

# Azam was a citizen

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 Yusuf noted that domicile of origin — citizenship by birth — can only be changed into domicile of choice by a combination of residence and intention to reside in another country permanently and indefinitely.

"In that case domicile of origin is suspended and kept in abeyance and whenever domicile of choice is given up domicile of origin automatically revives as no person can remain stateless," he added.

The court interjected asking "do you mean to say that the day you surrendered the Pakistani passport your domicile of origin (citizenship of Bangladesh) was automatically revived?"

Replying in the affirmative, Barrister Yusuf pointed out that the petitioner acquired the citizenship of Bangladesh under both the Bangladesh Citizenship Temporary Order (PO 149 of 1972) and the adopted Bangladesh Citizenship Act of 1951.

Born in Bangladesh in 1922, he said, Golam Azam had fulfilled all three conditions set under the Temporary Order to be deemed to be a citizen. He was born here, was a permanent resident March 25, 1971 and continued to be so resident the next day March 26.

He said that the petitioner also qualified to be a citizen under the Citizenship Act as he was a citizen March 26 and did not become a permanent resident of any other country.

Barrister Yusuf emphasised that March 26, 1971 was the commencement date and termination date and it also coincided with the proclamation of independence, when the court wanted to know how long a person needs to "continue to be so resident" as stipulated in the Article 2 Temporary Order.

He added that the law was to cover a transition period — March 25, 1971 being the last day of Pakistan while March 26 was the first day of Bangladesh. "Continuity cannot be stretched or else there will be two kinds of citizenship, one preliminary and the other permanent."

He asked if a country could proclaim independence without sovereignty, territory, a population of its own and without a government.

"Yes there was a territory and a population of Bangladesh when the proclamation of independence was made as Bangladesh always claimed the Pakistan army to be an occupation army," Justice Choudhury pointed out.

The counsel for the petitioner noted that in order to have a "population of its own" PO 149 of 1972 was made to have retrospective effect from March 26, 1971 to back up the proclamation of independence.

At this point the Attorney General acknowledged that the position on the commencement date of the Temporary Order was already "accepted".

The Court pointed out that if a person owed allegiance to a foreign country and the government decided not to apply the dual citizenship clause, then his Bangladeshi citizenship would go.

But the Pakistani passport held by Azam, Barrister Yusuf said, "was only used as a travel document, like many other Bangladeshis, the petitioner was in Pakistan against his wish and stranded."

He added that the proviso to Article 2 of the Temporary Order, which makes provisions for those stranded due to employment and in pursuit of their studies, was given a liberal interpretation by the government as everyone was allowed to come back.

The Court noted that the government "has the power to say goodbye to an undesirable citizen" and under Section 16(3) of the Citizenship Act of 1951 can deprive any person of his citizenship for being disloyal to the Constitution.

However, Barrister Yusuf pointed out that the government did not exercise that power under the Citizenship Act but issued the notification disqualifying Azam of his citizenship specifically as per Article 3 of the Temporary Order, which deals with the removal of a doubt as to whether a person is deemed to be a citizen or not.

Noting that the petitioner first went to Saudi Arabia and then to the United Kingdom in 1973, he added that Azam acquired a Pakistani passport as Bangladesh did not have any diplomatic relations with either Pakistan or Saudi Arabia at the time.

However, the Attorney General pointed out that the Egyptian embassy in Jeddah was authorised to look after the interest of Bangladesh

during that period.

Alternatively, the counsel for the petitioner argued that Azam's citizenship was also protected by Article 2(a) of the Temporary Order, which says any person residing in the United Kingdom shall be deemed to continue to be residents of Bangladesh, as he was already residing in London when the impugne notification was issued April 18, 1973.

Saying that the petitioner went to London during the first week of April 1973, he added "in view of international law position residence for a part of a day or a day is enough and that physical presence is not required for purpose of residence in Bangladesh".

