

My Lord, we beg you to act

BADIUL ALAM MAJUMDAR

IN his recent commentary ("My Lord, We Beg to Differ," Aug 13), Mr. Mahfuz Azam respectfully disagreed with the honourable chief justice that the Supreme Court in the past had always served the nation in times of crisis. He cited a few examples, and there are also other such examples. For instance, when Justice MA Aziz was appointed the chief election commissioner in 2005, the appointment was challenged on constitutional grounds. After it issued a rule, the relevant High Court bench's authority to hear writs was revoked, as a result of which the case was never heard.

Mr. Anam also cited the example of Abdul Momen Chowdhury and others vs. Government (Writ Petition 2561/2005), to which I, too, would humbly like to draw the attention of the honourable chief justice, and respectfully request him to act.

This is a famous case, in which a High Court bench in May 2005 required MP candidates to disclose with their nomination papers information about their education, income, assets, loans, criminal records etc. in the form of affidavits. The purpose of this seminal judgment was to empower the voters so that they could make informed decisions, and to prevent criminal elements from being elected to parliament. Unfortunately, a vested

interest group has been trying to prevent this judgment from taking effect, using undue means and committing fraud every step of the way.

One Abu Safa -- a third party -- filed in public interest a leave to appeal petition in July 2005 against this judgment, and undue means were used from the very beginning of the appeal process. The Supreme Court secretariat objected to Mr. Safa's petition on the ground that he was a stranger and had nothing to do with the case. However, for reasons unknown, he was allowed to swear an affidavit to file the appeal.

The scam in the process of granting the leave to appeal was very blatant. The notice for the leave to appeal hearing was not served on the Election Commission (EC) and the chief election commissioner, the only defendants in the case. The notices for the three lawyers, who were the original plaintiffs, were sent with their names, and the Bangladesh Supreme Court as their address. With such an address, naturally the notices did not reach them. Consequently, a Division Bench of the Appellate Division, headed by the chief justice, granted the leave to appeal after a unilateral hearing; however, the court did not stay the High Court judgment. Even though the case involved serious public interest, the honourable court did nothing to raise any question

regarding the absence of the opposing party.

The next episode was even more bizarre. After the leave to appeal was granted, the original petitioners filed caveat and waited for the hearing before the regular bench. The usual practice when caveat is filed is to ensure the presence of the relevant parties and to hear them. Unfortunately, on December 19 -- four days after the court went for the winter recess and merely two days before the deadline for filing the nominations for the parliamentary elections scheduled to be held on January 22 -- Mr. Safa's lawyers approached the vacation bench of the Supreme Court and got a stay of the judgment, again through a unilateral hearing.

The judge of the vacation bench did not hesitate or raise any questions before issuing the stay on this important judgment involving public interest, even though a four-judge bench of his seniors, headed by the chief justice, did not do so. Interestingly, the stay order was transmitted instantaneously to the EC, which implemented it on the same day. In addition, the vacation judge issued stay on the entire judgment for all candidates, even though Mr. Safa only objected to disclosing his own educational qualifications.

In his submission for the stay order, Mr. Safa claimed that he had bought a nomination paper for the

coming parliamentary elections and, since he was not highly educated, the disclosure of his educational qualification would be discriminatory against him. His junior lawyer claimed in a TV interview that Mr. Safa had directed him to file the petition for the stay. However, on inquiry we found that Mr. Safa had not bought, nor submitted, nomination papers at his Chittagong-3 (Sandwip) constituency. His name was not even on the existing electoral roll.

Mr. Safa's leave to appeal petition also contained totally false and fabricated statements. He claimed that because of poverty he could only study through class eight. However, he became self-educated and well to do, and was a benefactor of many educational institutions of Sandwip. In addition, he was a dedicated politician, social worker, and philanthropist. He also claimed that he was a popular and important leader with a great deal of public support, and that he was planning to run for parliamentary elections.

