most observed non-communal occasion as this movement created a deep love for language amongst the Bengalis. The Rabindranath and Nazrul Birth Anniversaries, Bangla New Years Celebration all were celebrated on a larger

⁶⁴*Supra* note 4 at 184-85.

⁶⁵*Ibid.*

⁶⁶Under the rule member could only speak in Urdu or English.

⁶⁷On January 27, 1952, Khwaja Nazimuddin came to Dhaka from Karachi. Addressing a meeting at Paltan Maidan, he said that the people of the province could decide what would be the provincial language, but only Urdu would be the state language of Pakistan. There was an instantaneous, negative reaction to this speech among the students who responded with the slogan, 'Rashtrabhasa Bangla Chai' (We want Bangla as the state language). By April 1951, the government had spent Rs. 60,000 on adult education centers in east Bengal 'to see whether literacy [could] be imparted more quickly through Arabic script'. Murshid, *supra* note 3 at 309-313.

scale. People opted for Bangla names for their children; houses and business establishments were named in Bangla.⁶⁸ Through the 1952 Language Movement Bangladeshis came to appreciate their linguistic and cultural roots closely, more than ever before.

B. Purging Bangalee Culture of its Impurities

Pakistan could not come out of the religious garb it had once used to get prominence at the center of political power. In order to quell the threat from Bangalee nationalism, it adopted a monolithic Islam and asserted it against its own citizens.

The rulers considered the Bangla language as well as the literary pioneers to offend the ethos of Pakistan. In 1958 *jatra pala* or folk drama was allowed on condition of non-participation of female actresses.⁶⁹ The Pakistani rulers treated Rabindranath as a threat to the integrity of Pakistan and prohibited transmission of his songs on radio and television in 1967.⁷⁰ Prior to that, the government prohibited the celebration of the poet's birth centennial in 1961. During the India-Pakistan war in 1965, Tagore song was banned again. The situation was such that any household hosting Rabindra Sangeet Asor had to be guarded against vandalism.⁷¹

Jamil Chowdhury, the then Station Manager of Dhaka television, in an interview during his stay in Calcutta as a refugee in 1971, revealed:

“The demand for the removal of the ban on Tagore continued until they were forced to withdraw it in 1966. But the unwritten policy was not to give prominence to Tagore. He was confined to a maximum of 40 minutes per month. Nazrul Geeti was permitted, but not songs with words such as *Bhagaban* (God, in Bengali) or Krishna (since he is a Hindu god) although Nazrul Islam is a Muslim himself. Songs which were banned included *Tomar Charan Dooto Amar Buke Dhor* (Let me clasp your two feet to my bosom, since this was considered a Hindu gesture to the deity) and *Dhan Dhanye Pushpe Bhara* because this was also supposed to have Hindu overtones.

⁶⁸*Supra* note 4, at 186.

⁶⁹*Ibid.*

⁷⁰*Ibid* at 187.

⁷¹Kamrul Hasan, *Bangladesher Shilpa Anadolon o Amar Katha* (Dhaka: Prothoma Prokashon, 2000) at 31.

Then Bengali words were slowly substituted with Urdu. Thus *ma* (mother) became *amma*, *mantri* (minister) became *wazir*. The language of radio and TV became so contrived and poor that it became quite different to what was spoken in West Bengal and to such an extent the people in West Bengal could not understand the Bengali language as spoken on Radio Pakistan. We were ordered to use even obscured Sanskrit or English words, so long as they were different to those used in West Bengal. One of the most ridiculous instances was the use of the English word [sic] 'people' in Bengali language broadcasts so as to avoid use of the common Bengali word *janagan*." [...] "Kazi Dil Mohammed, Director of the Bengali Academy was present at the famous meeting where Governor General Monem Khan said to the staff of the radio station: 'Why can't you write your own Tagore songs.'" ⁷²

In order to counter the Bangalee intellectuals, the Pakistan government created the '*Pakistan Writers' Guild and Art Council*' to foster a submissive class among the artists and to divide them through tours, parties, prizes, and titles.⁷³ A group of artists, intellectuals, and literature did emerge among the Bangalees who wanted to import Perso-Arabic words. Some wanted to write Bangla in Arabic or even the Roman alphabet. For example, Golam Mustafa wrote that there should not be any hesitation on the part of the Bengalis in accepting Pakistanism in their culture and literature.⁷⁴ He even asked for creating a Pakistani version of the works of Kazi Nazrul Islam by excluding Shyama songs.⁷⁵ Many writers of this breed also attempted to Islamize Lalou.⁷⁶ In the field of poetry, Islamist propaganda took prime. Golam Mostafa, Mufakkharul Islam, Rowshan Yazdani, Talim Hossain etc. took Pakistani communal spirit as their inspiration.⁷⁷

In general, there was a group beset against Bangalee traditions in fine arts. *Alpanas* (folk designs) are an integral part of Bangalee festivities, though principally used in Hindu pujas. This fraction of artists also tried to defile *alpanas* as an un-Islamic practice. After 1952 it became commonplace to draw *alpanas* on the streets in front of language memorials for the 21st February celebration. This way, the 'designs of the Hindu temples' ascribed by the Pakistanis came to the streets and became part of Bengali tradition, defying the religious

⁷²Amita Malik, *The Year of the Vulture* (New Delhi: Orient Longman, 1972) at 86.

⁷³*Ibid* at 41.

⁷⁴*Supra* note 32 at 259.

⁷⁵*Ibid* at 259-60.

⁷⁶*Ibid* at 267.

⁷⁷*Ibid* at 167.

misconstructions.⁷⁸ Through the dual effect of state censorship and state patronized promotion of Pakistani nationalism, the state portrayed the artists as disloyal to Pakistani sentiments and committed to their Hinduized origin.⁷⁹

C. Resistance: Politics and Performance

The All Pakistan Awami Muslim League (*APAML*) was founded in Dhaka in 1949 as an alternate political forum for Bengali nationalists to counter the domination of the Muslim League. The *APAML* formed United Front (*UF*) with the *KKP*, the Democratic Party, and Nizam-e-Islam, winning Pakistan's first provincial general election to the East Bengal Legislative Assembly.⁸⁰

The *UF* demanded greater provincial autonomy and questioned the religious Republicanism of Pakistan. In order to express its secular commitments, *APMAL* dropped the word 'Muslim' from its name and became Awami League (*AL*). Governor General Ghulam Muhammad arbitrarily dismissed the *UF* government in 1957, accusing it of attempted secession. The arbitrariness and lack of democratic culture were well pronounced in the constitutional developments as well. Before the Pakistan Constituent Assembly could enact a constitution, it had to pass the Objectives Resolution (1949) on the insistence of Islamist parties like Jamaat-e-Islami to declare state recognition of the sovereignty of Allah.⁸¹ The country's first constitution was approved in 1956 but abrogated in 1958 after a military Coup d'état. Pakistan's second constitution was approved in 1962 and was suspended in 1969. This failure to provide a constitution and uphold democracy coupled with severe economic and cultural domination led the East Pakistani Bangalees to a series of struggles for autonomy and culminated into the liberation war in 1971. The 1962 Education Movement, the Six Point Demand of 1966, the Mass upsurge of 1969, and finally, the 1970 general election of Pakistan were milestones along the path. In the first

⁷⁸*Ibid* at 39 and Malik, *supra* note 72 at 88.

⁷⁹Hasan, *ibid* at 37.

⁸⁰The election resulted in a crushing defeat for the Muslim League, with United Front parties securing a landslide victory and gaining 223 seats in the 309-member assembly. The Awami League emerged as the majority party, with 143 seats.

⁸¹The Objectives Resolution has henceforth been inserted as a preamble into each of Pakistan's subsequent constitutions.

General Election of Pakistan in 1970 Awami League won with a landslide victory with 160 seats out of 300. West Pakistan not only denied handing over of power, but also in the pretext of negotiation, attacked the unarmed Bangalee civilians on March 25, 1971, marking the beginning of one of the gravest genocides of human history to be continued for nine months.

The liberation war of 1971 was political, but there was no dearth of cultural contribution to it. The *Shadhin Bangla Biplobee Betar Kendra* (Independent Bangla Revolutionary Radio Station) was an act of revolt by the officers of Pakistan Radio themselves. When the genocide started, the country was virtually without any leadership. They took the initiative to transmit Sheikh Mujib's declaration of independence on 26 March 1971 from a remote transmission center under the control of the Eighth Regiment.⁸² The transmission power was minimal, but the signal was picked up at the Bay of Bengal by a Japanese ship and was retransmitted by Radio Australia and BBC. The Pakistan Air Force bombed the transmission center, and the officers and engineers flee to India with minimal equipment.

During the war, they not only boosted the morale of the people by transmitting and airing shows and news but also used songs as codes and signals for the guerilla fighters. The radio was obviously involved in the act of politics, but the act was carried out through cultural activities.⁸³ These acts of resistance by the artists, on the one hand, and the systematic attack on artists and intellectuals by the Pakistan Army and their local collaborators on the other probably distinguished the two sides for perpetuity.

A cultural troupe, '*Bangladesh Mukti Shongrami Shilpi Sangstha*' (Artists for Bangladesh Liberation Struggle), traveled to refugee camps and free areas and performed patriotic songs, dramas; organized puppet shows to boost the morale of the freedom fighters and ordinary people.⁸⁴ They also performed internationally in different foreign missions to

⁸²Malik *supra* note 78 at 47.

⁸³*Supra* note 32 at 246.

⁸⁴Using the original footage of the troop filmed by American filmmaker Lear Levin and archived footages from the UK and USA Tareque and Catherine Masud made a film *Muktir Gaan* (Songs of Freedom) in 1995.

raise funds and awareness about the plight of the refugees fleeing from Bangladesh to India.⁸⁵

The Pakistani leaders never conceived Bangladesh as integral to their homogenous “Muslim community”; therefore, it was a misfit in their idea of the Muslim nation. The onslaught on Bangalee culture was also based on fear and reproach for India. The ultimate translation of the reductionist view was the systemic and mass killing of Bangalee intellectuals during the war.

IV. Independent Bangladesh: Fight over Identity, History and Narrative

The independence of Bangladesh should have meant a closure of the persecution of the Pakistan regime, as well as an end to the dichotomy of Bangalee-Muslim identity. In effect, it only meant coming to the full circle of life, a return to square one. The Bengal Muslims were considered denigrates by the upper strata of their coreligionists in the British Period. Their only strength was the numeric majority over which they had no control. The same elite that repressed the Bengal Muslims took advantage of them by rallying them under the demand for a new state. When that ‘secular self-interest’ was realized by the Urdu-speaking Pakistani elite, the Bangalee Muslims were again vilified, as *kafirs*, as enemies of the state. Three partitions (1905, 1947, and 1971), an exodus (1947), and a genocide (1971) later Bangalees today are blamed for innovation and censured for commitment to their cultural roots.

The geographic zone now marked as Bangladesh and earlier eastern Bengal in undivided India has a long tradition of syncretism. The people of this region have come into contact with *Buddhism*, *Hinduism*, *Islam*, *Sufism*, and *Tantrik* cultures and accommodated all traditions within their own indigenous culture.⁸⁶ Both *Hinduism* and *Buddhism* intermingled with the local traditions resulting in Buddhist and Hindu practices unique to

⁸⁵Shaheen Samad, “Muktijuddher Din Bhule Jaoya Shombhob Noy” in Jahid Hossain Prodhan ed, *Swadhin Bangla Betar Kendrer Itihas* (Dhaka: Ityadi, 2010) 155.

⁸⁶Sanjay K. Bhardwaj, *Contesting Identities in Bangladesh: A Study of Secular and Religious Frontiers*, Asia Research Centre, LSE (Working Paper), p. 6.

Bengal. *Buddhism* took the shape of tantric-*Buddhism*, *Sahajiya*, *Natha*, *Abadhut*, *Baul* were some of the other cults that followed.⁸⁷ These practices have their unique followings, but the mythomoteurs have an impact on art forms.

In orthodox Islam, any performance or presentation is a *shirk*, a claim contested based on unique performances present in the Islamic traditions.⁸⁸ Bangalee folk performances have yet retained the syncretic character, as evident from the fact that even today performers are found enacting the role of Allah in Southwestern Bangladesh.⁸⁹ Around seventy genres of theatrical performances can be traced, of which more than fifty are religious, and most of them draw from Brahmanic stories of gods and goddesses.⁹⁰ Starkly remarkable are *Jatra*, *Kessa Kahini*, *Ghatu Gan*, *Pala Gan*, *Gombhira*-all performances secular in nature.⁹¹

Although the Government of Bangladesh has a Ministry of Cultural Affairs and various centrally regulated academies and art institutions, both performing arts and art activism are principally privately funded and organized. It is impossible to exhaustively categorize the art forms, institutions, and individuals related to them. Below is an example of how performers, organizers, and civil society break institutional barriers to carry forward their message to the grassroots.

In Bangladesh, theater and theater artists have not been provided with adequate infrastructure or incentives by the government, which makes staging outside the capital and divisional cities difficult. But local performers do their best to reach the audience. The street theater is one exceptional move to trickle down messages all around the country through live performance.⁹² Some NGO initiatives have proved that the political agenda of

⁸⁷*Ibid* at 57 & Ahmad Sharif, *Bangalir Chintachetonar Bibartandhara* (Dhaka: Agami Prokashoni, 2011) at 63.

⁸⁸Syed Jamil Ahmed, *In Praise of Niranjana: Islam, Theatre and Bangladesh* (Dhaka: Pathak Samabesh, 2001) at 19-66.

⁸⁹*Ibid* at 9.

⁹⁰*Ibid* at 67.

⁹¹Syed Jamil Ahmed, *Achinpakhi Infinity: Indigenous Theatre of Bangladesh* (Dhaka: The University Press Limited, 2000).

⁹²Rishit Khan, "First National Street-Theatre Festival '88" in Ramendu Majumder ed., *Natyo Porikroma: Char Doshoke Bangladesh* (Dhaka: Nabayug Prakashani, 2013) 260-63. In 1980 two theater groups, in order to break through with the middle class city-centric aura of the theater movement, tried to reach out to distant

Islamists and risk of non-prosecution of war crimes can be easily communicated with the mass when delivered in the form of folk songs or drama traditions.⁹³

Artists in Bangladesh continue to carry the ethnicity-infused identity but are increasingly challenged by the Islamists in terms of content and for their activism.

A. Bangalee and Bangladeshi Divide

Apart from the drastic constitutional changes relating to identity, what differentiated the military regimes from the AL regime (1972-75) was the censure for Bangalee culture and lifestyle.⁹⁴ Immediately after the assassination of Mujib, the national radio, *Bangladesh Betar*, was changed to *Radio Bangladesh*, resonating Radio Pakistan.⁹⁵ The words 'Razakar' (collaborators), 'Pakistan Army', and any praiseworthy mentioning or depiction of Mujib were meticulously struck out from the media throughout the martial law era.⁹⁶ Although both Zia and Ershad let the press and broadcast media function, both heavy-handedly imposed pre-censorship and press notes.⁹⁷ Any criticism of the martial law authority was made a punishable offense.⁹⁸ Consequently, media houses were banned on and off; journalists were prosecuted and attacked.⁹⁹

areas with two distinct approaches. *The Dhaka Theatre* started Village Theater to make class struggle the central theme of the plays and to question the status quo of the society, mainly performed by local artists. *Aranyak*, on the other hand, initiated Open Theatre where animators helped the villagers to make a script from their own lived realities to the staging of it by the locals themselves. Though the movements have not been able to retain steady success in the absence of government support, yet they have been able to maintain secular underpinnings.

⁹³Elora Shahabuddin, "Bangladeshi Civil Society and Islamist Politics", *supra* note 5, 91-114.

⁹⁴Selina Sheuly, The Killing of Bangabandhu Impaired the Cultural Practice: Opine Art Activists, BASAS, online: Bangladesh News Agency <www.bssnews.net>.

⁹⁵*Ibid.*

⁹⁶*Ibid.*

⁹⁷AJM Shafiul Alam Bhuiyan, "Press Freedom: Still a Far Cry", Forum 5 (5), *The Daily Star*, May 2011 online: The Daily Star <<http://archive.thedailystar.net>>.

⁹⁸S. 15 of the Martial Law (Seventh Amendment) Regulations, 1976 made any criticism of the Zia regime punishable with an imprisonment of ten years. Later Ershad reduced the punishment to seven years in 1982.

⁹⁹Naeem Mohaiemen, We Wish to Inform You: A History of Censorship in Bangladesh (1972-2012), (1 April 2013) online: <<http://blogs.cuit.columbia.edu/nm2678/2013/04/01/censorship-1972-2012/>>.

During Zia's regime in 1976, the staging of a drama on Mujib's assassination (On the Land of Homecoming) was prevented.¹⁰⁰ Poets and authors were encouraged to promote the ideas of Islami renaissance and Bangladeshi identity.¹⁰¹ The increase in Islamic content spread by the state-owned media was seen as an attempt to undermine the Bangalee lifestyle and culture.¹⁰² Zia's move to change the phrase "historic struggle for national liberation" with "historic war for national independence" in the Preamble not only denoted the bias of the regime towards the armed forces but also undermined the role of the civilian population in realizing freedom through sustained movement in the fifties and sixties.¹⁰³

These feelings of discontent saw height when Ershad declared laying flower wreath, street art (*alpana*), barefoot procession commemorating the language martyrs of 1952 as '*bedat*' (un-Islamic), and called for remembrance of martyrs through Islamic prayers.¹⁰⁴ The cultural activists united against the regime under the identity of *Sammilita Sangskritik Jot* (Combined Cultural Front). A whole new series of *Patha Natak* (street drama) was composed to raise mass awareness against the military regime. Ershad not only formed an alternative platform to fragment the cultural unity but also started writing poems himself.¹⁰⁵ Therefore, soon after the independence of Bangladesh, the Bangalees were considered denigrates in their own country by their army officials in power. There was one resemblance with Pakistan, however, the unlawful usurpation of power.

B. The Many vires of Islam

After the restoration of democracy in the 90s, various militant groups started launching attacks on national celebrations, including *Pahela Baishakh*. On 6 March 1999, the *Udichi*, a cultural organization having branches all over the country, became the first target of the Islamist (*JMB*) attack in Jessore, claiming ten lives and later again in 2005 in Netorkona

¹⁰⁰*Supra* note 94.

¹⁰¹*Ibid.*

¹⁰²*Ibid.*

¹⁰³Riaz, "God Willing", *supra* note 68, at 35.

¹⁰⁴*Ibid* at 53.

¹⁰⁵Lawrence Ziring, *From Mujib to Ershad: An Interpretive Study* (Karachi: Oxford University Press, 1992) at 177.

with a death toll of seven.¹⁰⁶ In between, there was another organized bomb attack by the *HUJI* in the Bengali New Year Celebration in the Ramna Batamul in 2001, which is being held since 1969 by the Chayyanaut.¹⁰⁷

The *JMB* also attacked Cinema Halls and circus tents in 2002.¹⁰⁸ The *ICS* men threatened cultural activists at the Rajshahi University Campus with death in the wake of the baul sculpture removal resistance movement in 2008.¹⁰⁹ Different Islamist parties issued several death threats of burning cultural activists countrywide. Similarly, there were many reports of mystic singers being attacked, looted, and killed during the years. In 2016, 300 Madrassa students burnt down *Ustad Alauddin Khan's* residence, '*Sangitangan*' in Brahmanbaria, both a music academy and a museum. An attack was carried on a folk drama gathering in the historic Kantajir Temple in Dinajpur in December 2015. Shrines in Bangladesh also host a lot of spiritual singing events, which do not comply with the orthodox Islam, and as such, have been targeted on and off. *JMB* threatened cultural organizations and artists with bomb blasts and killing in Barisal if they participated in the Bangalee New Year procession or fair.¹¹⁰

While militant groups carry these attacks, Islamists political parties are allowed to operate within the country and negotiate the same sort of restrictions with the support of the government. Delwar Hossain Saydee had tabled a blasphemy bill in the Parliament. *AL* once signed an agreement with *Bangladesh Khelafat Majlish* to introduce blasphemy law if elected. *GoB* now actively collaborates with the *Qwami madrassah*-based party *Hefajot-e-Islam (HI)* at the pretext of keeping them away from militant Islam.

¹⁰⁶Staff Correspondent, "Udichi Again: 33 Major Blasts since 1999" *The Daily Star*, (9 December 9, 2005) online: <<http://archive.thedailystar.net>>.

¹⁰⁷Bangladesh Bomb Kills Nine, *BBC News* (14 April 2001) <<http://news.bbc.co.uk>>.

¹⁰⁸"Trail of Terror Attacks", *The Daily Star* (31 March 2007) online: <<http://archive.thedailystar.net>>.

¹⁰⁹RU Correspondent, "Shibir threatens RU Cultural activists with death," *The Daily Star* (8 November 2008) online <<http://www.thedailystar.net>>.

¹¹⁰"JMB's letter' warns Udichi and Charukola not to celebrate Pahela Baishak in Barisal", *BDNews24.com* (11 April 2017) online: <<http://bdnews24.com>>.

In 2013, in the wake of the *Shahbag* movement, *HI* formulated a thirteen-point demand and threatened to siege Dhaka if the demands were not implemented within three weeks.¹¹¹

Among the thirteen points were:

- Bringing back “Absolute Trust and Faith In Almighty Allah” in the Constitution.
- Enacting law with the death penalty for defaming Islam, Allah, and the Prophet Muhammad.
- Prohibition on all adultery, immorality, public gathering of men and women, candle vigil and other un-Islamic cultures alike.
- Stop making sculptures in educational institutions and street intersections.
- Prohibition on the use of beard, head cap (*tupī*) in performances and making fun of Islam in all broadcasting media, including the portrayal of negative characters in Islamic attire misrepresenting Islam to the youth.¹¹²

Ansar-al-Islam, a militant outfit, issued a detailed hit list stating that they had no ill feeling towards religions or belief systems other than Islam, but they were vowed to root out blasphemy carried in the name of “Atheism, Free Speech, and Free Thinking”.¹¹³ Additionally, they listed seven more categories of targets, i) those who protect, help, or support the blasphemers ideologically, financially, or in an organizational capacity, ii) those who do not allow others to follow the rules of Islamic Sharia,¹¹⁴ iii) those intentionally misrepresenting Islam through writing or speech in order to deviate the Muslims which is the principal aim of Crusaders and Indian Mushrikins (well-known writers, poet, freethinkers, so-called “intellectual”, editor of newspaper or magazine, actor, journalist, producer, director), iv) those who oppose, insult or show insolence towards Islam through their speech or writing, v) those engaged in spreading nudity, obscenity and adultery in the Muslim society, vi) those trying to remove the remnants of the Islamic Sharia from the socio-economic system and vii) those who try to extinguish the light of the Almighty Allah from the land. The leaflet titled “Who’s Next” ended with a call to annihilate those who insult Islam by any means:

¹¹¹Staff Correspondent, “Government given Three Weeks: Hefajat Announces Fresh Programmes to Realise 13 Demands” *The Daily Star* (7 April 2013) online: The Daily Star <<http://www.thedailystar.net/news/govt-given-three-weeks>>.

¹¹²Translations are mine, as the available English translations do not exact with the original demands.

¹¹³“Ansar Al Islam’s Next Targets” *The Dhaka Tribune* (2 November 2015) online: The Dhaka Tribune <www.dhakatribune.com>.

¹¹⁴They subcategorized as example teachers (University, College, School), local leader or party, judge, advocate, engineer or doctor.

In short, the Mujahideen will target, by the permission of Allah, every apostates and enemies of Islam who are trying to insult Allah Almighty, our Prophet Muhammad or the religion of Islam by any means.

The two excerpts above, along with the attacks on artists, activists, and places of amusement, show the ongoing reductionism of Bangalee culture and identity. More worrying is the alliance between these Islamist groups and the state. The diverse identity postulates of the people have a long history of coexistence through shared values generated by exchange and dialogue through rituals, festivities, and performances. The shared values translated them to an ethnicity-informed identity-building during the Pakistan regime culminating in national unity in 1971. The secular public sphere emerging from the movement was fragmented with the rise of Islamism in the autocratic regime, and extreme polarization of the identity markers in the democratic regime led to alternate public spheres. The hostility of the contact warns of a breakdown of the legal system.

Conclusion

The construction of the dualism between the Muslim-Bangalee identity or the Bangalee-Muslim identity was not a given. Instead it was constructed over time in relation to macro politics and the lived relations in the society. The origin of Bengal Muslims as a community is almost a scandalized subject in history. The difference between the Aryan- Hindu and the lower caste Hindus in India and rise of the right-wing *Hindutva* movement can be studied parallel to the developments in Bangladesh. Orthodox Islam is not unique in this sense of regulating behavior in a singular way; some other belief systems might exert hegemony in the same way. Therefore there is nothing unique or innately different about the Muslims in Bengal (now Bangladeshi Muslims) other than the fact that they have been treated differently throughout history.

A Bangalee Muslim is different from a Delhi-bred Muslim, so is a Bangalee Hindu different from a Hindu from Madras. The chasm between Bangalee Muslims' language and culture is a colonial construct. The Mughal emperor and the sultanate used them as means of revenue generation and did not engage with them in any other manner, which served a practical

need. The British maintained disengagement as long as possible and only engaged with the Bengal-Muslim to corner the belligerent Hindus. Therefore, the Muslim community was regarded as a separate nation from the Hindu Community. This illusionary identity-building led to the annexation of Bengal with the Urdu-speaking Pakistan divided by a vast landmass of India. Pakistan's model of cultural assimilation was unable to tame the Bangalees.

However, in this long history of king-making Bangladesh has lost a lot of its cultural heritage through the partition, genocide, and riots. In present Bangladesh, demands for sanitization of Bangladeshi culture are being translated to laws and policies. This state and religion alliance shows the conflict is not merely about religion v secularism or religion v culture. It never has been.

Chapter III

The Secular Performing Arts: Quest for Humanism or Vilification of the Other?

Oh Merciful! I wish to know your real name,
In so many names we call You!
The holy books say You do not have a father or a mother
Then who named You? I wonder!
[*Janite Chai Doyal Tomar Ashol Naam Ta Ki?* –Bijoy Sarker]

Art activism or socially responsive performing arts is one of the key components of the public sphere in Bangladesh. Performing arts do not share the authority of law, but like law, they aim to persuade the audience and, as such, have an influence or impact on the audience.¹ Music and drama, like law, do not attain complete meaning in their text and require interpretation in the given context. For this reason, out of many performing arts genres, this chapter is based on a content-based analysis of select theater and music touching the intersecting points of law, religion, and identity. Since the systematic analysis of street theater or *jatra* in this research area is not feasible for lack of resource materials, only select group theater performances have been identified for analysis.

Similarly, protest songs from the language movement (1952) and liberation movement (1971) have been selected for their innate symbols and idioms of language-based nationalism. *Bauls* (mystic singers) in Bangladesh, like performers of various other genres of folk-dramas and music, have been subjected to religious edict, attacks on property and person as well as prosecution by rural elites and Islamists. Therefore, this chapter also studies select *baul* songs to understand their ethos and their discord with religion.

Part I of the chapter analyzes select plays from the theater movement as a field of resistance against religion-based nationalism. Part II focuses on select song verses from both protest and *baul* song genres. The protest songs are based on a plurality of identities of the people of Bangladesh and voice for religious harmony. At the same time, folk songs question the rigors of institutional religion and promote humanism. Part III highlights the

¹J.M. Balkin and Sanford Levinson, "Law as Performance" in Michael Freeman & Andrew D. E. Lewis eds, *Law and Literature* (Oxford University Press, 1999).

ethos of the various art forms against religion-based politics, and the vires against religion, if any.

I. Theater Movement in Bangladesh: A Hallmark of the Secular Public Sphere

Professional theater in Bangladesh truly flourished in the post-independence era starting from 1972, although amateur theater in Dhaka had attained a socially and politically active role by the time.² The twenty-four years of censorship during the Pakistan regime with parallel mass movements and the genocide of 1971 had left a vivid imprint of loss, pain, suffering, defeat, and glory, all elements apt for dramatization. Theater in independent Bangladesh started with such fervor for social and political changes that it was termed as “Group Theater Movement”.³ Several playwrights have endorsed the development of theater in Bangladesh as the most prized cultural achievement in the aftermath of the war of independence.⁴ Playwright Syed Shamsul Huq has gone so far as to say that “theater does not develop when a nation is not free.”⁵ While the universality of the claim may be contested given the success of the Indian Peoples Theaters Association against colonialism in pre-1947 India, there is no denial that playwrights and artists in a free society have the utmost potential to enrich the public sphere with diverse voices and viewpoints.⁶

In independent Bangladesh, protest became the core spirit of theater. Both direct criticism of political leaders, bureaucrats, intelligentsia, as well as metaphoric sarcasm and caricature, have been used to question the social injustice and political degradation.⁷ The dramatization of the 1971 war in the plays is negligible compared to the portrayal of the aftermath of the war in the social, political, and economic life of the nation.⁸ While plays

²Ashish Goswami, “Natyacharchay Bangladesh”, *Kali o Kalam*, Online: Kali o Kalam <www.kaliokalam.com>.

³Avijit Sengupta, “Gata Bis Bachare Amader Theatre: Khola Cokhe Dekha Natyacharcha”, *Theatrewala*, Volume 32: August 2019 online: <www.theatrewala>.

⁴Ramendu Majumder, “Introduction” in Ramendu Majumder ed, *Abdullah Al Mamun er Nirbachito Natok* (Dhaka: Nalanda, 2015).

⁵Interview by Biplab Bala and Hasan Shahriar, *Alapane Syed Shamsul Huq*, *Theatrewala* (2006) 19 online: *Theatrewala* <www.theatrewala.net>.

⁶Ranjan Gangapadhyay, “Lebedef theke ganantya: theatre e protibad” in Debabrata Biswas ed, *Bangla natoke protibadi chetona* (Kolkata: Nabajatak Prokashon, 2011).

⁷Kabir Chowdhury, “Natok: Protibad Protirodher” in Ramendu Majumder ed, *Natya Parikrama: Char Dashaker Bangladesh* (Dhaka: Nabayug Prakashani, 2013) at 58.

⁸*Supra* note 3.

written during 1972-1975 primarily focus on the sorry state of injured freedom fighters, economic hardships, and sexual exploitation of women, the post-1975 plays focus on the crude nature of the military dictatorship and rehabilitation of war criminals. In the post 90s democratic era, the politics of convenience by the mainstream political parties and the rise of religious fundamentalism were brought to the fore to some extent.

Therefore, in terms of content, the war of 1971 is present more as a backdrop than the actual subject matter of most plays. Moreover, historic struggles and movements other than 1971 have been widely used to invoke the spirit of protest in light of contemporary political events. In terms of form, inspiration drawn from the European theater, local/indigenous traditions, as well as verse play/ musical play is visible. For the purpose of this chapter, I have identified plays that touch upon the issue of religion-based politics and the religious-ethnic divide in Bangladesh. As the secular public sphere is blemished for spreading anti-Islamic sentiments and promoting an anti-Islamic lifestyle, I have also devoted a section on how or if Islamic text or tradition is treated in the theater. In order to do justice to the subject matter, I have limited this latter analysis to the plays selected for their focus on religion-based politics.

A significant limitation of this part is a reliance on the text of the dramas instead of stage plays or the actual performance. In a way, it is self-defeating to keep the actual “performance” aside while discussing a genre of performing arts, but the text is essential to understand the multiple probable interpretations. I have tried to remedy the gap between the text and the production by reading critique, watching performance clips, listening and reading interviews of playwrights and directors, cast, etc.

A. Religion-based Politics and A Divided Nation

The plays selected for analysis in this chapter show the political turmoil in a war-torn country, the futility of religion-based politics, and the resultant lack of unity. I have categorized the plays under three broad themes: **i)** Religious persecution and religion-based politics in 1971 and its continuation in independent Bangladesh, **ii)** Rehabilitation of

war criminals and forging religion-based national identity, and **iii)** Impact of religion-based politics in the life and psyche of the generations.

i. Religious Persecution, Religion-based Politics in 1971 and thereafter

In this section, I will mainly focus on three dramas that touch upon issues of religious persecution and religion-based politics in Pakistan, written by Syed Shamsul Huq,⁹ Mamunur Rashid,¹⁰ and Selim Al Deen.¹¹

Payer Awaj Paoya Jay (1975: At the Sound of Marching Feet), written by playwright, poet, and literature Syed Shamsul Huq is regarded as the seminal play on 1971.¹² It is a verse play (*kabya natya*) where a village elite (*matbor*) leads the villagers to believe the freedom fighters (*muktibahini*) to be enemies of the state and forces them to cooperate with the army. The central characters are the *matbor*, his guard (*paik*), his family-patronized cleric (*pir*), his daughter, and villagers left unnumbered by the playwright with a suggested minimum of twenty.

As the victory of the freedom fighters becomes imminent, the villagers approach the *matbor* with questions. They had spied against the freedom fighters and had borne witness to their persecution by the *matbor*.¹³ They had also tolerated army raids in hopes of unity of the country, all under the *matbor's* direction.¹⁴ While the altercations heightened, the *paik* insisted on military intervention to teach the villagers a lesson.¹⁵ But both the villagers and the *matbor* defer to the *pir* for his opinion.

The *matbor*, maintaining the freedom fighters to be the enemies, reminds the villagers of their foremost duty which is to protect the country. Allah will protect them if they keep

⁹Syed Shamsul Huq (1935-2016) was a poet, novelist, and playwright.

¹⁰Mamunur Rashid (1948) is an actor, director and scriptwriter.

¹¹Selim Al Deen (1949-2008) was a Bangladeshi playwright and theatre artist.

¹²Syed Shamsul Huq, *Payer Awaj Paoya Jay*, (Dhaka: Charulipi Prakashan, 2013). First directed by Abdullah Al Mamun in 1976 the play has been staged nearly 200 times. See Cultural Correspondent, "Payer Awaj Paoya Jay crosses 40-year mark" *New Age* (26 November 2016) online: *New Age* <www.newagebd.net>.

¹³*Ibid* at 14.

¹⁴*Ibid* at 35.

¹⁵*Ibid* at 15 & 21.

their *Imaan* (faith) strong.¹⁶ The villagers challenge deference to Allah's will, where Allah himself has asked humans to write their own fate.¹⁷ Angered by their audacity, the *matbor* calls them *Kufr* (idolater), *Nafarman* (ungrateful), *Bedwini* (faithless), and *Haram*.

The villagers in turn question the ability of the powerful to judge the faith of the powerless:

Your household has forever flourished
In the Name of Allah
Like a perennial blossom!
What is Allah's grace and judgment, who knows?
The low lives like us have been bestowed with *Imaan*
And you with the right to judge our *Imaan*!¹⁸

The *matbor* tells them that the intelligent never shakes the branch they sit on.¹⁹ They must not fear rumors, as farmers (freedom fighters) cannot defeat a trained army. The villagers ask one last question: why the military had disappeared in the past week. While they doubt *matbor's* reassertion that a military officer had visited just the day before, *matbor's* daughter confirms his statement. She blames her father's complicity in her rape by an army officer. The *matbor* insists that marriage has been solemnized between his daughter and the officer. Being pressurized by the villagers, the *matbor* confesses that the officer threatened to burn the house and kill everyone if the *matbor's* daughter was not given to him. The *matbor* pleaded with the officer to marry his daughter if they were the follower of the same creator and the Prophet and then solemnized a marriage without the proper *Qalemas* or recitals, just by uttering Allah's name three times.

The aggrieved daughter approaches the *pir*, her religious teacher. She reminisces how she thought a white man (a foreigner) she once saw in the jute field to be Allah. The *pir* hushes her with the warning that Allah is *Niranjan*, without shape and blemish. The daughter says that when the *pir* taught her the Holy Scripture in an alien language, she felt like a blind person being dragged through a colorful market. Definitely the lord is *Niranjan*, but His (Allah's) language is alien to her. The *pir* dutifully reminds her that Allah's language

¹⁶When we are with Allah, we have no one to fear. The enemy will diminish by itself. No one except Allah can help us overcome this hurdle. If you can keep faith in Allah, the darkness will disappear. *Ibid* at 20 [translation by author].

¹⁷*Ibid* at 20.

¹⁸*Ibid* at 21.

¹⁹*Ibid* at 28.

is transpired through faith and not meaning.²⁰ The daughter says that even with her unwavering *Imaan*, Allah did not protect her.²¹ “In which garden of the heaven was he resting in?” she asks. The *pir* says human does not have the authority to question Allah. She replies:

A human not have the right to question Allah,
But has the right to utter his name,
Therefore, my father took His name thrice
Before sending me harm’s way
Like thousands of people sin in the name of Allah.

...

For him [the father] the wedding was acceptable as it was done in the name of Allah
There’s nothing to this except for the Name,
Shapeless *Niranjan* Name
Just like acid that melts iron
His Name can glorify sin,
Even a thief’s den becomes a saint’s abode on His Name.²²

The villagers then press the *pir* to resolve the matter quickly before the freedom fighters arrive. But the daughter takes her life with no hope for justice in sight. The *paik* says an unchaste woman is a disgrace to the community.²³ *Matbor* reminds the *paik* that he is the source of the *paik*’s power, position, and weapon. So the *paik* better kill him than betray him. The *paik* becomes uncomfortable at the mention of the weapon, afraid that the angry villagers might use it to kill him.²⁴

The *pir* says that he avoided visiting the *matbor* as he had sensed the wrongdoings. But it is Allah’s word that, one who has *Imaan* in his heart, does not get touched by sin. The villagers agree that the *matbor* does not have *Imaan*. He compromised their well-being for his own benefit by allying with the army, and he did not even care for his own blood. They do not have a life as long as the *matbor* is alive.

²⁰*Ibid* at 46.

²¹If Allah is Merciful, if He can truly give His believers fearlessness, if He is the Almighty, if all venom really decay with His Name, where was He-the Merciful, where, where? Where was He-the Giver of fearlessness, where? When the serpent intruded my home? When the serpent spiraled my body, when the serpent spread its venom in my bosom? Answer me, where was He? Where? Where? [translation by author] *Ibid* at 46-47.

²²*Ibid* at 47-48 [translation by author].

²³*Ibid* at 50.

²⁴*Ibid* 43.

The *matbor* tells them that even if he is an oppressor, how can they be sure that no one like him will be born again? What would they get from killing him? The villagers reason that killing him will be their penance for allowing the *matbor* to commit all the misdeeds. The *matbor* pleads that he be buried in his village, which the villagers deny and say that they will exhume him from his grave. Supporting the *matbor* the *pir* says even if the *matbor* is exhumed, there will be a stain.

In the last scene, the *matbor* is seen lying dead with the *paik* standing next to him holding a bloodstained weapon as the freedom fighters finally take over the village. The *paik* tells them that the major enemy (*matbor*) has been killed, but his allies were still there. They will escape if not captured immediately and volunteers to identify the enemies. As the freedom fighters exit the stage, only the *pir*, the dead *matbor*, and a flag remain on stage. The *pir* calls everyone to join the *matbor*'s funeral prayers and bring all the dead bodies around.

Payer Awaj Paoya Jay identified the historic allies of religion (*pir*) and power (*matbor*) in marginalizing the grassroots, and their grand alliance with the state. The *matbor* tries to silence the villagers by questioning their *Imaan*. The *pir* also asks *matbor*'s daughter not to question the authority of Allah. When the *pir* differs from the *matbor*, the *matbor* reminds him about a give and take relationship between their generations who have protected each other for earthly and heavenly interests. The play also revealed how religious garb is used to validate grave violations, in this instance the validation of rape by invoking a sham marriage. The blind adherence to religion has been also shown through the conversation between the *pir* and *matbor*'s daughter. The *paik*'s role reversal before and after the war showed how the quest for justice has been compromised.

On the contrary, the *pir*'s character is not so straightforward. During the course of the drama, he at times questions the *matbor*'s interpretations and views. For instance, when the villagers argue with the *matbor*, he says 'at times you reap as you sow'.²⁵ He differs with

²⁵*Supra* note 12 at 16.

the *matbor* regarding the prospect and strength of the freedom fighters or even the *matbor's* interpretation of the country being at risk.²⁶ But he takes long pauses before deciding against the *matbor* and in the end emphasizes on burying him against the fury of the villagers. Whether the *pir* is a humanist, a pragmatist, or an opportunist, is a question the playwright left open to the interpretation of the director and the audience.

As for the inspiration for writing this drama, the playwright mentions that in the capital's Motijheel, he once saw a young boy poking an older man with an iron rod while calling him a *razakar*. The man kept denying the allegation as the crowd silently witnessed. He said this apathy would be incomprehensible to a foreigner or even to him if he were unaware of the history of 1971. Why people of the same country turned against each other is a question that haunts him. For him, 1971 was not about political freedom alone, it was also about freedom from bigotry. In *Payer Awaj Paoya Jay*, he asked questions about the role of religion in politics; therefore, though inspired by 1971, it is not a play about the war.²⁷

The playwright has been critiqued for the sympathetic characterization of a *razakar* (the *matbor*).²⁸ Kaysar has questioned the villagers' en masse opposition to the freedom fighters as divorced from reality.²⁹ The playwright maintained that he did not mention Pakistan or 1971 in the play as thirty-five other countries were fighting for independence at the same time.³⁰ Syed Jamil Ahmed faults *Payer Awaj Paoya Jay* for considering the 'cultural nationalism' as an *a priori*, whereas the rape rather than a counter-argument debases the initial argument forwarded by the *matbor* in favor of religious nationalism.³¹ The play's context, wording, and use of Bangladesh's flag in the stage production make it so embedded in 1971, that these criticisms bear significance.³²

²⁶*Ibid* at 26.

²⁷*Supra* note 5 and Shantanu Kaysar, *Bangladesher Natok o Natyodwander Itihash* (Dhaka: Kotha Prokash, 2014) at 180.

²⁸*Ibid*.

²⁹*Ibid*.

³⁰*Supra* note 5.

³¹Syed Jamil Ahmed, "Performing the Bengali nation: Munier Chowdhury's *Kabar* and Syed Huq's *Payer Awaj Pawa Jaye*", *Depart* Issue 14/15 *Depart* Online: <www.departmag.com>.