As the impugne notification did not claim to be retrospective in nature, he said, the petitioner continued to remain a citizen of Bangladesh until April 17, 1973.

"The most important right, which is the birth right and which is more important than the fundamental rights, of the petitioner was taken away without a show cause notice," Barrister Yusuf noted.

The Court observed that Article 3 of the Temporary Order which deals with cases of doubt if a person is deemed to be a citizen or not under Article 2 and the power to remove the doubt is vested in the government whose decision shall be final.

"You would have to argue on this point because if the law says the government decision is final then how far can the court go in opening it up," added Justice Choudhury.

The counsel for the petitioner said that he would argue on the "finality of the government decision" which, he added, was based on "irrelevant considerations".

Acknowledging that if a person had a right and that right was being taken away there must be a show cause, the court, however, noted that the provision of a show cause was "excluded" from Article 3.

However, Barrister Yusuf pointed out that provision for issuing a show cause notice was "not excluded but kept silent" from Article 3. "Principles of natural justice demand that a show cause notice is issued."

As Article 3 "consciously omitted" a hearing, the court said "you are saying that a natural justice clause would be read into it".

The counsel for the petitioner readily agreed saying that a hearing should be included unless it is expressly specified against doing so.

"But the government may think that there is not enough time to hear the petitioner as he is too dangerous a man," interjected the court.

Barrister Yusuf held that there was no problem in issuing a show cause notice to the petitioner as the government, through a gazette notification, issued a notice to Azam under the Collaborators Act (PO 8) in 1972, "then what problem in serving a notice to the petitioner."

However, the court interjected again saying that the petitioner's citizenship was not taken away but that he was not given the citizenship.

The counsel for the petitioner replied that too demanded a hearing as the birth right was being infringed upon.

Noting that the Citizenship Act stipulates that a person was not a permanent resident of any other country to be deemed to be a citizen of Bangladesh, the court pointed out that the petitioner was a resident of another country.

Barrister Yusuf replied that the petitioner was not a permanent resident of another country. "Permanent residency and residency are two different things."

## Attack on Nirmul leaders barbaric, says ALWC

Awami League central working committee at an emergency meeting yesterday condemned the government's "barbaric attack" on leaders and workers of Nirmul Committee, foiling their scheduled rallies in the capital on March 26 and 28, reports UNB.

Presided over by party President Sheikh Hasina the meeting said the BNP government is involved in a planned conspiracy with anti-liberation Jamaat-Shibir forces pushing the nation towards a critical situation.

The meeting asked the people to remain alert against the conspiracy of Jamaat-BNP axis and warned of utter consequences if the government tries to foil any public meeting and demonstration in future.

It criticised the authorities concerned for discharging Jahanara Imam from P G Hospital before she recovered completely.

The meeting also asked the government to withdraw "false" cases against Jahanara Imam and Abdur Razzak, MP.

It also criticised the Prime Minister for not visiting the Savar National Mausoleum on the Independence Day on March 26 to pay respect to the martyrs of the 1971 Liberation War.

## Show cause on two NAP leaders

The General Secretary of National Awami Party (NAP) Pankaj Bhattacharya has issued a show cause notice against party central leader Prof Abdul Hafiz MP and president member Dr M A Maleque as to why they would not be expelled from NAP for their involvement in anti-party activities.

According to party sources, the action was taken against them as they had formed a new central committee of NAP at a meeting in Syedpur Sunday violating the party constitution.

The source indicated that Prof Hafiz, elected a member of the parliament on the NAP ticket, might join the BNP for which he had formed a new committee of NAP.

## Peacekeepers come under motor attack in Cambodia

PHNOM PENH, Mar 29: UN peacekeepers in Cambodia have come under heavy mortar and automatic weapons fire and had to fight back for the second time in two days, a UN spokesman said Monday, reports AP.

## Sharif arrives in Bonn

BONN, Mar 29: Pakistani Prime Minister Nawaz Sharif arrived in Germany today for a five-day official visit for talks with Chancellor Helmut Kohl, business chiefs and leaders of the Pakistani community, reports AP.