All of these claims were completely baseless. We searched for Mr. Safa but could not find him in Sandwip. According to locals, Mr. Safa is an ex-soldier repatriated from Pakistan, and is most likely employed somewhere in Dhaka as a security guard. He does not live in Sandwip, nor did he go there in the past six years. He does not even have a dwelling there. His former neighbours claimed that he was a

cheat, and had married more than once without the permission of his wife. With repeated the search, but Mr. Safa could not also be traced in Dhaka.

The drama that was staged during the subsequent hearing of the appeal before the four-judge bench, headed by the chief justice, clearly lowered the prestige of the judiciary in the eyes of the citizens. During the hearing, the lawyer for the original plaintiffs, Dr. Kamal Hossain, challenged the maintainability of the appeal itself because of the fraud perpetrated in obtaining the leave to appeal. He claimed that Mr. Safa was a cheat and he was used by some interested quarter.

According to Dr. Mohiuddin Farooque vs. Bangladesh [17BLD(AD)1977], a person who serves the interests of others should not be allowed to file public interest litigation. In addition, Dr. Hossain brought before the Court the allegations of forgery against Mr. Safa and, in support, offered to show a video tape featuring Mr. Safa's wife, his relatives, and the local chairman. He also asked the court to direct the opposing lawyers to produce Mr. Safa, who was absconding, before the court. Unfortunately, the court ignored Dr. Hossain's pleas.

Realising that they were cheated, the senior lawyers withdrew, one after another, from the case during the appeal hearing. Consequently, the junior lawyer of Mr. Safa pleaded

the case and argued against the disclosure of the educational qualification of candidates. However, he had no objection to disclosing the other information required by the High Court judgment.

On April 20, the court pronounced its judgment and, to the utter surprise of all concerned, granted the appeal. This meant that a popular High Court judgment on disclosures, which had already been implemented in five by-elections, was overturned in its entirety, although Mr. Safa's lawyer had objected to the disclosure of the educational qualification only. However, within a few hours, the court, over the vehement objections of Dr. Kamal Hossain, withdrew its earlier order.

It is clear that undue means, deception, and fraud had been used at every step of the way in this important case, and neither the Bar nor the Bench can deny their responsibility for the misdeeds. We humbly request the honourable chief justice to seriously investigate this one case, and give exemplary punishment to those found guilty. We further request him to, if necessary, take the necessary steps for constituting the Supreme Judicial Council under Article 96 of the constitution. We feel that with exemplary punishment to the guilty, discipline will return to the court. We also respectfully request the chief justice to ask Mr. Safa's lawyers to produce him before the court.

We recall in this context that, in a speech last April, the honourable chief justice had stated that there was a proloy or catastrophe -- a calamity of serious magnitude -- in the appointment of judges. In a recent roundtable meeting held at the Supreme Court premise, he expressed the concern that the seeds that were planted would not give a good harvest. Thus, we beg his Lordship to take urgent action to redress the situation.

It is true that judges hold constitutional positions, and there are strong restrictions against their removal. However, due diligence has not been shown in the recent appointment of many judges. Due diligence is a legal concept, and is the opposite of negligence.

According to Black's Law Dictionary, it means: "Such measure of prudence, activity, or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case."

In others, without an absolute standard, the demonstration of due diligence depends on the situation. Thus, the degree of care and prudence will have to be far greater for the appointment of judges, who cannot be easily removed, as compared to hiring, for example, security guards.

According to Article 95 of the

constitution, an individual to be appointed as a judge must have experience of practicing before the Supreme Court for a minimum of ten years. It is alleged that due diligence was not shown by all concerned in the appointment of 19 High Court judges during the last government. More specifically, many of the newly appointed judges, although enrolled in the Supreme Court, did not have meaningful experience of practicing before the highest court of the land.

In addition, there is an allegation of tampering with the LLB marks sheet against one of them, which is still being litigated. Two of the judges were confirmed over the objection of the chief justice. It is, thus, clear that these judges were appointed in a negligent manner and without proper assessment of their capacity and competence, making the appointments at best faulty, if not outrightly illegal.