³²The playwright did not mention Bangladesh's flag. It was only mentioned that the flag should cover one-fourth area of the stage.

The next play for analysis in this section is *Jayjayantee* (a raga of Indian classical music) by playwright Mamunur Rashid set in a village and portrays the plights of a *Kirtaniya* group during 1971.³³ *Kirtans* are a musical form of narration or recitation having roots in religious myths of *Sikhism*, *Hinduism*, and *Buddhism*.³⁴ The *Kirtaniya* group in this play is a follower of *Sri Chaitanya Dev*, a devotee of Lord *Krishna*. The main characters are Dulal, the only Muslim member of the group; the *guru* of the group, Nabadweep; a local *muezzin* (person who calls people to the mosque for prayer) who becomes an accomplice to the army; and two brothers from the village: Habil, who sides with the freedom fighters, and Kabil who is also an aide to the army. Kabil and *muezzin* subscribe to an Islamist political party, *Jamhooriya*, collaborating with the army. Dulal's wife does not appreciate his passion for music due to financial constraints, but their daughter Meera sings herself and protects Dulal from her mother's wrath.

In one of the initial scenes of the play, we learn that the *muezzin* though critical of Dulal's musical passion frequently visits Dulal's house. Dulal asks the *muezzin* to practice the octave as his *Azaan* is never on the correct scale.³⁵ The *muezzin* gets angry and calls Nabadweep a "*malaun*" (a pejorative term used for Hindus), and Dulal chases him away.³⁶ The next morning when the group is set to depart the village for several months of performance, Habil, Kabil, and the *muezzin* approach them.³⁷ Habil tells Nabadweep that the country is uniting against the foreign rulers, and they need protest songs to inspire people.³⁸ Nabadweep expresses hopes that Habil will protect him and his group in this impending crisis.

Kabil and the *muezzin* enter the scene. The *muezzin* complains that Dulal has offended against religion by comparing *Azaan* with music and demands that he should be secluded

³³Mamunur Rashid, *Natya Samgra 2* (Dhaka: Nalanda, 2013) at 237-292.

³⁴For *kirtan* performances in Bangladesh, see Syed Jamil Ahmed, *Achinpakhi Infinity: Indigenous Theatre of Bangladesh* (Dhaka: University Press Limited, 2000).

³⁵*Supra* note 33 at 245.

³⁶*Ibid* at 246.

³⁷*Ibid* at 248.

³⁸The phrase he really uses is "bhinnbhashi manusher ekkocchotro adhipoty", meaning the hegemonic rule by non-native speakers.

from the villagers for joining the Hindu *Kirtaniya* group.³⁹ Dulal's wife exclaims in surprise as the matter was resolved the previous night and the *muezzin* even dined with them. Nabadweep replies "religion does not get offended so easily". As the group departs, Kabil tells Habil that non-Muslims (*bidhormis*) live under their protection. Habil also blames Kabil for associating with miscreants.

As the *Kirtaniyas* start performance in the village, unrest also starts to aggravate. On one such occasion, young political activists detain village elders supportive of the military rulers. The performance site becomes a trial site where Hindu villagers express their anguish of losing family property as enemy property and unlawful detention under the military rulers.⁴⁰ The dispute is postponed to the next morning, and the *Kirtaniya* group is requested to perform protest songs. While Nabadweep remains reluctant, his troop, except for Dulal starts singing "*Voy ki Morone*" (*why fear death?*) from Mukunda Das, a poet, and composer who had steered a protest movement in East Bengal in 1905. Despite his profound respect for Mukunda Das, Nabadweep expresses his discontent with the group for singing a protest song instead of the humanist *Kirtan* songs. The group entangles in a debate, if under the circumstances, the humanism of *Krishnaprem* will reach the audience or even bear relevance. The organizers cancel the rest of the entourage for security risks.

As the *Kiratniyas* return to the village, Kabil is also seen to return after an initial retreat after the villagers had burnt his house. Unrest has reached Nabadweep and Dulal's village too.⁴¹ As *Kirtan* performances continue to be canceled, all group members except for Dulal leave Nabadweep to perform popular songs. Nabadweep remembers when he signed up Dulal to his group people blamed him for offending religion, but he maintained that humanism was supreme. His conviction has proved right amidst a crisis. Dulal reminds him that the country is now faced with the same question as Nabadweep, "Which comes first, religion or humanity? We are all Bangalees regardless of religion and caste."⁴²

³⁹*Supra* note 33 at 249.

⁴⁰*Ibid* at 254.

⁴¹*Ibid* at 263.

⁴²*Ibid* at 264.

Habil and Dulal bring news that the military has been spearheaded to contain the public uprising, and the *muezzin* and Kabil have started looting. They persuade Nabadweep and the other Hindu troop members to flee for India. The military informants identify the fleeing Nabadweep and his team by the vermillion mark on his wife's forehead.⁴³ One of the troop members is taken for interrogation and released after brutal torture.

Muezzin and Kabil command Dulal and his family to work for the military forces arriving in the village, which Dulal refuses to obey. *Muezzin* and Kabil torture Dulal and interrogate him about the whereabouts of Nabadweep and Habil. Dulal is asked what religion is, to which he replies humanism.⁴⁴ Meanwhile, Habil and his team attack the military. A military officer comes and asks to release Dulal because capturing Habil has become the priority. The vengeful *muezzin* hands over Meera, Dulal's daughter, to the military. The military officer expresses his disappointment at how all the *kafirs* have fled from the village so quickly. In order to appease him, Meera is introduced as the daughter of a denigrate Muslim. The officer kills Meera. In turn, Habil kills Kabil.

The news of the war coming to an end reaches Nabadweep and his team in a refugee camp in India. The military prepares for retreat amidst Kabil's wife's plea of avenge for her husband's death and *muezzin's* plea for security. The military officer says that his religion of war and *muezzin's* religion of state policy both have failed. They both rush to beat Dulal as he can be heard playing the violin. As they continue to beat him, Dulal relentlessly plays the *Jayjayantee* raga to celebrate the victory. As they kill Dulal, the officer says to the *muezzin*, "[o]ur revenge is to stop the tune of humanism - from decades your warlords and our warlords have done the same"⁴⁵ As they leave, Amina, Dulal's wife takes up the violin and tries to play it forgetting all her annoyance for the violin. The play ends with Nabadweep's return when he realizes that Dulal has saved his properties with his life.⁴⁶ Amina hands over the keys and the violin to Nabadweep, both his tangible and intangible belongings, which were safe with Dulal.

⁴³The informants ask if the boat is carrying humans or refugees.

⁴⁴*Supra* note 33 at 278.

⁴⁵*Ibid* at 291.

⁴⁶In a previous conversation between Kabil and *muezzin* the playwright provided an explanation of why the house was not torched or burnt, and instead that were looking for the keys. *Ibid* at 272.

It is notable that, like *Payer Awaj Paoya Jay*, *Jayjayantee* also does not mention the Pakistani army or a time frame. The Islamist political party is mentioned as '*Jamhooriya*'. Regardless, the tropes of the story are such that it reminds the audience of no other historical incident than 1971. *Jayjayantee* is the only drama that puts the religion-based persecution of 1971 at the heart of the raging war. It also shows the discord between orthodoxies of religion, as both Hindus and Muslims detest Dulal's membership of the *Kirtaniya* group. The discord between religion and performing arts is also portrayed through the debate on the likeness of *Azaan* and music. The drama also asks questions about the role of art during a conflict. *Jayjayantee*'s beauty squarely lies in its portrayal of dualism and unity among people within the same set of realities, where brothers Habil and Kabil take two opposing sides of a conflict, while Dulal sacrifices his life to fend for Nabadweep's life and property. *Jayjayantee*, in that sense, prizes humanism over religion and caste.

Keramat Mangal (Epic of Keramat) by Selim Al Deen captures a vast time frame in history: from undivided India to independent Bangladesh.⁴⁷ The main character Keramat travels through times and places. In this sense, it is not Keramat but time that is the protagonist of this story. Keramat witnesses the Hindu-Muslim riot, the social taboos dominating womens' life, and the oppression by feudal landlords. He becomes part of the *Hajang* struggle against Pakistanis and spends many years in prison. He witnesses the forcible conversion of the *Garo* community by Christian missionaries. He aids the freedom fighters in 1971 and finds himself in the aftermath of the war.

Each of his journeys through time and space is divided into several episodes. In the 1971 episode (which the playwright names Ekinpur Khanada and Razakar Khanda), the snippets of the declaration of independence, the description of the guerilla war, the torture carried out on people are wonderfully knitted within a short space. Keramat gets detained twice by the Pakistani army and becomes mentally troubled from the torture.⁴⁸ There is an interrogation scene from a detention camp hoisting a Pakistani flag. The Commander wears

⁴⁷Selim Al Deen, *Natyo Samagra 1*, (Dhaka: Mowla Brothers, 2013) 560- 646.

⁴⁸In his words his head became defective, *ibid* at 619.

a lungi and a skull cap. The Commander speaks in faulty Urdu, the dialogues are comical, and Keramat is scolded for not knowing Urdu.

Commander: Why were you detained?

Keramat: I could not escape.

Commander: Why did you want to escape?

Keramat: I did not want to be caught.

Commander: Uff...what is the reason for your capture?

Keramat: Because I tried to escape.

Commander: Do you know *Qalma*? [Islamic oath of allegiance]

Keramat: Yes.

Commander: Recite the *Qalma*.

Keramat: Why?

Commander: To prove if you are Hindu or Musalman.

Keramat: Ask him! [indicating the Razakar who brought him] I removed my lungi immediately after I was captured to prove that I am a Muslim.⁴⁹

In this brief scene, the playwright has created a vivid portrayal of 1971, where people of Bangladesh were made to recite *Qalma* or men were asked to show if they had been circumcised in order to prove that they were Muslims.

Thinking Keramat to be naïve, the commander plans to recruit him as an informer, but failing to exert information on freedom fighters from him orders for his slaughter.⁵⁰ While the drama does not tell us how Keramat escaped, he is seen next in another locality after the war. There, Keramat tries to save Noorjahan, a *beerangana* (women raped and tortured in 1971), who was first captured by the military, then sold to a *razakar*, later to a Peace Committee chairman, and so on.⁵¹ As she gives birth to a stillborn war baby, Keramat saves her by donating blood. He arranges with a family to shelter Noorjahan for the time needed for her healing and then to send her home. The captors come to know about the hideout, and the family hurriedly marries off Keramat and Noorjahan, but Noorjahan dies from a hemorrhage. The captor, Sona Mia's goons, set the family's properties ablaze.

As Keramat and the family take Noorjahan's corpse to her village by boat, Keramat imagines that all the fetuses of the war babies lost in the war are looking at Noorjahan. He

⁴⁹*Ibid* at 617 [translation by author].

⁵⁰*Ibid* at 618.

⁵¹*Ibid* at 622.

curses Sona Mia as well as Joy Bangla wondering where do the hells in the earth end!⁵² The playwright portrayed the plight of *beeranganas* and the injustice exacerbated in a free country, as well as the continuation of oppression by the collaborators of 1971.

In *Jayjayantee*, there was a hope that humanism would triumph after experiencing the worst form of religious persecution. However, in *Payer Awaj Paoya Jay* and *Keramat Mangal* the aides to the military forces carrying out religious persecution and sexual oppression are seen to be reigning post-independence. How would a war-torn society make peace with these conflicting forces?

ii. Rehabilitation of War Criminals and Forging a Religion-based National Identity

In this section, I will analyze several dramas from playwright S. M. Solaiman, whose work is mainly satirical and politically explicit.⁵³ Solaiman highlights the distortion of history and the use of religion in politics at the expense of the people. I will also briefly address dramas from Mamun on the politics of convenience.

Solaiman's *Khypa Paglar Pyanchal* (Madman's Story 1979) is a witty street drama, where a mentally troubled freedom fighter exposes the hypocrisy of the ceremonial remembrance of the freedom fighters.⁵⁴ A crowd has gathered to inaugurate a memorial club established in the memory of a martyred freedom fighter. The guest of the event, Amzad Ali, is a local businessman, a socialite turned politician with no sensitivity towards history. While Amzad Ali's political alliance is not exposed clearly, his attire is religious.⁵⁵ While he asks the organizer to play movie tracks instead of people's song, a mad man (*khypa pagla*) enters the stage and starts to talk about the atrocities of the Pakistani army. Ignoring Amzad Ali's objections, the audience insists on listening to him. *Khypa pagla* continues to describe his struggle in independent Bangladesh. He, who was a hero in 1971, has turned into a dacoit by the conspiracy of Ramzan *matbor*, one of the many rehabilitated collaborators of 1971.

⁵²*Ibid* at 627-28.

⁵³S. M. Solaiman (1953-2001) was a playwright, director, actor, music composer, and signer.

⁵⁴S. M. Solaiman, "Khaypa Paglar Pyanchal", in Ramendu Majumder et al, *Nirbachito Natak: S. M. Solaiman* (Dhaka: Sahityo Prakash, 2002) at 15-22.

⁵⁵*Kurta* (robe), *tupi* (cap), and *lungi* (a traditional bottom worn by man).

He was tortured, detained in jail for three years, and his wife was forced into prostitution. He has lost his wife, son, and daughter. He wishes that a flood swept away the *matbor's* residence, and the martyr memorials. Amzad Ali warns him against wishing destruction of war memorials. He shouts back that the memorials have mushroomed all over the city; but they have become dens of drunkards. He claims to have heard the martyrs crying at the futility of those physical structures where the spirit of the war has died and everyone has forgotten their sacrifice. The program announcer vehemently denies that the martyrs have been forgotten. *Khypa pagla* continues to question how they can claim not to have forgotten the martyrs when the killers of 1971 preside memorial programs, when they want to hoist the Pakistani flag, and the youth instead of protesting use the memorial program subscription money for their own expenses. He instead finds protest in his own bodily wounds from the war and calls for the end of the collaborators, 'hyenas', and the *razakars*.⁵⁶

Khypa Paglar Pyanchal is a street theater and does not have the layered contours of a typical theater production. It is very direct in its approach, storyline progression, and deliverable. In its short span, the play tells the story of a freedom fighter who has sacrificed his limb but has found himself compromised by the rehabilitation of people he had fought against. To him, the memorial of the war, therefore, is nothing but a farce.

In *Election Caricature* (1980), Solaiman questions the sham elections and political voyeurism of the ruling class.⁵⁷ While the people suffer from fundamental needs, the political parties create debates on ideologies to eyewash them. The play ends with a statement, "From 1947 to 1980, we have witnessed many changes in ruling parties. In the historical process, one oppressor has replaced another without any change to our fate. I ask you - would this continue to be the same? Will we not do anything to change the status quo and create a new society?" To which a chorus replies "In order to deconstruct we have to struggle, in order to reconstruct we have to deconstruct".⁵⁸

⁵⁶*Ibid* at 21.

⁵⁷"Election Caricature", *supra* note 54 at 23-54.

⁵⁸*Ibid* at 53.

In *Ingit* (Clue, 1984) Solaiman, in a futuristic vision, portrays education, bureaucracy, film, and politics in 1994, ten years ahead of the time the play was written. In the opening scene, through chorus performance, the playwright established the dual between Bangalee and Bangladeshi national identity, allegiance to the legacy of Pakistan, and the politics of convenience.⁵⁹

The speakers talk in gibberish English and Bangla to portray the disregard for the language movement. The first speaker mentions that the liberation war was fought against the Portuguese army. The second speaker protests that the aggressors in 1971 were Dutch. A third speaker corrects them that the national curriculum nowhere mentions who the war was fought against. The first speaker says that it is undoubted that chaos (*gondogol*) occurred in 1971. A research scheme will be created to find out the true history of the liberation war. Then they quickly proceed to a competition; whoever can run and be the first one to put a flower wreath on the memorial will be awarded.

The crowd races towards the memorial, and the memorial collapses on the martyrs who were hiding behind. The crowd in order to appease the martyrs sings a song, "You who freed Bangla through bloodshed and sacrifice, we will not forget you".

The three martyrs: Please forgive us this time. Please forget us.

Speakers: We will not forget you.

Martyrs: Please forget us. We beg you to please forget us.

Speakers: Till death, we will not forget you.⁶⁰

Like *Khypa Paglar Pyanchal*, here also the playwright shows the slippery slope of ceremonialism centering the language movement and 1971, without proper memorialization of history. During the Zia regime, any reference to the Pakistani army was removed from the national curriculum, and Bangladeshi identity instead of Bangalee identity was branded. His next play will show that his projection of 1994 based on these realities of regime changes was not baseless.

⁵⁹"Ingit", *supra* note 54, at 55-92, at 57.

⁶⁰*Ibid* at 67.

Solaiman's *Ei Deshe Ei Beshe* (In this Country, in this Garb) is a play written in 1988 critiquing the Islamic identity that was forced on the nation by Zia and Ershad regime.⁶¹ The play is set in the background of an ostensible celebration of the Centennial of Bangalee Nationalist Spirit. Renowned Bangalee intellectuals, including Rabindranath Tagore, Kazi Nazrul Islam, Sarat Chandra Chhattopadhyay are posthumously invited to inaugurate the ceremony with an aim to validate the new Islamized national identity. The play is advanced through *Gombhira* performance, a traditional rhythmic musical and dance performance from Chapai Nawabganj area of Bangladesh where a man (grandson, *nati*) and his maternal grandfather (*nana*) talk on any topic in a satiric tone.⁶²

The *nana* and *nati* are among the many spectators of the celebration. The *nati* questions the grandeur of the celebration of the nation's spirit, which observes its language martyrs day on the 21st of February (instead of the Bangalee calendar date). Hey says especially after the nation has forgotten the history of 1971 and rehabilitated the *razakars*, celebrations of such magnitude are meaningless. His *nana* calls him naïve for differentiating freedom fighters and *razakars*: "Do you read the newspapers? Do you watch TV? Have you heard about our distinct identity? [...] All differences have to be forgotten for the national unity."⁶³ The "distinct identity" here refers to Ershad's suggestion as to the new identity of the nation after invoking state religion in the Constitution.⁶⁴ The play takes its flight from there to show how far the regime could go to establish this distinct identity.

The king and his cabinet enter the stage, a dialogue ensues:

King: Whom does the country belong to?

Cabinet: The King.

King: Whom does the land belong to?

Cabinet: The King!

King: The yield?

Cabinet: The King.

King: The vote?

Cabinet: The King.

King: Whom do the people belong to?

⁶¹*Supra* note 54 at 147-196.

⁶²*Supra* note 34 at 299.

⁶³*Supra* note 54 at 152.

⁶⁴"Islam gives us distinct Identity: Ershad", *The Daily Observer* (22 June 1988).

Cabinet: The Almighty Allah

Nati: *Nana*, what is the King saying? The country is his, the land, crop, vote - everything, belongs to him. Then why do people belong to Almighty Allah?

Nana: Our king loves assets, not liabilities!

After establishing the footings of a State with Islamic tokenism, the playwright introduces members of the Cabinet and advisors. The King introduces the national religious advisor with illustrious Islamic titles and as the mastermind of the ceremony.⁶⁵ The religious advisor tells the Cabinet that people of different religions would attend the event, and the Cabinet has the responsibility of driving everyone to the right path of *Imaan*. The *nati* expresses doubts as to why a Bangalee ceremony would have religious dignitaries. The *nana* dismisses his worries as cynicism since Rabindranath, the real ambassador of Bangalee culture, was invited.⁶⁶

On his arrival, Rabindranath is threatened to watch his words and not to speak against Deen (Islamic way of life) by Hurmot Ali Khan. Hurmot is introduced as the country's national physician, but in essence, he is a killer from 1971.⁶⁷ After the cabinet is convinced that the poet has been sufficiently warned, the King puts a religious cap and a coat on him, saying that it is a signification of the new identity Bangladesh has attained.⁶⁸ Finding this ridiculous, the *nati* starts singing Tagore songs in Arabic tune. When the *nana* scolds him, the *nati* says that if the rulers can make Tagore wear an Islamic skull cap, he (*the nati*) can make his songs "Rahman-songs" (give his songs Islamic overture) too. The *Nana* says that the rulers just mentioned about a distinct identity and they are merely implementing that. The *nati* questions the discord of this new national identity with the liberation war through

⁶⁵"Naional hajam cum religious advisor, hazrat pir e Kamel Nakshbandia, Mojaddedia, azizia, furqania, Kutube Azam, Gause Samdani Ishque Rabbani, Hukumote Khomeni, Khushbu e Birani".

⁶⁶Explain to me Nana what sort of a Bangalee spirit is this/ Why Irani, Birani and Khomeni in Bangla/ Those of us who live in Bangla dance in Boishakhi/ Why Boishakhi celebration makes the Amir (religious chief) uncomfortable?/ Nana, tell me where have you brought me?/ Bangalee celebration or a Milad Mahfil? *Ibid* at 153-154.

⁶⁷Hurmot describes to Tagore how he has killed intellectuals in 1971. They were Muslims just by name, but had no Imaan. *Ibid* at 158.

⁶⁸*Ibid* at 160.

a song.⁶⁹ Tagore also runs the same conversation in a dialogic form with the King and the cabinet:

Tagore: Is this really Bangladesh?

King: Yes, you are right.

Tagore: Was this country liberated through the sacrifice of three million lives?

Minister: You can take it with a grain of salt.

Tagore: Only this nation had set the example of sacrificing lives for language?

State Minister: Not denying.

Tagore: The liberation war opened the avenue for developing Bangalee culture in newer ways?

State Minister: Continue.

Tagore: Imbued with the spirit of liberation, this nation gave Tagore song the status of its national anthem?

State Minister: Yes. But if you exceed the limits, we will consider about changing the national anthem.

Tagore: Thank you. I will leave now.

Religious Minister: Where do you want to go? You have to inaugurate today's event. Please permit. We can proceed then.

Tagore: I will go outside. I have not seen the sky of this land for a long time.

King: Of course, do you need security?

Tagore: I do not believe that my countryman can be a security risk.

Hurmot: Another leader of idiots told this. We took him out at the first chance.⁷⁰

The reference to the leader here is that of Sheikh Mujibur Rahman, who warned by the intelligence about a security threat never believed that his countryman could kill him. In this dialogic form, the playwright has questioned both the 1971 genocide denial and the oft-put threat by the rulers about changing the national anthem, *Amar Sonar Bangla*, composed by Tagore.

On Tagore's departure, enter Nazrul and Sarat Chandra. The Information Minister welcomes Nazrul with an Islamic greeting and as the poet of the Islamic Renaissance. Nazrul expresses his doubts about the Islamist symbolism of the ceremonials. The more he insists that the use of religious idioms in his work was to protest against the British rulers, the cabinet members insist that he was a poet of the Islamic revolution. The *nati* gets irked

⁶⁹Explain the meaning of national identity/ Why do you manipulate language and culture?/ Tell me where else this has happened?/ That people have sacrificed lives for language?/ You replace Joy (victory, a Bangla word) with Jindabad (Islamic replacement for Joy), /Baul songs with disco dance/ Dignitary is Nayebe Amir (Chief Guest), people are Beradan Millat (Islamic word)/ Is this national identity?/ Bangalee's head is lowered with shame/ Hem, Nabeen, Bidyashagar, Shahidullah all legends/ Million of martyrs have the same question/ Is this Bangalee's freedom? *Ibid* [translation by author]

⁷⁰*Ibid* at 161.

at *nana* for missing the point that the rulers are trying to portray a humanist poet as a communal poet.

Sarat Chandra asks Nazrul to tone down a bit, as they are guests to the event. The cabinet members become ecstatic and say how much they appreciate how Sarat exposed the rigors of the caste system of the Hindu religion. It was the failure of the Muslim leadership under British rule, which could not convert him to Islam. In order to redress their failure, Sarat is circumcised.

As a frightened Sarat and angry Nazrul leave, Nazrul expresses his surprise how Bangalees could so easily forgive the same people who have killed millions of people in 1971, 'In this country, in this garb (religion)'. He says, "Please think about your children once. Those born in 1971 are youth now. Let your children know the history you have forgotten. Else your children will take up the same arms."⁷¹

As all three guests leave, the Cabinet aims to bring three new guests, but a young man hijacks the 'spaceship' in which they are traveling. In the end, the guests arrive, but the hijacker could not be found. The new set of guests includes Begum Rokeya, Jahir Raihan, and a *razakar*, Chikan Ali. They were being interrogated about the identity of the hijacker. Hurmat becomes very happy to know that Chikan Ali was a *razakar*, but Chikan Ali's version of the history could not make them happy. Chikan Ali was a poor man in the locality of the present health minister. When he approached the health minister for help during 1971, he recruited Chikan as a *razakar* with a monthly allowance. He also told Chikan Ali that he could get 70,000 points for heaven by killing each *kafir* or, in other words, the Joy Bangla supporters. When the country won freedom, Chikan Ali was convicted, and the tribunal judge was none other than the health minister. Chikan says that he realized that he was not Hindu, Buddhist, Christian, or Muslim, but simply a poor person. He also says that he met a Nazi officer in the afterlife, who told him that in the trials of World War II, the soldiers were not prosecuted but only the leaders.⁷² The playwright here has pointed to the rehabilitation of collaborators in Bangladesh. In effect, Chikan Ali was the first person to be

⁷¹*Ibid* at 167-168 [translation by author].

⁷²*Ibid* at 181.

awarded a death sentence for the atrocities of 1971. However, under the Zia regime, he, along with all the others undergoing trial or awaiting sentence was released. Chikan Ali died a natural death in 2005.⁷³

Once done with Chikan Ali, the Cabinet turns to Begum Rokeya, the pioneer of education for Muslim women. They want her to sign a statement asking women to stay indoors instead of demanding their rights on the streets. Begum Rokeya says that the rules they want to impose now are the ones she had protested against a hundred years back. The religious advisor and others continue to pressurize Rokeya to maintain veil and perform penance. Jahir Raihan intervenes. Jahir Raihan, a novelist and filmmaker, was on the lookout for his brother in 1972 in Dhaka's Mohammadpur Bihari Camp area and never returned. His brother's dead body was recovered from a mass grave. Jahir puts forth a question that in 1971, Bangalee women were at home, but those preaching religion today did not leave them in the safety of their home. So, would Rokeya be safe in their hands?⁷⁴ The Cabinet blames Jahir for inciting Rokeya to leave and questions him about the hijacker. Jahir reveals the hijacker to be Nur Hossain, who gave his life demanding democracy during the Ershad regime.

As they try to convince Jahir to be the inaugural guest, Jahir asks why they would not accept the founding father of the nation, Sheikh Mujibur Rahman. The state minister replies that during Mujib's regime the country was swept with corruption; the press was not free; he enacted the Special Powers Act and established a one-party rule. Jahir questions why Mujib's role after 1971 is being evaluated when they would not talk about Mujib's role during 1971. If Mujib's rule from 1972 was so condemnable, why is the Special Powers Act still in force? As they ask him to stop arguing and inaugurate the event, Jahir mocks them. He says that "disappeared" Jahir Raihan will inaugurate the centennial of "disappeared

⁷³The convicts and accused were released under the *Bangladesh Collaborators (Special Tribunals) (Repeal Ordinance) 1975* (Ordinance No. LXIII of 1975). See Azizul Parvez, "Fanshir Dorite Prothom Kon Juddhaporadhee" *Kaler Kantho* (13 December 2013) online: Kaler Kantho <www.kalerkantho.com>.

⁷⁴The *nati* also tells *nana* that those who want *jihad* in Bangladesh today were alive in 1971, but why did they become accomplice to violation of woman instead of a *jihad* then? *Ibid* at 188.

Bangalee spirit".⁷⁵ Angered by his uncompromising attitude, Hurmat kills Jahir while his documentary on 1971 "Stop Genocide" plays in the background.

The narrator says:

No conspiracy or killing ever brings any good for the nation. One conspiracy begets another. One killing incites another. The disappearance of Jahir Raihan at the early hours of freedom, Siraj Sikder's killing in 1974, the killing of Sheikh Mujib with his family in 1975, Colonel Taher's killing in 1976, Zia's killing in 1980 - everything is interconnected. The conspiracy is continuing.⁷⁶

The playwright has identified the hypocrisy of the religious garb by teasing out its underlying ideologies. Kaysar finds the plot absurd because the regime of the day would not organize a program like this, or even if they did, they would not invite people who do not fall in line with their principles.⁷⁷ In my opinion, the playwright successfully presented the discords between the regime's policy of Islam as the state identity and the language-based identity. The 'outsider' point of view of the guests, in conjunction with the question-answer of the *nana-nati*, has acted out very well in examining the politics of convenience.

This politics of convenience has been fleshed out in several of Abdullah Al Mamun's plays. In his *Bibishab* (Madam 1991), Moiram Bibi lost her husband and two sons during the war in 1971. In independent Bangladesh, *razakar* Boshiruddi Mollah, aided by the local Member, a freedom fighter, threatens her livelihood.

Moiram: Did you not say in your speech after independence that Bashiruddi Mollah was a Peace Committee Member and his sons were Al-Badrs? They will not be spared . . . didn't you say?

Member: Yes, I did!

Moiram: So?

Member: You see, Bibisab! Time has changed now.

Moiram: Time has not changed. It's the people like you who have changed. You are all blinded for power. You swap parties now and then to grab power. You think that we do not understand! You think people are cattle herds, and you can drive them towards any direction you want!⁷⁸

⁷⁵Ibid at 193.

⁷⁶Ibid.

⁷⁷Kaysar, *supra* note 27 at 149.

⁷⁸Anupam Hasan, "Abdullah Al Mamun: Dramas on the Liberation Movement", *supra* note 7, pp. 155-84, at p. 169. [translated by author]

In *Desher Manush* (Country Men, 1993), he also made a character declare: “Independence! Let us all gather under the same roof of independence, all of us, politicians, Razakars, Al-Badrs, all of us.”⁷⁹

The plays discussed in this section show memorialization of the martyrs, on the one hand, disturbing political and social trends that make the remembrance meaningless on the other. The freedom fighters did not get proper recognition, war crimes, and atrocities have not been accounted for, and a new national identity was forged to put the demand of justice to silence. How did that impact the lives of people?

iii. Impact of Religion-based Politics in the Life and Psyche of the Generations Post-independence

In this section, I will analyze five plays from Mamtajuddin Ahmed, Abdullah Al Mamun, and Syed Shamsul Huq. In *Shat Ghater Kanakari*, Mamtajuddin Ahmed has identified how the ruling parties have misled the youth, and oppressed the dissidents among them. Abdullah Al Mamun’s *Meraj Fakirer Ma* is a testament to how the abuse of religion by clerics continued to make the lives of marginalized people, especially of women, unbearable in independent Bangladesh. His *Tomrai* also shows youths in cities being misled by the rehabilitated war criminals. Whereas his *Meherjan Arekbar* and Huq’s *Mukhosh* (Mask) are attempts to find justice for the war crimes and atrocities committed in 1971.

Mamtajuddin Ahmed in *Sat Ghater Kanakori* (The Defunct Coin of Seven Shores, 1991) tells us a story of six brothers.⁸⁰ Their father has been killed in the war; the mother was a *beerangana*, and one of the brothers is a war child. The killing of the brothers signifies the extrajudicial killing of youths in Bangladesh post-independence in various movements. The narrator joins in as the seventh brother (Dashu) and hence the name *Sat Ghater Kanakori*. Dashu, the narrator and the eldest son, is portrayed as a communist and intellectual. He is mocked for communism being a far cry in Bangladesh. The playwright centers his characters during the Ershad regime when intellectuals, educators, and artists were bought

⁷⁹*Ibid* at 172. [translated by author]

⁸⁰Mamtajuddin Ahmed, *Sat Ghater Kanakori* in Selected Drama Collection (Dhaka: Biswasahitya Bhaban, 1999) at 203-280.

in to support the regime. The president tried to establish himself as a poet while repressing cultural movements in the name of religion.

The mother tells Dashu that she does not understand the politics and protests students are launching. In 1987, they said that they would restore democracy. Nur Hossain died, but democracy was not restored. Now, they only call strikes, which, to her, bear no meaning. The mother says that she would ask the president to dream that every youth in the country lives a dignified life instead of dreaming about which mosque he will say his next prayer at.⁸¹ The six brothers are variously used and abused by the system, but in the end, they all sacrifice their lives fighting for justice. The mother is troubled by her sons being called miscreants and immoral. Dashu reminds her that Suryasen, Siraj Sikder, Colonel Taher, were all named miscreants in history, but they are not.⁸²

Mother: [...] Dashu, who are the people hanging my sons one after another?

Dashu: You need not know their identity; you cannot fight them. [. . .]

Mother: Then why did my sons fight for freedom? Why did my husband give his life? Why did I lose my pride (ijjot)?⁸³ [. . .] Where are my sons? Where are you? [. . .] Come together, unite again.

All: Mother, we are here.

Mother: Now, now it's time for war.

All: Our war!

Mother: War for freedom!

All: War for freedom!⁸⁴

Sat Ghater Kanakori shows that the quest for freedom was not fulfilled with the end of the war in 1971. The invocation of religious tokenism to suppress the failure of the state at various levels has also been pictured.

In *Meraj Fakirer Ma* (Meraj Fakir's Mother), Abdullah Al Mamun portrays the invocation of religion by village clerics to their advantage through a story of a family with three sons.⁸⁵ Mojahar Mandal and Alo Bibi is an elderly Muslim couple in Palashpur village. Their eldest

⁸¹*Ibid* at 213.

⁸²*Ibid* 234.

⁸³Ijjot is the Bangla term for chastity. Equating raped women as a hurt to the nation's pride is questionable from a feminist point of view, but equating women's body to the motherland is a common parlance in Bangladesh.

⁸⁴*Supra* note 80, at 265-266.

⁸⁵"Meraj Fakirer Ma", *supra* note 3 at 393-444.

son Meraj is a *pir*, and very strict about religious rules.⁸⁶ His excesses do not allow his wife to move freely even in the house. He runs a *khanka* in the village where he provides emulate and holy water. The second son, Seraj, lives in the city with his wife, Selina. Meraj disapproves Seraj, and his wife's visit to Palashpur as they do not pray, and Selina, in particular, does not veil.⁸⁷ The youngest of the family, Piyar, who is a *jatra* artist, cannot stay with the parents fearing Meraj.

On a business level, Geda fakir, another *pir* in the village, visits Meraj's *khanka* to form an alliance against a young teacher who is trying to unite villagers against *fatwas* or religious edicts.⁸⁸ *Fatwa*, in common parlance, is an opinion by a scholar, which is non-binding. However, in rural Bangladesh, clerics and village elites impose arbitrary and derogatory punishment on people, especially women, for non-compliance with Islam.

At home, Alo Bibi asks Selina to stop singing, as Meraj would be returning home any moment. Piyar comes to see his mother stealthily. As Alo rushes to give him a meal before Meraj's return, Selina asks why everyone is afraid of Meraj. Piyar asks if anyone is not afraid of Allah. Selina cannot hide her surprise at how Meraj's dictions could be attributed to Allah. Piyar starts singing a song on how sham religious practices are like opium, and instead of allegiance to the creator, it prizes religious fraudsters.⁸⁹

Meraj enters and starts beating Piyar, citing divine advice, and calls him impure, uncultured, and enemy. He warns Selina that she will burn in hell for trying to stop him. As Alo Bibi swears on her life to stop Meraj, he blames her as a sinner for taking the wrong side. Alo Bibi tells him that a mother sees no difference between sons, be it a *pir* or a thief.⁹⁰ Meraj leaves the house with his belongings for the *khanka*.

At the *khanka*, a middle-east returnee Tabaraq tries to buy support from either Geda Fakir or Meraj Fakir for election nomination. Meraj teases Geda Fakir for his notoriety with

⁸⁶He asks his father why he did not respond to Salam and the father says exchanging religious pleasantries with family members at all times is not necessary. Meraj says it's in the books. *Ibid* at 400.

⁸⁷*Ibid* at 401.

⁸⁸*Ibid* at 403.

⁸⁹*Ibid* at 411.

⁹⁰*Ibid* at 413.

women who come to his *khanka* to seek help. Tabaraq says that Geda fakir has also blamed Meraj with the same misconduct, as well as for his preference for Hindus. Meraj replies that it is part of his plan to free Bangladesh from Hindus. “I want to convert all Hindus. I want to do what generals and politicians could not.” He compares himself to Mohammad Ali Jinnah, who realized the need for a Muslim Land and dreamed of Pakistan.⁹¹ Meraj expresses his discontent about the state of Islam in Bangladesh:

They divided Allah’s gift Pakistan into two pieces and challenged Allah. The Almighty turned away his face from us. Bangladesh has turned into a country of half *malauns*, and we have entered into Aiyame Jaheliyat. Then came the Suryasenas. The danger subsided a bit. Allah’s rule was established again. [...] But then Muslims were identified as killers and collaborators. Who knows from where a very ordinary woman arose and shook the entire country demanding the trial of war criminals.⁹²

Meraj gets angry with Tabaraq for identifying the woman and pronouncing her name rightly, Jahanara Imam.⁹³ Meraj expressed his disdain that women are leading the country.⁹⁴ Tabaraq speaks highly of Meraj’s political awareness. As they discuss how Meraj can ascend to power through *jihad* and riot, Geda Fakir and his group enter the *khanka* with an elderly Hindu man. The man on his deathbed introduces himself as Dheerendranath Mallik, leader of a jatra party and Alo’s father. This is a huge gusto for Geda fakir, because if true, Meraj was borne to a Hindu woman.

Meraj calls his family immediately to the *khanka*, where both Alo and Mojaher recognize Dheerandranth as Alo’s father. Mojaher was a *jatra* performer trained by Dheerendranath, and Alo Rani was also a performer. They eloped to Kolkata and later came to Mojaher’s village and settled there. Everyone is surprised by the revelation, as many would question the marriage between Alo and Mojaher without Alo’s conversion to Islam. At home, Selina asks Seraj not to make a mole out of mountains. Seraj says that his own brother will not accept this.⁹⁵ Geda Fakir and Tabaraq ridicule the family and ask them to perform penance before the villagers. As Seraj chases them away, Geda Fakir goes to Meraj’s *khanka* and

⁹¹*Ibid* at 420.

⁹²*Ibid* [translation by author].

⁹³Sydee used to mock Jahanara Imam as *Jahannamer Imam* (the leader of hell).

⁹⁴*Ibid* at 421.

⁹⁵*Ibid* at 428.

blames him for blemishing people's faith. Meraj comes home to kill Alo Bibi with a sword but instead asks everyone to flee from the village.

Geda Fakir and his assistants capture the family and issue a religious edict that Alo Bibi be stoned and lashed. When the execution starts, Meraj intervenes with the teacher and captures Geda fakir with the help of the villagers. At last, he asks for forgiveness from his mother. He says that he will not misinterpret religion anymore and will not abuse religion against people.

Meraj Fakirer Ma was inspired by a religious edict carried out on twenty-year old Noorjahan for marrying a second time. The playwright has portrayed how clerics can operate within a power structure to oppress the poor and marginalized by misinterpreting religion for their benefit. Through Meraj's political analysis, he has also shown how atrocities of 1971 are still validated in independent Bangladesh in the name of Islam. The diverse religious practices of the same family and the levels of religious allegiance and reasoning also show that when it comes to defining identity, people cannot be put into silos.

In *Tomrai* (You, 1987), Abdullah Al Mamun pictures how the rehabilitated war criminals take advantage of the youth who are least bothered about history.⁹⁶ In this play, the protagonist Ranju hails from a pro-liberation family whose parents were involved in politics. Ranju works for a 1971 collaborator Hyder Ali to extort, threaten, or dispossess people in exchange for money.⁹⁷ Young people who do not comply with Hyder's order are marked as stubborn or risky elements. Hyder Ali is also convinced that the number of those youth is minimal. He tells one of his men:

If our calculation works, we will soon extinguish the Bangladesh of 1971. The calculation is a struggle; the young generation is our main weapon. We cannot let them turn back to the past. For today's generation, 1971 is a story. There is a widening gap between the freedom

⁹⁶*Supra* note 4 at 213-278.

⁹⁷At the outset the play shows Hyder Ali's name was published in the book *Ekattorer Ghatok o Dalaera ke Kothay?* (Where are the Collaborators of 1971) and he boosts that the country is stagnant without the collaborators, *ibid* at 225.

fighters and this generation. We are penetrating through this gap. We will avenge for 1971.⁹⁸

The plot intensifies when Hyder aims to dispossess Ranju's neighbor and his parents' friend Nany Banarjee, claiming that his factory is premised on enemy property. Initially, Ranju says that business is business. He later learns from his mother that Hyder Ali was involved in the detention and torture of his father in 1971. His mother had to flee with him and his siblings during the nine months of the liberation war, and Nany Banarjee had sheltered them.⁹⁹ Ranju then disappears and alerts Nany to be careful. Hyder Ali recruits his 1971 man, who sets fire to Nany's factory but misses the gunshot, and freedom fighter Akbor is shot instead of Nany. While Hyder Ali prepares to elope, Ranju's entire family gathers at his residence, and Ranju shoots Hyder Ali.

The plot is very dramatic in places. For instance, Ranju's unawareness of his family's history or the entire family gathering at Hyder Ali's residence in the last scene is unrealistic. It nevertheless portrays the belittling of freedom fighters, the non-rehabilitation of injured freedom fighters in contrast to the rehabilitation of collaborators and their exploitation of the youth.

In most dramas relating to 1971, the female characters meet tragic ends except for a few exceptions. In Mamun's *Meherjan Arekbar*, the protagonist Meherjan is a *fatwa* victim who comes to the city after river erosion and works at a hotel with her daughter and daughter-in-law.¹⁰⁰ The locality is controlled by a now rehabilitated war criminal, *haji*, who openly admits his crimes. The *haji* plans a massacre in the locality and uses the hotel as ammunition storage. The lives of people depending on the hotel are threatened. Especially *haji's* men eye Meherjan and her family. Meherjan arranges escape for her daughter and daughter-in-law but denies fleeing and eventually kills the *haji* and his team.