## Heroin smuggling

Witness identifies Blankson as Tony

By Court Correspondent

Sales executive of Sonargaon Hotel, Shaiful Islam, Monday said before the Second Additional Sessions Judge, Dhaka, that he had seen Eliadah McCord and Tony (Robert Blankson) together in the hotel one day in February last year.

He was being examined and cross-examined in the court yesterday as proceedings of the trial in the sensational drug case, including Islam, 18 witnesses have been examined and cross-examined in the court so far.

Five persons, an American girl Eliadah McCord, a South African, Robert Blankson (Tony), a Bangladeshi Abdul Qayum and two Nigerians Ochendu Goddy and Okey Godwin have been accused of an attempt to smuggle 3.27 kgs of heroin from Bangladesh to Zurich, Switzerland February 25 last year.

Three of the five accused have been arrested while two others Qayum and Godwin are still at large.

During the yesterday's proceedings when Islam identified Blankson as Tony, Blankson denied saying "Sir, I'm not Tony—I'm Robert Blankson."

Before the Judge M Ansaruddin Sikder, the sales executive said that Eliadah stayed at the Sonargaon Hotel from February 17 to 25 last year. Earlier she was in the Hotel Purbani he added.

## AL, allies

ment had twice violated the Constitution by breaking up Committee rallies March 26 and 28 in the city. "These prove that this government, though elected, is not a democratic one in character," the resolution said.

The meeting resented the President and the Prime Minister's not paying their respects to the martyrs of the Liberation War on the Independence Day and said it was an utter disregard to the country that was liberated through the blood of 30 lakh martyrs.

"This also proves that the present government is nakedly ignoring the spirit and values of the Liberation War ... and wants to destroy those," the meeting resolved.

It accused not only the Home Minister but also the Prime Minister himself for injuring Jahanara Imam and others.

The countrymen would never tolerate torture in the style of the Pakistani military rulers or the past autocratic ones, the meeting warned.

Supporting the Samannaya Committee's March 31 agitation programme, the meeting cautioned the government against any obstruction on that day and called on the democracy-loving masses to resist unitedly the neo-autocrats and anti-Liberation forces.

Among others, who attended the meeting, were Abdul Mannan, Sajeda Choudhury, MP, Mohtuddin Ahmed, MP, Abdur Razzak, MP, Matia Choudhury, MP, Mozaffar Hossain Paltu, Sheikh Fazlul Karim Selim, MP, Mahmudur Rahman Manna and Akhteruzzaman of the AL, Rashed Khan Menon, MP, Hasanul Haq Inu, Kazi Aref Ahmed, Nirmal Sen, Abdullah Sarkar, Shirin Akhter and Bimal Biswas of the 5-party and Saifuddin Ahmed Manik, Pankaj Bhattacharya, Mohammed Afzal, Dr Wajedul Islam, Abdus Samad and Dilip Barua of the PDF and Samannaya body leader Syed Hasan Imam.

## Ctg Nirmul rally

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times as the latter attempted to hold the rally. At one stage police resorted to lathicharge to disperse the mob, witnesses added.

When the Nirmul Committee tied to regroup and hold a rally near Musafir Khana, several hundred yards away from the Minar, police again attacked them and forced them to leave the place, committee leaders and witnesses said.

Police swooped on when the convener of Chittagong unit of Nirmul Committee Begum Mustari Shaif was about to address the gathering, leaders said. Later the committee members brought out a procession and paraded the city streets voicing their protest against the police action.

Witnesses said some unruly processionists stoned at a few road side shops and damaged several vehicles.

Earlier, a procession of about 100 lawyers from Chittagong Bar led by its General Secretary Advocate Anwarul Islam also was opposed by police near New Market crossing while it was proceeding to attend the scheduled rally at Shahid Minar.

Meanwhile, the Nirmul leaders have announced a demonstration programme on March 31 here to protest the police attack.