Your Lordship, the highest court of the land is the last refuge of all citizens. We fervently hope that you will take the urgent initiative to turn this last refuge of the citizens into an institution which enjoys their utmost confidence. The nation will be eternally grateful to you for this initiative.

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Planned dependency

NAZRUL ISLAM

ONCE two traveler friends reached a country full of peace and tranquility. They decided to settle there. But the wise one opposed the idea when they found price of oil and ghee to be the same. He warned his friend that it was not prudent to live in a country where price of oil and ghee was equal. He insisted on leaving the country immediately, but his friend stayed back there to eat ghee at cheaper price. As the price of ghee and oil was same, he started to take ghee instead of oil and shortly he became a fat man.

After few years, the king asked his soldiers to summon all the fat men of his state in front of him and asked to hang those who accumulated extra weight eating ghee. The ghee-fond man recalled his friend's advice, but it was too late.

The teaching of the story is very simple. There should be a rationale in the prices of essentials in a country and the anomalies may turn the country uninhabitable and invite

disaster. I recollect the story seeing anomalies in prices of many essential items in our country. The country is uninhabitable in many counts but of late the prices of essentials has made the life of common people unbearable. Price of sugar, which was always higher than rice, is cheaper now. A kg of medium-quality rice is sold at Tk 30 but you can buy a kg of sugar at Tk 27 at retail market, thanks to the unscrupulous state policy of duty-free import of raw sugar. Similarly, flour became costlier than rice, green chili than dried pepper. Price of edible oil and fuel oil is almost the same.

We know, in the market economy system, price of a consumer item depends on the production cost and demand-supply mechanism. Sometimes, production cost remains absent in a shrewd market. To create future market in a weak country, stronger ones dump their goods at a nominal price for a certain period to destroy internal production.

Apparently, state has no respon-

sibility to control market, but it can't be a silent spectator in such a situation. The state should oversee the future demand and supply, and adopt policy to protect the interests of the producers as well as consumers. The state which would not do that will ultimately turn into a failed state.

Readers, there is nothing to feel complacent getting sugar at a cheaper price than rice. In fact, no sugar producing country in the world feeds its citizen sugar at Tk 27 (or equivalent price), whereas we were being given the item at the price after meeting transportation cost and paying all sorts of taxes.

The present heyday is perhaps an indication of future doomsday when sugar would have to be consumed at triple cost. And that is definitely after destroying our sugar industry. There should not be any logic to feed people sugar at lower price than the production cost allowing import of raw sugar at zero tax. This is a part of a conspiracy to destroy our sugar industry.

The country's sugar industry is

about to be destroyed by the policy of the government. The 14 state-owned sugar mills (out of 16 mills one has been closed down and another sold out) of our country produce about 2 lakh plus metric tons of sugar per annum. It was reported in the media that none of the mills could sell their sugar despite reducing price of sugar to Tk 25 per kg. On the other hand, the mills would have to count a huge loss at least Tk 10 a kg for selling sugar at Tk 25. If the situation continues for a few years, our sugar industry will embrace the same fate of jute industry. And our policymakers have been working towards this end.

Not only sugar, our policymakers do think little about total agriculture policy. Our country was self-sufficient in many agricultural products like pulses, spices and oilseeds a decade or two back. But the wrong policy formulated by a vested quarter made the country dependent in these goods. The country is gradually being made an import basket in a planned way to

serve the interests of foreign countries and traders.

Over the few years, rice production has substantially been increased in Bangladesh. But at the same time production of other items reduced proportionately. Nowadays, we import almost all essentials like pulses, spices and oils as their production decreased drastically over the years although their demand increased with the rise of population. The Bangladesh Bureau of Statistics data shown in the accompanying table is the testimony of statement.

The table shows that the acreage of pulse and oilseeds has gradually dwindled over the years, and yield also decreased accordingly. The production of spices although marked a rise but the main contributor in the rise was chili. The chili contributed 150,000 mts out of total spice production of 418 mts in 2001-2002 while it was only 53 mts out of 304 mts in 1988-89. The production of onion, garlic, and ginger ranges between 40,000 and 43,000 mts each during the

period.