⁹⁸*Ibid* at 250. [translation by author]

⁹⁹*Ibid* at 266.

¹⁰⁰*Supra* note 4 at 445-492.

In Syed Shamsul Huq's *Mukosh* (Mask), a doctor drops off a lawyer home after they meet by chance.¹⁰¹ The lawyer's wife suspects the doctor to be one of her torturers at the army detention center in 1971. In a turn of events, the doctor agrees to stay back for the night. While her husband is asleep, the wife gauges the doctor, brings him to the living room for interrogation, and holds him at gunpoint. The husband who has just been nominated to an inquiry commission on the atrocities of 1971 wants to let the doctor go. He defies his wife's insistence on recognition of voice and smell, which would not stand in a court of law. Through negotiation, they agree that the doctor has to sign a confession and leave. The doctor pretends to know nothing. The lawyer agrees to give him his wife's statement, which he has to recount merely. The wife provides the wrong nickname for the army officer who had detained her, and while recounting the doctor gives away the correct nickname, which proves that he was one of the torturers in the camp. The wife kills the doctor. Despite various plot holes, inconsistencies, and overly dramatic tone, through the differences between the lawyer and his wife, *Mukhosh* brings home the debates around truth, reconciliation, and trial of the perpetrators of 1971:

History shows that if we forget everything in the name of amnesty, then genocide will repeat; dictatorship will return; people will be oppressed; dreams will be shattered; the offenders will integrate into the society; they will act as innocent; they will even believe that they have not committed any crime, and people like us have to pay again, the ultimate price.¹⁰²

The plays under analysis in this section show a society unsettled with a fast-changing political landscape, the oppression of women through religious edicts, the exploitation of the youth by the state, the continuation of Islamist politics, and a cry for justice.

B. Islam/ Islamic Tradition as Reflected in Dramas on Religion-based Politics

It is often said that Islam is blemished in performing arts; *razakars* are by default characterized as clerics or are associated with religious attires. This section will analyze the truth of this contention in light of the plays discussed above, as well as to understand how Islamic traditions are portrayed in the theater.

¹⁰¹Syed Shamsul Huq, "Mukhosh" in *Satti Natak* (Dhaka: Shomoy, 2008) at 239-284.

¹⁰²*Ibid* at 284.

i. The Portrayal of the Enemy in 1971 related Theater

An analysis of the characters complicit in international crimes in the above plays shows that they are not limited to clerics. The *pir*, the only clerical figure in *Payer Awaj Paoya Jay* has been kept distant from any direct involvement with the Pakistani Army, indeed the *matbor's* complicity was directly established. Although on stage the *matbor* is seen in religious attire, the *Paik* is not. Moreover, some of the general villagers are seen with a beard and a skull cap as well.

In *Jayjayantee*, the *muezzin* is directly implicated, so is his associate Kabil who is not a cleric. In *Meherjan Arekbar*, the character Haji used religion for politics but is not a cleric *per se*. In *Tomrai*, the collaborator Hyder Ali is a businessman. In *Mukosh*, the collaborator is a doctor. In *Ei Deshe Ei Beshe*, characters with both religious and non-religious affiliations use religion for the purpose of politics. The same is true with respect to their involvement in 1971 atrocities, for example, Chikan Ali has no religious-political alliance but Hurmat has.

Moreover, many other characters in the dramas and survivors of 1971 are Muslims as well as religious. As such, it is not possible to draw a conclusion that Bangladeshi theater portrays a generic description or depiction of *razakars* or war crime sympathizers.

ii. Use of Islamic idioms and myths in 1971 related Theater

The use of Islamic idioms and myths is quite common in the plays. For example, *Payer Awaj Paoya Jay* uses the metaphor of the dust of Muharram ("*muharramer dhular saman*", the first month of the lunar calendar year is celebrated in many countries with processions) to portray the number of people approaching the villages.¹⁰³ In order to describe the torture on freedom fighters inflicted by the *matbor*, the darkness of "Karbala", a war in Islamic history, is used as a metaphor.¹⁰⁴ When the *matbor* describes the importance of the war to save the country from the freedom fighters, the *pir* says that some people died in *Karbala*

¹⁰³*Supra* note 12 at 9.

¹⁰⁴*Ibid* at 14.

for themselves, some died for others. Allah does not pardon those who complain about their sufferings.¹⁰⁵ He also describes the *Karbala* warrior Abu Hanifa's bravery elaborately.¹⁰⁶ When the *matbor* downplays the power of the freedom fighters, the *pir* recites from the *Quran* the myth of the *ababils*, small birds stoning elephants to death.¹⁰⁷ The *pir* also uses the Quranic verses to say that the *matbor* lacked *Imaan*.¹⁰⁸ Being ceaselessly encountered by the villagers, the *matbor* said that he felt as helpless as Habil. The *pir* explained that Habil and Kabil were two brothers. Habil killed Kabil, the first killing of the world, and could not find a place to hide from his guilt.¹⁰⁹

In *Jayjayantee*, the same Islamic fable of Habil and Kabil has been entwined with subtlety to show how countrymen turned against each other through a religious divide. On the other hand, the *muezzin* is pictured saying how the spirit of Islam is rejuvenated after each defeat like it was in *Karbala*.¹¹⁰ The same tendency of using Islamic idioms and myths is remarkable in many other dramas/plays. In *Meraj Fakirer Ma*, in the scene where Meraj attempts to kill his mother, different verses of the Quran are recited with translations in Bangla to explain the place of parents in Islam.¹¹¹ *Keramat Mangal* also provides a vivid description of hells in the Islamic tradition.¹¹² In *Koinna*, a play not discussed in this chapter, the difference between syncretic Islam and monolithic Islam has been portrayed by the co-existence of two streams of religious clerics in the same village.¹¹³

In Bangladeshi theater, traditions, cultures, and idioms drawn from people in their everyday walk of life have been central. Syed Shamsul Huq, Selim Al Deen, Mamunur Rashid all admit how their works have been inspired by folk or indigenous traditions and myths. Reference to Islam or Islamic myths and legends have been blended in storylines, as has been done with myths, legends, or traditions from other religions. As the above analysis

¹⁰⁵*Ibid* at 19.

¹⁰⁶*Ibid* at 26-27 & 28.

¹⁰⁷*Ibid* at 29.

¹⁰⁸*Ibid* at 51.

¹⁰⁹*Ibid* at 42.

¹¹⁰*Supra* note 33 at 266.

¹¹¹*Supra* note 4, at 438-440.

¹¹²*Supra* note 47, at 635.

¹¹³*Supra* note 6.

has shown, this stands true for dramas or plays based on or dealing with language-based nationality or a narrative of 1971. Syed Jamil Ahmed, however, observes that the “cultural nationalist” theater often gets so enmeshed in religious signs that its alternate identity building is hampered by the constant switching of vocabularies, like in *Payer Awaj Paoya Jay*.¹¹⁴

iii. Religious Root Paradigms in Transcending Boundaries

Syed Jamil Ahmed believes that the theater activists should aim to create a national theater idiom accessible to the majority Muslim population of the country by expressly recognizing what he calls the religious ‘root paradigms’.¹¹⁵ In his opinion, the fundamentalist has a ‘myopic vision’ of the identity, and the liberals consciously sidestep religious overtone.

He himself took up the task by staging Mir Mosharraf Hossain’s *Bishad Sindhu* (Ocean of Sorrow), the recounting of the death of the Prophet’s grandsons Hassan and Hossain. The obstacle that the director considered was avoiding the tone of communalism, which might result from dealing with content embedded in one religion (Islam) and the portrayal of the Prophet, Hassan, and Hossain on stage.¹¹⁶ Several theater activists had mentioned the risk that such a venture might upset the Islamists. The approach he adopted in his own words is as follows:

I wished to build on the Islamic root-paradigms that *Bisad Sindhu* offers with eclectic images of Christian, Brahmanical, as well as Islamic origins, in order to diminish the strong Islamic flavor of the Karbala legend and accentuate in its place a multi-cultural and humanist outlook.¹¹⁷

Ahmed’s *Bishad Sindhu* retells the story of *Karbala*, relating it to the contemporary context. In the legend of *Karbala*, Prophet Muhammad professed that the yet unborn son (who will be named Ejid) of his companion Mabilia would kill his grandsons Hassan and Hossain. Mabilia promised not to marry, but he did marry a woman beyond age, and thereafter left

¹¹⁴*Supra* note 31.

¹¹⁵Syed Jamil Ahmed, *In Praise of Niranjana: Islam, Theatre, and Bangladesh* (Dhaka: Pathak Samabesh, 2001) at 3.

¹¹⁶*Ibid* at 178.

¹¹⁷*Ibid* at 179.

Medina for Damascus. Surprisingly a son was born to Mabilia and his wife, whom Mabilia could not kill despite his wishes to do so.

As a grown man, Ejid wants to marry Jaynab, a married woman. His father abhors his desire but permits the marriage if everything is done 'according to religious rules'. Ejid deceives Jaynab's husband Jabbar to divorce her with an unfulfilled promise that the princess will marry him. The chorus sings how following religious rules often ensures legality, but not legitimacy or justice. Jaynab agrees to marry Hassan, who has two wives instead of Ejid, citing that Hassan is a man of ethics. Although polygamy was permitted at the time, the narrator questions if a polygamous person can be regarded as having high morals. The play also quickly mentions how time and space change and make an acceptable custom or tradition of a particular time unacceptable for a different time.

After the marriage, Ejid calls a war against Medina. Hassan who comes out victorious of the war is compared to the Hindu mythical character of Yudhishtira in the script for his wisdom and patience. The justification of war in the name of religion is also questioned. With the help of a woman called Maymuna, Ejid's prime minister, Marwan uses Hassan's second wife Jayda, to poison Hassan. Ejid thereafter kills Maymuna and Jayda. Several attempts are made to kill Hossain. Hossain is finally persuaded to go to Kufa as a result of a conspiracy between his childhood friend and Ejid. On his way to Kufa, he gets surrounded by Ejid's army on the banks of river Forat (Euphrates) and becomes completely deprived of water. Interestingly, the drama compares this with conditional aid from donor agencies, which prevents funds from flowing to the third world countries despite abundance. Hossain is killed in the war by Seemar as per the Prophet's prophecy after all his men die fighting. The mass destruction caused by this war was compared to the contemporary wars.

The strength of Ahmed's *Bishad Sindhu* lies in blending traditions (religious and non-religious) and locating a myth at the heart of contemporary issues, which goes on to deconstruct and reconstruct the myth. The director has relied on the narrator and chorus singers to question the choices the characters make and the ethical basis for such decisions. The narrator repeatedly reminds the audience that "Quest for wisdom is the essence of

human endeavor” and, therefore, questions why humans fail to control their fate or to change the prophecy.¹¹⁸

The scripting and staging of this play required a lot of curating as is evidenced by the director’s account of the composition. Despite being based on an Islamic myth, the play has not used Arabic at all. It is entirely written in Bangla. This probably explains his dislike for switching between languages (Arabic and Bangla) in theater, as discussed in the previous part.

The portrayal of the Prophet, which the director found challenging was done in a style that I find resembling the style of *w’az mahfil* speakers. The depiction of the Prophet on stage is obviously controversial. Instead of using light and voice to depict the Prophet, the director has used the narrator to start telling the story in the third person on an Eid day and gradually switched the description in the first person.¹¹⁹ By the time the switch happened, the audience was so engaged in the narrative that there was no disruption in their reaction. The speakers at *w’az mahfils* often switch their narratives from the third person to the first person when they talk about Allah or the Prophet.

The director noted that while the language-based nationalists accepted the play as promoting universal humanism, the religious factions were suspicious about the intention of the production. There were leaflet distribution and editorial publications for stopping the production, but no one actually tried to stop it.

However, this production too is unlikely to make it to the good books of the Islamists because of the critique of religion (the practice of polygamy and the justification of war) the production has intertwined. It is notable that while aspiring to create a ‘common sky’ rooted in religious ethos, the production could challenge religious hegemony. It was done within a framework of inclusivity (of other identities), rooting the text in a contemporary local and global context, and with a critical engagement with the text. It is doubtful if a state can act similarly while trying to advance religious ethos in its legal system.

¹¹⁸*Ibid* at 184.

¹¹⁹*Ibid* at 190-91.

II. 'Song(s) of Freedom': A Land and its People

Bangla music, with its numerous genres, is an extremely difficult field to be narrowed down for the kind of analysis in hand, namely religious and ethnicity-based identity. Firstly, protest songs from all significant movements, including from the British period to date, are performed on national memorial days, at cultural programs, and protest events alike. Secondly, the genres of songs, folk and modern, with religious content, myths, stories, and legends are aplenty.

Therefore, for the analysis of this chapter, I will be applying the following criteria: a) I will analyze a sampling of songs written on the 1952 Language Movement and the 1971 Liberation war, which represent the ethos of language-based national identity and non-communalism, the founding principles of Bangladesh, and b) *Baul* or esoteric songs from two renowned *Baul* singers, *Lalon Sai* and *Shah Abdul Karim*, which critique religious formalism and champion the cause of humanism.

A. Songs on the 1952 Language Movement and the 1971 Liberation War

The Language Martyrs' Day, now International Mother Language Day, as declared by the UNESCO, is observed on 21st February each year with barefoot processions leading to language martyr memorials singing '*Amar Bhaiyer Rokte Rangano Ekushey February*' (the 21st of February, painted with my brother's blood). The song was written by Journalist and author Abdul Gaffar Chowdhury, and was first tuned up by Abdul Latif, and then by Altaf Mahmood.¹²⁰ The first six verses are sung as a memorial song and have been translated into many languages since. The song commemorates the sacrifice made by the youths on 21st February 1952, the tears of the mothers who have lost their sons, and the promise that the sacrifice will not be forgotten. The remaining verses of the song that are not usually sung go on to say that the 21st February shows that there is no impunity for trying to silence people by killing. The people of Bangladesh hate the perpetrators of the language movement. They do not belong to the land as they trade the fate of the country. They have snatched peoples' right to food, clothing, and peace, and 21st February is people's verdict to undo the tyranny.

¹²⁰Dinu Billah, *Surer Barputra Altaf Mahmud* (Dhaka: Anannya, 2015) at 33.

Altaf Mahmood tuned up another song on the 1952 language movement written by Md. Shamsuddin, '*Rashtribhasha Andolono Korili Re Bangalee*'. The song describes how the Bangalees have shed blood in Dhaka in the language movement, and students who had come to study had to sacrifice their lives instead. In comparison with the British regime, the lyricist wrote that even the colonizers would shoot under the knee, wherein in the independent country, the rulers are shelling skulls of the citizens.¹²¹

'*Ora Amar Mukher Bhasha Kaira Nite Chay*' both written and tuned up by Abdul Latif puts forth the tie between mother tongue and culture.¹²² In just two verses, he depicts how the West Pakistani rulers were not only taking away the right to language but also restricting basic liberties and freedoms.¹²³ The songwriter reasons that a language that has been spoken for generations deserves to be defended with life. The song describes the connection between life and language: different folk genres and artists dancing to them, the melody of traditional instruments, the songs that usher from the heart of the working class, and how they reassure people through life's struggles. He also mentions *bauls* singing and guiding people through spirituality and mothers singing lullabies.

'*Salam Salam Hajar Salam*' (A thousand salutations) is another popular song on the 1952 language movement, written by Fazl-e-Khoda and tuned up by Abdul Jabbar.¹²⁴ The song pays tribute to the memory of the martyrs and speaks of kindling the spirits with their sacrifice. Towards the end of the song, the lyricist also uses *Diwali*, which is a festival of lights observed in Hindu tradition.

A song composed by Gauriprashanna Majumder and tuned up by Samar Das in 1970 became a slogan in the formative years of the liberation movement: "The Hindus, Buddhists, Christians, and Muslims of Bangladesh, we all are Bangalees".¹²⁵ The song celebrates the legacy of various Bangalee leaders (Titumir, Isa Kha, Seraj) and writers and

¹²¹Jagoroner Gan, *Gonosogramer Ganer Sonkolon*, Jagoron Songskriti Charcha o Gobeshona Kendro at 22.

¹²²*Ibid* at 73.

¹²³Ora amar mukher bhasha kaira nite chay, ora kothay kothay shikol poray amar hate pay (they want to take away our mother tongue, they want to chain us for making rightful demands) [translation by author].

¹²⁴*Supra* note 121 at 85.

¹²⁵*Ibid* at 34.

thinkers (Michael, Rabindranath, Nazrul, Kaykobad, Vivekananda) and how Sheikh Mujibur Rahman, through his leadership of Bengal, has taken the world by surprise. While this song is criticized for bracketing the progressives and religious reactionaries together, it also says that the sacrifice made by the six language martyrs shows that the language is religion and language is pride.

Jyotirindro Maitra composed '*Jessore, Pabna, Bogura, Khulna*' during 1971, which portrays people from different parts of Bangladesh united as one, as Bangalees, and not Hindus and Muslims.¹²⁶ They are fought against a trained army and sacrificed their lives for the victory of Bangla.

Joy Bangla, Banglar Joy (Victory of Bangla), written by Gazi Mazharul Anwar and tuned up by Anwar Parvez, is a song written shortly before 1971 for a movie, which became a motivational song during the war.¹²⁷ It says that through the night of oppression, millions of lives have risen for a new dawn. They are not afraid to shed blood. In the face of the degrading conditions of life, they are not afraid to hold the oppressors accountable. *Purbo Digonte Surjo Utheche* (The sun has risen in the east horizon), written by Gobinda Halder and tuned up by Samar Das, echoes the same ethos.¹²⁸

Gobinda Halder's *Mora Ekti Fulke Bachabo Bole*, tuned up by Apel Mahmood, poetically evokes the causes for the war: "We fight to pen a new poem, to compose a new song, to create a great movie, we fight to establish peace."¹²⁹

Mago Vabna Keno, written by Gauriprashanna Majumder and tuned up by Hemanta Mukhopadhyay, is a reassurance to the motherland that the peace-loving sons can take up arms if invaded by enemies.¹³⁰ This song is a testament to how an unarmed population was massacred and forced into a war.

¹²⁶Jagoroner Gan-2, Gonosogramer Ganer Sonkolon, Jagoron Songskriti Chorchha o Gobeshona Kendro, 2010 at 111.

¹²⁷*Ibid* at 87.

¹²⁸*Supra* note 121 at 89.

¹²⁹*Ibid* at 76 [translation by author].

¹³⁰*Ibid* at 25.

In *Dam Diye Kinechi Bangla*, Abdul Latif recounts war with the East India Company in 1757, the Sepoy Mutiny of 1857, the 1952 language movement, and the 1971 liberation war to affirm that freedom was achieved with a price and not by anyone's grace.¹³¹ He lyrically describes the genocide of March 25, 1971, the rape of women during the war, and the mass killing of intellectuals as the price paid for freedom.

In Sibdash Bandopadhyay's words and Amar Pal's tune *Akash Kande, Batash Kande* portrayed how the sky, the air, and the people of this country mourn the *beeranganas* and that their sacrifice guides the nation like the polestar.¹³²

Ek Shagoro Rokter Binimoye Banglar Swadhinota Anle Jara, composed by Gobinda Halder and tuned up by Apel Mahmood upholds the promise not to forget the sacrifices made for attaining freedom.¹³³ It says that the freedom fighters would be remembered in songs of the farmers, the flow of the rivers, the tunes of the *bauls*, and their sacrifice would be a guide to rebuilding the nation.

Ek Nodi Rokto Periyē, composed by Khan Ataur Rahman, instead of a pledge not to forget the sacrifice of the martyrs, says that the nation will be forever in debt for their sacrifice.¹³⁴ The martyrs may not be remembered in history or named in elite circles, but they will be remembered by the commoners.

The above songs, despite being written by different lyricists, bear recurrent themes. These include the celebration of Bangalee language and culture, the cultural censorship during the Pakistan regime, the language-based identity of the people, a sense of unity irrespective of religion, homage to the martyrs, and the pledge to create a social justice-oriented state.

B. Baul Songs: A Humanist Approach to Life

The *bauls* of Bengal prize humanism over formalism of religion. *Bauls* have manifold classifications and do not go by singular following. Often described as mystic minstrels,

¹³¹*Ibid* at 52-53.

¹³²Collected.

¹³³*Supra* note 120 at 28.

¹³⁴*Ibid* at 40.

they promote spirituality and humanism. They believe that the Creator can be reached only through a *Murshid*, mediator, or *guru*. In monolithic Islam, there cannot be any intermediary between Allah and his creation, and as such religious clerics do not endorse the *bauls* or their followers. *Bauls*, however, do not only concern themselves with spirituality; many are regarded as social reformers of their times. This section will analyze the work of two such social thinkers and reformers, Fakir Lalon Sai and Baul Samrat Shah Abdul Karim.

i. Lalon Sai

Lalon Sai (1774-1890) is also known as Lalon Fakir, Fakir Lalon Shai, etc. There are several versions of stories on Lalon's birth and origin. The most popular account goes that on his way to a pilgrimage he developed smallpox, which was considered a deadly disease at the time. Thinking him to be dead, his companions left him.¹³⁵ He was first sheltered by a Muslim family and became a follower of the spiritual guide of the family, Seraj Sai. When he returned to his village, he was declared an outcast.¹³⁶ This experience made Lalon question both the caste and religious divide. He became a follower of Seraj Sai and created his own *akhra* (baul residence) in Kushtia's Cheuria. Lalon was accused of heresy in his lifetime and even posthumously in Bangladesh.

Lalon has questioned the formalism of religion and the caste system. He has questioned why people indicate toward the sky when asked about the creator.¹³⁷ No one knows where the creator resides in heaven, but it is common knowledge that the earth going around its orbit creates day and night. Therefore, everyone sees the sky, but how many can see the creator? Human does not know that the creator resides within and as such looks to the sky. In *Apnar Apni Fana Hole*, Lalon says humans created all the names for the creator (Allah, Khodatala, and God) in different languages and traditions. Humans also created norms for prayers and rituals. However, the creator who is unknown or unnamed cannot be

¹³⁵Shaktinath Jha, *Fakir Lalon Shai: Desh, Kal o Shilpa* (Kolkata: Songbad, 1995).

¹³⁶Muchkund Dubey, "The Sadhana of Lalon Fakir" (1997) 24(2/3) India Intl. C. Q. 139-52, at 139.

¹³⁷Keno Jiggashile Khodar Kotha Dekhay Asmane? Abul Ahsan Chowdhury, *Lalon Samagra* (Dhaka: Pathak Samabesh, 2008) at 273.

understood by language, knowledge, or wisdom.¹³⁸ Only when the sense of self is annihilated, humans can get to know the creator.

In *Pap Punyer Kotha Ami Kare ba Sudhai*, Lalon writes that the virtuous conduct of one country is sinful in another, and therefore, he does not know who to ask for the judgment.¹³⁹ For example, according to Tibet law, polyandry is permitted, but in Bengal, it would be adultery. Jesus permits consumption of both pork and beef, but Muslims and Hindus are prohibited from consuming one or the other. He concludes that time and space define what is sinful and what is virtuous, but if thought critically, there is no difference between the two.

Lalon also asks specific questions about Islam. In *Ki Ain Anilo Nobi Shokoler Sheshe*, he expresses his amazement at what change the Prophet Muhammad brought to Islam so as to make the other books obsolete. The rules for *Salat* and *Zaqat* were there, so were *shirk* and *bedat*. Then where lies the differentiating mark?¹⁴⁰ He also wonders how *Meraj*, the meeting between the Prophet and Allah had happened.¹⁴¹ Did Allah, the *Niranjan*, shape up or the Prophet forewent his human figure? In another song, he describes how the four sects under the four *sahabas/imams* of Islam have created conflict because they have forgotten the path of the Prophet.¹⁴² In another song, Lalon questions the emphasis on the five columns of Islam, especially the *Qalma* as *Sharia*. He says that in order to fulfill the obligations of *Sharia*, one has to understand it. Without proper understanding, one cannot reach the root but can only keep aiming at the branches.

In Lalon, we find criticism of the caste system.¹⁴³ Everyone is cynical about losing their caste, but no one is out there on the righteous path. Which caste were you born to which caste will you be when you die? He also asks how one can know the other's religion.¹⁴⁴

¹³⁸*Ibid* at 113.

¹³⁹*Ibid* at 455.

¹⁴⁰*Ibid* at 232.

¹⁴¹*Ibid* at 579.

¹⁴²*Ibid* at 137.

¹⁴³*Ibid* at 354.

¹⁴⁴Sob Loke koy lalon ki jat songsare, *ibid* at 574. Similar song 'Sobe bole Lalon Fakir Hindu ki Jobon' *ibid* at 659.

Everyone asks about the religion Lalon belongs to. He says that he did not see any difference between religions. If circumcision makes a man Muslim, what happens to a woman? If one knows a Brahmin man by their sacred thread, how can a Brahmin woman be identified? Some wear *Tasbis*, and some wear *Malas*. Does that mark the difference between Hindus and Muslims? Is there any difference in religions when we come to this world or leave thereafter?

Lalon prizes the search for humanism and the enrichment of self for the greater good as the ultimate truth of life. He says that people can become true to their selves only by respecting humans; otherwise, they will lose connection with their roots.¹⁴⁵ By caring for humanism, you can get everything in this earthly world; with death, everyone turns into soil, so there is no reason to stop living in dreams of heaven.¹⁴⁶

In Lalon, beyond spirituality (finding the creator in oneself), one can also find ‘rational thinking’: using reason to challenge the authority of religious scripture and a concept of the common good that starts and ends in humans.

ii. Shah Abdul Karim

Religious divide along the lines of Hindu and Muslim faith systems, was the root cause of injustice in many cases during Lalon’s time in British India. Similarly, Shah Abdul Karim, in his lifetime witnessed the India-Pakistan divide, the oppression of the Pakistan era, and the lack of democracy and communal harmony in Bangladesh.

In *Age ki shundor din kataitam*, he reminiscences the past village festivities where everyone would participate regardless of religion or class,¹⁴⁷ Hindu and Muslim youths used to sing *Baul* and *Ghatu* songs alike. Gajir Gaan, Sari Gaan, Jatra gaan would take place round the year. The village elders would ensure justice for the poor, and people were naïve and had morals.

¹⁴⁵*Ibid* at 574.

¹⁴⁶*Ibid* at 666.

¹⁴⁷Shuvendu Imam, *Shah Abdul Karim Rachanasamagra*, (Dhaka: Boipatra, 2009) at 163.

He deeply resented the *mullahs* blaming him during *w'az mahfils* for singing and not abiding by religion.¹⁴⁸ He also portrayed these feelings in his songs. He wrote, "The envious say that Abdul Karim is an addict, does not abide by religion and keeps busy with songs and music/ Let me tell you that a Mumin (believer) does not boast or envy/ the envious are not religious/ They will tell you that the Mosque belongs to Khoda and the Temple to the Lord/ But let me tell you that the Creator's place is in a believer's heart/ Us humans remain humans only by keeping each other's company".¹⁴⁹ He also mentions in another song that *Ilm* (knowledge) does not make anyone *Alem* (wise). It is the purity of body and soul that makes someone a believer. If observing the rituals brings pride in someone, then everything loses meaning.¹⁵⁰ Allah does not reside in Mecca but Qalb (heart) of Mumin.¹⁵¹

Karim also says that the heavens are for the rich and hell is for the poor. Unlike rich people, the poor do not oppress but take in all the pain. Wealthy people can judge the poor for their lack of understanding of religious injunctions or halal-haram (mandated-prohibited) or for not observing prayers and fasting. In assessing the religious rigors, Karim finally says that the poor appears to be Allah's enemy.¹⁵²

The language movement and Pakistani regime playing the religion card to oppress the people is central to many of his songs.¹⁵³ The history of the country from the British era to the re-establishment of democracy is poignantly described in some of his songs. He mentions religious-divide created by the British regime in great detail and how Hindus and Muslims fought together against Pakistan to bring back Bangladesh. He mentions the plight of the refugees, the *beeranganas*, and the killing of the intellectuals. He asks people to remain vigilant in order to fend for their rights in the independent country.¹⁵⁴

¹⁴⁸T M Ahmed Kaisher, "Interview with Shah Abdul Karim" *ibid* 378, at 379.

¹⁴⁹*Ibid* 57-58 [translation by author].

¹⁵⁰*Ibid* 61-62.

¹⁵¹*Ibid* 52.

¹⁵²*Ibid* 202.

¹⁵³*Ibid* 176-77, 178, & 179.

¹⁵⁴*Ibid* at 119-125.

He mocks religion-based politics by singing, “We live in a free country, we do not get to eat, and hence we call Allah”.¹⁵⁵ The farmers are suffering; the education system is not universal, healthcare and justice system are not accessible. Without ensuring any of these rights, some political parties would appeal to language-based nationality, and some would ask for a Muslim awakening as religion is going to ashes.¹⁵⁶ Hindus and Muslims continue to attack each other, forgetting that there is only one creator. Everyone can call the creator in their way, follow a righteous path and observe religion to ensure justice. After all, to kill each other cannot be a religious call.¹⁵⁷

Karim, with great detail, also mentions the lack of liberty in the free country, how access to law and justice has not been ensured for the poor, autocracy has taken over, and democracy remains a far cry in Bangladesh.¹⁵⁸

While the search for spirituality is not uncharted territory for Karim, in his work a quest for ensuring justice for the poor and the marginalized is remarkable. Karim questions the religious and class divide, and his class-consciousness gives his songs more of an activist overtone.

In Chapter II, I have discussed how cultural activists in Bangladesh had set up a radio station during the 1971 war and how cultural troops had moved in refugee camps and training camps of freedom fighters to boost the morale of the people. Tareque and Catherine Masud made a documentary titled ‘Song of Freedom’ with the footage of these artists moving from camp to camp.¹⁵⁹ Many of the songs of 1952 and 1971 discussed in this section were transmitted and performed in 1971 to ignite the aspiration of freedom. The *baul* songs, as discussed, also seek freedom: freedom from the rigors of religion, freedom from religious divide, as well as freedom from injustices created by a class-divided society. As such, I have tagged them together as ‘songs of freedom’.

¹⁵⁵*Ibid* at 195.

¹⁵⁶*Ibid* at 170-71, & 174.

¹⁵⁷*Ibid* at 196.

¹⁵⁸*Ibid* at 180-82, & 189-190.

¹⁵⁹*Muktir Gaan: Song of Freedom* (1995) online: <www.tarequemasud.org>.

III. Performing Arts as a Site of Protest against Religion-based Politics and a Platform for Advocating for an Inclusive Identity

During the Pakistani regime and the liberation war, art activists have performed a crucial role in articulating public demands and mobilizing people. In independent Bangladesh, the success of the artists depended on continuing the critique of the newly formed state and its policies in implementing the spirit of liberation: establishing social justice for all citizens irrespective of religious identity. By analyzing two specific forms of performing arts, namely, theater and music, this Chapter has shown that while the state failed to act on its promise of establishing a secular legal system with equality for all citizens (Chapter I), the artists continued to challenge the status quo.

Language-based nationalism is central to secular performing arts, as seen in the case of theater and music. Performing this identity is embedded in the colonial past of religious persecution and the contemporary reality of religion-based politics. While this relationship has always been contentious, following the *Shahbag* movement, an alleged negative bias of performing arts towards Islam and Muslims has been consistently argued. In what follows, I will sum up the ethos of theater and music in addressing the questions of law, religion, and identity based on the content-based analysis above.

The theater movement has never been hesitant to deal with matters of religion and politics. It started questioning Islamization and amnesty of the collaborators during the military regime. Under Islamo-secularism, should the theater activists take note of the projected “changed reality” by the government and stop performing plays relating to religion and identity? Should they revisit their performances? Or should they argue, as Moiram does in *Bibishab*, that those who hold power change the reality?

The history of nation building in Bangladesh is so intertwined with religion-based politics that it cannot simply be ignored. It will not be possible to direct a play on World War II without implicating the Nazis if one has to make an authentic performance. The history of 1971 cannot also be performed authentically without questioning the religion-based persecution by the Pakistan regime. Even if some people find it discomforting, Islamist

parties did collaborate with the Pakistani Army in 1971. To criticize those who collaborated with the Pakistani Army does not amount to questioning Islam or the clerics. As has been shown before, the characterization of war crimes collaborators or sympathizers of collaborators is not limited to clerics alone. However, the use of beard and skull cap as attires in characterizing *razakars* is too rampant.

The rehabilitation of the collaborators has been questioned to a great extent, which is quite normal for a post-conflict scenario. In fact, the role of the mainstream political parties in rehabilitating the collaborators and perpetuating religion-based politics has been criticized with far more vigor. For example, in *Ingit*, the distortion of history by the state has been questioned. *Ei Deshe Ei Beshe* portrayed the state and Islamist alliance and the attempted sanitization of the Bangalee culture by the state. *Sat Ghatir Kanakori* is also premised on criticism of the state in its abuse of power and religious tokenism.

A critique of religion or religious rigor is also present in the dramas, but it is not limited to Islam alone. In *Payer Awaj Paoya Jay*, the daughter questions the learning of religion in a foreign language (Arabic). The villagers also question why Allah has bestowed power to the *matbor* to judge their *Imaan*, a question not far removed from Abdul Karim's assertion that he thinks Allah is the enemy of the poor. If one takes note of the essence, the question here is not directed towards the authority of religion, rather those holding authority in the society. In *Jayjayantee* the rigors of Hinduism in declaring people outcast has been touched upon. Similarly, in *Keramat Mangal*, proselytization by the Christian missionaries has been depicted.

In many cases, the criticism of religion is made with religious provisions or logic internal to the belief system. The use of the *Quranic* verses, stories, myths, and legends is quite common in the theater. Whether done through external or internal logic, the objectively and sensitivity of the criticism is the key issue. Theater artists and critiques themselves do not agree on the topic. For example, Kaysar finds Huq's sympathetic portrayal of the *razakar* (*Payer Awaj Paoya Jay*) problematic, while Solaiman's depiction of Sarat Chandra's imaginary circumcision (*Ei Deshe Ei Beshe*) is way too loud and unrealistic as a satire for

him. Ahmed believes that the use of Arabic or Islamic rituals and symbols to portray the religious-nationalist ideology creates ambivalence by switching language and, as such, is not effective. In his production (*Bishad Sindhu*), he questions if religious practices (polygamy) should remain static or change with time and asks if wars should be justified in the name of religion, all the while building on the story of *Karbala*.

However, undoing the Islamization project of the state often reduces the dramas into sloganeering rather than unfolding actual narratives of the war or the nationalist claim. Maybe it is time the theater worked on narratives of the war. Narratives where characters of freedom fighters will not be limited to martyrs (as dead revisiting), and those suffering from the post-trauma of war. Perhaps, women's active participation should be portrayed. Maybe while looking at the past, the theater should also engage with the present more critically. For example, the transnational Islamist trends are entirely unaddressed in the theater.

Unlike theater, challenge to an orthodox view of religion is much more pronounced in the *baul* songs studied in this chapter. Some of the questions that Lalou had asked during the eighteenth and nineteenth century will be difficult to perform today in urban areas in Bangladesh. Not because they are oppressive or shocking to the conscience, but they will carry consequences. Yet these traditions have existed for centuries in Bangladesh. Shah Abdul Karim, also hailing from a remote area deeply reflects on religious divide, politics, and social justice.

The songs of the freedom movement of Bangladesh uphold the spirit of unity, harmony, and peace regardless of religious identity. The songs discussed in this chapter identify language as the soul of Bangalee culture and national identity. They, too, sometimes suffer from the language conundrum with heavy reliance on Perso-Arabic loanwords.

In sum, performing arts in Bangladesh presents itself as a site of protest against the detractors of secularism, with both religious and non-religious affiliation. At the same time,

it also aspires to create a common/inclusive identity for all citizens regardless of ethnicity or religious belief.

Conclusion

Islamist political parties in Bangladesh have often pressed demands to prevent cultural activists from defaming Islam and using religious attire or portraying clerics in a negative light. In this chapter, I have analyzed both the contents and forms in which religion-based politics or religious belief is treated in theater and music. Myths, stories, and legends from Islamic and other religious traditions form part of indigenous theater in Bangladesh. The theater activists in Bangladesh have grafted the same syncretic forms in formulating a politically conscious theater.

Portraying history in art is neither a straightforward nor an easy process. Moreover, in a country like Bangladesh, where historical truths are themselves contested by political voyeurism, historicizing art would more often than not imply being at war with the state or the ruling class itself.

While the state and legal system sided to rehabilitate the war criminals and allowed the continuation of religion-based politics, the artists and activists have stepped in to prevent abuse of religion and uphold secularism. In their effort to portray the 'others', they have placed both Islamist parties and mainstream political parties as forming an alliance against the aspirations of the people.

Chapter IV: The 'Islamist' Public Sphere in Bangladesh: Piety, Identity, or Culture of Othering?

The "fiery Islamist rally" is now a form of performance art, it needs that BBC camera as oxygen. The audience is inside and outside borders, and the international eye is often more critical -- without getting on an "Enemies List," this politics cannot survive. [Naeem Mohaiemen, "Smash Palace"]

The Islamist Public sphere has become ubiquitous in Bangladesh, from the capital city to remote villages, from blog posts to religious sermons, from leaflets to YouTube videos, social media platforms, and downloadable Apps: the forms and contents are abound. The rise and ubiquity of Islamist content in the public sphere place monolithic Islam *vis-à-vis* the diverse cultural identity markers of the people, both religious and cultural.¹ The Islamist public sphere is using all the modalities of communication considered as the attributes of 'modernity', such as television programs, novels, newspapers, drama, songs, poetry, blogs, vlogs, skits, social media platforms, audio, and video recordings.² All these modalities used by Islamists borrow forms of mainstream performing arts but the contents disseminated are intended to stratify religious belief, as well as to debase the secular public sphere.

In Chapter III, the thesis outlined the political engagement of the secular art forms in Bangladesh and their critique of religion-based politics. This chapter argues that the Islamists are using the modalities of the secular public sphere in order to build a counter-narrative on national history and identity. On the one hand, the counter-narrative, debunks the local/indigenous culture and ritual practices of Bangladeshi citizens and endorses an exogenous and pan-Islamic identity and imagined community on the other. The chapter looks into *w'az mahfil* and *jihadi* songs as popular genres of Islamist performances to find their appeal to identity formation and relationship to mainstream art forms and cultural practices.

¹Ali Riaz, *Islam and Identity Politics among British-Bangladeshis: A Leap of Faith* (New York: Manchester University Press, 2013).

²Ali Riaz and Abu Naser, "Islamist Politics and Popular Culture" in Ali Riaz ed, & C. Christine Fair, eds, *Political Islam and Governance in Bangladesh* (New York: Routledge, 2011) 136-152.

Part I of this chapter discusses the portrayal of the Islamist Public Sphere as the “counter-public” or a “subaltern resistance” in the existing literature and maps the Islamist Public Sphere as an alternate public sphere. Part II focuses on the transformation of *w’az mahfil* and how these ‘religious’ gatherings are used to evoke emotion among the commoners in a religious-political context. Part III focuses on lyrics, style, production, and dissemination of *jihadi* songs, popularly known as *nasheeds*. Part IV discusses the ethos of the Islamist public sphere as against the secular public sphere and the implications this dual might have for the diverse citizenry.

I. Mapping the Islamist Public Sphere: Counter/Alternate or Subaltern Public Sphere?

The term ‘Public Sphere’ is used abundantly in Bangladesh as a catchphrase to categorize communicative discourses without grounding the theory or its criticism into the local context. In the study of religion-based politics, there is a readiness to use terms such as ‘counter-public’, ‘counter-hegemony’, or even portraying Islamist performances as ‘subaltern resistance’ vis-à-vis the secular/national public sphere.³ These categorizations lack adequate theoretical underpinning and comprehensive mapping of the Islamist/secularist sphere in question. The focus of this part is both to map the Islamist Public Sphere and to understand if the existing categorizations are befitting.

Studies on Islamist Public Sphere engage the language of finding the ‘truth’ as against popular belief.⁴ The elitist liberal intellectuals and their aspired secular public sphere are shown as intolerant to and unaccommodating of Islamic belief and value practices. Several authors have used the concept of ‘counter-public’ with the idea that ‘religious and moral

³Taj I. Hashmi, *Pakistan as a Peasant Utopia: The Communalization of Class Politics in East Bengal, 1920-1947* (Oxford: Westview Press, 1992); Taj I. Hashmi, “Islamism beyond the Islamic Heartland: A Case Study of Bangladesh” in Ishtiaq Ahmed ed, *The Politics of Religion in South and Southeast Asia* (London: Routledge, 2011); Taj I. Hashmi, “Islamic Resurgence in Bangladesh: Genesis, Dynamics and Implications” in Satu P. Limaye, Robert G. Wirsing and Mohan Malik eds, *Religious Radicalism and Security in South Asia* (Honolulu: Asia-Pacific Center for Security Studies, 2004); Ali Riaz, “The New Islamist Public Sphere in Bangladesh” (2013) 25:3 Global Change, Peace & Security [Riaz, “New Islamist”], Max Stille, *Islamic Sermons and Public Piety in Bangladesh: The Poetic of Popular Preaching* (London: Bloomsbury Publication PLC, 2020); and Syed Jamil Ahmed, “Hegemony, Resistance and Subaltern Silence: Lessons from Indigenous Performances of Bangladesh” (2006) 50 (2) The Drama Review, 72.