## Imam

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for the next seven days. The statement said that her body, she was yet to subside and that specialist physicians including a neurologist would examine her today.

The physicians have also advised relatives to control visitors.

Meanwhile, a large number of political leaders and prominent personalities visited her house to enquire about her.



Prime Minister Begum Khaleda Zia presiding over the weekly cabinet meeting at Bangabhaban yesterday. Story on page 1 — PID photo

## Attack on Nirmul leaders barbaric, says ALWC

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## Russian Congress

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forms Yeltsin began in 1992.

Presidential aides denounced the question as being designed to elicit a "no" vote.

The decisions by the Soviet-Congress on the fourth day of its emergency session deepened the power struggle between Yeltsin and the legislative branch. The constitutional crisis has paralyzed political life for nearly a year.

Yeltsin, angered by the Congress, may hold his own referendum, said allies Sergei Filatov and Vladimir Lysenko. The president wants to ask voters whether they trust him, whether they want a new election law and whether they want to replace the old Soviet constitution with a new charter that would eliminate the 1,033-member Congress with a smaller bicameral legislature.

Frustrated by their failed weekend effort to oust Yeltsin, his legislative opponents began work Monday by passing a resolution rescinding presidential decrees in 1991 that placed regional administrators in power across Russia. Yeltsin relies on the 66 officials to promote his reforms.

The Congress made no provisions for replacing the administrators, but the regions still have local councils elected before the collapse of the Soviet Union.

There was no indication Yeltsin's representatives would

## Dostam demands seat in cabinet

KABUL, Mar 29: On the eve of a scheduled meeting to form a new Islamic government, a spokesman for Afghanistan's most powerful warlord warned Sunday his boss must be included or peace won't return to the battered capital, reports AP.

Gen Abdul Rashid Dostam insists his national Islamic movement party deserves a seat in the cabinet because its members played a significant role in helping the Muslim rebels oust the communist rulers in April 1992.

## Counterproductive

From Page 1 Col 4

charges of deliberately provoking political confrontation instead of harmony and consensus. What makes the government's action so invidious is the fact that there was nothing in the Nirmul Committee's programme for the day, that warranted such a vicious response.

From all reports it is clear that when the police finally attacked the leaders of the Nirmul Committee there were only a handful of people who the police could have easily encircled and kept within a confined area. Yet they opted to attack the group, dislodge the make-shift dais on which Mrs Jahanara Imam was standing, and then beat her in the abdomen, chest and shoulder after she fell. What could have unleashed this brutality, that is so completely uncharacteristic of democratic governments, especially those who adhere to the parliamentary form.

