The Supreme Court of Bangladesh has declared the Fifth Amendment in the constitution unlawful as it allowed religion-based politics, not envisaged by the original document.

The recent judgment of the Supreme Court of Bangladesh reaffirming secular pluralistic constitutional democracy and barring use of religion in politics, has once again revived debate about the motives and purposes behind the partition of India. Dismemberment of Pakistan in 1971 exploded the myth that the "real" purpose behind establishment of Pakistan was establishment of an Islamic State. The two-nation theory, based on the foundation of religious divide of Hindus and Muslims, received an irretrievable setback when the Bengalis were maltreated by the ruling elite of West Pakistan. This ultimately led to a division of the Muslim state, proving that socio-economic factors play a decisive role in politics. Religion is just one of the ploys to achieve political goals.

It is well-documented (see Secular and Nationalist Jinnah by Dr. Ajeet Jawed), that Quaid-i-Azam wanted a secular Pakistan. Throughout his political career, he struggled against both Hindu and Muslim extremists. After independence, the feudal class with the help of its cronies - bureaucrats, clergymen and men in khaki - managed to hijack the new state and converted it into an Islamic Republic. Islam does not permit feudalism and its main stress is on the empowerment of the have-nots. Even in the very beginning, these classes tried to tamper with the famous speech of the Quaid, but failed to do so as Dr. Ajeet Jawed says in his book: "...it was allowed to be published in full only after Dawn's editor, Altaf Hussain, threatened those who were trying to tamper with it to go to Jinnah himself if the press advice was not withdrawn."

For building a secular Pakistan, Dr. Jawed writes, the Quaid sought the help of Khan Abdul Ghaffar Khan, because, as he said in his letter to Badshah Khan, he was "surrounded by thieves and scoundrels" through whom he could do nothing. With a mass of evidence, Dr. Ajeet Jawed has established that the Quaid remained a secularist and nationalist up to the last moment of his life.
The decision of the Bangladesh Supreme Court must be seen in this historic perspective. It reflects the ideology of the founding fathers and has restored the original constitution of the People’s Republic of Bangladesh. In the wake of this verdict, the Election Commission of Bangladesh, on January 26, 2010, asked the three Islamic parties - Jamaat-e-Islami, Bangladesh Khelafat Andolan and Tarikat Federation - to amend their charters as they were in conflict with the supreme law of the country.

Just as Quaid-e-Azam was betrayed by the feudal class in his party, the founding father of Bangladesh also met the same fate. Sheikh Mujib’s Awami League gave the nation its first constitution within one year of independence, based on the four cardinal principles - secularism, nationalism, socialism and democracy. Bangladesh became the third major Muslim country to officially embrace secularism after Turkey and Tunis. On August 15, 1975, Sheikh Mujib was assassinated along with his family. Luckily, Rehana and Hasina, his two daughters, residing outside Bangladesh, survived. In the wake of Sheikh Mujib’s assassination, the country unfortunately witnessed a number of coups and countercoups within a very short span - from August 15 to November 7, 1975.

The successor of Sheikh Mujib, Moshtaque Khondkar, selected Chief Justice Abu Sadat Mohammad Sayem as President. Deriving power through martial law proclamations, he abolished secularism from the constitution by amending Article 38. The lifting of the ban on religion-based politics paved the way for theocratic parties to campaign in the name of religion. Abu Sadat transferred powers to Ziaur Rehman on November 26, 1976 after a deal that he would indemnify his illegal takeover as well as all actions taken between August 15, 1975 and April 9, 1979 and passing of the Fifth Amendment that ratified martial law proclamations including desecularisation of the constitution. Subsequently, Ziaur Rehman was assassinated by junior army officers and General Ershad took control, declaring Martial Law on March 24, 1982.

General Ershad, like General Ziaul Haq, abused religion for the perpetuation of his rule and Islam was made the state religion. In the wake of a popular democratic movement, his military rule came to an end and democracy was restored in 1991. In 1996, the Awami League once again won elections and abrogated all the unconstitutional amendments to sanction the trial of the assassins of Sheikh Mujib. In 2005, the Fifth Amendment was struck down by the High Court. The Court emphasized secularism as the guiding state policy. It held that religious non-discrimination and protection for all faiths, even for non-believers, should be the main responsibility of the state. It explained that secularism means ensuring religious tolerance and freedom of faith without any favor or discrimination. The Court, in unequivocal terms, condemned the actions of the military junta to convert secular Bangladesh into a theocratic
The Court's ruling was contested by the Bangladesh National Party (BNP), led by the widow of Ziaur Rehman, Khalida Zia. The Court granted a stay order that was ultimately vacated on January 3, 2010. As a result, the original Article 38 of the Constitution became operative and barred the use of religion or communal connotations in politics. This has been termed as a major development not only in Bangladesh but the entire Muslim world. It is commonly advocated in the West that Islam and pluralistic democracy are incompatible. The very use of Islam as state religion, critics of Muslim world say, negates the concept of democracy. Secularism requires that at the state level, there should be no propagation of religion and it should be the personal matter of citizens.

In the peculiar political milieu of Bangladesh and elsewhere in the Muslim world, religion has become a tool in the hands of vested interests. The mushroom growth of so-called Islamic political parties is a cause of concern for all. These parties, backed by military establishments, exploit the masses and grab the nation's wealth, all in the name of Islam. Militants are their front men, terrorism their weapon and they themselves are the pawns of neo-imperialism. In the face of these realities, it is heartening to see that the Supreme Court of Bangladesh has upheld the High Court's ruling delivered in 2005, declaring the Fifth Amendment in the constitution unlawful as it allowed religion-based politics, not envisaged by the framers of the original document.

In Bangladesh, this decision of the Supreme Court may enhance hostility between the two traditionally rival parties - the Awami League led by Sheikh Hasina, daughter of Sheikh Mujibur Rehman and BNP led by Khaleda Zia, widow of Ziaur Rehman. The verdict is a defeat for the BNP that challenged the High Court decision in 2005 and secured a stay. BNP will have to surrender to the commands of the law.

Article 41 of the Constitution of Bangladesh guarantees freedom of religion. It says:

(1). Subject to law, public order and morality,
   a. every citizen has the right to profess, practice or propagate any religion;
   b. every religious community or denomination has the right to establish, maintain and manage its religious institutions.

(2). No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.
The above command of the constitution guarantees religious freedom for all. The use of religion in politics only creates divisions, rather than achieving unity. The Bangladesh Supreme Court's verdict, restoring the secular character of the Constitution holds a promise of progress and democratization of society and sets a good example for other Muslim states.