⁴Max Stille, *ibid* and Jamil Ahmed, *ibid* at 73.

values' marginalized by the secular public sphere in Bangladesh has found a place in the Islamist agenda and hence, has gained grassroots support:

Islam provides the peasants with an alternative philosophy confirming to their moral code of conduct, or inversely, their moral code of conduct, to a great extent, is by-product of Islam.⁵

An emphasis on bottom-up approach or an organic support base for religious ethos absent in the mainstream media or the popular culture in independent Bangladesh has also been identified:

Despite the gradual inclination of national politics toward "cultural" Islam, secular tendencies have continued to prevail in most elite national arenas, particularly that of creative literature. However, *secularist hegemony* in the literary arena is being increasingly contested by Islamist "micro-intellectuals," who occupy the interstices between traditionalist religious experts at one end of the intellectual spectrum and secularist intellectuals at the other.⁶ [emphasis added]

First of all, the problem of these various points of departure is considering the secular public sphere as bereft of ethical or moral values, so as to say that there cannot be morals and ethics independent of religion, and they cannot be learned and internalized from being in a community. Secondly, the assumption of Islamists getting popularity among villagers and peasantry only, in other words the marginalized or subaltern classes ignores the Islamist strongholds in cities and hence fails to note the mobilization through cultural modalities or entertainment.⁷ The use of cultural organizations, publications, and media outlets for generating public support and ensuring new recruitment to the ranks and files of Islamist organizations from among students is admitted by Islamist leaders, as well as evidenced by research.⁸

⁵Taj I. Hashmi, "Islam in Bangladesh Politics" in Hussin Mutalib and Taj I. Hashmi eds, *Islam, Muslims and the Modern State* (UK: The MacMillan Press Ltd, 1994) at 134.

⁶Maimuna Huq, "From Piety to Romance: Islam-Oriented Texts in Bangladesh" in Dale F. Eickelman and Jon W. Anderson eds, *New Media in the Muslim World: The Emerging Public Sphere* (Bloomington: Indiana University Press, 2003) at 147.

⁷Huq argues that JIB's audience of Islamist content is primarily urban, *ibid* at 121 & 141.

⁸*Ibid* at 131; Ali Riaz, "The Politics of Islamization in Bangladesh" in Ali Riaz ed, *Religion and Politics in South Asia* (USA and Canada: Routledge, 2010); and Local Correspondent, *Avinava Koushale Sangathita Hocche Jamart-e-Islami* (JIB is organizing in an Unprecedented Manner) Jago News24.com (6 December 2019) online: Jago News24.com <<https://www.jagonews24.com>>.

Most importantly, some authors identify the absence of religious (Islamic) content in popular culture in post-independence Bangladesh or the vile portrayal of “Muslim characters” in popular culture, concluding that the secular public sphere is hegemonic. Hence, the emergence of Islamist counter-public. Almost all studies on the Islamist public sphere start with the note that popular culture in Bangladesh had no interest in catering demands of its Muslim majority population. As a corollary, the “secular liberal intellectual” is cemented in the literature as Islamophobic.⁹

The proponents of cultural hegemony argue that the post-independence ruling class in Bangladesh has created a public sphere bereft of religion and is based on hegemonic Bangalee nationalistic-secular ideology.¹⁰ In their view, mainstream entertainment and secular intellectuals have been used as instruments of that ideology. Chapter I of this thesis has shown that religion-based politics and nationalism, instead of secularism, acts as the dominant ideology of the ruling class in present-day Bangladesh. Accordingly, the secular public sphere has been marred and not nourished by the state. In addition, entertainment-based media does not primarily deal with religious content. Moreover, folk cultural performances in Bangladesh traditionally reflect a rich cultural composite with spiritual ethos, and there is no evidence of any effort to sanitize genres of performing arts from such religious or spiritual attributes post-independence.¹¹ *Shyama songs* (songs about the Hindu Goddess *Kali*, revered as a metaphor of woman power), *Hamd-Nath* (songs praising Allah and the Prophet with musical accompaniment), *punthi gan*, *murshidi gan* (both traditional folk art on religious heroism and traditions), many genres of dance with their religious attributes were and continue to be broadcasted in national television, albeit at times being sanitized of their ‘Hindu’ influence rather than Islam.

In my opinion, the rise of the Islamist public sphere in Bangladesh cannot be divorced from its national context of Islamized politics and its international context of religious

⁹ “[P]rogressive urban middleclass still fear the Islamic bloc” Stille, *supra* note 3 at 6. Huq mentions “deliberate and scornful distancing”, see *supra* note 6 at p. 130. See also Ahmed, *supra* note 3 at 73.

¹⁰ Joseph T. O’Connell, “The Bengali Muslims and the State: Secularism or Humanity for Bangladesh?” in Rafiuddin Ahmed ed, *Understanding the Bengal Muslims: Interpretive Essays* (New York: Oxford University Press, 2001) 179-208.

¹¹ *Ibid* at 196-97.

polarization and the advent of *Salafism*. The use of new media to spread Islamist content is not unique to Bangladesh.¹² Studies show commonalities of means of entertainment among *jihadi* networks, such as storytelling, songs, drama, jokes etc.¹³ From the 80s to the beginning of the 21st century, the modalities of the Islamist public sphere in Bangladesh was limited to booklets, cassette sermons, novels, and non-extremist *nasheeds* (songs praising Allah and Muhammad without musical accompaniment). In a reverse scenario, the Islamist Public Sphere in Bangladesh today is a parallel of the mainstream media industry with publications, songs, dramas, cultural organizations, concerts, theatres, audio, and video production houses.¹⁴

What has changed during this time? Today, most men and women in Bangladesh wear religious attires in public, which was near zero in the 90s. Arabic words are used instead of Persian words, and many traditional religious festivities, such as *Shab-e-Barat* and *Shabe-e-Kadr* or *Lailatul Kadr* are shunned as being non-Islamic, and it is a matter of debate whether or not celebrating Bangalee culture and rituals is Islamic.¹⁵ These changes were brought into effect by four factors, i) the Saudi and middle-Eastern influence created through petrodollar, ii) the religion-centric politics in Bangladesh, iii) spread of militant networks in Bangladesh, and most recently, iv) the Islamist mobilization against bloggers in Bangladesh.

Riaz termed the Islamist Public sphere in Bangladesh ‘new’ and ‘emerging’ in his research in 2011 and 2013.¹⁶ He also pointed out that any ‘counter-public’ might be exclusionary and restrictive in practice.¹⁷ On the other hand, Ahmed, a veteran theater director, has portrayed *w’az* congregation as a “site with shifting ground” of exerting hegemonic control

¹²Dale F. Eickelman and Jon W. Anderson eds, *New Media in the Muslim World: The Emerging Public Sphere* (Bloomington: Indiana University Press, 2003).

¹³Thomas Hegghammer ed, *Jihadi Culture: The Art and Social Practices of Militant Islamist Culture* (UK: Cambridge University Press, 2017).

¹⁴Salman Tarik Shakil, *W’az Mahfil Ki Peshay Porinitio Hocche* (Are *W’az Mahfils* Turning into a Profession?) Bangla Tribune (19 March 2019) online: Bangla Tribune <<https://www.banglatribune.com>>.

¹⁵Taj Hashmi, “Arabisation of Bangladesh: An Asset, Liability or Threat?” The Daily Star (14 July 2015) online: The Daily Star <<https://www.thedailystar.net>>.

¹⁶Riaz and Nasir, *supra* note 2 and Riaz, *New Islamist*, *supra* note 3.

¹⁷Riaz, *New Islamist*, *ibid* at 13-14.

against the masses and ideological resistance against Western imperialism.¹⁸ Although I maintain that the Islamist public sphere in Bangladesh has far exceeded its infancy so as to call it 'new', and I would not go so far as to call it an "ideological resistance." In my analysis, I am inclined to apply these two approaches. I tried to map the emerging trends that shape the transforming Islamist public sphere in Bangladesh and focused on the performative aspect of "shifting grounds" in assessing the genres I analyze here.

Islamist contents in Bangladesh are created to serve the political goals of diverse Islamist parties, and they compete against each other to carve out space in the mainstream media. As Huq has identified regarding Islamist literature, "[w]hile print culture has been shown to secularize Islamic knowledge in modern Turkey [...] print in contemporary Bangladesh is Islamizing secular discourse."¹⁹

This chapter is focused on "Islamist" modalities and content and not on all Islamic content-based art forms. There has been limited research on the scope, content, and reach of Islamist Public Sphere in Bangladesh. Huq has elaborately discussed how Islamic novels or romantic fictions advance the purpose of Islamizing the national culture through entertainment.²⁰ The author also observed study circles or *Halaqa* on Quran among JIB's women student wing as potential recruitment circles and means for enhancing the knowledge of the Quran.²¹ Riaz and Nasir expanded their study to both print and non-print media, in particular, fiction, *w'az mahfil*, drama, and music.²² Al-Zaman has written on

¹⁸In the article, the author studied a *w'az mahfil* speech in reaction to a court order declaring '*fatwa*' or religious edict issued by clerics on criminal matters as unlawful and void. While the speaker argued the court decision to be an encroachment on religious freedom, he did not mention about *fatwa* inflicted death and torture on women leading to the court order. He also described *fatwa* as Allah's mandate, which Muslims should abide by. At the same time, the speaker cautioned his audience of their other, the "entire world including Zionist forces," and to build resistance against western imperialism. As such, the author noted that the *w'az* performance was simultaneously an act of exerting hegemony (to the mass) and resistance (against the West). Ahmed, *supra* note 3 at 75.

¹⁹Huq, *supra* note 6 at 132.

²⁰*Ibid* at 147.

²¹Maimuna Huq, "Reading the Quran in Bangladesh: The politics of 'Belief' Among Islamist Women" (2008) 42 (2:3) Modern Asian Studies 457-488.

²²*Supra* note 2.

Islamic content in the digital public sphere in Bangladesh.²³ Stille has extensively studied *w'az mahfils* based on their performative and emotive value. We also see glimpses of *w'az mahfil* reflected in Ahmed's work as he draws its parallel in traditional Bangalee art forms, *jatra* and *pala gan*.

Islamist groups in Bangladesh do not operate under an umbrella identity; they are diversified in their political goals as well as ideological beliefs and practices. In order to understand the genres of Islamist performances in present-day Bangladesh, it is important to understand the religious-political sub-divide among the Islamist political parties in Bangladesh. In terms of the political, as well as religious ideological divide, the parties can be distinguished into five broad categories.²⁴ First, Jamaat-e-Islami Bangladesh (*JIB*) believes in establishing Islam as the complete code of life (*Deen*) pursuant to *Maududi ideology*. The party has different wings of activists, cultural organizations, and NGOs spread across the country. It used to take part in national elections until its registration was canceled in 2018.²⁵ Second, the *Qawmi Madrassah* or *Deobandi* School-based parties led by *Hefajat-e-Islam*, who want to establish an orthodox/revivalist Islamic state and have recently come into light as an organized force following the *Shahbag* movement in 2013. *Deobandis* typically subscribe to the Hanafi sect of Sunni Islam. Third, *Pir*-centric parties also endorse the *Deobandi* doctrine but are organized around individuals who purport to establish Islamic Sharia and also participate in elections. This *Deobandi* stream endorses some remnants of Sufism in contrast to the *Qawmi* stream. Fourth, urban elite-centric highly educated groups who are internationally connected and seek to establish *Khilafat*. Finally, *jihadists/ahle-hadith/ghair mazhabi/salafi* groups aim to establish Islamic rule in Bangladesh through militant activities. Among these diverse streams, the *JIB* and *Pir*-centric parties have a history of participating in national elections, even though their mutual relationship is attended by conflicting religious ideology and political strategy.

²³Md. Sayeed Al-Zaman, "Religious Public Sphere of Bangladesh: Confrontation and Domination" (2020) *Jurnal Penelitian* 29-42 doi:10.28918/jupe.v17i1.2450.

²⁴Ali Riaz and Kh. Ali ar Razi, "Who are the Islamists" in Ali Riaz & C. Christine Fair, eds, *Political Islam and Governance in Bangladesh* (New York: Routledge, 2011) at 48.

²⁵Tribune Desk, EC Issues Gazette Finally Cancelling Jamaat's Registration as a Political Party, Dhaka Tribune (29 October 2018) online: Dhaka Tribune <www.dhakatribune.com>.

Again, most of these streams oppose traditional *Sufi* practices, such as the celebration of the birth of the Prophet Muhammad, the celebration of *Urs*, pilgrimage to the shrines of *Sufi* saints, loud *dhikr*, and seeking help from the Prophet Muhammad, practices that are still observed in shrines and *dargahs* in Bangladesh.²⁶

These political groups in recent years have mass-produced Islamist contents that swell the print and electronic media in Bangladesh. Most parties have websites with founding documents, resources on books and publications, as well as news commentary, blog section, and social media platforms. Party leaders, preachers, and patrons have a remarkable social media presence. Educational institution-based organizations, study circles, as well as cultural organizations work for the recruitment of youths.²⁷ There are scores of cultural groups working with children and adolescents.

Islamist print media is a long-established medium of Islamist public sphere, and they are now taking full advantage of digitization and conservation. Alongside, Islamic book fairs are also arranged on a regular basis. Moreover, every national newspaper has a dedicated Islamic corner each Friday. At least twenty-eight (28) commercial TV channels in the country telecast Islamic talk shows, commentaries etc., and some even have Islamic singing contests and reality shows, for example, styled after the “Who wants to be a Millionaire?.” One mainstream TV Channel has an online outlet exclusively dedicated to Islamic shows and performances.²⁸ There are two licensed channels named Islamic TV and *Dawah* TV. The Peace TV of the Islamic televangelist *Zakir Nayek* broadcasted from Dubai in Bangla, English, and Arabic was shut down after the Holey Artisan attack, when at least two of the militants referred to the channel as their inspiration.²⁹

Post Holey Artisan, numerous online outlets styled as Islamic online TV have mushroomed, and they air programs, dramas, songs, etc., for all age groups. Audio and video content,

²⁶Salman Tarik Shakil, *W'az Mahfiler Jata Dhara* (The Many streams of W'az Mahfils) Bangla Tribune (21 March 2019) online: Bangla Tribune <<https://www.banglatribune.com>>.

²⁷*Ibid.*

²⁸ATN Online Islamic TV.

²⁹Sohel Mamun, “Zakir Naik’s Peace TV Banned in Bangladesh” The Dhaka Tribune (11 July 2016) online: Dhaka Tribune <<https://www.dhakatribune.com>>.

lyrics, books are available for download through various apps. Preachers or singers who appear in live setting also live stream through their social media pages like any mainstream media artist. Followers along the religious divide mock contents of the rival Islamist platform through comic skits and recorded commentaries. In sum, the functioning structure of the Islamist public sphere in Bangladesh is hardly distinguishable from mainstream media in terms of modalities of dissemination or profit venture; as such, it is an alternate public sphere.

As for the content analysis of this alternate public sphere, this chapter will focus on two specific genres of Islamist performances in the following sections: *w'az mahfil* and *jihadi* songs.

II. W'az Mahfil: Poetics, Polemics, and Hatred

W'az Mahfil, in common parlance, means religious admonition provided by an Islamic scholar (*Alem*) in front of the attendees. Scholars have used different descriptive names to define them, for example, “non-Friday sermons”, “public performances of scriptural commentaries”, or “Islamic scriptural commentaries”.³⁰ Islamist groups in Bangladesh, however, call them “*Tafsirul Quran Mahfil*” (gathering on exegeses of the Quran), and the speaker is addressed as the *Mufasssir-e-Quran*. *W'az mahfils* usually occur during the winter or dry season from October to March of the Gregorian calendar, mostly starting after the evening prayer and continuing till late hours of the night.

W'az mahfils have been known to be held since the twelfth century as a medium of preaching religion.³¹ *W'az mahfils* of different streams are known to have existed and be used during the British era influencing the psyche of the Muslims of this region for or against different religious ethos. They came to prominence through *Maulana Keramat Ali Jainpuri* of the *Barelvi* school of Islamic Jurisprudence based on Sunni Islam, who endorsed

³⁰Stille, “non-Friday sermon”, Riaz, “public performance of scriptural commentaries”, and Huq “Islamic scriptural commentaries”.

³¹*Supra* note 2.

British policy and supported the cause of Pakistan.³² The *Deobandi* stream, on the other hand, was opposed to the establishment of Pakistan as a conspiracy of the imperialists to divide India. They used to hold *bahas* (public arguments) much like today's university debates, a tradition that continues to this date in some regions of the country.³³

While traditional *w'az mahfils* or *bahas* were held indoors in mosques and *madrasahs*, contemporary *w'az mahfils* are mostly held in open fields in well-lit makeshift tents, with loudspeakers spread even two hundred meters away from the location of the gathering.³⁴ During the winter season of 2015-16, when I was traveling in Bangladesh to the North and northeastern zone, to the South, and on the outskirts of Dhaka, I saw large banners and posters all around advertising *w'az mahfils*. During nightly travels, well-lit tents were visible within reach of each small town, the sound of which could be heard from far away. Some *mahfils* have long stretched well-lit gates like wedding ceremonies; some have food and bookstalls resembling a street fair or a village fair.

I have never been physically present at a *w'az mahfil*, and therefore, the visuals I describe here are second-hand experiences gathered from watching video recordings. I would like to borrow the following words from Ahmed to describe the performative aspect of the *w'az mahfils*:

The scholar is usually seated on a raised platform at one end of a large open space, canopied on top and lit with fluorescent tube lights. The scholar's voice is crystal clear (clearer, in fact, than most of the performers in the mainstream urban theatre of Dhaka) and his vocal modulation is characterized by a chant-like pattern, which he adapts to fit any ordinary prose sentence. Alternating this near-chanting with ordinary prose, the scholar constantly encourages two-way communication by asking questions and seeking responses from the audience.³⁵

Stille points out that it is the "festive mood, vocal art, and audience interaction" that

³²*Supra* note 14.

³³*Ibid.*

³⁴Salman Tarik Shakil, "W'az Mahfil Kivabe Provab Felche: Srota ki Barche?"(How is the W'az Mahfil impacting people? Are the Audiences Increasing?) Bangla Tribune (23 March 2019) online: Bangla Tribune <<https://www.banglatribune.com>>.

³⁵Ahmed, *supra* note 3 at 73.

distinguishes it from parallel forms of religious speech.³⁶ Stille also emphasizes code-switching, *i.e.*, recitation from the Quran in Arabic, or singing in *Urdu* followed by translation, narrative, and commentary in Bangla, which creates a multilingually layered presentation.³⁷ I have to admit that the performances and chanting are sometimes so melodic that I have (at least on one occasion) fallen asleep listening to the speaker chant and then again woke up to the same speaker shouting at the top of his voice against the enemies of Islam. The questions asked to the audience are primarily didactic tag questions and limited to close-ended answers. The speakers encourage the audience to respond in loud voices, sometimes through shouting or raising hands. Inside the tent, speakers sit on a raised platform surrounded by the organizers, patrons, other speakers, and guests, and the audiences are typically seated on bamboo mats on the ground.

The speakers are greeted with sloganeering on their arrival and are escorted to the stage in a similar fashion to that of movie stars. Some of them are brought to the location by helicopters. Although preachers at all times are heard complaining about administrative attempts to foil gathering, police officials are seen standing right behind or even escorting the speaker to and from the stage. Ministers, members of parliament, political leaders, local people of influence are always announced to be present in the gatherings. The preacher often addresses his audience as “fellow Muslim brothers” (*Musalman Bhaiyera*) and “mothers and sisters in the veil” (*Pardar Araler Ma o Bonera*). Women either sit in a separate tent; or they gather in nearby houses to listen to the preachers. In some *mahfils*, there are projectors inside the tent so that the female audience can see the speaker on screen.

In recent times, *w'az mahfils* have drawn internal criticism for their lavish expenditure and venturing more into the domain of entertainment than spirituality.³⁸ *W'az mahfil* speakers have been criticized for demanding high remuneration and booking money from the organizers. Traditionally, speakers were provided a *hadiya* or honorarium for their preaching and some scholars maintain that making a profession out of religious sermons is

³⁶Carla Petievich and Max Stille, “Emotions in Performance: Poetry and Preaching” (2017) *The Indian Eco & Soc Hist Rev* 54 (1) 67 at 73.

³⁷Stille, *supra* note 3 at 81.

³⁸*Supra* note 14.

against the purpose of *w'az mahfil*. However, nowadays, celebrated speakers are often booked a year in advance and even attend 7-8 sessions in a single day. Speakers ask for thirty thousand to a million in local currency for attending one session. There are at least eighty preachers around the country who would fall under this highly sought-after list. It is not only the preachers but also a whole industry has flourished around this practice, which is evident from the series report by Salman Tarik Shakil published in the online newspaper Bangla Tribune.³⁹

The growth of decorators for *w'az* tents, sound systems, audio and video recording houses, and income generated through paid YouTube accounts all evidence signs of an industry of its own. There are around 500 video recording organizations that thrive on *w'az mahfils* alone. Moreover, in many places, Islamic cultural organizations or individual artists sing before and after the *w'az mahfil*. One such group accepts remuneration of forty thousand for thirteen vocal artists performing for two hours, which is equivalent to the remuneration of a live TV performance. These trends have also brought some formative changes to the *w'az mahfil* as a genre.

W'az has also become a common place for speakers to exaggerate their experiences, boast about the number of attendees, and ridicule or mimic other speakers. For example, helicopter rides to the *mahfils* have become a matter of esteem or excess and a recurrent topic in recent *mahfils*. *JIB* preachers used to call the *pir*-based preachers “helicopter *huzurs* (preachers)” for their lavishness, but now their own preachers take helicopters to venues. *Hafizur Rahman Siddiki* of *Islami Andolon* therefore called them fraudsters (“*ore batpar*”) for the hypocrisy.⁴⁰ One preacher of *JIB* claimed that he refused to take a helicopter ride to a venue offered by the organizers because rockets are everyday ride, and the venue was “easy peasy lemon squeezy” to reach by road.⁴¹ But the organizers did not pay him the cost

³⁹Ibid.

⁴⁰ Hafizur Rahman Siddiki, “New Waz 2020”, Sylhet Islamic Media <https://www.youtube.com/watch?v=Nx6G3VuSl6g>. In one of his recent *mahfils* someone from the audience called him “ore batpar” which shows deep fragmentation along religious lines in *w'az mahfils*.

⁴¹This trimmed video clip of Tareq Monowar in all probability is a reaction to criticism of abundant use of helicopter by his fellow *JIB* centric preacher Mizanur Rahman Azhari. “Listen How Much Mawlana Tareq Monowar accepts as honorarium in his own Words”, Muslim TV <https://www.youtube.com/watch?v=_OPEPcA6jAo>.

and this is why people should comment with extreme caution on the earnings of preachers. No one sees the extreme hardship preachers go through to attend these *Tafsirs* of Quran. In order to further emphasize how valuable these *Tafsirs* are, the speaker claimed to have denied an invitation from the U.S. President “Ronald Trump” [sic] because of conflicting schedules during his recent New York trip.

Traditionally, *w’az* consisted of recitation from *Quran*, *durood* (praise of the Prophet), Persian, Arabic, and Urdu prose and poems. Now, most speakers provocatively attack showbiz performers, intellectuals, mimic popular songs and dramas. They exaggerate stories about legendary heroes and use derogatory language against women but offer little or no solution to modern-day questions Muslims face in their day-to-day life. Preachers themselves do not agree on these emerging trends in preaching. One preacher has noted that imitating a popular song by a preacher shows that he has invested time in listening to the song and memorizing it, which is self-defeating.⁴² Speakers with little or no knowledge or understanding about Islam have allegedly gained fame by appeasing people’s entertainment needs. With the advent of social media and smartphones, the *w’az mahfils* are no longer dependent on audio/video recordings circulated in the forms of cassettes and CDs. They can be easily distributed and accessed through social media. This widespread dissemination has made the speeches visible to the public gaze in short consumable formats, and as such, the competition and divide in the field have multiplied. This new trend often leads to trolling in social media more by followers of different Islamist groups than the secularists, and the storm is spiraling back to *mahfil* ground where speakers are lashing out against each other.

It is nearly impossible to analyze *w’az* speeches from all the Islamist groups; any such attempt would only lead to piecemeal understanding. Therefore, for the analysis of this part, I have chosen *w’az mahfils* of *JIB* speakers to identify how they portray the secular public sphere, the intellectuals, and performing arts. The reasons behind this choice are: i) *JIB* is considered a pragmatic political party for choosing election as means of establishing Islam; ii) their historic discord with freedom of Bangladesh and the secular public sphere;

⁴²Salman Tarik Shakil, “Allah Says No, No, Musa Says Yes, Yes” *Bangla Tribune* (20 March 2019) online: *Bangla Tribune* <www.banglatribune.com>.

and iii) their leader, *Delwar Hossain Saydee*, is considered to be the most influential Islamist speaker in Bangladesh and most emulated in terms of content. Identifying how the “pragmatic” or “non-militant” stream treats the secular intellectuals in their communicative discourse is likely to provide us a sense of threshold of opposition for the secular public sphere. Despite *JIB* denying the clandestine activities committed through its student wing *ICS*,⁴³ most militant hideouts have *w’az* publications from *JIB* and confess of being inspired by so and so speech of *JIB* leaders.⁴⁴

This part is based on the analysis of selected *w’az mahfil* videos available online. In order to decide the area of analysis and select relevant topics, I had initially listened to videos available from all Islamist blocs to fathom the general structure. Later, I transcribed specific recordings and clips of *JIB*-centric preachers based on subject matter relevant to this thesis, for example, Saydee’s views on secularism, secular public sphere, intellectuals, and public figures, his view on Islam, and political practice. In doing so, I have transcribed thirty hours of YouTube video recordings. In order to trace the legacy, I have also gone on to transcribe and analyze Tariq Monowar and Mizanur Rahman Azhari’s *w’az* to portray how the *JIB* ideology is in circulation despite life imprisonment or death sentence issued to nine of its prominent party leaders for war crimes and atrocities committed in 1971.

A. Delwar Hossain Saydee: The Complete Commentary of Islamist Politics in Bangladesh

Delwar Hossain Saydee is considered as a legendary figure for making *w’az mahfils* a phenomenon in Bangladesh. His *w’az mahfils* witnessed the gathering of millions of people and have been transmitted as cassette sermons both at home and abroad. Saydee joined *JIB* in 1987 and was elected twice in the parliament. In 2011, he was charged for atrocities committed in 1971 and was sentenced to death by the trial court, which was later revised and lessened to life imprisonment by the Appellate Court.⁴⁵ Violent clashes ensued

⁴³“Press reports and analysts have suggested that members of the organizations are reportedly engaged in violence including killing and maiming their rivals, amputating limbs, severing vital veins and crippling them for life.” *Supra* note 24 at 52.

⁴⁴Riaz and Nasir, *supra* note 3 at 145.

⁴⁵*Prosecutor v Saydee*, ICT-BD Case No. 1 of 2011 (Judgment 28 February, 2013) and *Saydee v Bangladesh*, Criminal Appeal Nos. 39-40 of 2013.

between the police and the *JIB* workers resulting in the deaths of forty people around the country following the initial verdict of a death sentence.⁴⁶ Moreover, *JIB* workers used a photoshopped image of Saydee to spread a rumor that the reflection of his face was seen on the surface of the moon in Bangladesh and Saudi Arabia as a pretext to create violence.⁴⁷ Saydee remains in prison as of date. His audio and video recordings from *w'az mahfils* still swell YouTube and other online platforms. Complete *w'az* recordings from up to three hours, one and a half hours, and smaller clips are available online.

Some of these are live recordings; some videos are made with superimposed images and played with pictures or video collages. The banners are not completely visible in all recordings, and as such, it is not possible to ascertain the date, place, and organizers for all the videos. Some of the clippings of his old *w'az* were made sensational, tagging them with contemporary issues and circulated widely. For example, during the COVID-19 Pandemic, his *w'az* clipping on 'repression of Muslims' in Spain and converting mosques to museums was used to explain widespread community transmission in Spain as a curse from Allah.⁴⁸ However, *JIB* went silent on this issue as community transmission started in Bangladesh.

Saydee is seen on stage with an embroidered skull cap, black robe with golden embroidery, and beard colored in bright red. He usually opened his *w'az* speech with Bismillah-ar-Rahman-ar-Raheem, followed by "*Balaghal-ula bi-kamaalihi / Kashafad-duja bi-jamaalihi / Hasunat jameeu khisaalihi / Sallu alaihi wa aalihi*", an Arabic quatrain by Persian poet *Saadi Shirazi* describing the meeting between Allah and his beloved Muhammad.⁴⁹ He then chanted *darood* accompanied by the audience, and finally proceeded with the discussion topic typically ending with *munajat* (prayer). Apart from using dramatic descriptions, pitch alteration, use of melody, Saydee often used to raise the *Quran* in the air, forcefully shrugged the ends of his robe, and suddenly jumped out of his seat at the peak or climax of

⁴⁶"Bangladesh War Crime Verdict Spark More Violence: BBC News Asia" (March 1, 2013) online: <www.bbc.com>.

⁴⁷Staff Correspondent, "Lie worked well: Photoshopped pic of Saydee used to Instigate Bogra Violence", The Daily Star, March 4, 2013 online: <www.thedailystar.net>.

⁴⁸Allah's Gazab has started in Spain, Tech Voice BD, <https://www.youtube.com/watch?v=6LYn1L4eIMU>.

⁴⁹Hamza Shad, Lyric, Translation and Explanation of *Balaghal-ula-bi-kamalehee*, online: <https://www.hamzashad.com/balaghal-ula-bi-kamalihi/>.

his speech. He typically described the *wa'z* gathering as a piece of *Jannat*, and described any natural calamity or technical difficulty that hindered the *mahfil* as *Imaaner Porikkha* (test of faith). He used to praise his audience for passing the test with flying colors.⁵⁰

Saydee often used to administer oaths in the supplicatory part to the effect that his audience will not quit mandatory prayers and continue to fight enemies of Islam. He encouraged buying booklets, and cassettes from the stalls and financial contributions to the organizers. The attendance of youth was always praised and described as highly important.⁵¹ His speech on different *suras* of the *Quran*, on the fundamentals of Islam, stories about messengers and the *khalifas*, role of women in Islam are available online. However, all of his speeches are intertwined with the political development of the time.

Most of the time, he lashed out against the secular intelligentsia, university teachers, artists, Bangalee tradition, *pir*-centric religious practices, and leftist politicians. He used to call *Allama Iqbal*, the Urdu Poet *biswakabi* (a title used for Bangalee Poet Rabindranath Tagore). He would call Prophet *Ibrahim* (PBUH) the father of the nation instead of *Sheikh Mujibur Rahman*, the founding father of Bangladesh. He always framed freedom and martyrdom with Islamic legends and history, building an alternate frame of national history. His main spirit was to describe Islam as the complete code of life, and anything that contradicts Islam was to be shunned and discarded. After listening to a few *w'az* recordings, it transpired to me that the central tenets are the same in most speeches, and the same speech was delivered on different occasions word to word, creating an

⁵⁰In this particular *w'az*, heavy rain and gasps of wind make the *w'az* gathering a near impossibility. People still sit through to it under difficulty and are praised for their firm faith. Maulana Saydee W'az in Mirpur pt.1 Bangla Waz, The Waz Centre, <https://www.youtube.com/watch?v=k7VdxaOu6RM>.

⁵¹He would always put the number of youth attendance at 95% and said how secularists and communists are jealous to see youths joining the *mahfils*. "Maulana Saydee Waz in Mirpur pt.2 Bangla Waz", The Waz Centre <https://www.youtube.com/watch?v=U4THBjzJlk>. He also said how youth have always foiled the state's policy against *tafsir mahfil* by joining in hundreds and thousands, and why not? Because they are Muslims, they have Shah Makhdum and Titumir's (nineteenth-century revisionists) blood in their veins and not Rabindranath or Suryasen's blood. "Delwar Hossain Saydee Waz Chittagong 1997 Day 5", Islamic Waz Bangla <https://www.youtube.com/watch?v=aEqDe6JHBoA> ["Chittagong 1997"].

impression that the audience response is not always spontaneous but learned through repetition. In what follows, I will recount some of Saydee's *w'az* recordings with relevant context and analysis.

I will start with a transcription of Saydee's most detailed description of secular ideology and its odds with Islam:⁵²

Islam is Allah's creation. I have said that *Shaytan* [evil] has created exact opposites to Allah's creation. Is it correct? Correct [crowd]. Say aloud! Correct [crowd repeats]. So, Allah made *Khilafat*. What did *Shaytan* create? Crowd responds (unclear). *Mulukiyyat* or *Rajtantra*, monarchy. [indistinct] Allah has provided the ideal path for life: Islam. What has *shaytan* made? [crowd: unclear] Saydee: Secularism.

The secularists fool people by saying that secularism is not opposed to religion. The truth is precisely the opposite. I have said in the Parliament, I belong to a separate life. I am a pupil of the Quran. With Allah's blessings, I have gone to the Parliament. There I spoke in front of people who believe in secularism, as long as the Parliament remains my speech will remain in the record.

Crowd: Allahu Akbar!

In my speech, I cited definitions of secularism from all the world-famous dictionaries. I have told them that secularism is devoid of religion.

Crowd: Correct [*Tthik, tthik*]

The world-famous Random House Dictionary of English Language provides three meanings to the concept of secularism: i) not regarded as religious or spiritually sacred (translates in Bangla); ii) not pertaining to or connected with any religion (translates in Bangla); iii) not belonging to any religious order (translates in Bangla).

Now, according to The Chambers Dictionary, "secularism is the belief that the state, morals, education should be independent of religion" (translates in Bangla).

Now, listen to what Oxford Dictionary says, "secularism means the doctrine monarity [sic] / should be based/ solely/ in regard to the well-being of mankind in the recent/ recent [sic] life/ to the exclusion of all consideration/drawn from belief in God or in future states." (translates in Bangla)

Now, let's see what Encyclopedia Britannica says: secular spirit or tendency, especially (inaudible) social philosophy that rejects all forms of religious faith (translates in Bangla) [crowd says *Nauzubillah* (we seek refuge to Allah)]. [Meaning repeated] [whispers

⁵²"The doctrine of Secularism means non-Religion/ It is a Doctrine of the Evil", BD Islamic Television, <https://www.youtube.com/watch?v=YeagNGCfKuW>.

Astagfirullah (we seek forgiveness)] Number two, the view that public education and other matters of civil society should be conducted without the introduction of a religious element.

This means that secularism or *dharmanirapekshata* solely means freedom to be beyond the limits of any religion, *dhormodrohit*. No other definition of secularism is available in any dictionary of the world. Therefore, secularism is an evil doctrine without any divine semblance and created by man, *dhormodrohi motobad*, a Kufri [infidel] doctrine!

Crowd: Allah! [bursts into roar]

Politics and state principles are integral to secularism. Are you listening? Are you listening? I will not speak without reference [*dali*]. The main principles of secularism:

One: State and politics will have no connection to religious belief.

Two: Religion will be limited to the private sphere.

Three: The state principles and conduct of the state will have no connection with religion.

[He then quickly turns to what secularism would mean for a Muslim state]

Four: In the Muslim world, secularism means a rule devoid of Islam. State affairs should be conducted by limiting Islam to the private sphere.

Five: Secularism means state, politics, economics, and all other things pertaining to state and the society should be devoid of religion – devoid of Islam.

Therefore, secularism is a curse for Muslim society. It is Allah's *Gojob* [wrath]. We have to be united against secularism, united. [Slogan-Naraye Taqbir, Allahu Akbar] I have told many things from the dictionaries. Don't you want to listen to what Allah has said? [Softens the tone] We should listen more to Allah, to what Allah has said.

Recites from the Quran: "Afatu'minuuna biba'dhil kitaabi wa takfuruuna biba'dhi?

Will you obey some of Allah's words and disobey the rest? The secularists follow *namaz* (prayer), *roja* (fasting), *zakat*, *hajj* (pilgrimage) but do not obey the justice system provided by the Quran. They do not follow the economical, political or social structure provided in Quran, they do not follow the Prophet's politics, and they separate politics from religion. This is why Allah has said, "if you obey some words of the Quran and disobey others, you will be humiliated in earthly life, and in the afterlife, you will be thrown to the hell." Dear brothers, may Allah give us all this understanding.

My question is that the Allah who is not needed in educational institutions, the Allah who is not needed in the Parliament, in the election, in the secretariat, in college and university, in factories, then in the end why that Allah is needed at all. [Naujubillah] Musalmans can never divide their life into two.⁵³

In my opinion, this brief description of secularism is more concrete and solidified than the Constituent Assembly Debate this thesis has discussed in Chapter I. In seven minutes, the speaker describes the central tenets of secularism, its discords with Islam, and why Muslims should not follow secularist leaders, all in lay terms. The only score the speaker

⁵³Chittagong 1997, *supra* note 51.

skillfully avoids is what the Constitution of Bangladesh says about secularism. Elsewhere, however, he criticizes *AL* for pursuing a policy of secularization post-independence and calls his audience to be cautious that Allah forbid if they come into power again, they will reinstate secular constitution and as such the *tawhidi* people (believers) should unite against the doctrine of the infidels.⁵⁴

It is interesting to compare how Saydee presented the same content in his Parliamentary speech and in an interview with a presenter in a much calmer voice. In the interview, Saydee also debases secularist attempt to rely on the Islamic verse “*Lakum deenukum wa liya deen*” [Your religion is yours, and our religion is ours]:

“They say this because they do not know the story behind this verse. The *Kafirs* told Muhammad (PBUH) to bow before their idols for a few days and in return they will to the mosque. Then, Almighty Allah ordained these verses “*qul yaaa-ayyuhal kaafiroon, laaa a’budu maa t’abudoon.*” – Oh idolaters, we do not pray the same identity you pray to. Therefore, *Lakum deenukum wa liya deen*. Your religion is yours; our religion is ours. There is no opportunity to divide religion into 50:50. From this perspective, secularism is not for Muslims.”⁵⁵

⁵⁴“Awami League was first established as Awami Muslim League. They used the slogan “*Naraye Takbir, Allahu Akbar*”. For they adopted secularism as their ideology, they excluded “Muslim” from their name and dropped Allah’s *Takbir*. As they ascended to power in 1972, they excluded “*Bismillah-ar-Rahman ar Raheem*” from the constitution. They excluded *Quranic* verses from university monograms. They excluded “Muslim” from the name of “Salimullah Muslim Hall” (a student residence of the University of Dhaka), they excluded “Islam” from the name of “Nazrul Islam College”. The government is against Islam and Muslims for its policy of secularism. They blame the best citizens of this country *pirs, alems, olamas* as militants and employ police brutality for any untoward incidents. While universities are the cocoons of goons, the government is scaling down Madrassahs. There are national newspapers, both good and bad. There are also street magazines selling pornographic content. The government had no opposition to media run by Hindustani funds, but they want to bring down the vocalist for Muslims and Islamic rule in the country, Dainik Inquilab. Beware! If anything like this happens, we will halt the whole country. [...] If this government comes to power again, say “Allah Na Koren” [thrice, God forbid] they will reinstate the secular constitution. [...] The Allah-fearing people of Bangladesh should unite to protest against this doctrine of infidelity.” *Bangla Waz Mahfil Delwar Hossain Saydee 1991*, UTV BD <https://www.youtube.com/watch?v=4JJKvJDca78> at 16.9. In another w’az, Saydee says the Sheikh Hasina Government has changed the Zia regime’s “Principle of Absolute Trust and Faith in Almighty Allah” and made the leftists ministers. When those ministers say religion-based politics will be prohibited and the *PM* does not protest, it becomes clear that she tacitly approves the policy. He also warns that Sheikh Hasina will meet the same fate as her father for promoting leftists. Those who try to put restrictions on Tafsir-e Quran will have to answer to Allah on the Day of Judgment. “Heavy Weight Speech by Allama Delwar Hossain Saidi”, Shibir Tube https://www.youtube.com/watch?v=l9pZ_FOWlco.

⁵⁵ Saydee’s interview with London Bangla TV, “What is Secularism” Esho Alor Pothe <https://www.youtube.com/watch?v=TZqbCNqU1gU> and Islami Shonkskritir Porichoy Pt. 2 (Various Artists Topic) at 17.40 <https://www.youtube.com/watch?v=fSQzaAMublg>.

His tone in the *w'az*, however, is comical and of a storytelling mode. In the same interview, Saydee also explained his reason for joining the *JIB*.⁵⁶ He said he was drawn to *Maududi* doctrine during his student life, and then after finishing his studies in 1962, near about in 1970, he became a *Ruqan* of *JIB*. He was not a full member yet.⁵⁷ He was convinced that in order to establish Islamic rule, he needed to join a party, which can perform its duties at the state level. He chose *JIB* because of its expansive network among students, workers, women, and other religious communities. Moreover, *JIB* had party discipline and literature and publication in Arabic, English, Urdu. He also mentioned that *JIB* is debated because other parties are afraid to see its expansion in the mainstream, in performance, drama, theater, history, and culture, and even in the Parliament. He emphasized that he considered *AL*, *BNP*, and leftists or none as enemies. The awareness about the battle line along the cultural divide is vividly evident in Saydee's account.

In a *w'az* titled '*Islami Sangskritir Parichay*' [Introduction to Islami Culture], Saydee sets the 'others' one by one and debunks them: scientists, nationalists, and secularists.⁵⁸ He starts by joking about the theory of evolution and then claims that Allah created all fundamental elements, and science has merely assembled them. Allah, therefore, is the greatest scientist, and Islamic culture is based on the primary notion of one creator. Secularists, however, are different:

In Islam, there is only one Ilah [diety], but for secularists, there are four Ilahs [encourages the crowd to say *naujubilllah*]: homeland, nationality, intellect, and persuasion of instinct. They regard their country as a mother. They say motherland [*matrivumi*], we call the country of birth [*jonmovumi*]. We do not say "*tomar pore thekai matha*" [This is a Tagore song that says I bow my head before my motherland]. This is not our culture. Therefore, they can sacrifice lives for their country, but do nothing for Allah. Patriotism is a virtue, but worshipping of the country is not good.

[Sings from Allama Iqbal]

In taza khuadon mein bara sub se watan hai

⁵⁶*When and why I joined Jamaat?* Esho Alor Pothe: <https://www.youtube.com/watch?v=2MyOIHwmuNM>.

⁵⁷*Supra* note 25 at 51.

⁵⁸*Islami Shonskritir Porichoy*, pt. 1, Various Artists Topic https://www.youtube.com/watch?v=RaX7aK_JwjA, "*Islami Shonskritir Porichoy*, pt. 2", Various Artists Topic <https://www.youtube.com/watch?v=fSQzaAMubIg>. See also Ummah Tube: <https://www.youtube.com/watch?v=5WbhUKrj29Y> at 44 minute.