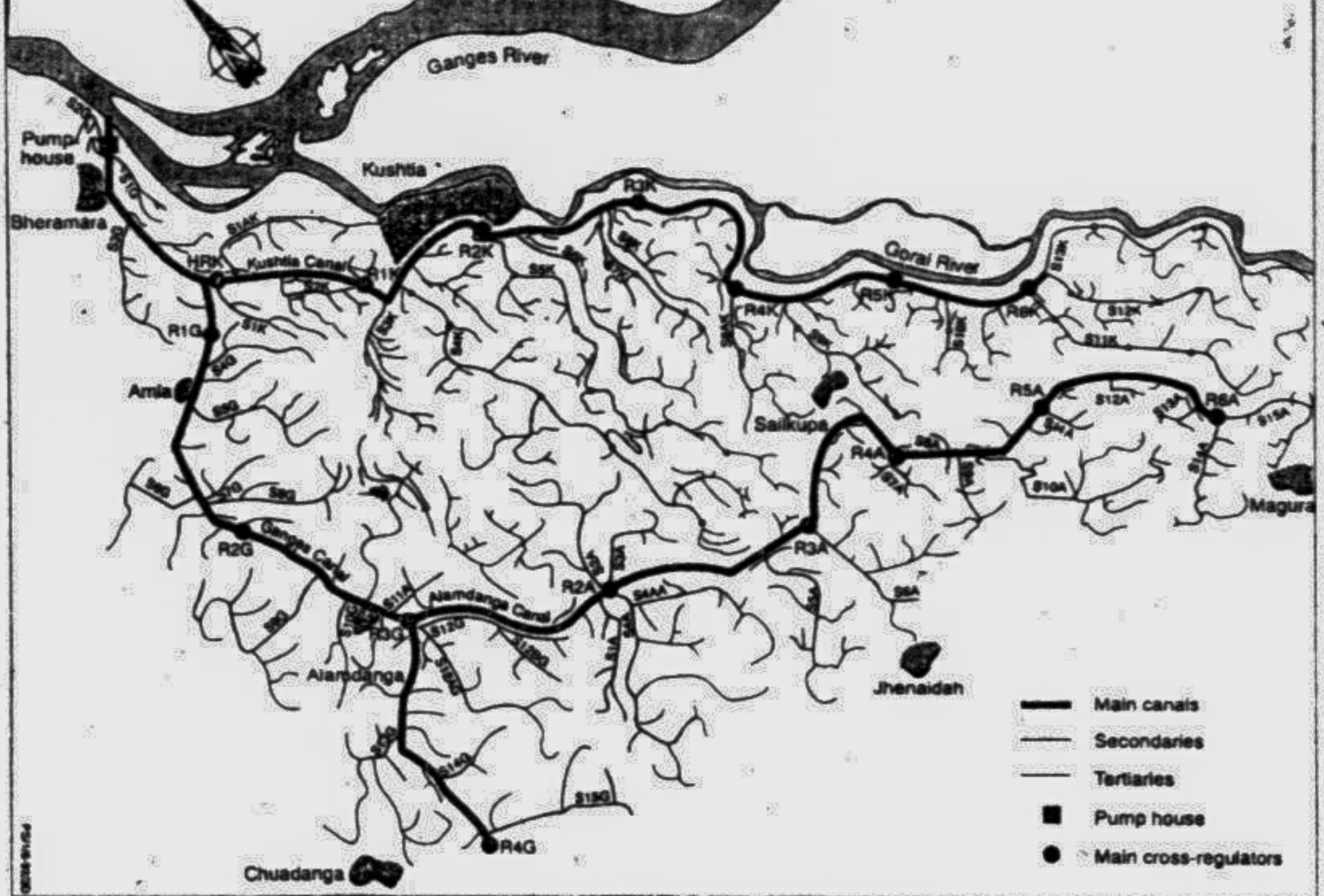
The best way to judge the blunder of the government's move is to imagine what would have happened if the police action did not take place. The Nirmul Committee would have held its meeting — not too well attended from the record of attendance from its recent rallies — and would most probably have dispersed after taking some programme for the future. But in stead, we now have a situation where the government stands accused — and rightly so — of violating the fundamental rights of freedom of expression and of association.

Finally, as result of this unwarranted and unnecessary action the goodwill enjoyed by Begum Zia and her party, is likely to suffer a serious setback. Through the decision to first prevent the holding of the Nirmul Committee's meeting on the 26th March and, later to disrupt the protest rally on the 28th, the government has opted for a show of strength on an issue that is likely to cause significant damage to the image of the ruling party as a pro-liberation force.

Nirmul Committee's method of holding a public "trial" and then "sentencing" Golam Azam to death are questionable, and this journal had said so many times. But the spirit of its demands find echo in the hearts and minds of all the people of Bangladesh who fought for the liberation of the country, whose near and dear ones were killed in the war, and in the genocide of 1971, and who have suffered the humiliation of being brutalized and looked down upon as inferior people that needed to be ethnically cleansed through the rape of thousands of Bengali women (more than two lakhs of them were released from the army cantonments and barracks after independence).