Jo pirhan iss ka hai, who mazhab ka kafan hai

[Country, is the biggest among these new gods!
What is its shirt is the shroud (kafan) of deen (religion)].⁵⁹

They have separated *deen* from *mazhab*, politics from *mazhab* – Islam. The great poet has said that a nation is built through religion. Without religion, you are nothing, just like without gravity, there is no planet - sun and earth. [...] The world will be ruled by Allah's law, not by anyone's father's law [the indication here is against the Prime Minister Sheikh Hasina, who is the daughter of Sheikh Mujib], not by man-made law. Man can never ensure justice.

The fundamental perception of Islamic culture is to implement Islam in all aspects of life. Culture is not only instruments and music. Culture includes rituals and celebrations; it is the spirit of a nation. It is part and parcel of life, but in our country, people's religious identity has been sold in the name of culture, for example, the New Year celebration - *Pahela Baishakh*.

We have no opposition as to the New Year celebration, *Pahela Baishakh*. Perform supplication, recite Quran and *durood*, do yearly business accounting [open *hal khata* - starting a new business year]. The First day of Bangalee New Year, we have no problem with that. What we oppose is the degeneration of culture [opsongskriti] centering New Year celebration. Do you understand? [...] They light up *mangal pradips* [clay candles with clarified butter], *rakhi bandhan* [Hindu ritual where a sister ties sacred thread to her brother's forearm to protect him from harm. This is not a new year tradition], *uluddhwani* [a Hindu prayer ritual that is also not performed in New Year], *kopale tilak* [putting *sindoor* into forehead, that is also not a New Year ritual], boys paint tattoo on girls cheek [men, women and children draw face art if they wish]. . . is it our culture? Please say, is it our culture? These are cultural degeneration. Valentine's day? Musalmans do not need to observe Valentine's Day. Islam has been born through love. [...]

Throughout the year, they do not eat *panta* [traditional rice dish soaked in water], but for one day, they have to go to the *Batamul* [*Ramna Batamul*, where Bangalee New Year has been celebrated since 1967] to eat *panta* . . . like this Valentine's day, spring day, *poush mela* [autumn festival] ...*nauzibillah*. This is not our culture.

One of my speeches has been misinterpreted. I have said for non-Muslims establish fifty instead of one idol, Islam does not have any issues with that. However, the majority population of this country is Muslim; therefore, you cannot make idols in the streets in name of statue with the taxes we pay. If you are a Muslim you will agree with me.

In the above *w'az*, the culture Saydee describes is wholly divorced from the context and lived reality of Bangladesh. The complete reversal of the legal system to *sharia law* would not appeal to most people. The Islamic culture he describes here has never been present in Bangladesh or the Indian subcontinent. What he describes as 'cultural degeneration'

⁵⁹Translation from online: <<http://www.allamaiqbal.com/>>.

(although an exaggerated account of the existing celebrations) is actually the culture of the land. Therefore, a need to debase the local culture and identify it as *shirk* (infidelity) arises:

[Sings from Allama Iqbal]⁶⁰

*"Waza' main tum ho nasara, to tamaddan main hunood
yeh musalman hain jinhain dekh kay sharmain yahood!
yuun to sayyed bhi ho, mirza bhi ho, afghan bhi ho
tum sabhi kutch ho, batau to musalman bhi ho?"*

[In appearance you look like Christians, culturally you are Hindus/
Are these Muslims who would make Jews blush with shame!
Given that you are Sayyeds, Mirzas and Afghans/
you are all that, but tell me are you Muslims at all?]⁶¹

Sayeedi urged that life has to be sanitized from the culture of Jews, Christians, atheists, and apostates. People other than Muslims too live in the country, for example, Christians can celebrate 31st December, but not Muslims. He then went on to slam Bangalee New Year Celebration at length:

For the last two-four years, they have started wearing yellow saree for *Pahela Baishakh* [it has been celebrated for many centuries and the colors typically worn are red and white], drawing *alpanas* [folk motifs], and singing "*esho hey Baishkah, swagotomo hey*" [welcoming the first month of Bangalee New Year]. The *kalbaishakhi* [summer storm caused by extreme heat] then says, "wait and see". It comes with 180-mile speed and teaches them a lesson [the crowd laughs]. The intellectuals, university teachers, students, all light up *mangal dips*. They dress up as dogs, donkeys, and crocodiles [the Bangalee New Year celebration procession displays colorful structures in folk motifs including, different animals. However, no one dresses up as animals or creatures]. They use loud musical instruments. [. . .] I do not understand the relationship between masks of cows, donkeys, piglets [the procession organizers will be disheartened to know that their colorfully crafted masks looked like these animals] and the New Year. Celebrate New Year with Faz'r Namaz (obligatory morning prayer) and supplication.

They practice vulgarity in the name of culture. They perform Indian Festivals in Bangladesh. These are more dangerous than HIV/AIDS. They have brought songstresses and dancers from India. These are *najayez*, *haram*, *haraam* (prohibited). Our culture is based on faith in Allah. They have harmed our image as Muslims.

[Sings from Iqbal]

⁶⁰*Supra* note 55, at 1.18 minutes.

⁶¹Translation from anonymous Facebook post.

*Main Tujh Ko Batata Hun, Taqdeer-e-Umam Kya Hai
Shamsheer-o Sanaa Awwal, Taoo-o-Rabab Akhir.*⁶²

Let me tell you the history of degression of this nation, the Quran has been replaced by songs and music. [...] The nation has been doomed.

Our country celebrated the silver jubilee of freedom with songs and dances. Freedom should be celebrated, but we cannot sing and dance like Christians or Hindus.

Bangladesh is a fortress for Islam. No one in this land was spared beheading when they voiced against Islam, Allah, *Alems*, and *Pirs*, [...] no one should dare have the courage of offending Islam. We have to establish *Imaan* in this land. Whose law will rule the country? We deny man-made system of secularism, capitalism, communism, and nationalism. In order to establish Islam, religious scholars have to unite. The enemies of Islam are sitting on radio stations, TV stations. Today, they create dramas and movies against Islam, atheists, apostates, and faithless have all united, and they are trying to ridicule Allah's *deen*. If they succeed, they will haunt all bearded and skull capped man, no one will be spared based on which stream of Islam they endorse.

In his scheme, Saydee first portrays Bangalee traditional rituals as alien to Islamic culture, therefore, *shirk* (idolatry). Then he sets forth an unholy tie between the state and the cultural sphere and poses artists and intellectuals to be bloodthirsty for Islamists. Therefore, an imminent sense of risk is created to nurture hostility against the secular public sphere that ultimately advances political Islam.

In broad strokes, Saydee blamed intellectuals and free thinkers for conspiring against Islam and the Prophet Muhammad. He called them *Norodomar keet* (sewage worms), *Kulangar* (disgrace), *nastik* (atheist), *murtads* (apostates), *taghut* (tyrants), *pora kopal* (misfortunate) and *kafirs* (infidel) worse than *chotushpad jantu* (quadruped).⁶³ He also blamed them for spreading vulgarism through popular culture instead of boosting *Imaan* (faith).⁶⁴ He called Bangalee linguist Kudrat-e-Khuda, who framed a uniform education policy for Bangladesh

⁶²"The destiny of nations I chart for you: At first the sword and spear, the zither's, the lute's soft sighs at last." Translation from <http://iqbalurdu.blogspot.com/2011/04/bal-e-jibril-049-aflak-se-ata-hai-nalon.html>.

⁶³ *Shirk of Kufrer Alochona*, Ummah Tube: <https://www.youtube.com/watch?v=5WbhUKrJ29Y> and *Bangla Waz*: Allama Delwar Hossain Saydee, Shibir Tube: <https://www.youtube.com/watch?v=HTtAw95UAWI&list=PLiaRRJe3vxM3qS2sWKCb5Etm7X7sY7WG&index=13>.

⁶⁴Saydee urged women to disconnect satellite televisions at home in order to protect their families from vulgarism <https://www.youtube.com/watch?v=Uh9KUOIgYZE>. He referred to movies such as *The Message* and *Lion of Dessert* as ideals. He blamed Bangladeshi cinema producers for not making such films that create fear of Allah <https://www.youtube.com/watch?v=dqMXCKL-KkI>.

as *Gajab-e-Khuda* (Lord's curse); mother of martyrs turned war crimes trial organizer, Jahanara Imam as 'Jahannamer Imam' (leader of the hell), and he continued to vilify literature Humayun Azad as an atheist, before and after the terrorist attack on him and even after his death.⁶⁵

As for political Islam, Saydee maintained that there is a clear distinction between *jihad* (struggle) and *herb* (war). Islam can be established through either revolution and bloodshed or parliamentary politics.⁶⁶ He told his audience that he would not name a party to vote in the upcoming election, but they should select a party that has organizations among students, women, workers and has published Islamic literature to enhance knowledge of Islam. Saydee maintained that only those who sacrifice their lives for Allah could be called *Shaheeds* or martyrs.⁶⁷ "Allah loves those who unite to strive for him. Fight for man-made nations; fight for man-made legal systems are not struggles that Islam endorses. [. . .] *Kafirs* or idolaters struggle for democracy, capitalism, and secularism."⁶⁸ Thus, in Saydee's narrative, Bangladesh's 1971 war for freedom is assailed as an Un-Islamic war that was fought to establish man-made law, secularism, and democracy, and the martyrs also are not "*shaheed*". In his narratives, Saydee often refers to the freedom of Bangladesh or the fact that people have sacrificed lives for the country, but he never provides a time frame, nor does he mention the Pakistan regime or the war of independence.

As for his trump card, Saydee used the *w'az mahfils* to deny his involvement in war crimes and portrayed the allegations as a ploy to damage Islamist politics.

They called me a *razakar*. Listen ... only Hindustani (Indian) *razakars* call me a *razakar*. Until 1973, I was not a member or leader of any political party. I am not a *razakar* . . . Those

⁶⁵ "Porokaler jobabdi hita Mawlana Delwar Hossian Saidi Waz" Bangla Waz, <https://www.youtube.com/watch?v=rgzQ5eQWaFo>.

⁶⁶"Munafiker Charitra", CHP Tafsir Mahfil <https://www.youtube.com/watch?v=Uh9KU0IgYZE> and "Bangla Waz: Allama Delwar Hossain Saydee", Shibir Tube: <https://www.youtube.com/watch?v=HTtAw95UAWI&list=PLiaRRJe3vxM3qS2sWKCb5Etzm7X7sY7WG&index=13>.

⁶⁷"Shahadat means people who have given testimony for truth and sacrificed through words, action, property, and life. Today people become *shaheed* in the streets. Anyone is called *shaheed*...Those who sacrifice their lives for Allah, Rasul, and Quran are Shaheeds. Shaheedi death is a means to meet Allah in the other world." *Supra* note 55.

⁶⁸Munafiker Charitra, *supra* note 66.

who call me *razakar* are fatherless bastards! Listen Musalmans! No dirt of 1971 touches Saydee! You cannot separate me from people by calling me a *razakar*! Because these people do not come for me, they come for Allah's Quran. Today, whoever talks about Islam is termed as *razakar*, fundamentalist.⁶⁹

Fact check: in his own words, though not a full member of *JIB*, Saydee was affiliated with the party around 1970, as he was convinced of the strength of the party as a leader of the Islami movement.⁷⁰

B. Continuation of the Trend

Tariq Monowar and Mizanur Rahman Azhari both have recently been under media scrutiny and were even brought up in parliamentary discussion for repeatedly saying in *w'az mahfils* that Saydee will reborn in each house of Bangladesh.⁷¹ Monowar has claimed on several occasions that it was Saydee who told him to return to Bangladesh from the UK, where he was an *Imam*, and to continue the tradition of *w'az mahfil*.⁷² Similarly, there are viral clips where Azhari and Monowar seem to be in each other's awe, and Azhari describes how Monowar has led him to the world of *w'az*.⁷³ At the beginning of my *w'az* transcription, they each seemed to have a different style, but the more I listened to the content, the more similarities were found. In many places, I experienced a *déjà vu*, as if I was listening to Saydee in a different voice. From a comparison, not only the stories but also verse selections, jokes and recounting of personal experiences or statements in the first person are the same.⁷⁴

⁶⁹ Bangla Waz Allama Delwar Hossain Saidi Full 1991: Chittagong <https://www.youtube.com/watch?v=4JJKvJDca78>.

⁷⁰*Supra* note 57.

⁷¹ "Alems on Celebrated Mufassir Allama Delowar Hossain Saydee", Satya Anneshene, <https://www.youtube.com/watch?v=FVR4ksDW3DU>.

⁷²*Ibid*.

⁷³ "Tariq Monowar and Mizanur Rahman Azhari meet after twelve years and the rest is history", Mahfil TV <https://www.youtube.com/watch?v=X83G-dRFedw>, and "What Mizanuur Rahman Azhari says about Tariq Monowar", Islamer Rasta <https://www.youtube.com/watch?v=K2RhjSw20Fw>.

⁷⁴In my few hours of listening, I found several resemblances between the *mahfil* content, which are not merely recounting legendary stories. Saydee used to say Quran makes people hero or zero, Mizanur Rahman Azhari repeats the phrases word to word. Saydee said in one of his *mahfils* that Christians are selling churches in the West, and Muslims are converting them to mosques. Mizanur Rahman Azhari made the same comment. They both said in the first person (presenting as their own account) the starting alphabet and ending alphabet of the *Quran* indicate that Allah has made *Quran* a complete code of life. Tariq Monowar, on the other hand, resembles Saydee on his discussion of Nazrul, on his propaganda about a national award-winning poet, maligning the NGOs, his comments about *Pahela Baishakh celebration*, and also on recounting Hazrat Ali's dream. The resemblances are countless, which shows *w'az* speeches too are learned.

Monowar is a singer, a former *Imam*, a TV commentator, and a *w'az* preacher. After the Holey Artisan attack, he went to a hideout abroad for some time due to militants citing his name as a mentor.⁷⁵ Monowar sings, jokes, taunts, and more often than not, delivers unstructured *w'az* speeches. Although in one of his *w'az*, he says that no one has the right to judge others' Imaan, his speeches are very derogatory towards women and those who are "*taghut*" (tyrant) in his eyes.⁷⁶ Another key feature of his speech is English conversation with Christians living in western countries. He either makes his characters a laughing stock or claims that his recitation changed their religious belief. However, regardless of geographic location, all these men speak English with an Afro-American accent.⁷⁷ The Prophet's ascend to *Meraj* also holds a central space in his narrative, but instead of Saydee's "*Balghal Ula bi Kamalihi*," he sings Bangla translation from Matiur Rahman Mallick. He mimics Bangalee songs, and even if he praises poet Kazi Nazrul Islam, he says that Nazrul did not have proper belief.⁷⁸

He endorses the same vision as Saydee that observing only the five pillars of Islam does not establish *deen*. Instead, one has to strive for establishing Islam in *all* spheres of life.⁷⁹ His views on *kafirs*, *mushriks*, and atheists⁸⁰ or the secular Bangalee festivities are similar to Saydee.⁸¹ He also says that other religionists should be persuaded to Islam and not forced,

⁷⁵*Supra* note 14.

⁷⁶"The unimaginable beauty of Hoors", Islamic Idol <https://www.youtube.com/watch?v=N1mCww4v-50>
<https://www.youtube.com/watch?v=Dgs4Pxb1-UM>.

⁷⁷"The significance of Imaan", Mowlana Tareq Monowar 2018, Nb Islamic Bazar 2018
<https://www.youtube.com/watch?v=WMB6xf8DSOs>.

⁷⁸*Ibid* and "Tariq Monowar New Waz", Takbeer Media https://www.youtube.com/watch?v=Tgn_M6cY330.

⁷⁹"If you do not participate in politics, you will not be a Muslim just by observing the five pillars. We will not do politics beyond *Quran* and *Hadith*. We will not read anything beyond *Quran* and *Hadith*. We will do everything for Allah, because the field of *jihad* is *Zanna*". *Supra* note 77.

⁸⁰You people should leave this land! No atheists will be allowed to remain in Bengal! No Kafir will be spared space here! This is Shariat Ullah's land! [Nineteenth Century Orthodox Islamist Reformer] This is Bakhtiar Khilji's Land! This is Shah Makhdum's Land! [Islamist invaders in pre-British India] This is Nazrul's land, not Rabindranath's! [Nazrul is the national poet of Bangladesh, who wrote for humanity and intentionally blended terminologies from Hindu and Muslim practices, but Islamists use his religious identity to create a counter to Rabindranath]. We will not retain relationships with *Kafirs*! [Weblink no longer available]

⁸¹"Esho He Boishakh!" (Come Summer, this is a Rabindranath Tagore song to welcome Bangla New Year) Let me adore you (uses slang)! I heard in Dhaka, [Sings] I don't want you to cry to the summer cloud for pouring! Why would you ask for water from the summer? Who is the owner of water? [Crowd chants] Allah! Say aloud! Allah! This festival is a celebration of *Mushriks* [equating Allah with others]! Islam has nothing to do with this New Year Celebration! [Crowd chants] No! Shout again! No! Whoever has gone to this celebration has been guilty of *shirk*! Because they dressed up as monkey, boys wore *dhuti* (an attire usually attributed to Hindus),

but his speeches, unfortunately, are not as much sensitized to the religious faith of other religions.

He often criticizes the Taliban, but then again, does not go very far and often lauds their bravery. He tells an entirely distorted story of undivided India, which praises the courage and determination of Afghans. A booklet named "*Rangila Rasool*" was published in 1929 on Prophet Muhammad. Following the Muslim outrage on the publication, the British rulers penalized hurting religious sentiment. A nineteen-year-old assailant later killed the publisher of the booklet.⁸² In Monowar's recounting, however, under-aged twin brothers from Afghanistan traveled to India with the mission to kill the author. They were connived, wooed, nevertheless, succeeded in completing their mission.⁸³ He would demand such devotion and fervor from his audience as true Muslims. Saydee wanted to transform *Pahela Baishakh* celebration into prayer and congregation, but in Monowar's version, there cannot be any celebration apart from the two Eids.⁸⁴

Azhari, on the other hand, can be called the glamorous and sensational entry in the *w'az mahfil* of Bangladesh. His speeches are said to have drawn young educated Muslim men to *mahfils* like never before. He is highly articulate, wears bright colors, uses a tab for his sermons, and also directly communicates through social media. He is a singer, hosted Islamic TV programs from 2010 to 2013, and started performing in *w'az mahfils* since 2015. Unlike Monowar who introduces characters to strike English conversation, Azhari speaks to his audience in English (probably as a technique to reach a wider audience) followed by Bangla translation. He sings popular songs from the Islamist cultural groups, and also sings his own comical version of Bangla songs, even popular movie songs.⁸⁵

girls drew *ulki* (tattoo) on their forehead and cheeks, they dressed as bears, like cats and dogs! [Weblink no longer available]

⁸²Avatans Kumar, "The Ghost of Rangeela Rasool", *Times of India* (25 October 2019) online: <www.timesofindia.com>.

⁸³*Supra* note 77.

⁸⁴*Supra* note 76.

⁸⁵ See Azhari is mimicking a popular movie song in its entirety https://www.youtube.com/watch?v=rCwBz_yaMGk.

Although he speaks for establishing the *deen* and Allah's laws, his speeches do not have direct political deliverables as those of Monowar and Saydee. Instead, his driving messages mostly relate to the appropriate sexual demeanor of men and women, daily-life issues, and conversion of other religious communities in the country to Islam.⁸⁶ He overtly praises Saydee for converting Hindus, atheists, and Chakmas to Islam, a claim *JIB* has maintained for years, but media reports suggest them as forcible conversion or staged drama.⁸⁷ Azhari's *w'az* were marked with claims of scores of Hindus coming to the *mahfil* or converting to Islam who were seldom seen. Even when they were seen, men claiming to be converting had a beard cut unmistakably peculiar to *JIB* activists.

Rumors are that the faction between Islamists has forced Azhari to flee the country at the behest of the administration at the beginning of 2020. However, he claimed that he had moved abroad for further research. He maintains his social media accounts, preaching, and other activities remotely. Azhari talks about following the middle path instead of extremism and voices for a socio-religious mosque-centric community life, which is conducive to *JIB*'s current scheme of setting a new party. However, the disgust for *pir-mazar* and Bangalee culture remains the same in his account as well.⁸⁸

The song you sing must be approved by Islam and justified by the Quran. You cannot sing just any song. The songs that bring you to Quran, the songs that bring you to Islam, the songs that create fear of Allah in your heart is your song. But in our country, we have band music, rocks [sic] music, aulã song, baula songs - is not it? They sing, "Beautiful days we used to spend, the Hindu and Muslim youth signing Baula gan and Murshidi together." Why don't you spend a beautiful time now? "*Kopal Pora*" [Misfortune]. These *Lalon* songs, *baul songs* - do they have *dhol-tabla* or not? The prophet came to the world to destroy *dhol-tabla*. Musalmans cannot listen to songs accompanied by musical instruments. You cannot listen to songs, which have Hindu essence or have ethos against Islam. [...] They will create a façade in your mind with one verse and make you a *mushrik*. Listen to Nazrul's Islami songs, Farrukh Ahmed's songs, jagoroto Kobi Muhib Khan's songs, Al Mahmud, Saimum Shilpi Goshti, the young performers of Kalarab.

From the above description of *JIB* led *w'az* speeches, we can discern a familiar pattern, which indicates that they are not simply religious admonitions. They have a specific

⁸⁶He explains characteristics of Islam and asks his audience to discuss these points to their Hindu friends, colleagues and fellow businessman. "Best *w'az* of the History: Mizanur Rahman Azhari", MHR Bangla W'az: <https://www.youtube.com/watch?v=wFkpoVfUvU0>.

⁸⁷*Supra* note 71.

⁸⁸"The songs you can listen to and not", Islamer Rasta <https://www.youtube.com/watch?v=x4LB4VwkKLY>.

purpose of leading people to an Islamic way of life, which encapsulates not only individual and social life but also political life and state power. Identification, as well as vilification of the social, religious, political, and cultural others is an important aspect of *w'az*, which has a life cycle of its own beyond the *mahfil* or the gathering. Inasmuch as they have ingrained poetics, they are polemical to the extent of promoting hatred and instigation against their 'others'.

As we have noticed that the *w'az* preachers change roles as singers, hosts, or preachers; the same goes for Islamist lyricists and singers. In the excerpt above, we see Azhari providing a recommendation of song genres to listen to or to avoid. As the analysis below will reveal, the *jihadi* songs or *nasheeds*, in the same way, feed the aspirations of *w'az mahfils*.

III. Jihadi Songs: Battleground for Khilafat and Islamic Brotherhood

Jihadi songs, *Anasheed Jihadiya* or *Nasheeds* as they are sometimes called, are Islamist hymns, an essential part of the *jihadi* culture. *Nasheeds* have known to exist since the 1970s and 1980s in Middle Eastern countries and became central to *jihadi* culture after 9/11, and also during the Arab Spring, but definitely as a key functioning model of ISIS. *Jihadi* songs can be defined as "a cappella chants sung by men and drenched in echo, all with spoken word intro".⁸⁹

For the purpose of this thesis, I have not listened to English or Arabic *nasheeds* except for acquiring a general idea. Listening to *nasheeds* in Bangla was stressful at times with the loud intro sounds, echoes, and the overall politically or religiously charged proses without musical accompaniment, not fitting to my understanding of music or song. Even then, most of the time, the echoing proses or verses of some songs will last in my mind for many days, or I would find myself humming a particular verse. I would often question if there is something particular with the repetitive pattern of the hymns or the echoing effect that leaves a lasting impact on my mind or I was going crazy. As a consolation, I started telling

⁸⁹Alex Marshall, *How ISIS got its Anthem?* The Guardian (9 November 2014) online: The Guardian <www.theguardian.com>.

myself that the genre is consciously designed to do so, but only experts can make such a broad claim. I was, however, comforted to read the experience of a *nasheed* researcher.⁹⁰

Talking about ISIS's anthem, he says:

Even for an infidel like me, it has a certain quality. It invigorates certain spirits. ... The first time I heard it, I could not get it out of my head for two weeks. I'd sit on the metro and it'd come into my head.

At the beginning of this research, my primary access to *nasheeds* was through an Islamist title track web page,⁹¹ "All Nasheeds" which had the most extensive and organized collection of Bangla *nasheeds* of all genres, even rap, and pop versions. Following the Holey Artisan attack, the page was no longer available. *Nasheeds* remain widely circulated through online mediums, but sporadically and in a disorganized manner, each platform presenting its own types of song. However, there are new trends of translating Bangla *nasheeds* into Arabic and English, accompanying music videos, and lyric collections, trends, which were not as common when I started the research.

For a long time, the cultural wing *Spandan Shilpi Goshti*, floated by *ICS* in the 80s, was the only Islamist Cultural Group. *JIB*'s cultural front, *Saimum*, has also been in the frontline by creating contents for different age groups. In the aftermath of 9/11 and the rise of Islamist militancy in Bangladesh, there seemed to be a swamp of *Jihadi* songs in different forms, such as audiocassettes, videos, and audiovisual clips on social media. From a study conducted by a magazine in 2016,⁹² the number of such organizations was estimated to be no less than thirty. In a 2017 news report from an Islamic news portal, the number is at least a hundred.⁹³ Besides the organizations, established individual singers linked with various Islamist parties are also around 30 in number. However, like *w'az* preachers, these

⁹⁰Ibid.

⁹¹<<https://allnasheed.wordpress.com>>.

⁹²"Jihadi Songs: Instigation or Inspiration" (20-26 January 2006) *The Probe News Magazine*.

⁹³"Deshe Islami Songeet Niye Kaj Korche Joto Songotohon" (The number of groups working in the country on Islami songs) *Our Islam* (30 July 2017) online: <www.ourislam24.com>. Some well known cultural organizations known across the six divisions are: Dhaka: Saimum, Jagoron, Uccharon, Sawgat, Swandipon, Nimantran, Probaho, Chittagong: Panjeri, Durnibar, Karnafuli, Sindabad, Mohona, Rajshahi: Udvabon, Swamonoy, Bikalpa, Khulna: Tranga, Bytikrom, Typhoon Sylhet: Dihasri, Moulovibazar, Barisal: Herarroshmi, Rangpur: Angikar, Rahbar.

diverse groups of singers are also fighting to determine what qualify and does not qualify as “Islamic songs”.⁹⁴

These jihadi songs, described as *Nasheeds*, are different from the traditional Islamic *hamd-nath* songs in two respects: i) they are performed without instruments, and ii) instead of praising Allah or the Prophet, these songs hail Osama/ Mollah Omer and call for *jihad*.

The songs do not follow any set pattern or even aesthetic trend apart from rhyming, but the core message and presentation can be easily traced: i) some songs merely call for reinforcing Islamic lifestyle; ii) there is a tendency to credit the nineteenth-century Islamist reformers; iii) discrediting Bangalee culture as unlawful innovation; iv) discrediting both democracy and secularism as doctrines of apostates, and v) high esteem for Osama and Mollah Omer and call for Jihad. The songs, in many cases, are preceded by recitation from the Quran or a commentary as to the derailed state of Bangalees.⁹⁵ There is a trend to negate the legal framework and history of nation-making in Bangladesh.

In order to understand this particular genre, I have selected the two most famous singers of Islamist songs, Ainuddin-Al-Azad and Muhib Khan.

A. Ainuddin-Al-Azad: Songs of the Mujahid

Ainuddin-Al-Azad had an education from Alia *Madrassah* and he also completed a bachelor’s degree in Bangla literature from the National University of Bangladesh. His singing career started by performing in *w’az mahfils* in his village. In 1992, he joined the student wing of Bangladesh Islami Andolon (formerly *Islami Shashontontro Andolon*) and soon rose to the higher strata of the student wing. Azad’s songs are critical of the *mazar* (shrine) culture, corrupt politicians, and *jihad* is the central theme of his songs. In 2004, he

⁹⁴Omar Faruque, “Islami Songeet: Bitorko Upekkha kore Notun Somvabona Dwar ki Khulbe” (Islami Songs: Will New Opportunities Open up Ignoring Debates) <https://fateh24.com/islami-songit/>.

⁹⁵For example, Muhib Khan’s album *Yein Mera Watan* is preceded by an elaborate introduction listing all his previous Albums, his ideology, and his devotion to the cause of salvaging the lost glory of Bangalee Muslims. online: <https://www.youtube.com/watch?v=2VzH8hCeJk>.

established a national cultural organization for children and youth, named *Kalarab*. He made wearing robes and turbans mandatory for all members. *Kalarab* has published more than forty music albums, and their performing troops travel abroad to perform for the diaspora. Azad breathed his last in 2010 in a street accident and is revered as the pioneer of establishing large-scale Islamic cultural organizations in Bangladesh.

He had published about twenty-seven audio albums in his lifetime, including one titled *Brave Mujahid Osama* and another titled *Bush's Graveyard*. His albums start with sounds of bombing, shooting, lightning, and vocal intros in which he narrates how the Bangalee nation needs to be salvaged from its disdain or how Muslims are under repression in the entire world.⁹⁶ His songs are slow-paced, and musical variety is not noticeable. Many of his songs also borrow tunes from popular songs or even folk songs.

Most of his songs are open calls to join the *jihad*, '*Ay Mujahid Ay Chute Ay*' (O Mujahid come to the call of sacrifice), '*Shahidi Moron Jodi Bhabte*' (If you thought about the grace of martyrdom, you would have sacrificed your life unhesitatingly), '*Arakan-Kashmir-Afghan*' (in all those places Mujahids are fighting atheists and Mushriks), and '*Biplob mane jibon deya boshe thaka noy*' (Revolution means sacrificing life), to name a few.

In the title track of the album "*Shikkhito Shaytan*" (Educated Evil), he criticizes the government officials as corrupt individuals; Alems for shunning the path of *Jihad*; shrine-based religionists as idolaters; political leaders for their lack of accountability; university students for lack of morality; intellectuals for working against Islam; and women asking for equal rights for 'vulgarity'.⁹⁷

⁹⁶For example, his first Album, titled *Durnibar* starts with the commentary: "Capitalist enemies are taking people to the verge of extinction. In order to salvage the defeated Bangalee nation and to rejuvenate them, Ainuddin-Al-Azad introduces: Durnibar." [translation by author]

⁹⁷The corrupt people have the vanity to show off knowledge; they camouflage their identity in disguise of their position. The shrine worshippers are frauds; they engage in addiction in disguise of prayer. The intellectuals are busy pleasing their foreign Lords; their genuine interest is in adultery and hurting religious sentiment. In sum, he states that all the educated people are taking advantage of their position and acting against the principles of Islam. [translation by author]

In his songs, the concept of '*shwadinota*' or freedom comes repeatedly, but he emphasizes that true freedom has not been achieved, as leaders continue corruption and the impoverished die in hunger. Under such circumstances, freedom is futile. It only means laying wreaths to memorials, celebrating New Year, media promoting vulgarity, women practicing nudity, and offending religion in the name of writing. And because he opposes this, he is a lawless rebel.⁹⁸ In another song titled '*Rokte Kena Bangla Amar*', he says that millions have sacrificed their lives for Bangla, but people of the land have forgone their culture by renouncing faith in Allah and celebrating foreign culture. This 'foreign' culture, unfortunately, is Bangalee's own New Year celebration.⁹⁹ Bangalees who celebrate the New Year, in his words, are '*hanumans*' which, in literal meaning, is apes, but in Hindu mythology, is also a God.

He also portrays his duel with the '*Hanumans*' in detail in the track "rebel, belligerent, fundamentalist":

I speak for truth, so I am belligerent
For I call people in the path of truth, I am a rebel
Because I speak for *Quran*, I am a fundamentalist
I write songs endorsing *jihad*, so I am extremist
Didn't they sing Azan to your ears after birth?
Then, you were not born without fundamentals
When you die, they will also perform burial rituals for you
Where will you hide then?
Shameless women get a headache when they see a *burqa*
And if I ask them to practice seclusion, it becomes *fatwabaji*
The *Hanuman* thinks I am *Taliban* for my beard and skull cap
But fears me more than lion and tiger if they see me in a turban.

⁹⁸*Swadinota Chai Ni Ami Ei Shwadinota* (I did not ask for this Freedom), album: Tai To. In another track titled "Oh my Motherland!" he questions the futility of freedom. "Oh, my motherland! You are not a connoisseur of oppressors/ I rest my head on you to find abode. Many have sacrificed their lives to free you /what return did the misfortune nation receive/... killers run abound in the name of freedom; this is not freedom only façade/ women are roaming in the streets in herds/ freedom means nudity and vulgarity/ then why was the country freed? [translation by author]

⁹⁹Millions of martyred sacrificed for my Bangla, why my friend, do you feel inclined to a foreign land/ why the nation that gave life for freedom bows to others/ why disgrace the sacrifice of the martyrs? /why eat *panta* in a *Baishakhi* morning/and dance to English Hindi songs in the same afternoon/ why forget your own songs and take hymns from others/why Muslims wear *sindoor* and *shakha*/ You have forgotten Allah and turned into evil/ in your strange attire why you prefer to look like *hanuman*. [translation by author]

This sorry state of affairs that he portrays in his songs, according to him, can only be changed through *jihad*.¹⁰⁰ *Hukumat* can come to this country only through bloodshed, “Oh! Brave rebel, take the naked sword; the *kafir* will run away as your sword roars.”¹⁰¹

B. Muhib Khan: Identity Beyond Border

Khan is a celebrated Islamist poet and singer, addressed as ‘*Jagrata Kobi*’, and a progressive Islamic thinker.¹⁰² Like Azad, he also studied from *Alia madrassah* and later in political science from the National University. His political affiliation is not clear. His father was a member of the *Nizami-Islami* party and later got elected from *BNP* as an MP. In 2016, Muhib Khan declared that he would float a National Movement: a political party for everyone. He said that despite his respect for Islamist politics, he feels the need for an inclusive political party where all citizens, regardless of religious belief, can participate.¹⁰³ He cited Erdogan and Mahathir Mohammad as his inspirations.

His signature style is a beret hat. Khan sings in a choir mode, and unlike Azad, his songs are often performed with a *daf* and on other rhythms. He has never directly answered the question whether songs with music and video accompaniment are Islamic, but he maintains that lyrics should be the priority for songs.¹⁰⁴ Khan has published fewer albums compared to Azad, but when albums were still sold as CD recordings, he had a record bestselling of 35k per album.¹⁰⁵ He is trilingual, skilled in Arabic, English, and Bangla. His songs previously had many Arabic verses, but recently he has also started to sing English translations.

¹⁰⁰“This day will change, my friend!! Raise your fist and march fast, play the flute of jihad, do not hesitate, take your arms oh new rebel!”

¹⁰¹Hukumat will come to this land through bloodshed, the nation’s future lies in this path, there is no alternative today/ hurdles will be unavoidable in this path/ *Khelafat* will come only though bloodshed/ who is willing to die to become a *gazi* in the battlefield?

¹⁰²Simply spoken, *jagrata* means awoke and *kobi* is poet. It is hard to comprehend what the phrase means; my best guess would be a poet vocal of people’s aspirations.

¹⁰³“New Political Initiative and on use of Instruments”: <https://www.youtube.com/watch?v=1cqg3HnKuE8>.

¹⁰⁴*Supra* note 94.

¹⁰⁵*Supra* note 92.

Recently, a select number of his old and new songs have been published by Holy Media. The title track of his album “*Open the Border*” has been translated as “Open, open the border from North to the South, unfasten the chain of Muslims of the world.”¹⁰⁶ Another translated song is “*Have Imaan*”, which calls all Muslims to keep faith in Allah regardless of nationality, color, and stature and to fight for the cause of Islam.¹⁰⁷ Another song, ‘Takbir’, asks all Muslims of the world to unite because the *kafirs*, *mushriks*, and atheists have all united against Islam. In this song, he says that whenever Muslims unite against oppression and protect their rights, people insist that Islam is the religion of peace. However, *Badr* and *Uhud* are part of that religion, and therefore, the prophet himself has taught *jihad*.¹⁰⁸

The intention to reach a diverse audience is clear from his compositions. His album *Dastan e Muhammad* explains Muhammad’s journey in simple Bangla and Arabic hymn with soothing *daf* sound.¹⁰⁹ He performs well-known Arabic scores such as ‘*Tala al Badru*’ and ‘*Labbayik*’ in this album. ‘*Iye Mera Watan*’ (Oh my country) is another of his albums,¹¹⁰ which relies heavily on Arabic words. In one of the album tracks, he sings that though the nationality of the people of Bangladesh is Bangalee, Muslims are not limited by borders. Allah has ordained *Quran* for them, and they need not follow man-made law. In the title track of the album ‘*Notun Ishtehar Ashche*’ (New Mandate is Coming),¹¹¹ he said that monarchy, feudalism, socialism, theocracy, democracy all have failed, and therefore, a new system is required, not saying what it would be. In another track, “Why Kill People”, aside from bi-partisan political leaders, he also criticizes militant groups for killing innocent people.

In many of his songs, Khan calls for peaceful coexistence of Hindus and Muslims, but in an interview, he said that Hindus in Bangladesh should protest against atrocities in India committed against Muslims and should be grateful that Bangladeshi Muslims are not taking

¹⁰⁶ Open the Border/ Iftahil Hoodod Amin by Muhib Khan, Holy Media <https://www.youtube.com/watch?v=kuP2aPAddYs>.

¹⁰⁷ Have Iman/ Bil Iman by Muhib Khan, Holy Media <https://www.youtube.com/watch?v=FexJObQqQqY>.

¹⁰⁸ Tolo Takbir by Muhib Khan, Holy Media <https://www.youtube.com/watch?v=bsmUtZmmhms>.

¹⁰⁹ Dastan E Muhammad, Mubib Khan new Song, Katib TV <https://www.youtube.com/watch?v=T5D4qZbl6Q4>.

¹¹⁰ Iye Mera Watan, Muhib Khan <https://www.youtube.com/watch?v=2VzH8hCeJk>.

¹¹¹ Notun Ishtehar Asche, Muhib Khan <https://www.youtube.com/watch?v=WYLPjeJ-8Ws>.

revenge on them.¹¹² This account is highly troublesome on several accounts: i) it negates the repression of Hindus in Bangladesh; and ii) asks them to proactively comment on political events of a neighboring country, an approach that considers them as Hindus first, and nationals of Bangladesh after.

In the wake of the *Shahbag* movement, Khan released an entire album tagging the activists of the movement as atheists and insisting that Bangladesh will be a land of Muslims alone. He took each symbolic representation of the *Shahbag* demonstration to picture the movement as un-Islamic.¹¹³ Indicating the candle vigil by *Shahbag* activists, the song conveyed that the country is enlightened with the light of *Imaan* (devout) and not candles. The *dhak-dhols* (music instruments) of *Shahbag* belong to temples and candles in the churches. This “exogenous” culture, as per him, is to be prevented even if by sacrificing lives. It goes on to say that idolatry has been given the name of sculpture in Bangladesh; the New Year has been made communal by Hindu rituals, and women and liberation war have been made commodities. The song also touched the Fifteenth amendment to the Constitution, saying that the meaning of Bismillah has been changed and “Allah” has been excluded by naming Him as the “Creator”. In another song, “atheist and apostate”, he identifies atheists and apostates as the common enemy of peaceful religious harmony in Bangladesh. In his songs, he says that secularism means adherence to no religion, but atheists in Bangladesh only want to remove Muhammad’s tradition from Bangladesh. In the name of religious neutrality, they promote religionlessness. They are squarely to blame for both vandalizing idols and installing statues.¹¹⁴

In a sequel of his song titled “Keno”, Khan also walks hand in hand with other protagonists discussed in this chapter in questioning all religious, political, national, and cultural traditions a common Bangladeshi would celebrate. For example, why lay flower wreaths in monuments and *mazars*? Why build statues in a Muslim country? Why should the legal system run under colonial law and not Islamic law? Why should there be a father of the

¹¹²*Supra* note 103.

¹¹³Abar Jege Ottho, Muhib Khan Abubakar Siddique <https://www.youtube.com/watch?v=suatvC2TgQw>.

¹¹⁴Nastik by Muhib Khan, Holy Media <https://www.youtube.com/watch?v=Avf3QwAkztM>.

nation? Why should the number of martyrs be exaggerated to three million? Why debate as to the nationality of Bangalee or Bangladeshi? Why does the neighboring country want to be our master and not our friend? Why, despite having a Muslim National poet [Nazrul], we chose another poet's [Rabindranath] song as the national anthem? Why should women be commoditized? Why celebrate Bangalee or English New Year? If amulet, holy water, etc. are shunned as superstition, then why not *mangal dip*, *rakhi* be banned also? Why, despite 90% of people being Muslim, the country has to be called secular? Why call for *jihad* would be regarded as terrorism? If capitalism and communism can be practiced in the country, why can religion-based politics not be?¹¹⁵

Khan also advocates for the unification of Islamist activists in the country:

We are the Olamaye Islam of free Bangladesh
 We sacrifice for Islam and our country
 We carry the *Quran* and *Hadith* in our heart
 The world is nothing when we rise
 We protect the *deen* and *imaan*
 We do not accept descent of *Taghut* and oppressors
 We are the unstoppable leaders of Muslim brotherhood
 We Prevent *bedat*, we struggle endlessly.¹¹⁶

In his statements, Khan preaches about a qualitative difference in his political aspirations compared to other Islamist political parties. In his songs, however, we see the same cliché and rhetoric about reviving the Islamist tradition, fighting the *kafir* and apostates, peaceful coexistence with other co-religionists, which treats them to be on the mercy of the majority of Muslims, and the call for establishing Allah's laws.

From the analysis of the *nasheeds* or *jihadi* songs, the symbols invoked, in general, are powerful and striking. They refer to the *Quran*, Allah, the Prophet, and Islam to create a sense of unity. They serve the dual purpose of dismissing Bangalee culture, creating a sense of injustice, and conveying the core message of reviving the Islamic lifestyle in clear terms.

¹¹⁵Keno: A Hundred Questions by Muhib Khan, Binod Bari: <https://www.youtube.com/watch?v=HhQ-exS1EdM>.

¹¹⁶Amra Swadhin Bangladesher Olamaye Islam, *supra* note 112.

Unlike traditional performing arts, they do not have to or are not intended to comply with any artistic standards. They are just a means to convey a very particular message and, as such, can be produced in bulk.

IV. Ethos against the Secular Public Sphere: Dissonance

In the previous sections, the chapter discussed two specific genres of Islamist performing arts. Notably, the themes between the *w'az mahfil* preachers and *jihadi* songwriters/singers are recurrent, indeed so much so that it feels like the same content in different forms at times. A pattern of loathing for Bangalee traditional culture, disgust for the intellectuals and popular media, and freethinking is easily discernible in the Islamist Public Sphere, so is the strong opposition to secularism, socialism, democracy, and a secular legal system. The promised accommodation of rights of religious minorities within the communicative discourse is compromised by the constant utterance of disrespect towards other religions.

Notably, despite *JIBs* oppositions to *Deobandi* or *Quami* School, Saydee is strongly vocal against identifying *quami madrassahs* as terrorist elements. At the same time, there is a strong opposition to shrine-based religious practices. It can be said about the rest of the four protagonists too. This further shows that Islamists in Bangladesh are employing the mainland or Arab Islam against the local syncretic Islam to create a cultural vacuum, on which the alternate Islamist Public Sphere thrives. What is the nature of this alternate public sphere? What are its implications for the secular public sphere?

In the excerpts from the *w'az mahfils* and *jihadi* songs, the content creators claim themselves to be fundamentalists, for their reliance on the fundamentals of Islam, the *Quran*, and *Hadith*. Therefore, it is easy to portray secularists as antagonists to political Islam, as they have no belief. Moreover, the definition of a good Muslim advanced by the Islamist public sphere is not locally rooted but determined with reference to Arabic Islam. As such, anyone who practices their culture, rituals, festivities, language or national history is regarded to have crossed the limits of Islam. Secularists in Bangladesh do not need to act

to ignite wrath from the Islamists, their existence or 'who they are' is considered to be against the tenets of Islam.

From the *w'az mahfil* and songs described above, the wide difference between the Islamist cultural agenda and the local/ traditional culture in Bangladesh is readily visible. Based on this difference, Islamists are not only engaging in a critique of the secular art forms or celebrations but also trying to change them. Culture or ritual practices are not static, and they change with time, but forcible changes only cause social disruption rather than bringing meaningful change.

Stille has argued that the 'othering' techniques of *w'az mahfils* are an exercise of humor in creating a sense of community and, despite not being entirely harmless, do not have a life beyond the *w'az mahfil*.¹¹⁷ From the excerpts discussed, the cause-and-effect relationship does not seem to be that easy. It has to be borne in mind that the dehumanization of Bangalees in Pakistan started with identifying them as lesser Muslims or denigrates. Today, Islamists are taking upon the same task by calling into question all rituals and cultural practices as un-Islamic and unlawful innovations. It has become common practice not only to ridicule the secular public sphere, artists, and performers as a group but also to handpick individual artists or content creators or producers and to initiate witch-hunts for alleged excesses of Islam.

A folk-song performer in Bangladesh was arrested in January 2020 as he commented during a performance that Islam does not prohibit songs and music. The locals of his area saw a YouTube video where he was seen making the alleged comment. Police arrested him for hurting religious sentiments under the provisions of the Digital Security Act, 2018 on allegations made by a local *cleric*.¹¹⁸ The careful crafting of a psyche against an individual or a group based on preaching rooted in religious belief that circulates through

¹¹⁷Max Stille, *supra* note 3 at 192, 200.

¹¹⁸TBS Report, "Why Shariat Bayati will not be Granted Bail, High Court asks" (12 February 2020) online: <<https://tbsnews.net>>.

“archetypes” practiced across genres cannot be set aside as humor alone. The implications of the conflict between these ideologies are real, and so are the consequences.

Conclusion

At the beginning of the chapter, I have cited literature claiming the secular public sphere to be hegemonic, hence the rise of Islamist counter-public. But the discussion shows that indeed secular public sphere has been slanted by the Islamists to build a counter-narrative of national history based on Islamist identity. Out of the five Islamist protagonists considered here, Monowar, Azhari, and Khan can be conveniently called televangelists (or teleislamists for that matter). They have all hosted programs in the mainstream broadcast media. Saydee, now convicted for war crimes, has been elected in the Parliament twice. Therefore, the public sphere and legal system of Bangladesh have indeed been conducive to the rise of the Islamist public sphere.

The concepts of ‘hegemony’ and ‘counter public’, ‘mainstream’ and ‘subversive’ none are static; they evolve and transform over time. For example, in the process of challenging the secular public sphere, *w’az mahfils* have changed from preaching to political campaigns to a form of entertainment. In its diluted form, the *mahfils* themselves have become subject of ridicule and contest along their own religious divide. This continual fragmentation of the public sphere, without rational engagement, poses a significant threat to national unity. This fragmentation marginalizes and relegates the secular public sphere in Bangladesh into a subversive site, as Islamists and the state go hand in hand.

CHAPTER V

Islamο-secular Influence on the Legal System: Law on the Brink

“The bloodshed of the war still haunts my memory with its wielding axe;
The evil had danced in the name of religion, while my mother’s breasts were groped [...]
The constitution once written with my tears is now smeared with religion
Poetry and music have been silenced [...]
Religion is smashing Lalon’s *ektara* (single string instrument)
Oh, Constitution! You decide now
Why religion is supreme and the people minnow!”

This 2008 song titled “Constitution” resorts to the Constitution to adjudge the legality of the ‘state religion’ provision in the backdrop of the removal of *baul* sculptures following a threat by the Islamists.¹ These verses quite poignantly sum up the principle of constitutionalism: the constitution as the ultimate arbiter of the principles to guide a nation. Chapter I raised the question, “Is Islamο-secularism Secular?” without any in-depth analysis of the relevant legal provisions. The chapters thereafter featured the contest over performing arts between the Islamists and Secularists in Bangladesh in order to portray the changing nature of the public sphere under Islamο-secularism.

This chapter returns to the Constitution and the legal system to see not only how the law regulates such contests generated by Islamο-secularism but also if it induces or creates the bedrock for such contests. This chapter will argue that with the rise of the state religion and then Islamο-secularism, the focus of the judiciary, executive, and legislature has boiled down to the protection and preservation of ‘religious sentiment’ of the “majority”, rather than preserving and securing equality for *all* citizens.

Part I focuses on two arguments: **A)** the parliamentary and judicial retention of ‘state religion’ is selective, contrary to the general approach to constitutional amendments; and **B)** this retention meant not only a retreat from the commitment to upholding the secular ethos of the original constitution but also a qualitative change in judicial logic and argument, i.e., highlighting religious tenets. Part II discusses the broad and all swiping penal provisions regulating freedom of speech and expression (including artistic

¹Mahmuduzzaman Babu, “Constitution” CD: *Dukkho Koro Na, Bacho* (Mrittika, Dhaka: Sangeeta, 2012) [translation by author].

expressions), often operating in excess of constitutional limits and creating a chilling effect. Within the legal scheme, regulating “defamation of religion” has been given a definite win over “hate speech regulation”. Part III argues that this ‘religious sentiment’ garnered legal approach has led to discriminatory enforcement and an overall failure of enforcement in securing free speech, dissent, and diversity.

I. Law as Bedrock of Contestation between the Secularists and Islamists

The HRC General Comment No. 22 notes that the existence of a state religion or the fact that the followers of the religion comprise the majority should not impair the rights of others or entail discrimination for religious minorities or non-believers.² The committee observed the same for any set of beliefs treated as an official ideology in constitutions, statutes, proclamations of ruling parties, etc.³ The Special Rapporteurs on Freedom of Religion and Belief concluded that the idea of a state religion is not by itself contradictory to human rights, but the state should not exploit such provision to discriminate against minorities.⁴ Experience worldwide shows that the adoption of state religion and neutrality in terms of state affairs do not always go hand in hand:

. . . aggravated discrimination tends to intensify or become more likely to occur when the State itself officially adopts the religion of the majority or of the ethnically dominant minority, or subscribes to a particular ideology. The State religion or the religion of the State is not, of course, a characteristic of the religion, but of the State. However, if in its Constitution the State professes its adherence to a particular faith, some will see the mere profession of that faith - whatever the good intentions of the State - as a form of discrimination against the ethnic or religious minority or minorities.⁵

Bangladesh’s State Party Report to the *ICCPR* refers to both the principles of secularism

²General Comment No. 22 (48) (art.18), CCPR/C21/Rev. 1/ Add. 4 (27 September 1993) p 9.

³*Ibid* at p 10.

⁴*Report of the Special Rapporteur on the implementation of the Declaration on the elimination of all forms of intolerance and of discrimination based on religion belief: visit to the Islamic Republic of Iran*, E/CN.4/1996/95/Add.2; para 81, 88, *Report of the Special Rapporteur on the implementation of the Declaration on the elimination of all forms of intolerance and of discrimination based on religion belief: visit to Pakistan*, E/CN.4/1996/95/Add.1; para 132, *Interim report of the Special Rapporteur on religious intolerance: visit to Greece*, A/51/542/Add.1 and para 134, *Interim report of the Special Rapporteur on religious intolerance: visit to Sudan*, A/51/542/Add.2.

⁵Racial discrimination and religious discrimination identification and measures - Study prepared by the Special Rapporteur on religious intolerance, A/CONF.189/PC.1/7 (13 April 2000), para 119.

(art. 12) and state religion (art. 2A) of the Constitution without explaining the contradiction or congruence between the two articles.⁶ The report also vaguely refers to the government policies of promoting non-communalism, peaceful coexistence of religions, and a 'zero tolerance' approach to violence and non-tolerance against religious minorities.⁷ Bangladesh's comment on the Report of Special Rapporteur on Religious Freedom portrays the state religion provision as a mere manifestation of respect to the majority Muslim People. It suggests that the state religion provision has no interpretive value in comparison to the fundamental principle of secularism.⁸ However, the longstanding legislative and judicial practice in Bangladesh shows that the 'state religion' provision has created a definite tilt toward the majority Muslim identity.

A. Reluctance in removing "State Religion" from the Constitutional Framework

The Constitution of Bangladesh vests the Parliament with the plenary law-making power, as well as the power to amend the Constitution.⁹ The Constitution being the supreme law of the land, the Supreme Court (SC) has immense power to annul any law that contradicts the Constitution.¹⁰ In the landmark case of *Chowdhury v Bangladesh*, the SC upheld the doctrine of 'Basic Structure'.¹¹ The doctrine implies that the power to amend the Constitution is a limited power derived from the Constitution, and as such, amendments cannot offend the basic features of the Constitution.¹² The case arose from the *Eighth Amendment* during the martial law regime, which provided for holding six benches of the High Court Division (HCD) outside the permanent seat in Dhaka.¹³ The SC invalidated the amendment holding the oneness of the SC as one of the basic features of the Constitution. After the restoration

⁶Consideration of reports submitted by States parties under Article 40 of the Covenant Initial reports of states parties due in 2001, Bangladesh, CCPR/C/BGD/1 (19 June 2015), para 196-97.

⁷*Ibid.*

⁸"While the provision declaring Islam as the 'state religion' is merely a manifestation of respect to the majority people of the country, the same provision also recognizes equal status and equal right in respect of practicing Hindu, Buddhist, Christian or other religions. Beyond all these remains the provision of 'non-discrimination on the ground of religion' which is guaranteed as a fundamental right under Article 28 of the Constitution." *Report of the Special Rapporteur on Freedom of Religion or belief, on his mission to Bangladesh: comments by the State*, A/HRC/31/18/Add. 4 (19 February 2016) at 2.

⁹Art. 65.

¹⁰Art. 7.

¹¹41 (1989) DLR (AD) 165 [*Chowdhury*].

¹²*Ibid.*, 213 at para 161.

¹³By way of amending art. 100, *The Constitution (Eighth Amendment) Act*, 1988 (Act No. XXX 1988).

of democracy, this decision opened a plethora of challenges to the amendments validating martial law regulations as *ultra vires* to the Constitution.

The SC invalidated the *Fifth Amendment* validating the first martial law regime (1975-1979) for lack of legitimate authority and for violating the basic structure of the Constitution.¹⁴ The Appellate Division (AD) upheld the decision with condonation for two provisions: Supreme Judicial Council and Bangladeshi identity. The Supreme Judicial Council took away the parliamentary power to impeach judges from office and vested the power with a council composed of the Chief Justice and other judges.¹⁵ The SC condoned this considering it to be a better formulation over the original provision. Similarly, the ‘Bangladeshi’ identity replacing Bangalee identity was retained as a matter of convenience to aver the cost of citizenship documents change.¹⁶ The *Seventh Amendment* validating the second martial law regime (1980-1989) was declared unconstitutional in its entirety.¹⁷ The SC also invalidated the *Thirteenth Amendment* providing for an intervening caretaker government for the purpose of ensuring free and fair elections.¹⁸ The amendment was held to be prospectively void for transgressing the basic features of independence of the judiciary and democracy by leaving power in the hands of an unelected body. The *Sixteenth Amendment*, which inserted the original provision (1972) of removal of judges replacing the Supreme Judicial Council, was also declared unconstitutional.¹⁹

Amendment	Amended Article(s)	Present Status
<i>Eighth Amendment</i>	<u>Art. 100</u> : Holding six benches of the HCD outside the permanent seat	Annulled in <i>Chowdhury</i>
	<u>Art. 2A</u> : Islam as ‘state religion’	Retained and modified through the Fifteenth Amendment

¹⁴*The Constitution (Fifth Amendment) Act*, 1979 (Act No. 1 of 1979) was held to be unconstitutional in 2006 (BLT) (HCD) 1 affirmed by *Hossain v Italian Marble Works*, Civil Petition for Leave to Appeal No. 1044 and 1045 of 2009 [*Italian Marble Works*].

¹⁵Art. 96 as amended by the *Fifth Amendment*.

¹⁶Art. 6 as amended by the *Fifth Amendment*.

¹⁷*Ahmed v Bangladesh*, Civil Appeal No. 48 of 2011 declared the *Constitution (Seventh Amendment) Act* (Act No. XXX of 1988) to be unconstitutional [*Ahmed*].

¹⁸The *Constitution (Thirteenth Amendment) Act*, Act No. (Act No. I of 1996) was declared unconstitutional in *Mannan v State*, Civil Petition for Leave to Appeal No. 596 of 2005 [*Mannan*].

¹⁹*Bangladesh v Asaduzzaman*, Civil Appeal No. 6 of 2017 declared the *Constitution (Sixteenth Amendment) Act*, Act No. XIII of 2014. [*Asaduzzaman*]

<i>Fifth Amendment</i>	<i>Bismillah</i> as a starting provision	Annulled in <i>Italian Marble Works</i> , revived and modified through the Fifteenth Amendment
	<u>Preamble and art. 8 (1)</u> : Exclusion of secularism and modification of socialism	Revived in <i>Italian Marble Works</i> , retained as original through the Fifteenth Amendment
	<u>Preamble and art. 8</u> : Inclusion of 'Absolute Trust and Faith in Almighty Allah'	Annulled in <i>Italian Marble Works</i>
	<u>Art. 12</u> : Exclusion of secularism	Revived in <i>Italian Marble Works</i>
	<u>Art. 6 and 9</u> : Exclusion of Bangalee identity and Bangalee nationalism respectively	Bangladeshi identity was condoned in <i>Italian Marble Works</i> (retained with modification by the Fifteenth Amendment), but Bangalee nationalism revived.
	<u>Proviso to Art. 38</u> : Exclusion of bar on religion-based politics	Revived in <i>Italian Marble Works</i> , but modified through the Fifteenth Amendment allowing religion-based politics
	<u>Art. 96</u> : Modified removal of judges (by Supreme Judicial Council instead of President as in the Fourth Amendment)	Condoned in <i>Italian Marble Works</i> , retained in Fifteenth Amendment
<i>Thirteenth Amendment</i>	The provision for an interim caretaker government with a retired Chief Justice as the Chief Advisor to hold free and fair election	Declared unconstitutional in <i>Mannan</i> , but condoned for two national elections. The Fifteenth Amendment deleted the provision.
<i>Fifteenth Amendment</i>	Islam as state religion with 'equal status' accorded to other religions	Challenge to the provision denied by the HC
<i>Sixteenth Amendment</i>	<u>Art. 96</u> : Inserted original (1972) provision of removal of judges by Parliamentary resolutions	Annulled by <i>Asaduzzaman</i>

Table: Retention of State Religion despite Constitutional Facelift

The constitutional amendments in Bangladesh have been subjected to judicial scrutiny. As against this 'vigilant' approach of upholding the spirit of the Constitution, the SC seemed unmoved with the 'state religion' provision as inserted by the *Eighth Amendment* during the martial law regime.²⁰ At the time of the *Chowdhury* case, three other petitions challenging the state religion provision were left unheard.²¹ The petitions were only

²⁰Art. 2A, *supra* note 13. "The state religion of the Republic is Islam, but other religions may be practiced in peace and harmony in the Republic".

²¹One filed by the NGO, *Naripaksha* (W. P. No. 1330 of 1988), another by the Resistance Committee Against Autocracy and Communalism (RCAAC) and a third one by a lawyer *Shakti Das Goswami* (W. P. No. 1177 of 1988).

resumed for hearing together after two decades, first in 2011 and then again in 2016, in light of the *Fifteenth Amendment*.²²

In light of the *SC* decisions invalidating the *Fifth Amendment* and the *Seventh Amendment*, the *AL* took up a task of a constitutional facelift. The Parliament demonstrated keenness in returning to the original Constitution, except for the matter of secularism. The Parliament by the *Sixteenth Amendment* went back to the original provision of impeachment of the judges despite the *AD*'s condonation of the Supreme Judicial Council.²³ The *Fifteenth Amendment* even repealed the caretaker provision of the *Thirteenth Amendment*, which was allowed to stay by the judiciary for two other consecutive elections. The Bangladeshi identity, which the *AD* condoned on the grounds of convenience and pragmatism, was somewhat balanced by putting Bangladeshi identity as citizenship and Bangalee identity as a nation.²⁴ There was an attempt to balance the state religion provision by according other religions the equal 'status'²⁵ and by restoring secularism.²⁶ Nevertheless, religion-based politics was allowed under the *Fifteenth Amendment*, though prohibited under the original Constitution.

This shows rigidity on part of the Parliament to do away with martial law remnants in relation to religious identity. The Parliament not only retained the state religion fallout of the *Eighth Amendment* but also revived the annulled provision of *Bismillah* from the *Fifth Amendment*.²⁷ This is a departure from the original Constitution in terms of religious identity while denying revision of the original notion of Bangaleeness as the only national identity despite demands from the indigenous communities. This failure to go back to the original scheme of equality in terms of religious identity and not moving forward from the original scheme of racial or ethnic inequality evidences the exclusionary politics of identity

²²Art. 2A, Act No. XIV of 2011. "The State Religion of the Republic is Islam, but the State shall ensure equal status and equal right in practice of the Hindu, Buddhist, Christian and other religions."

²³*Supra* note 19.

²⁴Amended art. 6 (2), "The people of Bangladesh shall be known as Bangalees as a nation and the citizens of Bangladesh shall be known as Bangladeshis."

²⁵Amended art. 2A, "The state religion of the Republic is Islam, but the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions."

²⁶Restoring the original art. 12.

²⁷Opening verse of the Constitution.

building and conflict in Bangladesh. Furthermore, the *Fifteenth Amendment* took this crisis one step ahead by freezing more than half of the Constitution as basic and non-amendable features of the Constitution, including the questions of identity.²⁸ In terms of identity, if left un-impugned, this will (ideally) mean that no later Parliament can repeal the state religion provision or recognize any ethnic identity other than Bangalees.

All these phases of political changes ranging from martial law regime, return to democracy, and the incorporation of basic structure in the Constitution had set the judiciary in different footings over the time to decide the constitutionality of the state religion. The judicial response from reluctance to activism to square one notion of reluctance is what marks Bangladesh's journey with Islam as the state religion.

i. Eighth Amendment Judiciary Decentralization Case: A Futile Hope

The three writ petitions challenging the 'state religion' provision of the *Eighth Amendment* were not heard close to the time of their filing, but the *Hossain Case* raised both hopes and despairs for the negation of the state religion provision. Hope, as the judiciary endorsed the basic structure doctrine, and it was assumed that the state religion provision would be annulled as well. There was despair because while basing their interpretation of the basic structure on the Preamble and art. 8, none of the judges mentioned the martial law amendments made to the provisions (exclusion of secularism, Bangalee nationalism, and the inclusion of Absolute trust and faith in Almighty Allah) as offending the basic structure. In *contra*, B. H. Chowdhury J. and M. H. Rahman J. impliedly considered the amended provisions as the basic structures of the Constitution.²⁹

In addressing the question of non-reversal of past constitutional amendments, Shahabuddin Ahmed J. observed that the past amendments (*Fourth, Fifth, and Seventh*) became part of the Constitution with acquiescence as no one challenged them.³⁰ The lone dissenting Judge, A. T. M. Afzal J., quite rightly noted the complexities of naming basic

²⁸Art. 7B provides "basic provisions of the Constitution are not amendable".

²⁹*Chowdhury, supra* note 11, para 292-93 at 230-31 and para 431 at 265.

³⁰*Ibid*, para 369-70 at 251.

structures of an unstable constitution.³¹ The majority judges based their notion of inviolability of basic structures on a provision (amended by the *Fifth Amendment*) requiring a referendum for amending certain provisions of the Constitution (including the provision of Absolute Trust and Faith in Almighty Allah).³² The judgment reflected the judiciary's self-interest in deciding the question of its decentralization of the judiciary leaving aside the other part of the Amendment (state religion) unquestioned and expressing sympathy for unauthorized past amendments.

ii. Fifth Amendment Case: A Promise Revived

The vires of the opening verse of the Constitution (Bismillah),³³ exclusion of secularism,³⁴ and the inclusion of Absolute Trust and Faith in Almighty Allah,³⁵ friendly relations with Islamic State,³⁶ and the exclusion of bar on religion-based politics³⁷ under the *Fifth Amendment* were called in question in the *Italian Marble Works* case.³⁸ Comparing the original and amended preambles, the Court held that "the original Preamble clearly shows that one of the four fundamental bases of our nation-hood and inspiration of liberation was "secularism" but the amended Preamble, especially the second paragraph, shows that 'secularism' was omitted from the Preamble thus changing the basic character of the Constitution."³⁹ The Court also noted that the replacements made in the Preamble and art. 8 (1) changed the secular character of the Republic into a theocratic State.⁴⁰ The same observation was made regarding the amendments promoting friendly relations only with Muslim countries based on Islamic solidarity [art. 25(2)] and omitting the prohibition on religion-based politics (art. 38).⁴¹ These changes were regarded as alteration of "the most basic and fundamental feature of the Constitution" so as to deface the Constitution

³¹*Ibid*, para 589 at 297.

³²*Ibid*, para 184 at 216, para 431 at 265, para 385 at 255 and para 464 at 270.

³³Bismillah-ar-Rahman-ar-Rahim.

³⁴Preamble, arts. 8 and 12.

³⁵Preamble and art. 8.

³⁶Art. 25.

³⁷Art. 38.

³⁸*Supra* note 14.

³⁹BLT (HCD) 2006 1 at 143.

⁴⁰*Ibid* at 144.

⁴¹*Ibid* at 150-51.

altogether.⁴² The Court also explained the ambit of secularism as contained in the original Constitution as a unique basic feature:

This provision of secularism explained and expounded in Article 12, is one of the *most important and unique basic features of the Constitution*. Secularism means both religious tolerance as well as religious freedom. It envisages equal treatment to all irrespective of caste, creed or religion but the State must not show any form of *tilt or leaning towards any particular religion either directly or even remotely*. It requires maintenance of *strict neutrality* on part of the State in the matters of different religions professed by various communities in the State. The State must not be seen to be *favoring any particular religion*, rather ensure protection to the followers of all faiths without any discrimination including even to atheists. This is what it means by the principle of secularism.⁴³ [emphasis added]

The *Italian Marble Works* by reviving secularism in the preamble, art. 8(1), and art. 12 and by annulling *Bismillah* and Absolute trust and faith in Allah had created an immense possibility for determination of 'state religion' provision under art. 2A void.

iii. Eighth Amendment State Religion Case: Islamist Victory over a Battle not fought

The Eighth Amendment (1988) was challenged immediately after its adoption by the members of the *RCAAC* but remained unheard of for more than two decades. The petitioners filed a supplementary petition following the Special Committee's recommendation to retain state religion. The *HCD* issued a rule nisi asking the government why the state religion provision would not be declared unconstitutional.⁴⁴ The *HCD* suspended the hearings on 16 June 2011 after three amicus briefs which though maintaining that a secular state could not have a state religion submitted that the Court should not intervene as the Parliament was in session.⁴⁵ The Court, therefore, allowed a margin of appreciation to the Parliament.

⁴²*Ibid* at 130.

⁴³*Ibid* at 149.

⁴⁴Staff Correspondent, "Why State Religion Not to be Illegal", *The Daily Star* (9 June 2011) online: The Daily Star <www.dailystar.net>.

⁴⁵"The Religion Issue should be Decided Practically" *The Daily Inqilab* (date not archived).

As the *Fifteenth Amendment* kept both state religion and secularism, the petitioners revised their challenge, now impugning art. 2A of the *Fifteenth Amendment*. The *HCD* in December 2011 issued a supplementary rule asking the government to explain why art. 2A of the *Fifteenth Amendment* should not be declared unconstitutional.⁴⁶ Finally, on March 28, 2016, the *HCD* rejected the writ for want of *locus standi*, stating that the committee never registered with the government and as such it was not a legal person.⁴⁷

This case was different from the 1988 challenge. Now the state religion (art. 2A) stood in direct contradiction to the tenet of secularism as enshrined in the Preamble, arts. 8(1) and 12. *Secondly*, the question also involved providing eternity to the state religion provision under art. 7B. Surprisingly, the Court dismissed the plea without hearing in stark contrast with its willingness to hear the issue in 2010. Apparently, the Court was dealing with a challenging question in absence of any precedent of rejecting a state religion provision from a comparative constitutional law perspective.⁴⁸ Ironically, just the year before, the Pakistan Supreme Court was inquiring on the justness of the basic structure doctrine, probing in particular whether Pakistan could be declared a secular state in the future despite its original dispensation as an Islamic State.⁴⁹ The judiciary of Bangladesh did not even allow such deliberation by this summary rejection. Both national and international media showcased pictures of Islamists showing ‘V’ signs on the alleged ‘upholding of state religion’ by the Supreme Court of Bangladesh. In effect, this case meant neither rejection nor upholding of Islamo-secularism. The Court simply denied hearing the issue and also withdrew its order to hear the thirteen amicus curiae listed in 2010. The counsel for the petitioners Subrata Chowdhury was awestruck, “[w]ithout a hearing, without giving any

⁴⁶Ashif Islam Shaon, “HC rejects writ on state religion” *Dhaka Tribune* (29 March 2016) online: The Dhaka Tribune <<http://www.dhakatribune.com>>.

⁴⁷*Ibid.* The members maintained that they have signed both in their individual capacity and as members of the *RCAAC*, which the Court denied.

⁴⁸Ridwanul Hoque, “Constitutional Challenge to the State Religion Status of Islam in Bangladesh: Back to Square One?” *I-Connect* (27 May 2016) online: <<http://www.iconnectblog.com/2016/05/islam-in-bangladesh/>>.

⁴⁹Hasnaat Malik, “Supreme Court asks if Parliament can declare Pakistan a Secular State”, *The Express Tribune* (5 May 2015) online: The Express Tribune <<https://tribune.com.pk/>>.

chance [. . .] I've never seen anything like this. At least a proper hearing should have taken place.”⁵⁰

iv. Fifteenth Amendment State Religion Case: Another Summary Rejection

Prior to the *Eighth Amendment* decision, a fresh challenge to the art. 2A of the *Fifteenth Amendment* was also rejected summarily.⁵¹ The petitioner argued that art. 2A directly contradicted the provision of secularism enshrined in art. 12 and the Preamble. Dr. Kamal Hossain, one of the framers of the Constitution, opined in 2010 that holding the *Fifth Amendment* unconstitutional has made the state religion provision of the *Eighth Amendment* contradictory to the revived principle of secularism.⁵² But the *HCD*, however, was unable to decipher why despite according “equal right and status” to all other religions the state religion provision stood in contradiction to secularism. Notably, despite this rejection, the vires remain open to challenge, as the decision of one *HCD* Bench is not binding for other benches.⁵³ As such, the constitutionality of Islamo-secularism in Bangladesh remains undecided yet.

In another writ petition, impugning the registration of *Jamaat-e-Islam Bangladesh (JIB)* filed in 2009 but decided in 2013, a lone judge from a three-member bench made an obiter on the question of the state religion.⁵⁴ The *JIB* argued that as the *Fifteenth Amendment* retained state religion, the *JIB*'s Islamic Constitution should be judged accordingly. The Judge though ruled this argument as irrelevant, chose to deal with the question of ‘state religion’.⁵⁵ He evaluated the state religion provision in light of the principle of secularism as enshrined in the Preamble, arts. 8 and 12. Citing the decision in *Chowdhury* and *Italian Marble Works*, he concluded that the state religion clearly goes against the principle of

⁵⁰Maher Sattar and Ellen Barry, “In 2 Minutes Bangladesh Rejects 28 Year Old Challenge to Islam’s Role”, *The New York Times* (29 March 2016) online: <<http://www.nytimes.com>>.

⁵¹Staff Correspondent, “Bangladesh Court Rejects Petition Challenging Islam as State Religion”, *The Daily Star* (September 8, 2015) online: <www.thedailystar.net>.

⁵²Kamal Hossain, “State and Religion-Bangladesh and Pakistan: Response to the Challenge of Change” (Paper delivered at the Seventeenth International Law and Religion Symposium Session on “Law in Contemporary Legal Systems”, (4 October 2010).

⁵³Art. 110.

⁵⁴*Chadpuri v BJI*, W. P. No. 630 of 2009 [*Chadpuri*].

⁵⁵*Ibid* at 57.

secularism.⁵⁶ Then he moved on to consider the state religion provision in light of Islam and concluded that the state religion provision has subordinated the universal religion of Islam to the state authority. He noted that religion is for the temporal and spiritual well-being of individuals, but the state is confined to the temporal well-being of its citizens, it has nothing to do with the afterlife.⁵⁷ The duty of the state is to ensure the rights and freedoms of all citizens and to provide for the security of the citizens in performing their religious rights.⁵⁸ The Judge then poignantly asked, “Since the state cannot perform religious duties, does it really need a religion?”⁵⁹ The question remains, does the constitutional Court need religion (layered argument of *Quranic* verses) beyond its constitutional scheme to debunk Islam as the state religion?

The SC made a break with its reluctance to entertain a challenge to the state religion provision under the Eighth Amendment by reviewing the *Fifth Amendment* to the Constitution. However, it returned to its previous position, by summary rejections one after another on the question of Islamo-secularism. This denial also contradicts its willingness to decide complex cases on separation of power, such as the caretaker government provision and the Supreme Judicial Council. It can be duly questioned whether the Court is declining its duty to uphold and preserve the Constitution by denying the litigants the opportunity of a full hearing on an issue of public importance, Islamo-secularism. The Parliament’s sincerity in freezing the Constitution in its original form by including an eternity clause (art. 7B) is remarkably different from its approach in rewriting the state religion as Islamo-secularism. In *Asaduzzaman*, the AD resorted to the eternity clause of art. 7B to assail the validity of the Sixteenth Amendment. The AD reasoned that the Supreme Judicial Council under the *Fifteenth Amendment* constituted a basic feature of the Constitution protected by art. 7B, and as such, it was not amenable to subsequent Constitutional Amendment.⁶⁰ The eternity clause, therefore, remains an additional challenge in adjudging the validity of future amendments to art. 2A (if any!).

⁵⁶*Ibid* at 60.

⁵⁷*Ibid* at 62.

⁵⁸*Ibid*.

⁵⁹*Ibid* (translated from Bangla by the author).

⁶⁰*Supra* note 19, at 497.

B. Judicial Decisions: Religious Overtones and Undertones

As noted earlier, the *GoB* maintains that the state religion Islam is merely ornamental and it does not impact the secular character of the country, especially in view of the equal status and rights accorded to the followers of other religions.⁶¹ By discussing cases touching on law and religion interrelation, and the various provisions relating to state religion in the Constitution, it becomes clear that the judiciary is not immune from the effect of the state religion/ Islamo-secularism.

i. Faith Provision as the basis of *locus standi*

In the famous case of *Farooque v Bangladesh*, the AD was interpreting the term “aggrieved person” in art. 102 of the Constitution for determining the *locus standi* of the petitioner-appellant impugning a flood action plan.⁶² The petitioner based their argument on art. 21(1) of the Constitution, public duties of citizens.⁶³ For the petitioner, the ‘public duty’ was to abide by “the principles of absolute trust and faith in the Almighty Allah” as a fundamental principle of state policy. The petitioner argued that the principle necessarily meant the duty to protect Allah’s creation and environment, and the petitioner was aggrieved because Allah’s creations and environment were put in “mortal danger of extinction and degradation.”⁶⁴ The author judge noted that art. 102 cannot be interpreted as divorced from other provisions of the Constitution and in so doing the emergence of the Constitution, art. 7 (sovereignty of the people), the Preamble, art. 8 (fundamental principles of state policy), and the fundamental rights have to be considered.⁶⁵ Coming to the Preamble and art. 8, the Judge noted that:

It is in our Constitution a real and positive declaration of pledges, adopted, enacted and given to themselves by the people not by way of a presentation from skillful draftsmen, but as reflecting the ethos of their historic war of independence. *Among*

⁶¹Art. 2A, *supra* note 22.

⁶²Civil Appeal No. 24 of 1995. Art. 102(2) empowers the HCD to issue writ of *certiorari*, prohibition, *habeas corpus*, *mandamus* and *quo-warranto* in application of “any person aggrieved” when the HCD is satisfied of the absence of any equally efficacious remedy.

⁶³“It is the duty of every citizen to observe the Constitution and the laws, to maintain discipline, to perform public duties and to protect public property.”

⁶⁴*Ibid*, para 23.

⁶⁵*Ibid*.

*other pledges the high ideals of absolute trust and faith in the Almighty Allah, a pledge to secure for all citizens a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social and the affirmation of the sacred duty to safeguard, protect and defend the Constitution and to maintain its supremacy as the embodiment of the will of the people of Bangladesh are salutary in indicating the course or path that the people wish to tread in the days to come.*⁶⁶

The binding part of the judgment setting up criteria for establishing *locus standi* did not touch the question of the absolute trust and faith in Almighty Allah. Nevertheless, it is pertinent to ask how far the Court was justified in entertaining this argument while anyone else than a Muslim would not have been able to invoke the provision. Therefore, even if the state religion provision is considered to have interpretive value alone, it still has an impact in shaping the course of law.

ii. The Fatwa Cases: Taking the Middle Course

In a purely Islamic sense, *fatwa* means a non-binding opinion relating to a point of ambiguity rendered by a *mufti* (a person trained in Islamic jurisprudence) in response to a question from the *qadi* (judge) or *mustafi* (any individual).⁶⁷ The *HCD* first stepped into the debate in 2001, with a *suo motu* intervention in a *fatwa* relating to *hilla* (intervening marriage before returning to the husband in case of oral divorce).⁶⁸ The Court decided that in Bangladesh, *only* courts are authorized to decide Muslim and other laws, and therefore, *all* *fatwas* are unauthorized and illegal. In response, the Islamists declared the two judges delivering the judgment to be apostates and violent demonstrations caused the death of seven persons.⁶⁹ The decision was challenged by two religious leaders on the ground that it was made without authority and impinged the right to freedom of expression.⁷⁰ The *AD* took ten long years before delivering the judgment, while *fatwa* inflicted violence continued to take lives.

⁶⁶*Ibid*, para 40 [Italics supplied].

⁶⁷Suad Joseph et al, eds, *Encyclopedia of Women and Islamic Cultures: Family Law and Politics*, Vol. I (Netherlands: Brill Academic Publishers, 2005) *sub verbo* “fatwa”.

⁶⁸*Editor v Magistrate*, 2010 W. P. No. 5897.

⁶⁹Kajalie Shehreen Islam, “Crime in the Name of Belief”, *The Daily Star* (26 February 2010) online: The Daily Star <thedailystar.net>.

⁷⁰*Azad v Bangladesh*, Civil Appeal No. 594 of 2001 and *Tayeeb v Bangladesh*, Civil Appeal No. 593 of 2001.

Five human rights organizations brought another petition before the *HCD* seeking directions for local authorities to prevent invocation of such *fatwa* inflicted punishments.⁷¹ The Court decided that “[i]mposition and execution of extra-judicial penalties including those in the name of execution of *Fatwa* is bereft of any legal pedigree and has no sanction in laws of the land.” The Court noted that the punishments in question not only violated the right to equal protection of the law, the right to life and liberty, and equality before the law but were also discriminatory. This decision made an inroad in the unfettered execution of *fatwa* by avoiding the complexities of religious freedom.

In the pending *fatwa* appeal, the *AD* requested nine senior advocates to appear as *amici curiae*, and five *Olayma Kerams* (Islamic scholars) were invited to appear before the Court through the Director General of Islamic Foundation on the points: (i) what is *fatwa*? ii) the status of the *fatwa*, iii) the application of *fatwa* in Bangladesh and its legality, and (iv) the position of *fatwa vis-à-vis* the law of the land.

The *amici curiae* agreed that *fatwas* could not be executed without the authority of the Court and are also against the law of the land. The only area of difference among them was whether the pronouncement of *fatwa* as mere opinion should be allowed or not? A majority of them opined that putting a blanket prohibition on *fatwa* violates the right to freedom of expression.⁷² Farooqi made a definitive assertion that *fatwa*, even if an opinion should not be allowed. Islam noted that in the absence of qualified *muftis*, the question of the issuance of *fatwa* does not arise. He observed that *fatwa* infringes the personal as well as fundamental rights of citizens and even if it is a mere opinion it has a damaging impact and is destructive of one’s family life in the context of rural areas.

The *muftis* present before the Court agreed that *fatwa* is a mere opinion, which cannot be executed but unanimously opined that a prohibition on *fatwa* would infringe the right to

⁷¹*BLAST v Bangladesh*, 2009 W. P. No. 5863, 2010 W.P. No. 754/4275.

⁷²Md. Abdur Razzaq opined that the *HCD* travelled beyond the terms of the rule by allowing a blanket prohibition. Muhammad Nazrul Islam, A.B.M. Nurul Islam and T. H. Khan also submitted along the same line.

freedom of expression.⁷³ One of the *muftis* suggested the establishment of a *fatwa* Board to determine the qualification of the *muftis*,⁷⁴ while another *mufti* opposed the suggestion.⁷⁵

The *AD*, in its judgment, noted that under the laws of Bangladesh there is no institution or authority determining the qualification of a *mufti* or any council for issuing a *fatwa* in its legal or theological sense.⁷⁶ From this, the logical inference would be to prohibit *fatwa* in the absence of persons qualified to pronounce *fatwa*. However, the Court did not prohibit *fatwa* citing the violation of freedom of expression.⁷⁷ Instead, the Court provided some restrictions on issuance of the *fatwa* and said any *fatwa* issued in violation of such restriction would amount to contempt of Court:⁷⁸

(ii) Fatwa on *religious matters only* may be given by the *properly educated persons* which may be accepted only voluntarily but any coercion or undue influence in any form is forbidden.

(iii) But no person can pronounce fatwa which violates or affects the right or reputation or dignity of any person which is covered by the law of the land.

(iv) No punishment, including physical violence and/or mental torture in any form, can be imposed or inflicted on anybody in pursuance of fatwa.

The Court did not clearly define or mention any ambit for ‘religious matters’. The mention of ‘properly educated persons’ is also questionable as the Court itself noted that the absence of any authority determining the competence of a person as *mufti*. The Court excessively relied on religious provisions not only to determine the scope of *fatwa* vis-à-vis the law of the land but also discussed freedom of expression in light of Islamic tradition.

⁷³*Mufti* Md. Tuafutullah said that the prohibition of *fatwa* would amount to a prohibition on Islam. *Fatwa* is applicable in all respects, while the law is limited. *Mufti* Md. Ruhul Amin opined that for a Muslim, *fatwa* is necessary from his cradle to the grave, and as such, *fatwa* cannot be declared unconstitutional. Moulana Kafiluddin Sarker said **the** prohibition of *fatwa* would amount to a challenge to the *Quran*.

⁷⁴*Mufti* Abdullah-al-Maruf.

⁷⁵*Mufti* Mizanur Rahman Sayeed.

⁷⁶*Supra* note 70. “In Bangladesh, we do not have any State regulated religious institution or authority which is the case in certain Islamic States to determine the eligibility of a *Mufti* or any such council for issuing *Fatwas* in either its legal or theological aspects.”

⁷⁷*Ibid* at 199-200. “We do not like to create any special class to give *Fatwa* which may be given by any person versed in *Shariat*. It has been stated before that educational curriculum of Bangladesh does not recognize *Mufti*, though the word ‘*Mufti*’ is familiar in the sub- continent from time immemorial. In addition, by creating a class such as *Mufti*, it would be difficult to restrict issuance of *Fatwa* by the *Muftis* only in the rural area.”

⁷⁸*Ibid* at 85, 137-38 and 200.