The Prime Minister, it appears, is either losing her cool, or losing her control. We sincerely hope, neither. However, the lack of firmness in controlling terrorism, violence, extortion, campus unrest, and the general law and order on the one hand; and a brutal assault on a group whose demands deal with atrocities and genocide committed against our people, on the other, do not speak of the most judicious political decision making process. First the democratic norms and second, Begum Zia and her party, are likely to emerge as the biggest losers from this police action.

## Padma flow falls to record low



The Ganges-Kobadak Project canal network

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difficult task by engineering means.

"It is impossible ... it will not only affect ecological imbalance ... where would the money come from?"

Meanwhile, political and peasant leaders at Bheramara, one of the worst hit areas, have been voicing demand for a barrage on Bangladesh side.

"I would urge Prime Minister Begum Khaleda Zia to build a barrage that was planned by Shaheed Ziaur Rahman" said Shahidul Islam, a BNP central committee member from Bheramara.

During Zia's rule, the foundation stone for the barrage was laid by the then minister on December 27, 1980. A week before his death, Islam recalled, Zia went to visit the area.

However, the government is unlikely to respond to be plea in the near future, authoritative sources hinted.

The unusually low discharge of waters, as an immediate effect, has kept the gigantic pumps of the Ganges-Kobadak Irrigation Project at Bheramara, Kushtia inoperative, affecting hundreds of thousand of people in four south-western districts.

The pumps should have been put into operation on March 1 to pour water into 1,20,000 acres of dry cropland to help thousands of farmers produce high yielding aus rice. The project's engineers said Monday that the water level was too low even to testrun the pumps.

As a result, the farmers did not get water to grow seed-

lings during the month of March, the time for it.

In terms of agricultural output, the loss has been estimated at Tk 100 crore.

Yesterday, the river level at the Hardinge Bridge point was the all-time low —13.97 feet.

The previous day, on Sunday, it was 14.05 feet — the lowest ever until then.

Discharge of waters at the point was only 9,247 cusec yesterday, beating all previous records! On Sunday, it was 9,761 cusec.

Last year, the lowest was recorded on March 28 with the water level at 15.63 feet and discharge at 13,521 cusec. The engineers cried hoarse to say that the figures were the lowest ever.

A minimum 14 feet water level is required to switch the G-K pumps on. When the project was conceived decades ago, it was assumed that the water level will never go below 22 feet and "the pump house was designed in such a way", said Noajesh Ali, the project's top administrator. Before 1975 the water level had fallen below 22 feet, the engineers said.

Worst of all, the ground water level has gone down to an extent that hand and shallow tubewells do not pump adequate water these days, WDB engineers and peasant leaders said.

According to the engineers, the ground water is flowing down to the river due to the decreasing surface water level.

"Much of the water that flows through the now lean Padma is this ground water," said the engineers quoting BM

Abbas AT, a renowned water expert and former Water Resources Minister and Presidential Adviser.

Abbas was quoted to have said that of the 13,500 cusec late last March flow, the last year's lowest, only 5,000 cusec was released by India at Farakka point. The rest, he said, was ground water.

If this was the fact last year, the engineers argue, India is not releasing any water through Farakka this season. "It's simple arithmetic," they said referring to yesterday's 9,247 cusec flow.

Under the imposing 1.6 kilometre metallic structure that is Hardinge Bridge, the water width has been reduced to 50 per cent. Seven of the 15 piers of the bridge stand on sands.

According to Noajesh Ali, the water width is only 0.6 kilometre now.

"Unbelievable!" exclaimed a journalist visiting the area after years.

The largest irrigation scheme, known as G-K project, directly benefits 1,20,000 farm families or roughly 1.5 million population.

During the dry days, from March through June, three gigantic pumps with 1300 cusec capacity each and 12 subsidiary pumps with 125 cusec capacity each divert Padma water through a 120-mi main canal, 47 secondary canals (total length 292 miles) and numerous tertiary canals (total length 621 miles).

The lower the water level is, the more the capacity (of pumps) is reduced," Noajesh Ali said.