The legal explanation of freedom of expression, its interrelationship with religious freedom, and also providing opinions by unauthorized persons were not discussed employing a legal framework, so to say.

iii. Forced Veiling Case: A Window to the Secular Constitution

In contrast to the previous decisions, a headscarf debate in *Dolon v Bangladesh* made quite an exception.⁷⁹ In 2009, during an official meeting, an Upazilla Primary Education Officer called the headmistress of a primary school a ‘whore’ for not covering her head.⁸⁰ The *AD* had declared the ‘absolute trust’ provision unconstitutional and revived secularism just two months before the incident.⁸¹ As the respondent lodged an unconditional apology, no punitive action was taken.⁸² The court observed that despite the absence of any uniform practice with regard to headscarves or veiling, there was a practice by private persons, Islamist organizations, and public authorities to forcibly impose a dress code on women.⁸³ The court noted the incident as a sexually colored remark in clear violation of the code of conduct for government officials and decided that:

It is the personal choice of a woman to wear veil or to cover her head. Any such attempt to control a woman’s movement and expression and further in this case threatening the teacher concerned for her failure to do so is clearly a violation of her right to personal liberty.⁸⁴

It is notable that the Court reached the decision based on interpretation of the constitution and international standards on freedom of expression and religion, equality and non-discrimination, and the right to be free from sexual harassment without delving into the religious domain relating to veiling practices.

iv. Uniform Family Code and Muslim Family Law Reform: Against *Sharia*?

In the nineties, there was a longstanding demand for enacting the Uniform Family Code (*UFC*) in Bangladesh instead of personal laws governing marriage, divorce, inheritance,

⁷⁹W. P. No. 4495 of 2009.

⁸⁰*The Daily Samakal* (26 June 2009) at 9.

⁸¹*Supra* note 14.

⁸²*Supra* note 79 at 14.

⁸³*Ibid* at 7.

⁸⁴*Ibid*.

custody, and maintenance.⁸⁵ The Islamists were strictly opposed to any such enactment, and as such, Bangladesh kept a reservation to *CEDAW*. In 2005, the Law Commission (*LC*), in its report on the possibility of a *UFC* citing the relevant legal provisions and the state religion clause of the Constitution noted that “it can be said that the Muslim personal law is an eternal law prevailing as the only law for all Muslim Family Affairs and hence there cannot be any change in it nor can it be amalgamated with any other personal law of any other religion.”⁸⁶ The *LC* observed that to make amends to the *sharia* provisions are tantamount to calling Muslims to give up the Quran and also assumed that all Muslims of the country would rise in revolt if any such changes are brought.⁸⁷ However, a 2013 *LC* Report based on available field data and focused group discussions led by the Commission shows that majority of sample participants were in favor of reform of Muslim personal law.⁸⁸

In a divorce suit of a Christian couple,⁸⁹ the *HCD* made a recommendation to the effect that “a Uniform Marriage and Divorce Act for all the citizens should be enacted by the Parliament keeping in pace with the modern time.” Islamic Law Research Center and Legal Aid Bangladesh, both third parties, filed a leave petition against the judgment and order of the *HCD*, contending that the uncalled for recommendation is in violation of art. 41 as there is no scope to alter, modify or add to the provisions of *Sharia*. The *AD* observed that the

⁸⁵In Bangladesh, the personal law of the Muslims, marriage, dissolution of marriage, maintenance, dower, guardianship, gift, inheritance, trust and trust properties, *wakf* are regulated by the *sharia*, see *the Muslim Personal Law (Shariat) Application Act, 1937*. During the Pakistan regime, the *Muslim Family Law Ordinance* was enacted, and the *Dissolution of Muslim Marriages Act* was also amended. The rights enjoyed by Muslim men and women are not similar under those provisions of law, and believers of Hinduism, Buddhism, and Christianity also enjoy different rights.

⁸⁶*Report On A Reference By the Government Towards the Possibility of Framing Out of A Uniform Family Code for all Communities of Bangladesh Relating to Marriage, Divorce, Guardianship, Inheritance etc.* The Law Commission (18 July 2005), para 2.

⁸⁷ “Muslim family law affairs covering marriage, divorce, maintenance, dower, guardianship, inheritance etc. are all included in the huge mass of Muslim law developed over a period of fifteen hundred years. To take up a position that these laws should be suitably changed so as to fit in with a Common Family Code of all faiths and denominations is not merely an intellectual decision, but basically a decision as to whether the Muslims of Bangladesh should give up Quran as a revealed Book or not. The Law Commission has no hesitation to say that the Muslims of Bangladesh would rise in revolt as one man if they are asked to give up a basic tenet of their faith.” *Ibid* at para 1.

⁸⁸*Review of Muslim Personal Law in Bangladesh and Recommendations from the Law Commission*, The Law Commission (9 January 2013).

⁸⁹Divorce suit no. 1 of 1998 (30 October 2000).

recommendation gave rise to “reasonable comprehension in the mind of the community at large” and ordered that the recommendation be expunged.⁹⁰

Similarly, in *Sultana v Elias*, the *HCD* observed that sec. 6 of the Muslim Family Law Ordinance allowing polygamy with the permission of the existing wife should be deleted.⁹¹ On appeal, the *AD* held that the observation of the *HCD* was uncalled for and should be expunged in order to prevent any confusion in the minds of the people at large and for the subordinate courts. In both cases, the *HCD* made the recommendations as obiter, and the frightful expunction by the *AD* almost echoes the unfounded *LC* Report of 2005.

v. Jamaat Registration Case: A Political Battle Dragged to the Court

In *Chadpuri*, the petitioners challenged the registration of *JIB* by the Election Commission (*EC*) ahead of the general election of 2008.⁹² The intervening caretaker government amended the Representation of People Order, 1972 (*RPO*) as part of election reform.⁹³ The amended *RPO* made registration by political parties mandatory subject to the qualification and disqualification thereby. The petitioners contended that the *EC* allowed the *JIB* to register before removing all inconsistencies with the qualification [90(B)] and disqualification [90(C)] clauses in order to lure the four-party alliance to the national election. The inconsistencies identified were *first*, not having secured at least 5% vote in the constituencies contested in previous elections as required by art. 90(B)(1)(b)(ii). Second, the constitution of *JIB* violated art. 90(C)(1) as it contradicted the Bangladesh Constitution; included discriminatory provision as to race, religion, and sexes; and was hurtful to communal harmony and national integrity of Bangladesh.

⁹⁰*Bangladesh v Chowdhury*, (2003) 11 BLT (AD) 180, 54 DLR (AD) 2002 168.

⁹¹17 BLD 1997 4. “Muslim Jurists and Scholars are almost unanimous in taking the view that in the context of modern society it is virtually impossible to be able to deal with the wives justly and as such the Quranic sanction for taking a second wife under specified conditions virtually amounts to a prohibition in taking a second wife during the subsistence of an existing marriage. [...] So we find that Section 6 of the Muslim Family Law Ordinance 1961 is against the principle of Islamic Law. We recommend that this section be deleted and be substituted with a section prohibiting polygamy.”

⁹²*Supra* note 54.

⁹³Vide Ordinance No. 42 of 2008.

The writ petition was filed in 2009 when the Constitution still had Islam as the state religion and the faith provision. Therefore, the petitioners stated that their “faith” in statehood was rooted in the Medina charter signed between Prophet Muhammad and the representatives of other religions. *JIB*’s ideology, *Moududism*, is opposed to the traditional, peace-loving Islam, and as such, garners fanaticism, extremism, and militancy. The Petitioners also argued that *JIB*’s opposition to the birth of Bangladesh and its collaboration with the Pakistani Army in 1971 shows its inconsistency with the democratic and secular values of Bangladesh.

Among the petitioners, there were twelve clerics, some ordinary citizens, and three offspring of the martyred freedom fighters. The clerics though claiming themselves to be the followers of traditional Islam, non-communal, non-violent in nature, at least three of them represented parties engaged in religion-based politics, and all of their constitutions have been found to suffer from the same vices as the *JIB*.⁹⁴

The case was decided on 2:1 majority, declaring the registration of *JIB* as *void ab initio*. The Chief Justice, the dissentient, rejected the writ as premature and the petitioners not having *locus standi*.⁹⁵ He held that the *EC* served the purpose of public policy by allowing the parties to participate in the general election pending revision of their Constitution.⁹⁶ The *JIB*’s involvement in fundamentalist and anti-state activities is well known for decades, and the clerics dragged this to the Court from vengeance.⁹⁷ In his opinion, the moral disentitlement of *JIB* for its role in 1971 was not an issue to be recognized in law.⁹⁸

Quazi Reza-Ul Haque J. addressed the question of *locus standi* and mentioned that every citizen of Bangladesh whose heart bleeds for the cause of liberation would happen to have *locus standi* before the Court.⁹⁹ By considering the provisions of the *RPO* and the *JIB*’s impugned registration process, he found in favor of the petitioners. *Enayetur Rahim J.*

⁹⁴*Supra* note 54 at 10. The parties were Zaker Party, Bangladesh Khelafot Andolon, and Tariqat Federation.

⁹⁵*Ibid* at 27-8.

⁹⁶*Ibid* at 41.

⁹⁷*Ibid*.

⁹⁸*Ibid* at 42.

⁹⁹*Ibid* at 139.

concluded that the provisional constitution of *JIB* did not fulfill the requirements of the *RPO*, and as such, the registration is illegal.¹⁰⁰ The Judge cited different propagandas of the *JIB* during the liberation war and negated them with verses from the Quran.¹⁰¹ The Judge probed into *fatwas* of clerics in deciding *Moududism* as contrary to the tenets of Islam.¹⁰² For instance, he considered *fatwas* from *Fazlul Huq Amini*, referring to him as a distinguished “Islamic Intellectual”. Ironically, *Amini* was the former leader of the *Islamic Oikko Jot*, a party responsible for several terrorist attacks and threatening the *Fatwa* case judges.¹⁰³ He himself was charged with sedition for making derogatory remarks about the Constitution.¹⁰⁴

The framing of this petition under the contour of the Medina Charter shows how special status accorded to religion(s) in the Constitution can change the nature of a legal dispute. By placing reliance on a specific set of religious opinions (*fatwas*) in deciding the validity of the registration of a political party, the Court essentially took up the task of differentiating between good Muslims and bad Muslims.

This brings us to the question, how fair is the *SC* of Bangladesh in its performance regarding Islamo-secularism? The court’s hands-off policy regarding Islamo-secularism is exceptional. The *SC* in Bangladesh has invalidated constitutional amendments made in both autocratic (made without lawful authority) regime and democratic regime (made in excess of authority). The Court’s decision in assailing the Parliamentary power of removing judges (*Sixteenth Amendment*) irked the Government so much so that the Chief Justice allegedly was forced to go on leave.¹⁰⁵ This evidences the weak separation of power but at the same time shows the judicial resilience in exercising its constitutional power. Is the court complying with the ‘changed reality’ of the *GoB* in appeasing the Islamists under Islamo-

¹⁰⁰*Ibid* at 47.

¹⁰¹*Ibid* at 72-77.

¹⁰²*Ibid* at 81-99.

¹⁰³“Bangladesh cracks down on Islamists”, *BBC News* (5 February 2001).

¹⁰⁴Court Correspondent, “Amini Sued for Sedition” *The Daily Star* (12 August 2011) online: The Daily Star <www.dailystar.net>.

¹⁰⁵Staff Correspondent, “CJ Forced to go on leave” *The Daily Star* (5 October 2017) online: The Daily Star <www.thedailystar.net>.

secularism? Or is the Court free from such influences? Does state religion or Islamo-secularism impact the interpretation of the Court?

The above analysis addressed cases from three time-frames: i) when both state religion and faith provision prevailed in exclusion of secularism (1988-2010); ii) when secularism was judicially revived, and faith provision was removed (2010-2011), and under Islamo-secularism (2011 onwards).

In *Farooqi* (1995), the Court used the faith provision as an interpretive tool to establish *locus standi*. This shows that special status or recognition to any religion, even if limited to the fundamental principle, may impact a judicial decision.¹⁰⁶ Another pertinent example is *Chadpuri* (2009), where in order to challenge the registration of a religious political party under the Constitutional scheme of the state religion, the petitioner took resort to the Medina charter to define their faith and distinguish themselves from the *JIB*. The two family law reform cases (1997-1998) show *AD*'s startling reaction to mere recommendations by the *HCD* with regard to change in *sharia* law.

In 2010, when secularism and the ban on religion-based politics were revived through the invalidation of the *Fifth Amendment*, the judiciary's approach seemed to change. In *BLAST* (2009, judgment 2010), the Court decided the imposition of extrajudicial punishment in the name of *fatwa* to be unconstitutional and issued preventive guidelines. In *Dolon* (2010), the Court declared forced veiling to be a violation of freedom of expression. However, in *Azad* and *Tayeb* (2001, decided in 2011), the Court, despite noticing that there are no *muftis* in Bangladesh qualified to issue *fatwas*, decided that imposing prohibition on all *fatwa* will bar freedom of expression.

Chadpuri (2009), the case seeking cancellation of registration of *JIB* was decided in 2013. As such this case covers all three phases discussed above, and in that sense is peculiar. It was framed with reference to the Medina Charter, and at the time the case was decided, the

¹⁰⁶Some try to make the distinction that the state religion provision (art. 2A), unlike the faith provision is not part of the preamble and as such not a basic structure of the Constitution.

GoB itself became a propagator of the Medina Charter under Islamo-secularism. Although the case tried to make a strong obiter on why state religion provision under the present constitution (2011) is not suited to the constitutional scheme, the judgment is drenched with Quranic provisions and *fatwas* even from clerics linked to extremism. It was shown that all these diverse streams of Islamist schools were opposed to *JIB* espousing a particular militant version. The overwhelming religious content in the decision and the crowding of Islamist petitioners curiously mirror the Islamist polarization of the public sphere at the time.

II. Freedom of Expression and Religion: International Standards and the Laws of Bangladesh

The scope of the right to freedom of opinion and expression and its limitations, particularly the regulation of hate speech, presents a contentious area. While the right to hold an opinion is without restriction, the right to freedom of expression is not. The distinction is quite similar to the one between freedom of thought, conscience, and religion and its manifestation.¹⁰⁷ This part will analyze the international standards applicable to restrictions on freedom of expression and manifestation of religious belief, particularly focusing on ‘hate speech’ and ‘defamation of religion’. In light of these principles, the laws regulating freedom of speech, hate speech, and offenses against religious sentiment under Bangladeshi law will be discussed.

A. Freedom of Expression and Manifestation of Religious Belief: International Standard

Art. 19 of the Universal Declaration of Human Rights (*UDHR*) recognizes the right to freedom of expression so as to include the right to seek, receive and impart *information* and *ideas* regardless of *medium* and *frontiers*.¹⁰⁸ Art. 19 of the International Covenant on Civil and Political Rights (*ICCPR*) prescribes the scope, medium, and restrictions pertinent to the right.¹⁰⁹ Paragraphs 1 and 2 of art. 19 recognize the right to hold an opinion without any

¹⁰⁷*Report of the Special Rapporteur on Freedom of Religion or Belief*, A/HRC/ 31/18 (23 December 2015), para 7.

¹⁰⁸UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), online: <<http://www.refworld.org>>.

¹⁰⁹UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United

form of interference and the right to freedom of expression, respectively. According to paragraph 19(2), expressions can be made orally, in writing, through art, or in any other manner. The scope of the freedom extends to expressions, which may be regarded as *deeply offensive*, subject to paragraph 19 (3) and art. 20.¹¹⁰ The restrictions under sub-art. 19 (3) include respect for the rights and reputations of others, preservation of national security, public order, health, or morality. Art. 20 requires state parties to enact laws prohibiting i) propaganda of war and ii) *advocacy* of national, racial, or religious hatred constituting *incitement* to discrimination, hostility, or violence. The separate mention of the limitations contained in art. 20 implies that they apply to rights other than freedom of expression, including the manifestation of religious belief.¹¹¹

Paragraph 19 (3) also provides standards for imposing restrictions with the caution that “relation between right and restriction and between norm and exception must not be reversed”.¹¹² The restrictions *may* be imposed only through law, based only on the enumerated grounds, and it must be necessary for a legitimate purpose and proportionate to the mischief sought to be prevented.¹¹³ Art. 20 requires the propaganda or advocacy in question to be clearly defined and prohibited by law as being contrary to public policy.¹¹⁴ Any restriction imposed under art. 20 must comply with the standards set forth in art. 19, paragraph 3.¹¹⁵ While paragraph 19 (3) names permissible grounds for restrictions, paragraph 20 imposes a positive duty on member states to prohibit certain acts.¹¹⁶ Art. 20

Nations, Treaty Series, vol. 999 at 171, online: <<http://www.refworld.org>>.

¹¹⁰HRC General Comment No. 34, CCPR/C/GC/34 (12 September 2011), para 11.

¹¹¹*Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance*, A/HRC/2/3 (9 September 2006), para 46.

¹¹²Paragraph 21, *supra* note 110 citing the Committee’s general comment No. 27 on article 12 and *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 40*, vol. I (A/55/40 (Vol. I)), annex VI, sect. A.

¹¹³*Ibid* at paragraph 23 citing communication No. 1022/2001, *Velichkin v. Belarus*, Views adopted on 20 October 2005.

¹¹⁴*General Comment No. 11: Prohibition of propaganda for war and inciting national, racial or religious hatred (Art. 20): 29/07/1983. CCPR General Comment No. 11. (General Comments).*

¹¹⁵Paragraph 50, *supra* note 110 citing communication No. 736/1997, *Ross v. Canada*, Views adopted on 18 October 2000.

¹¹⁶*Ibid*, para 51.

interventions require a high threshold, and the general principles or three-part test of legality, legitimacy, and proportionality apply according to art. 19:

Firstly, limitations or restrictions must be “*prescribed by law*” or “provided by law”. The requirement of a clearly formulated legal basis should prevent Governments from intervening in an arbitrary and unpredictable manner. Moreover, limitations or restrictions must serve a *legitimate purpose* from an exhaustive list of possible purposes. . . . Finally, [. . .] limitations or restrictions [need to] be strictly “*necessary*” to pursue one of the said purposes.¹¹⁷

The strict requirement of restriction to be imposed by law to be found in both the articles prohibits invocation of restrictions found in religion, tradition, or customary law.¹¹⁸ The principle of proportionality is not limited to the law framing the restriction but also applicable to judicial and administrative authorities implementing the law.¹¹⁹ As such, the law should not provide unfettered discretion to the authorities carrying the execution.¹²⁰ As for proportionality, there has to be a direct connection between the restriction and the mischief:

When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a *direct* and *immediate* connection between the expression and the threat.¹²¹

Apart from arts. 19 and 20, art. 17 (right to privacy), art. 18 (freedom of thought, conscience, and religion), art. 25 (right to vote), and art. 27 (right to language, culture, and religion of ethnic, religious, and linguistic minorities) contain certain guarantees for freedom of opinion and expression. For the purpose of the present chapter, it is essential to look into the provisions, scope, and limits of art. 18.

Both the *UDHR* and *ICCPR* recognize the rights to adopt any religion or belief and its manifestation through worship, practice, teaching, and observance in private or public,

¹¹⁷Para 25, *supra* note 107.

¹¹⁸Paragraph 24, *supra* note 110 citing General Comment No. 32.

¹¹⁹*Ibid*, para 34, citing General Comment No. 27, para. 14. See also Communications No. 1128/2002, *Marques v. Angola*; No. 1157/2003, *Coleman v. Australia*.

¹²⁰*Ibid*, para 25.

¹²¹*Ibid*, para 35 citing communication No. 926/2000, *Shin v. Republic of Korea*.

either individually or in the community.¹²² The 1981 General Assembly Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief also endorses these rights.¹²³ Art. 18 protects theistic, non-theistic, and atheistic beliefs, as well as the right to not profess any religion or belief.¹²⁴ The freedom to manifest religion or belief in worship, observance, practice, and teaching include a broad range of actions.¹²⁵ Worship extends to ritual and ceremonial acts as well as practices, including the building of places of worship, display of symbols, observance of holidays. Similarly, observance and practice of religion or belief include not only ceremonial acts but also customs. The practice and teaching of religion or belief include the freedom to choose religious leaders, priests, and teachers, the freedom to establish seminaries or religious schools, and the freedom to prepare and distribute religious texts or publications.¹²⁶

While freedom of thought, conscience and religion is absolute,¹²⁷ the manifestation of religious belief may be subjected to certain limitations through the law, in order to secure public safety, order, health, or morals or the fundamental rights and freedoms of others.¹²⁸ Also, the state parties are obliged to prohibit any manifestation of religion or belief amounting to the propaganda of war or incitement to hatred on national, religious, or racial grounds.¹²⁹

Both arts. 18 and 19 provide absolute protection of '*forum internum*' the freedom to think or believe without interference, and the '*forum externum*,' the manifestation of the thinking or belief is subjected to almost similar restrictions.¹³⁰ Therefore, it might not be unfair to comment that both rights have certain similarities in terms of formulation, and often overlap in the area of manifestation like a Venn diagram, and those areas of intersections give rise to controversies and conflicts.

¹²²UDHR 18 & ICCPR 18 (1).

¹²³Art. 1 (1).

¹²⁴Human Rights Committee General Comment No. 22.

¹²⁵*Ibid.*

¹²⁶*Ibid.*

¹²⁷*Ibid.* para 3.

¹²⁸Art. 18 (3) of the ICCPR & art. 1 (3) of the Declaration.

¹²⁹Para 7, *supra* note 124 and HRC General Comment 11 (para 19).

¹³⁰*Supra* note 107.

One such controversy is the defamation of religion. During 1999-2010, a number of non-binding resolutions condemning “defamation of religion” were voted and adopted by the *UN*. After a long-standing tussle between the *OIC* Countries proposing such resolutions and their opposing counterparts, the *OIC* changed its resolution to “Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief” which received unanimous support.¹³¹ Thereafter, in July 2011, the *HRC General Comment No. 34* concluded that “[p]rohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant.” *General Comment No. 34* clarifies that countries with blasphemy laws in any form that have signed the *ICCPR* are in breach of their obligations.¹³²

B. Freedom of Expression and Manifestation of Religious Belief: Bangladesh Context

The contest between the secularists and Islamists in Bangladesh marked with the critique of religion, expression of national or religious ethos; intolerance for others, and a ‘holier than thou’ approach is often alleged to go off-limit. On the one hand, we have the allegations of “defamation of religion” against the seculars, and on the other, we have allegations of “hate speech” against the Islamists. The *HRC* noted that in order to understand the entire regime of freedom of expression, it is necessary to know not only the constitutional provisions but also the rules defining freedom of expression and restrictions thereby and also the attendant conditions, which affect the practice of such rights.¹³³ In what follows, the chapter will analyze the entire regime of the right to freedom of expression in Bangladesh.

i. The Constitution of the People’s Republic of Bangladesh

Art. 39 of the Constitution recognizes both rights to freedom of thought and conscience, and freedom of speech and expression. ‘Freedom of thought and conscience’ has been

¹³¹*Resolution 16/18, 2011.*

¹³²Para 48, *supra* note 110.

¹³³*Ibid*, para 27.

addressed with freedom of expression. Art. 39(1) recognizes freedom of thought and conscience as absolute rights, wherein freedom of expression is subject to reasonable restrictions of law.¹³⁴ In elucidating those restrictions, the Constitution has traversed beyond art. 19(3) of the *ICCPR*. The grounds of restrictions under the article, such as morality, public health or order, national security, are similar to the restrictions found in the *ICCPR*. The difference lays on the grounds of ‘friendly relations with other states’, ‘contempt of court’, ‘defamation’, ‘decency’, and also ‘incitement to offences’.

The *ICCPR* restriction of “rights and reputations of others” is not exhaustively addressed through “defamation”. The *HRC General Comment No. 34* says the term “rights” in paragraph 3 should be construed as human rights recognized by the *ICCPR* and, more generally, international human rights law.¹³⁵ The term “others” has been explained to include other persons individually or as members of a community defined by its religious faith or ethnicity.¹³⁶ Therefore, the construction imported by the Constitution is relatively narrow. Then again, the term “incitement to offences” will include incitement to any act or omission prohibited by the law. Therefore, hate crimes are not squarely focused on the article, and also the provision is overbroad. “Decency” is a vague term to form a ground of restriction.

Art. 41 recognizes the right to profess, practice, and propagate religion. Reasonable restrictions are also imposed on the grounds of public health, order, and morality. The context of hate crime is absent altogether here. It is also notable that unlike art. 18 of the *ICCPR*, there is no restriction on the ground of causing injury to “fundamental rights and freedom of others”. Taking the difference with the wording of the *ICCPR* for both arts. 39 and 40 together, it appears that the framers did not see the manifestation of religious belief

¹³⁴The proclamation of emergency under art. 141B allows the state to deviate from the right to freedom of expression under a state of emergency and make laws infringing the right. Although art. 4 of the *ICCPR* does not refer to freedom of opinion as a non-derogable right, the HRC’s General Comment no. 29 has extended the non-exhaustive provision and noted that freedom of opinion cannot be derogated from even under a state of emergency.

¹³⁵Paragraph 28, *supra* note 110.

¹³⁶*Ibid* citing communication No. 736/97, *Ross v. Canada*, Views adopted on 18 October 2000, communication No. 550/93, *Faurisson v. France*; concluding observations on Austria (CCPR/C/AUT/CO/4) and Concluding observations on Slovakia (CCPR/CO/78/SVK); concluding observations on Israel (CCPR/CO/78/ISR).

as a potential source of injury to rights and freedoms of members of any other religion or belief community. The religious freedom provisions of the Pakistan Constitution exactly resemble art. 41.¹³⁷ Given the time spent during the Constitutional Assembly Debate on religious freedom and communal hatred, it would not be wrong to expect more caution being devoted to the clause.

The SC has been quite flexible in determining the scope of freedom of expression in cases of exercise of certain civil and political rights, although artistic freedom and the ambit thereby never came into a direct debate. The *HCD* and *AD* have held freedom of expression to include the right to seek, receive and impart information,¹³⁸ and the right to peaceful protest.¹³⁹ The *HCD* has noted that the freedom of expression ranges from the articulation of words and images to actions and lifestyle choices¹⁴⁰ and it means and includes “expression, publication, distribution and circulation of anything and any idea of any sort subject to the restrictions that may be imposed by law for securing any of the eight purposes enumerated in clause (2) of art. 39 of the Constitution.”¹⁴¹

Coming to the manifestation of religion, the SC has held that the state cannot take away the right to profess, propagate or practice religion, but the Parliament may regulate the manner in which those rights are manifested.¹⁴² Moreover, such restrictions may be imposed to regulate the activities of a religious group, and only in extreme cases prohibition may be imposed.¹⁴³ The freedom to profess or propagate one’s religion and to establish or maintain religious institutions in the Constitution is to be read in conjunction with the greater interest of public order and morality.¹⁴⁴

¹³⁷Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: Mullik Brothers, 2nd Edition, 2006) at 271. “The language of art. 41 (1) is exactly the same as used in art. 18 of the Pakistan Constitution of 1956 and in fundamental right no. 10 of Pakistan Constitution of 1962. On the other hand, the language of art. 41(2) is exactly similar to the language of clause (1) of fundamental right no. 12 of the Pakistan Constitution of 1962.”

¹³⁸Eight Information Case Regarding National Election Nominees.

¹³⁹*Elahi v Bangladesh*, 2001 BLD 352.

¹⁴⁰*Supra* note 79.

¹⁴¹*Kader v Bangladesh*, 14 BLD (1994) 418, at 423.

¹⁴²*Kishore v East Pakistan*, [1957] 9 DLR 21.

¹⁴³*Sharif vs. Bangladesh*, [2002] 54 DLR 413.

¹⁴⁴*Supra* note 68.

In the case of both freedom of expression and manifestation of religious belief, restrictions cannot be imposed on grounds other than those enumerated in the Constitution.¹⁴⁵ The standard of ‘reasonableness’ is yet to be interpreted by the Court, but it is wider than the yardstick of “necessity and proportionality”.¹⁴⁶

In the following paragraphs, this part will analyze the provisions restricting freedom of expression, specifically artistic freedom, and also provisions of laws that deal with the insult to religious sentiment, breach of communal harmony, and incitement to offenses targeting individual members of religious or belief groups.

ii. Restrictions under the Law

The Penal Code (*PC*), the Code of Criminal Procedure (*CrPC*), the Information and Communication Technology Act (*ICTA*), the Digital Security Act (*DSA*), the National Broadcasting Policy (*NBP*), the Metropolitan Police Ordinance (*DMPPO*), and the Anti-Terrorism Act (*ATA*) provide different penal provisions on offending religious sentiment and regulation of artistic freedom of expression.

a. Offenses against Religion: Outraging Religious Feeling

The *PC*,¹⁴⁷ the general penal law, defines most of the offenses in Bangladesh; wherein special laws provide for new offenses or the establishment of special courts or tribunals. Originally promulgated in the British era, the *PC* has a whole chapter devoted to “offences related to religion” with five separate sections.¹⁴⁸ The offense relevant to the present

¹⁴⁵Tashmia Sabera, “Voices of Dissent” in Mohammad Shahbuddin ed, *Bangladesh and International Law* (London: Routledge, 2021) at 323-32 at 324. Islam has interpreted “reasonable restriction” as restrictions imposed by law, and when discretion is conferred on any authority, the law should provide sufficient guideline for the exercise of such discretion. It should be proportional to the mischief to be remedied and there should be a rational connection with the grounds of restriction. *Supra* note 137 at 246 citing *Secy. v. Cricket Association of Bengal*, AIR 1995 SC 1236.

¹⁴⁶*Ibid* at 255.

¹⁴⁷Act No. XVI of 1860.

¹⁴⁸The offences include “injuring or defiling place of worship, with intent to insult the religion of any class”, “disturbing religious assembly”, and “trespassing on burial places, etc.” secs. 295-298 under chapter XV.

discussion was included through an amendment in 1927 as sec. 295A, namely “Deliberate and malicious acts intended to outrage religious feeling.”

Whoever, with deliberate and malicious intention of outraging the *religious feelings* of any class of the citizens of Bangladesh, by words, either spoken or written, or by visible representations insults or attempts to insult the *religion or the religious beliefs of that class*, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In contrast, sec. 298 covers only utterance of words, gestures, or placing of objects *within the sight or hearing of the subject*. Sec. 196 of the *CrPC* bars private complaints under the sec. 295A and as such, cases of ‘insult to religion’ can start only with prior government sanction.

b. Hate Speech: Virtually non-existent

Sec. 153A of the *PC* addresses public tranquility with almost similar wording as to sec. 295A and penalizes promotion or attempts to promote feelings of enmity or hatred between different classes of the citizens of Bangladesh with two years of imprisonment, or with fine, or with both. The section, however, exempts expressions made without malicious intent or with the honest view to matters, which are producing or have a tendency to produce, feelings of enmity or hatred. Bangladesh state party report to the *ICCPR* portrays this as the anti-hate speech provision.¹⁴⁹ However, the *NHRC Shadow Report* is more accurate in pointing out that there is no legal provision defining hate speech, and the Constitution should enshrine such prohibition.¹⁵⁰

There are certain other provisions, which may be extended to cover the area of advocacy and incitement. The *Penal Code Amendment Act, 1991* brought some changes to sec. 505 relating to statements conducing to public mischief.¹⁵¹ The earlier provision penalized making, publication, or circulation of any comment, rumor, or report “with intent to incite, or which is *likely* to incite, any class or community of persons to commit any offence against

¹⁴⁹*Supra* note 6, para 271.

¹⁵⁰*JAMAKON Report to the UN Human Rights Committee* 2016, para 40-41.

¹⁵¹(Act No. XV of 1991).

any other class or community” (sub-section c). The newly introduced sub-section (d) also penalized publication of any content with the “intent to create or promote, or which is likely to create or promote, feelings of enmity, hatred or ill-will between different communities, classes, or sections of people”. The penalty was also increased to seven years instead of two years.

While it might seem that these provisions though sporadic in nature provide minimal restriction against incitement to hatred, the concepts typically remain undefined, opening the way to the arbitrary application of the laws, often to the disadvantage of those who actually need protection from incitement to acts of hatred, including members of religious minorities, dissenters, critics, converts, atheists, and others.¹⁵²

c. Religious Hurt: The Notorious Information and Communication Technology Act, 2006

Apart from the general vagueness and restriction on contents otherwise lawful, sec. 57 of the *ICT* Act penalized transmission through website or electronic form any material causing or likely to cause religious hurt.¹⁵³ The offenses under the section were non-bailable, empowered the police to arrest without a warrant and included a maximum of fourteen years and a minimum of seven years punishment. The *GoB* claimed that “in order to address the growing occurrence of cybercrimes involving political leaders as well as *religious sentiments of general people*, the Government made the offenses under sec. 57 cognizable and non-bailable.”¹⁵⁴ The *NHRC* report bashed the Act for broad content-based restrictions, ambiguity, and disproportionately criminalizing several areas of expression, which are generally legitimate.¹⁵⁵ The judiciary maintained an ambivalent position on the issue. In the first writ petition challenging sec. 57, the Court issued a rule nisi asking why certain phrases of sec. 57 should not be considered ultra vires but carefully omitted

¹⁵²*Supra* note 107, para 64.

¹⁵³Act No. XXXIX of 2006.

¹⁵⁴*Supra* note 6 at 3.

¹⁵⁵Para 39, *supra* note 150. Notably, the *NHRC* though mentioning the definitional vagueness of fake information and obscenity avoided mentioning “religious hurt”.

religious hurt.¹⁵⁶ The *HCD* rejected two subsequent petitions challenging sec. 57 and accepted another.¹⁵⁷ The *DSA* repealed s. 57 of the *ICT* making the two pending writs obsolete.

d. Religious Hurt: Digital Security Act

The *DSA* penalizes hurting of religious sentiment with imprisonment not exceeding seven years or a fine not exceeding BDT ten lac or both.¹⁵⁸

If any person or group intentionally or knowingly with the aim of hurting religious sentiments or values or with the intention to provoke publish or broadcast anything by means of any website or any electronic format which hurts religious sentiments or values then such activity of such person will be considered an offence.¹⁵⁹

The punishment for a second conviction under the sec. is a maximum of ten years of imprisonment or a fine not exceeding twenty lac or both.

International law requires the state parties to formulate each restriction with sufficient precision so as to enable an individual to regulate his or her conduct accordingly, sec. 28 being vague and overbroad does not meet this requirement.¹⁶⁰ Certain other issues deserve consideration as well, i) the Constitution of Bangladesh does not have any grounds of restriction such as “hurting of religious sentiment or values”; ii) the prohibition on display of disrespect to religion including blasphemy laws are contrary to the ICCPR;¹⁶¹ iii) the threshold of the offense has been lowered compared to the “deliberate and malicious intent” requirement under sec. 295A; and iv) the section is also discriminatory in the sense that the same offense under the *PC* is punishable with two years of imprisonment and with seven to ten years under the instant section.

¹⁵⁶*Khan v Bangladesh*, W. P. No. 4719 of 2010. The Court issued a rule questioning the provisions of ‘fake information’, ‘moral depravation’, and sec. 47 without touching the question of religious hurt.

¹⁵⁷ “Court Rejects Section 57 Writ Hears Another”, *Dhaka Tribune* (31 August 2015) online: <<http://archive.dhakatribune.com>>. An *HC* bench of Justice Farah Mahbub and Kazi MD Izarul Haque Akand rejected the other petition. M Moneruzzaman, “Section 57 of ICT Act: HC asks Government to Explain Legality”, *The New Age* (2 September, 2015).

¹⁵⁸*The Digital Security Act* (Act No. 46 of 2018).

¹⁵⁹*Ibid*, sec. 28 (1)

¹⁶⁰Para 25, *supra* note 110.

¹⁶¹*Supra* note 138.

e. The National Broadcasting Policy, 2014

The *NBP* is excessively dubbed with religious overtones and the same confusing musing of secularism and state religion as found in the Constitution.¹⁶² The policy requires all contents to be respectful towards all religions.¹⁶³ It requires that broadcasting advertisements (the language, scenes, and direction) should not offend religious sentiments, secularism, and political sentiment.¹⁶⁴ Racial or class hatred broadcasted with the intent of creating desegregation or dissatisfaction, insult, attack or mocking of any religion, any statement or scene which is likely to create difference and hatred among different religious communities, races, or groups is prohibited.¹⁶⁵ Programs or statements, which may hurt religious sentiment or secularism or create incitement to breach of public order or promote law-breaking are prohibited.¹⁶⁶ Programs or advertisements creating hatred among followers of different religions are also prohibited.¹⁶⁷

f. Forfeiture of Publication and other Restrictions: Penal Code and The Code of Criminal Procedure

Sec. 294 of the *PC* prohibits creating annoyance through obscene acts in any public place or singing, reciting or uttering obscene songs, ballad or words in or near a public place with imprisonment of either description to three months or fine or both. Sec. 99A of the *CrPC* allows the Government subject to its satisfaction to forfeit any publication containing any words or visible representations which incite, or which are likely to incite, any person or class of persons to commit any cognizable offense,¹⁶⁸ promoting enmity between classes (153A), obscenity (292), injuring place of worship (295), outraging religious feelings (295A), statements conducing to public mischief (505) and prejudicial act by words

¹⁶²*National Broadcasting Policy 2014*, Bangladesh Gazette (6 August 2014).

¹⁶³Paragraph 3.4.5.

¹⁶⁴Paragraph 4.1.1.

¹⁶⁵Paragraph 5.1.2.

¹⁶⁶Paragraph 5.1.6.

¹⁶⁷Paragraph 5.1.7.

¹⁶⁸Clause (d).

(505A). In this case, the discretionary power given to those endowed with the execution is too broad.

g. Power Accorded to Police Officers for Prevention of Disorder: Metropolitan Police Ordinances

The six metropolitan areas of Bangladesh: Dhaka, Chittagong, Khulna, Rajshahi, Barisal, Sylhet, are governed by the Metropolitan Police Ordinances assigning discretionary power to the Police Commissioner for the maintenance of peace, order, and public safety. The present discussion will address only Dhaka Metropolitan Police Ordinance to overview the nature of restrictions.¹⁶⁹

Sec. 28 (1) empowers the Police Commissioner to prohibit at any place: i) the exhibition of persons, corpses, figures, or effigies; ii) the public utterance of cries, singing songs, or playing music; and iii) the delivery of public harangues, the use of gestures or mimetic representations, and the preparation, exhibition or dissemination of pictures, symbols, placards or any other object or thing which may, in his opinion, offend against decency or morality or undermine the security of the State.¹⁷⁰ The prohibition has to be imposed through notification (public or individual) for as long as necessary on the grounds of public peace and safety. Sec. 29 authorizes the Commissioner to prohibit any assembly or procession whenever and for so long considered to be necessary for the preservation of public peace and safety.¹⁷¹ Sec. 31 allows the Commissioner to prohibit by written order any vocal or instrumental music, microphone, loudspeaker, or other instruments for amplifying music or other sound in any vicinity to prevent annoyance, disturbance, discomfort, injury or risk to the public or to any individual.¹⁷² Sec. 33 of the Ordinance authorizes the Police officer of the highest rank present to regulate admission, peaceful and orderly conduct of the proceedings, and maintenance of safety at any place of public amusement or assembly or meeting where the public have been invited, for prevention of severe disorder, breach of law or imminent danger to the public assembled. Sec. 79

¹⁶⁹Ordinance No. III of 1976.

¹⁷⁰Section 58. Any act carried out in violation of such order is punishable by three months of imprisonment or a five hundred BDT fine or both.

¹⁷¹Section 59. The section imposes punishment extending to three months of imprisonment or a five hundred BDT fine or both.

¹⁷²Section 61. Violation of the section is punishable with a maximum fine of five hundred BDT.

penalizes exhibition of mimetic, musical, or other performance of a nature to gather crowd contrary to the regulations made by the Commissioner.

Although some of the sections require a written order from the Commissioner, there is no requirement for providing grounds of “satisfaction” of the Commissioner, leaving the sections open to arbitrary interpretation and leaving room for excessive interference. The grounds of restrictions, such as ‘decency’ and ‘morality’ are vague and overbroad.

The analysis of the penal provisions from different laws shows how the expressions found in one law have been conveniently borrowed in another without considering the contextual nuances. The legislative aim seems to be enhancing punishment rather than defining the acts, omissions and the required *mens rea*. Furthermore, stringent provisions such as arrest without warrant and non-bailable offenses do not satisfy the proportionality test. It is also notable that where penal provisions are to be invoked as a last resort in regulating freedom of expression, the major trend in Bangladesh is to impose imprisonment in the first instance. In recent years, the prohibition on hurting religious sentiment has become the core essence of regulating free speech and artistic freedom.

The Special Rapporteur has rightly noted that the range of expression starting from theological critique to hate speech do not exclusively emanate from secular spheres but often have their origin in religious communities.¹⁷³ Individuals who belong to a majority religion are also not always free from being pressured to a particular interpretation of religion.¹⁷⁴ Individual members of religions or communities of belief should not, therefore, be viewed as parts of homogenous entities. For that reason, the law primarily protects individuals in the exercise of their religious freedom and not religions *per se*.¹⁷⁵ However, the idea of religious communities as homogenous units and the immunity of the religious sphere from the scrutiny of hate speech regulation seem to pervade the penal provisions in Bangladesh.

¹⁷³Para 25, *supra* note 110.

¹⁷⁴*Ibid* at para 27.

¹⁷⁵*Ibid*.

III. Discriminatory Enforcement of Law: Law in the Brink

The preceding part shows that the law itself garners the tension between religion and free speech by pushing restrictive provisions on religious hurt with wide discretion given to the executive. This part shows how legal provisions are translated into discriminatory actions so as to shrink the space for those differing with the state ideology of Islam as the state religion.

A. Law as applied against the Secularists

In the nineties, prominent secularists were singled out, and hate campaigns were spearheaded against them, followed by litigation for causing religious hurt. The Islamists continued to push for blasphemy laws and death penalty for ‘atheist’ bloggers. The over sweeping provisions of hurting religious sentiment somewhat compensate for such demands. Often smear campaigns, physical attacks, and litigation go hand in hand against the same individual or group. With the passage of time, the Islamists have become successful in getting leeway with the legal system, and now the Islamists dictate the restrictions on secular spaces and cultural events.

i. Pushing Restrictive Laws

In 1993, Motiur Rahman Nizami, the then Secretary-General of the *JIB* tabled a blasphemy bill to insert secs. 295B and 295C modeled on existing Pakistani laws. Sec. 295B would have created a new offense of “insult to the Quran” with a maximum sentence of life imprisonment. Sec. 295C would have created the new offense of “insult to the Prophet” and would carry a maximum sentence of death.¹⁷⁶ These proposed sections are different from 295A inasmuch as, they address Islam alone, they expressly aim to protect the religion rather than individuals having religious faith and the punishment is way higher compared to two-years term under sec. 295A.

¹⁷⁶Sara Hossain, “Apostates, Ahmadis and Advocates: Use and Abuse of Offences Against Religion in Bangladesh”, *Women Living under Muslim Law* (December 2004) at 86.

The bill was foiled by the Parliament, but in 2004 there was another private member bill though not tabled proposing that any speech, or gesture, by words or otherwise, or any *picture, film or artwork, or behavior*, which insults the *state religion Islam* or *any religion*, or which insults the Quran, the *Sunnah*, or *Sharia* would be punishable by two years' imprisonment.¹⁷⁷ The bill defined *Sharia* as 'Islamic Law and Customs' and *Sunna* as the saying, actions, or percepts of Prophet Muhammad. Despite addressing all religions, this bill is notable in three aspects: i) on the cover of protecting insults to all religions this was a bill to secure a special place for Islam as the state religion, ii) the elaborative clause mentioning 'picture, film, artwork or behavior' shows the extensive target of the Islamists, and iii) inclusion of other religions and lowering the punishment seem to be tactics for getting the legislative nod.

The *ICT Act* providing seven years of imprisonment for religious hurt was first enacted in 2006 by the *BNP* regime.¹⁷⁸ It was later amended in 2013 during the *AL* regime on demand of the Islamist party *Hefajat* claiming for the death penalty for bloggers and online activists.¹⁷⁹ The amended provision increased the maximum punishment from seven years to fourteen years and initiated the special tribunal under the Act. A series of cases of religious hurt were filed against bloggers and online activists, primary school teachers from the Hindu community, journalists, and critics of religion under sec. 57 of the Act. Between 2006 and 2013, a total of 426 complaints were lodged under the *ICT Act*, but following the 2013 amendment, the cases soared in numbers. Between 2013 and April 2018, the police submitted 1271 charge sheets, many of which included multiple accused.¹⁸⁰ Not all of these cases involved hurting religion. A bulk of the cases involved allegations of criticism of the government, the *PM*, and her family members, as well as other defamation claims. One public prosecutor has commented that most of these cases to be

¹⁷⁷*Ibid* at 92.

¹⁷⁸*Supra* note 153.

¹⁷⁹Act No. XL of 2013.

¹⁸⁰David Bergman, "No Place for Criticism: Bangladesh Crackdown on Social Media Commentary" *Human Rights Watch* (9 May 2018) online: Human Rights Watch <www.hrw.org>.

frivolous and not having any leg to stand before the court.¹⁸¹ In 2018, the *DSA* replaced s.57, but the rigors of the law have not softened.

ii. Religious Hurt: Censorship to Protect Religion

In cases involving religious hurt, the accused often move the *HCD* for bail. As a result, some of these decisions are reported, unlike the judgments of subordinate courts and tribunals. However, being limited to the questions of issuance of bail, only a handful of cases put light on the question of religious hurt.

During the nineties' movement, cases were lodged against famous writers, intellectuals, newspaper editors, or critics of religion. Alongside, there was hate campaigns and life threat against each defendant declaring them as apostates. Among the persons litigated were Professor Ahmed Sharif, writer Taslima Nasrin, and Professor Humayun Azad. Among them, Humayun was attacked by the Islamists in 2004, and Taslima Nasrin had to leave the country in the 90s. The judicial approach to sec. 295A is not steady, and there are not many reported cases as well. The lower courts, in most instances, mechanically entertained the cases without even fulfilling the threshold of the section; while the higher judiciary has either granted bail to the accused or ordered surrender to the appropriate forum.

In *Sharif v The State*, Dr. Ahmed Sharif filed a quashment petition to dismiss a complaint filed against him under sec. 295A without government sanction and by a private individual based on a publication in the *Daily Inquilab* fabricating his speech.¹⁸² The petitioner also submitted that some interested quarters at the *Daily Inquilab* misquoted and misrepresented his speech, and there was no intention on his part to outrage the religious sentiment. The Court, despite noting that the charge under sec. 295A was not maintainable held that the petitioner has violated the law by not surrendering before any court of law.

¹⁸¹*Ibid.*

¹⁸²17 BLD (1997) 235. The professor had allegedly said, "Ignorance and Muslim belief is synonymous. Knowledgeable people are atheists. There is not a single misdeed in the world, which the theists did not commit. Islam has lived among ignorant and timid minds for a thousand and half years. They have made Islam survive as hearsay without understanding. How many literate people trust in religion?"

However, considering the adverse and riotous situation at the place of institution of the case, the age and health issues of the professor, the Court directed that the case to be transferred to the Chief Metropolitan Magistrate Court, Dhaka, where the petitioner should surrender and obtain bail.¹⁸³ In remarkable contrast, the *HCD* in *Ahmed v The State*,¹⁸⁴ concerning a satire published in the *Daily Janaknatha* held that “the Constitution of Bangladesh also allows some liberty and freedom to make free and fair criticism of any religion or faith.”¹⁸⁵ The Court also made it clear that sec. 295A penalizes only those “insult to religion or religious belief” which, apart from being “deliberate and malicious” are also intended to “outrage the religious feelings”.¹⁸⁶

The reported cases on forfeiture orders under sec. 99A are also from the same period. In *Shuresari v State*, forfeiture order against six out of eight books written by the petitioner under sec. 99A of the *CrPC* was upheld. The petitioner was held liable for opposing, injuring, or insulting the religious sentiment of the followers of Islam and as such punishable under sec. 295A of the *PC*.¹⁸⁷ Although the Court noted that the government order is subject to strict judicial review,¹⁸⁸ it absolved the government from mentioning the grounds of satisfaction in the order of forfeiture. The Court said that as the Ministry of Home Affairs had sent the impugned books to the Ministry of Religious Affairs which were then examined by religious experts, the opinion to forfeit the books was based on substantial grounds and objective satisfaction.¹⁸⁹ The Court also decided that the writer or publisher was not entitled to any prior notice, as sec. 99A provides a preventive measure.¹⁹⁰

In contrast, with regard to the forfeiture of Azad’s book, the Court held that the

¹⁸³*Ibid* at para 19.

¹⁸⁴20 BLD (HCD) (2000) 268. The complainant argued that the article distorted the meaning of Sura “Tin” of the Holy *Quran*, and thus it hit the religious feeling and sentiments of the Muslims. Therefore, the petitioners committed an offense under section 295A. The author portrayed the cunningness of the Mollahs and *fatwabaj*, cashing on people’s ignorance and exploitation of religious belief.

¹⁸⁵*Ibid* at para 11.

¹⁸⁶Citing *Lahore v Crown*, 7 DLR (WPC) 17.

¹⁸⁷16 BLD (1996) 141.

¹⁸⁸*Ibid* at para 32.

¹⁸⁹*Ibid* at para 26-27.

¹⁹⁰*Ibid* at para 24.

fundamental right to freedom of thought and conscience of the author and publisher could not be taken away without giving them a chance of being heard.¹⁹¹ Quite unfortunately, in *Anjuman-E-Ahmadiyya v Bangladesh*,¹⁹² the forfeiture order of a decade-old religious publication of the *Ahmadiyya* community was upheld by the *HCD* holding the book to be highly offensive to the bulk of Sunni Muslims of the country. It was argued before the Court that the *Ahmadis* themselves being Muslims, no question of injury to the beliefs of the Muslims should arise. However, the Court held that as the book *opposes* the tenets of the Sunni Islam, “the very publication reflects a deliberate and malicious intention to outrage the religious beliefs and faith.”¹⁹³

After reviewing the reported judgments, Hossain concluded:

“[I]t seems that most prosecutions for offences against religion, or the banning of publications in this context, are intended more to silence, or at least marginalize, dissenting voices, and to reinforce a particular, and intolerant, interpretation of majoritarian views, rather than to protect the religious feelings or beliefs of minorities, or to safeguard communal harmony - the purposes for which the law was enacted.”¹⁹⁴

Recently, the government has banned a novel about sexual abuse of a boy in a *madrassah*, claiming that it would outrage religious teachers and threaten public security.¹⁹⁵ This incident proves Hossain’s point of use of religious hurt as a way of silencing dissent. The banning of a publication, like a charge of religious hurt, is mostly not an end in itself and carries further consequences. For example, the ban on Professor Humayun Azad’s political satire *Pak Sar Zamin Sad Bad* (Be Blessed the Sacred Land) criticizing the Islamists was followed by threat and hacking in 2004.

The dual-threat of censorship and bodily harm cripples the accused from pressing the right to free speech and pushes them towards the ‘defensive legal strategy’ of securing a bail.¹⁹⁶ The *ICT Act* and *DSA*, with their non-bailable sections, have confined the bloggers and

¹⁹¹Unreported Case.

¹⁹²45 DLR (1993) 185.

¹⁹³*Ibid* at para 12.

¹⁹⁴*Ibid* at 86.

¹⁹⁵Prapti Rahman, “Bangladesh bans novel about sexual abuse of boy in Islamic School” *Benar News* (1 September 2020) online: Benar News <www.benarnews.org>.

¹⁹⁶*Supra* note 176 at 92.

activists to seeking bail rather than contesting the alleged religious hurt. The decision to stand ground is not welcome. Asad Noor, a blogger, was arrested in 2017 after a cleric sued him for hurting religious sentiment.¹⁹⁷ In 2020, again, Islamists threatened him for making videos on the dismemberment of the Buddha statue under construction. Noor alleged that local political leaders backed the attackers so that religion can be used as a pretext for evicting the Buddhist community. This time, an *AL* leader sued him under the *DSA* for hurting religious sentiment and running propaganda against the spirit of the liberation war.¹⁹⁸ As the blogger fled to India, his family members were detained for 48 hours without legal authority. This incident squarely shows that the detractors of secularism and freethinking in Bangladesh are not Islamists alone, rather the state itself.

The *DSA* is creating increased risks of censorship and prosecution for artists and performers. Two recent cases will help explain the matter. *Baul* singer Shariat Sarkar was arrested on January 11, 2020, under the *DSA* on allegations of hurting religious sentiment. Sarkar, in a concert, criticized the clerics for their opposition to singing and challenged them to prove that singing is *haram* (prohibited) in Islam.¹⁹⁹ Another *baul* singer Rita Dewan was charged under both the *PC* and the *DSA* in two separate litigations on allegations of hurting religious sentiment through her performance during a musical duel.²⁰⁰

The expected reaction to the heightening Islamist attacks on secular spaces, artists, and individuals would be the law providing additional security measures to the cultural sphere and regulating the hate campaigns spearheaded by the Islamists. The ambit of artistic freedom in Bangladesh has shrunk to a notable extent with the stringent laws, vague and overbroad laws in force.

¹⁹⁷PEN America, "Detained Bangladeshi Blogger Asad Noor Should be Released and Given Protection" (11 January 2018) online: <www.pen.org>.

¹⁹⁸Arafatul Islam, "Bangladeshi blogger faces death threats for criticizing Islamic Fundamentalism" *Deutsche Welle* (24 August 2020) online: <www.dw.com>.

¹⁹⁹"Why Baul singer Shariat won't be granted bail: HC" *UNB* (12 February 2020) online: United News of Bangladesh <www.unb.com.bd>.

²⁰⁰Sanaul Islam Tipu, "Baul singer Rita Dewan sued for hurting religious sentiment" *The Dhaka Tribune* (3 February 2020) online: The Dhaka Tribune <www.dhakatribune.com>.

iii. Scrutiny and Closure of Secular Spaces:

The existing laws and policies regulating freedom of expression in Bangladesh create a pre-censorship and chilling effect. Islam being at risk creates a scenario where speech and expression have to be mindful of not hurting religious sentiment and values.

The *PM* and the law enforcers on previous occasions have warned bloggers to be mindful of the consequences.²⁰¹ The *PM*, on several occasions, self-identified as a Muslim and also explained how both Mujib and her regime were devoted to the cause of Islam in Bangladesh.²⁰² During a parliamentary session when asked to intervene on arrests of *baul* singers, the *PM* commented that the law should take its own course. She said an arrest shows some sort of involvement in crime, and no one can vouch for the innocence of the *bauls*.²⁰³ Since guilt and innocence are being determined by the sanctity of religion here, the question of restriction on content otherwise lawful is not even being asked in Bangladesh.

Secular spaces, both online and physical, have been subjected to restrictions. Several blogs and social media users have been blocked in Bangladesh on the allegation of harboring “malice to Islam”.²⁰⁴ Bangladesh has recently asked Facebook to ensure compliance with the *DSA* standards.²⁰⁵

²⁰¹Staff Correspondent, “IGP urges Citizens to Take Responsibility” *The bdnews24.com* (26 April 2016) online: BDNews24.com <www.bdnews24.com>, Senior Reporter, “The PM asked not to Offend Religious Sentiments” *The bdnews24.com* (08 November 2015) online: BanglaBDNews24.com <www.bangla.bdnews24.com>, Staff Correspondent, “Those Criticising Religion Shall be Arrested” *The Kaler Kantho* (25 May 2016) online: Daily Kaler Kantho <<http://www.kalerkantho.com>> & Staff Correspondent, “The IGP advised Bloggers Not to Exceed Limits” (09 August 2015) online: BanglaBDNews24.com <<http://bangla.bdnews24.com>>.

²⁰²“PM Lays Importance to Religious Education from Early Age” *Bangladesh News Agency* (22 March 2016) online: <<http://www.bssnews.net>>.

²⁰³Hasina says no one is above the law as she defends baul arrests” *The bdnews24.com* (22 January 2020) BDNews24.com <www.bdnews24.com>.

²⁰⁴Muhammad Zahidul Islam, “Govt Blocks 2 Messaging Services” *The Daily Star* (20 May 2016) online: The Daily Star <www.thedailystar.net>.

²⁰⁵“Jabbar: Facebook has to comply with Bangladesh’s Law” *Dhaka Tribune* (7 September 2020) online: Dhaka Tribune <www.dhakatribune.com>.

Restrictions on cultural events and spaces are increasing, keeping in line with Islamists' demands. In 2016, *AOL* and other Islamist parties called *Pahela Baishakh* celebrations haram and asked to stop state funding of the celebrations.²⁰⁶ The law enforcement agencies decided to enforce curb on programs by fixing five pm as the end time for all outdoor festivities and restricting the use of facemask.²⁰⁷ The situation was tense as citizens' groups identified the curb on the *Pahela Baishakh* celebration as a reflection of 'medieval thinking'.²⁰⁸

Addressing the *AL* leaders and workers during the *Pahela Baishakh*, the *PM* questioned whether the people protesting against celebration curbs were ready to take responsibility for any untoward events?²⁰⁹ In the following years, the Bangalee New Year Celebration has been restricted.²¹⁰ In 2019, the *DMP* prohibited outdoor celebrations of New Year's Eve, citing security threats from people who consider such celebrations to be illegal.²¹¹ The month-long Bangla Academy *Ekushey Boi Mela* (February Book Fair) has been placed under scrutiny for prohibition on any books hurting religious sentiment for recurring years now. While the Police vows to protect security for everyone, stalls are shut down, and books are forfeited for allegations of hurting religious sentiment.²¹² Alongside these restrictions, heightened security measures are imposed to restrict access to or organizing cultural events. The police often use their power to shut down live performances, fairs, and public gatherings on the grounds of security.

²⁰⁶News Desk, "Awami Olama League Against Funding Bangla New Year Celebrations" *bdnews24.com* (09 April 2016) online: *BDNews24.com* <<http://bdnews24.com>>.

²⁰⁷Sohel Mamun, "End Boishak Programs by 5pm" *The Dhaka Tribune* (3 April 2016) online: *The Dhaka Tribune* <<http://www.dhakatribune.com>>.

²⁰⁸"Curb on Pahela Baishakh celebration Medieval thinking: Sultana Kamal", *The Daily Star* (12 April 2016) online: *The Daily Star* <<http://www.thedailystar.net>>.

²⁰⁹"Bangladesh PM says writing against religion will not be tolerated", *The Daily Star* (16 April 2016) online: *The Daily Star* <<http://www.thedailystar.net>>.

²¹⁰"No Baishakhi events after 6PM: Home Minister" *The Daily Star* (3 April 2019) *The Daily Star* online: *The Daily Star* <www.dailystar.net>.

²¹¹Senior Correspondent, "Police restrict New Year's Eve Celebration in Dhaka" (30 December 2019) *BDnews24.com* online <<http://bdnews24.com>>.

²¹²Golam Mujtaba Dhruva, "Bangla Academy alerts police on 'religion sensitive' books at Ekushey Book Fair" *Bdnews24.com* (30 January 2017) online: *BDNews24.com* <<http://bdnews24.com>>, Senior Correspondent, "Books under police lens to prevent hurting of religious sentiment" *Bdnews24.com* (1 February 2019) *BDNews24.com* <<http://bdnews24.com>>, & Arifur Rahman Rabbi, "DMP: Books hurting religious sentiments not to be allowed at book fair" *Dhaka Tribune* (21 January 2020) online: *Dhaka Tribune* <www.dhakatribune.com>.

A curb on secular spaces on alleged ‘malice against Islam’ and ‘public safety’ is visible from the above incidents. While secularists see these restrictions imposed as adhering to the demands of the Islamists, the *PM* has asked them who would take responsibility for any untoward event. If the state is not capable of taking responsibility for the security of its citizens, it amounts to an enforcement failure. In this case, the failure is rooted in a discriminatory enforcement standard.

B. Law as applied against the Islamists

In sharp contrast to the Islamists, the secularists are largely not seen taking resort to legal avenues. They do not sue Islamists for spreading propaganda or push for laws regulating hate speech. The secularists are seen in street protests, which though mobilizing resistance, do not provide a tangible remedy for the loss or injury suffered. The operation of the legal system vis-à-vis the Islamists portrays a glaring picture of impunity. The secular public sphere has indeed criticized the linking of possession of militant literature or books with distorted interpretation to extremism and arrests on such grounds.²¹³

i. No Prosecution for Hate Speech

As noted in the analysis of the free speech regulation, there is no effective mechanism to regulate hate speech in Bangladesh. Although provisions like ‘spreading false information’ to incite hatred or like provisions may apply remotely, pressing charges under the *DSA* is understandably not a preferable course to the secularists. After all, one cannot legitimize the very law they are opposing by asking the state to enforce it on their behalf.

As a party to the *ICCPR*, it is incumbent on Bangladesh to provide legal remedies regulating hate speech. The *Rabat Plan of Action* has formulated a six-part test for hate speech restrictions to satisfy the high threshold of art. 20.²¹⁴ The first requirement is the context of

²¹³Tribune Desk, “Experts: clear definition of jihadi books needed before arrest”, *Dhaka Tribune* (14 October 2018) online: Dhaka Tribune <www.dhakatribune.com>.

²¹⁴*Rabat Plan of Action on the prohibition of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence* (5 October 2015), para 22.

the speech: the social and political underpinnings as well as the implications for the targeted group at the time of the incidents. Also important is the status or position of the speaker, and the size of the audience and medium used. It is also important to consider whether the content or form of the speech was provocative and direct. Incitement being an inchoate crime in nature, reasonable probability of the crime and a direct nexus between the speech and the incident is also required.

In Bangladesh, the Islamists are openly allowed to propagate hate without any accountability. There have been numerous instances of attacks on religious establishments, places of worship, NGOs, and cultural organizations or programs following religious sermons or rumors spread through mosques. No actions have been taken under either sec. 153A (creating enmity, hatred or ill-will between communities) or 505 (inciting hatred between communities) against any clerics or religious leaders. The typical religious sermons constantly portray the religious minorities and secularists as enemies of Islam and cultural activists and intellectuals as apostates, making the targeted groups vulnerable. The religious leaders are usually held in high esteem, and many of them exploit peoples' religious sentiments by misinterpreting Islam. The size of the audiences is usually huge, and the offensive contents are also spread through print, electronic and social media. In many cases, the contents are provocative (for example, leaving no ground for those practicing Bangalee culture), and direct nexus can be seen between the speech and the alleged crime of targeting individuals or institutions. Despite fulfilling all criteria of hate speech under international standards, Islamists in Bangladesh do not face any trial for igniting hatred against certain classes of citizens.

ii. Backlog in terror cases

In general, allegations under the Anti-terrorism Act, 2009 suffer from backlog.²¹⁵ A 2016 news report shows that at least 52 death references and appeals were pending with the SC

²¹⁵*Anti Terrorism Act*, (Act No. 16 of 2009).

for the inaction of the prosecution.²¹⁶ In 2016, amidst series of militant killings claiming links to extra-territorial militant groups, the *GoB* claimed the militants to be homegrown and was criticized for sloth in prosecution. The *PM* informed the National Parliament that the mysteries of recent killings were solved, echoing the *IGP*, who claimed to have solved 80% of the cases.²¹⁷ However, records did not demonstrate headway in investigation or trial in most cases. A 2016 news report at around the same time showed militants were securing bail from the courts due to the insufficiency of information and lack of coordination between prosecutors and investigating officers.²¹⁸ To date, most of the cases have not yield judgment or prosecution.

It is also notable that Bangladesh did not have anti-terror law until 2009, a long time after the terrorist attacks have started. As a result, earlier cases were filed under the *PC* for willful killing or under the Explosive Act. Therefore, the judicial process is cumbersome and lacks uniformity.

iii. Slow progress on cases targeting the secular public sphere

An analysis of the leading cases against secular personalities, and places of entertainment show that only a handful of cases have been resolved so far. The cases of attacks against poet Shamsur Rahman (1999) and writer Humayun Azad (2004) still remain pending. The 1999 *Udichi* Blast case is still pending for death reference before the *HCD*.²¹⁹ On June 23, 2014 the trial court issued a death sentence against eight *HUJI* members on allegation of the Ramna Batamul Blast case (2001). The death sentence is yet to be confirmed by the *HCD*, while the chief accused, Mufti Abdul Hannan, has been executed in relation to another

²¹⁶Muhammad Yaesin, "50 Appeals of Militants Pending with SC", *The Independent* (28 July 2016) online: <www.theindependentbd.com>.

²¹⁷Mohammad Al-Masum Molla, "PM: Mysteries of Recent Killings Solved" *The Dhaka Tribune* (28 April 2016) online: The Dhaka Tribune <www.dhakatribune.com> and Mohammad Jamil Khan, "80% of Militant Linked Cases Solved, Says IGP" *The Dhaka Tribune* (28 April 2016) online: The Dhaka Tribune <www.dhakatribune.com>.

²¹⁸Prakash Biswas, "The Militants Getting Bail: Prosecution and Police Indifferent" *bdnews24.com* (1 May 2016) online: *BanglaBDNews24.com* <bangla.bdnews24.com>.

²¹⁹Tauhid-Uz-Zaman, "Udichi tragedy: Victims, families still await justice for bombings" *Dhaka Tribune* (6 March 2019) online: *Dhaka Tribune* <www.dhakatribune.com>.

blast case.²²⁰ In some cases, for example, the *Sangitangan* burning case, hundreds of unnamed people were accused, leading to mass arrest but yielding no result.

Despite the worldwide media attention, only two of the cases related to blogger and publisher killings from 2013 to 2016 have been decided by the trial court.²²¹ In contrast, where the five attackers of the Holey Artisan (2016) case were killed on the spot, the Court was able to prosecute another seven for planning and supplying weapons of the attack within a relatively shorter period of less than three years.²²² While this speedy trial is laudable, the comparative lack of empathy concerning the secular public sphere is miserable.

iv. Masterminds executed without inquiring into the motives adequately

It has been mentioned that the manhandled prosecution under the *BNP* regime in both *Ramna* and *Udichi* blast cases made the work of the later governments difficult.²²³ So far, the masterminds behind the two banned militant outfits *JMB* and *HUJI* responsible for those attacks have been executed under other cases. The death sentence against Shaykh Abdur Rahman and his aides has been executed in 2007 for the countrywide blasts in 2005.²²⁴ *Mufti Hannan*, the *HUJI* leader, was executed in 2017 for an attack on the British High Commissioner for Bangladesh in 2004.²²⁵

Under the leadership of Rahman, *JMB* attacked writers, journalists, cinema halls, and cultural organizations, including the *Udichi*. But his execution was carried in haste, with the other cases remaining pending. From the judgment, it can be assumed that the trial court

²²⁰Ashutosh Sarkar, "Ramna Batamul Carnage: Justice in Legal Tangle" *The Daily Star* (14 April 2020) online: The Daily Star <www.dailystar.net>.

²²¹Arifur Rahman Rabbi, "What is the status of freethinker murder case?" *Dhaka Tribune* (25 February 2020) online: The Dhaka Tribune <<http://www.dhakatribune.com>>.

²²²"Holey Artisan cafe: Bangladesh Islamists sentenced to death for 2016 attack" *BBC News* (27 November 2019) online: BBC News <www.bbc.com>.

²²³*Supra* note 219.

²²⁴Randeep Ramesh, "Bangladesh executes six Islamic militants" *The Guardian* (30 March 2007) online: The Guardian <www.guardian.com>.

²²⁵"Mufti Hanna to be executed anytime" *The Hindu* (9 April 2017) online: The Hindu <www.thehindu.com>.

did not adequately probe the motive or scheme of the organization.²²⁶ The judge expressed astonishment as to how the accused could have been so opposed to the legal system that they even denied appointing lawyers for themselves. The judge also observed that:

[M]uch bigger issues are involved and that penalising this kind of attitude and action of derailed individual is not enough. The root cause and the solutions of the problem are to be found out. To that end the forerunners of our society, particularly those who play major role in building up the social and individual psyche, need to seriously address the issue of perverted indoctrination in the name of Islam.²²⁷

Firstly, the court was not dealing with any ‘derailed individuals’ but the leader of an organized militant group terrorizing Bangladesh for over two decades. The very existence of the party was to deny the validity of man-made law, and therefore, the judicial forum was their ultimate performance stage to show their defiance of the law of the land. *Secondly*, without denying the role of the society at large it can be questioned whether the trial court adequately absolved its duty of figuring out the ideological understandings of the outfit so as to lay path for others to eradicate those misconceptions. If the early strategies of the outfit were chalked without hasting for an eyewash execution pending decision on attacks on cultural platforms, maybe the party would not still be operating to shortlist cultural activists to be killed or burnt alive.

Almost the same pattern is applicable in the case of the recently hanged *HUJI* chief. He was hanged under the *PC* at a time when both the *Udichi* cases were still pending with the higher courts. Interestingly, the author judge in the *Mufti Hannan* judgment, while focusing on the justness of the death sentence, went at length to address the concept of terrorism from internationally reputed authors, Indian jurisprudence, and Islamic sources. The judge concluded that the “criminal acts and conspiracy of explosion of bombs and grenades and killing of innocent people by the accused persons are also violative of the injunctions of the Holy Qur’an and prophetic traditions.”²²⁸

²²⁶*State v Rahman*, 58 DLR (2006) 615.

²²⁷*Ibid* at para 106.

²²⁸*The State v Hannan*, Death Reference No. 135 of 2008 at 166.

With regard to the recent killings, the *GoB*'s steadfast denial to consider international militant links though befitting its political purpose of blaming *JMB* (therefore *JIB* and *BNP*), is detrimental to public safety. And once again obstructs the proper understanding of militant networks and the threats they pose to the diverse citizenry.

It appears from the above analysis that Islamist parties operate with relative impunity under the legal system of Bangladesh compared to their secular counterpart. The manifestation of freedom of expression in Bangladesh is subject to pre-censorship and allowed only as long as it does not offend "religious sentiment and values". In contrast, the manifestation of religious belief is allowed to operate even at the cost of affecting the rights and liberties of others and mobilizing violence as long as an element of "religious hurt" can be imported.

Conclusion

Legislative and judicial actions often foster the context in which the contestations between the secularists and Islamists take place in Bangladesh. Both the judiciary and the parliament have orchestrated their respective performances to cater to the needs of their Islamist audience. The construct of majority Muslim identity as a homogenous unit and shaping the legal framework on this singular identity is creating a hegemonic effect for its larger audience. The repetitive use of religious tenets in judicial and legislative function (performance) is taking the state further away from its decayed secular underpinning and closer to an established religion. This tilt reiterates the propaganda of "Islam at risk" and creates an atmosphere where freedom of speech and expression as *a fortiori* need to be mindful of not hurting religious sentiments.

The entire gamut of laws regulating freedom of expression in Bangladesh presents a trend of silencing dissent and diversity. Both the 'religious sentiment' and 'hate speech' provisions are invoked against the secularists rather than ensuring accountability for the Islamists. This lopsided application of the law creates a total enforcement failure whereby the executive is seen to shut down secular spaces in the face of Islamist threat showing

ground of public order and security. The legal system though claiming to be secular operates to preserve Islamism through legislative, judicial, and executive intervention and thereby reinforces Islamo-secularism.

CONCLUSION

Performing Islamo-Secularism

Where the mind is without fear and the head is held high; [/] Where knowledge is free;
Where the world has not been broken up into fragments[/] By narrow domestic walls;
Where words come out from the depth of truth;
Where **tireless striving** stretches its arms towards **perfection**;

Where the clear stream of reason has not lost its way;
Into the dreary desert sand of dead habit;
Where the mind is led forward by thee;[/] Into ever-widening thought and action;
Into that heaven of freedom, [/] My Father, let my country awake.¹

Secularism in Bangladesh was marked as the ‘binary opposition of communalism’ on the one hand and the ‘binary opposition of religion’ on the other.² Neither of the above descriptions entirely capture secularism as envisioned in the original constitution. The principle of secularism (art. 12) along with its prohibition on religion-based politics (art. 38), the promise of equal rights and protection before the law (art. 27), right to freedom of religion (art. 41), and state policy of uniform education (art. 17) provided a framework for the separation of state and religion. The mischief that secularism sought to prevent in Bangladesh became its most pressing challenge: religion-based politics. The use of religious tokenism reduced secularism to mere non-communalism (1972-1975). Islam was made the state religion for legitimizing autocracy and politics of convenience (1975-2010). Finally, despite judicial ‘revival’ of secularism, continued Islamization made removal of state religion unlikely (2011). Through these three trajectories, the legal system of Bangladesh has landed on its *durcupine*, Islamo-secularism.

This thesis has studied the formation of Islamo-secularism and its impact on the public sphere of Bangladesh. Instead of identifying the theoretical or normative underpinnings of secularism and religion in the abstract, this thesis has focused on the context-specific local rootedness of ethnicity, religion, community, and their evolution in transforming the national identity. By situating law, religion, and identity in their day-to-day lived

¹Rabindranath Tagore, “Prarthona”, *Gitanjali* (Song Offerings) (London: Indian Society, 1911) poem 35 [emphasis added, “\” inserted by author for the purpose of pagination].

²Tazeen M. Murshid, *The Sacred and the Secular: Bengal Muslims Discourses, 1871-1977* (Calcutta: Oxford University Press, 1995) at 5-6.

relationship in the public sphere through performing arts, this thesis has deconstructed the myth of the 'Muslim majority identity' of Bangladesh as a monolithic unit. Priorities over identity markers have certainly shifted over time, but not to the extent of validating the binary opposition of Islamism v secularism. The binary formulation does not explain why the militant groups' rank and file predominantly come from mainstream education or why faith school students subscribe to mainstream entertainment.³ Due to their diverse language, ethnicity, inter and intra-religious followings, socio-economic divide, and political differences, the citizens of Bangladesh cannot be identified by a singular identity marker of either language/ethnicity or religion. Under Islamo-secularism, an attempt to stratify these diverse identities within a monolithic version of Islam has created a schism in the public sphere.

However, even the Islamist public sphere in Bangladesh is not a composite unit. My understanding of the Islamist public sphere has significantly changed during this research by engaging with the publications and media content. In my initial drafts, words like 'bigots' or 'zealots' would often pop up as an expression equivalent to the Bangla expression '*dharmandha*' (blinded by religious dogma). While this description may not be harmful in a general discussion, the use of this term by the lawmakers and secularists concerning extremism or religion-based politics means either an obscuring of identity or a lack of understanding of the 'other.' This ambivalence is utterly unhelpful in mitigating the conflicts in the public sphere.

As mentioned in the introduction, this thesis never aimed to find a way out of the crossroads of Islamo-secularism, but to understand the contesting identities better. Engagement with the other helps one to see one's strengths and limits and appreciate the other.⁴ By analyzing the Islamist and secularist manifestations, and their regulation by the law, this thesis has put the discords into a dialogue. For example, the attempts to sanitize

³Zobaer Ahmed, "More Radicals Come From Bangladesh's Mainstream Schools than Madrassas" *The Wire* (30 June 2019) online: The Wire <www.thewire.in> and "Madrassa burns pupils' smartphones in Ctg" *The Daily Star* (7 March 2018) online: The Daily Star <www.dailystar.net>.

⁴Martha C. Nussbaum et al, *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon Press, 1996).

Bangalee culture of its roots by the state as pictured in Solaiman's *Ei Deshe Ei Beshe* (Chapter III) is a translation of the state policies as seen in Chapter II. The same themes are recurrent in *w'az mahfils* (Chapter IV) and Islamists' demands (Chapter II), which continue to dictate the actions of the state under Islamo-secularism (Chapter V).

When I propose an expansion of this dialogue for mutual engagement, I do not mean 'dialogue' in its narrow sense, between the state (as representative of the secular) and the religion-based parties.⁵ This narrow 'dialogue' in the form of political bargaining has resulted in Islamo-secularism, with no participation of the people. Neither the *GoB* nor the religion-based political parties (Islamist and others) represent the interests of all citizens. People can peacefully engage with each other regardless of differences when democratic institutions are functioning, and those in authority are not fanning the flames of prejudice. The Islamo-secular legal framework is not suited to facilitate such conversations and engagement.

Now that Bangladesh has arrived at the crossroads of Islamo-secularism, the three trajectories of 'secularism' can be seen in the rear-view mirror of history. In 2011, a democratic regime inserted state religion (Art. 2A) under the *Fifteenth Amendment* alongside secularism. While the military regime called its state religion provision under the *Eighth Amendment* (1988) "a new feather" to the distinct national identity, Islamo-secularism has been called ornamental.⁶ It is probably only after the *durcupine* removes these layers of feathers and ornaments that the nation will be able to see more than what meets the eye; the true self (identity).

During the insertion of the state religion provision, a Parliament member had said that the government was making Islam the state religion without ensuring the right to food and

⁵Sen argues that dialogues on civilizations, though well-intentioned, ultimately harm any meaningful understanding by reducing people to their religious belief alone, regardless of all the shared identities. I find this argument valid even in a national context. Amartya Sen, *Identity and Violence: The Illusion of Destiny* (New York: W. W. Norton and Company, 2006).

⁶"State Religion Gives Distinct Identity: Ershad", The Daily Observer (9 June 1988).

clothing for the people to evade responsibility by deferring to Allah's will.⁷ The same message is echoed in Shah Abdul Karim's song. In Solaiman's *Ei Deshe Ei Beshe*, the cabinet says that the land belongs to the King, but the people belong to Allah. While the kingmakers and the mainstream political parties busy themselves in dividing the public sphere over religious and national identity, it is ultimately the citizens who continue to lose lives and suffer harm.

This thesis has engaged several theoretical frameworks in its analysis, such as the public sphere and legal pluralism, and the concepts of self and the other, without theoretically grounding them in the context of Bangladesh. Although I identify this as a limitation, doing otherwise might have taken away from the contextual analysis central to the thesis. As such, I have used these theories as "clues" to examine and understand the ground realities of Islamo-secularism in Bangladesh.⁸ This thesis has studied the performing arts of various genres in the intersecting areas of law, religion, and identity. I am not versed in drama, theater, performance, musicology, or theology. My presentation or interpretation of the relevant texts is not free from the influence of legal hermeneutics either. Empirical research could have supplemented the findings of this research. This thesis opens up possibilities for several empirical inquiries as to the relationship among law, religion, and performing arts.

My content-based analysis started with three questions. Can Bangladesh endorse Islam as the state religion and yet claim to be secular? Does the guarantee of "equal status" and "equal right in the practice" of all religions on a par with Islam (Art. 2A) ensure equal rights and dignity of all citizens? Can the present constitutional scheme ensure cohesiveness and unity in national life? I answer all three questions in negative based on the research findings below.

⁷Rabbiul Hasan, "The Sovereign and Distinct Identity of Bangladesh will be Established: Government" & "State Religion Bill has Reinstated the Two-nation Theory: Opposition" *The Daily Ittefaq* (8 June 1988).

⁸Rajeev Bhargava and Helmut Reifeld eds, *Civil Society, Public Sphere and Citizenship: Dialogues and Perceptions* (California: Sage Publication Inc., 2005) at 32.

By analyzing the three trajectories of secularism in Bangladesh, Chapter I concluded that Islamo-secularism was not mandated by the people but driven by the Islamization of the state. The chapter also notes the failure of the framers in articulating their notion of secularism clearly. In contrast, the Islamists eloquently explain the odds between secularism and Islam. As the state exclusively chose the right-wing political forces as its audience, the rights and liberties of *all* citizens were not weighed in on the interpretation of secularism. As a result, the state exerted the hegemonic claim of monolithic Islam, dividing the public sphere.

Chapter II analyzed the discord between the religion-infused identity and ethnicity-informed identity in their historical context during the British colonial and Pakistan eras. This chapter has shown that the threat against a particular identity marker (real or imagined) induces people to identify with the identity at risk exclusively. Therefore, the state policies concerning identity markers often dictate which identity people would cling to at a given time, which is evident in the contemporary reality in Bangladesh.

Chapter III, by analyzing contents from two secular art forms, namely music and drama, concluded that the secular public sphere is not negatively biased towards Islam. The portrayal of Muslim clerics or attires from the tradition often creates an impression of bias. However, given *JIB's* role during 1971, such portrayal cannot be invalidated. Moreover, the performances take note of censorship, insult, or injury inflicted by the Islamists. For example, Shah Abdul Karim's song addresses the clerics' w'az against him, and *Meraj Fakirer Ma* touches on the name-calling of secularists by the clerics. The critic of religion is also visible in performing arts, in both songs and dramas. The folk songs especially endorse unorthodox views of Islam, which are unlikely to trade fairly under the Islamo-secular legal framework. The secular performing arts engaged in countering Islamization often fall short of drawing a compelling national identity building narrative. Despite being imbued with humanism, the secular public sphere is not equipped to address the Islamist transnational identity building.

Chapter IV focused on the ubiquity of the Islamist public sphere in Bangladesh and analyzed *w'az mahfil* and *jihadi* songs as genres comparable to drama and music. This chapter concludes that the characterization of the Islamist public sphere as a counter-resistance to the hegemonic claim of Bangalee nationalism is inappropriate. Instead, the Islamist public sphere is geared towards mobilizing public opinion in favor of monolithic Islam and transnational Islamic brotherhood. By emulating the modalities of the mainstream performing arts, they portray a vile picture of the secular artists and intellectuals as infidels and enemies of Islam, hence justifying a counter-narrative of national history.

Chapter V offered an analysis of the legal interpretation of Islamo-secularism and how this particular interpretation impacts the rights of the citizens. The Chapter concludes that the parliament or the lawmakers have failed to ensure equality for all citizens by denying recognition to the diverse ethnic identities in Bangladesh and giving special status to the religion followed by the majority. Similarly, the judiciary has abstained from its duty to perform or adjudicate a matter of constitutional importance by putting down the challenges against Islamo-secularism. A translation of the constitutional policy of Islamo-secularism is remarkably reflected in the overbroad provisions relating to religious hurt and the complete absence of hate speech regulation. While expressions of freethinking or performing arts are scrutinized against obscure laws, the Islamist public sphere operates in calling out for closure of secular public spaces and events, which are often heeded to in the name of security.

By this particular performance of the constitutional framework of Islamo-secularism, the parliament and judiciary have inclined towards a faith-state unity. There is an apparent unity of ends as the state claims itself as the protector of the religion and the Islamists claim to fight for establishing the religion. According to *GoB* no law or state action would go against the tenets of Islam and the teachings of the Prophet, which shows the unity of state and religion in matters of law and policy. The religious institution(s) or individuals do not run the state, but there is scope for any political party to pursue such a goal, except that the Constitution declares the country to be a People's Republic.

The judiciary's reluctance in reviewing 'Islam secularism' and the overbroad restrictions on freedom of expression on the ground of religious hurt has limited its scope of performance to protect the rights of citizens based on a preponderance of religious identity. The SC's silence amounts to a failure to perform and translates into discriminatory enforcement for its citizens.

However, the denial by the HCD to review Islam secularism is not a bar for future courts to adjudicate on the matter. Islam secular framework and its permanency in the constitution are "[...] in a state of limbo. They await their performance by legal actors and actresses, or to shift the metaphor, by virtuosos of the law who can interpret melodic lines in the law in the ways overlooked by previous players."⁹ Maybe one day, the SC will find reason enough within the constitutional scheme to adjudicate Islam secularism for judicial review and listen to the parties at length. Maybe it will apply the text in its context and strive to provide an interpretation, which is authentic to the spirit of the constitution and responsive to the rights and liberties of citizens. This possibility is not limited to legal interpretation alone. All the stakeholders involved in the process might come to see a truth or meaning not seen or conferred before and to define and redefine their performances to be inclusive, to be respectful, and accommodative of others.

In the last scene of *Jayjayantee*, Dulal, a member of the *kirtaniya* group, started to play his violin as the war came to an end. Dulal played the *Jayjayantee* raga, a raga that celebrates achievement but also mourns the loss. Dulal had lost his daughter in the war and did not know if the members of his troop were alive or not. The retreating military officer returned to beat Dulal to death as the music reached his ears. Dulal continued to play until he breathed his last. Amina, Dulal's wife, took up the violin setting aside her despise for music to continue the performance. With "tireless striving", even an antagonist to performance can turn to a virtuoso's role to interpret the law (Islam secularism) as the *Jayjayantee* raga, mindful of the joys and sorrows the interpretation might bring to the people living under the law.

⁹Sanford Levinson and J. M. Balkin, "Law, Music, and other Performing Arts" (1991) U. Pen. L. Rev. 139 1597, at 1657.

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