Bangladesh is now an agri-production deficit country. The way the cultivable land is shrinking every year (85,000 acres of arable land go out of cultivation due to building of houses, using by various projects and devouring by river erosion), it is a distant dream to attain autarky in agri-production. Parts of our internal demand are met through import.

Now, we have to decide which items should we import low-value rice or high-value pulse and spice? Our production strategy also must focus on the cost and benefit of cultivation and environmental impact of cultivation in terms of land degradation, water pollution and its chain effect on other productions.

For example, rice cultivation is an environmentally degradable process where huge quantity of ground water, chemical fertiliser, and pesticide is used. All the three - underground water, chemical fertilizer, and pesticide -- have a chain effect on fishery, poultry and

Crop	1988-1989		2001-2002	
	Acreage	Yield	Acreage	Yield
Rice	25,265	15,544	26,344	24,299
Pulse	1,822	539	1,115	341
Oilseeds	1,351	449	1,000	376
Spices	--	304	--	418

Source: BBS Acreage and yield in thousands.

cattle head production and human health. Rice production also seriously depletes fertility and productivity of land.

On the other hand, all types of pulses are highly beneficial crops. Their cultivation does not require application of any chemical fertiliser, rather they themselves add fertiliser to the soil.

So, why should not we take program to make the country sufficient in certain high-value crops rather than futile exercise in low value-rice? We are importing a good quantity of rice every year. What is wrong in importing some more rice attaining autarky in other items? It's disgraceful for a sovereign agro-based country, which has to import items like onion,

garlic, ginger, pulse etc.

One of my Indian friends a few years back asked me: What's wrong with your countrymen that you import all these petty things like onion, garlic, ginger from India? So far as we know, Bangladesh is one of the most highly fertile countries in the world. Then, why do not your policymakers undertake plan to produce these items sufficiently?

I did not have any answer. Readers, can you say why we should import these items and who should be to blame?

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How to beat terror

JOE COCHRANE, CRISELDA YABES, AND MARITES D. VITUG

AT first, the image looked grimly familiar: two masked men brandishing assault rifles at a cowering prisoner. But the video, shown on Indonesian TV in June, had a twist: it brought good news, not bad.

The gunmen were actually soldiers in a crack Indonesian counter-terrorism unit. And their captive was Abu Dujana, a long-sought leader of Jamaah Islamiyah -- Southeast Asia's most potent terrorist network. The militant had been nabbed in a raid on June 9, the same day police captured Zarkasih -- JI's "emir," or supreme leader. (Like many Indonesians, he uses only one name.)

It was a stunning success: in two quick strikes, Jakarta "had dealt a body blow" to the extremist group, said Sidney Jones, a terrorism expert and regional director of the International Crisis Group in Singapore.

The victories, once hard to imagine, have become increasingly common in this part of the world, on what's often called the second front in the global War on Terror. Indonesia, Southeast Asia's largest nation, has captured more than 400 militants since 2002, hobbled JI and avoided a major bomb attack for nearly two years.

Meanwhile, the Philippines has managed to liquidate half the terrorists on Manila's most-wanted list and drive the Qaeda-linked Abu Sayyaf group from its main bases. Malaysia and Singapore have rolled up terrorist cells of their own and thwarted several planned attacks. At last, "the glass looks half full," says Ken Conboy, a JI expert and author of "The Second Front: Inside Asia's

Most Dangerous Terrorist Network." Of course, it's too early to declare victory. In recent weeks, Philippine militants killed scores of marines in the southern Mindanao region and the Australian government issued an advisory against traveling in Indonesia. But throughout the region, violence is on the wane -- except in southern Thailand. Many observers say the tide has turned. And what's most interesting about the victories is how they've been accomplished: using strategies that could teach Washington a whole new way to wage this kind of war. The key?

Avoiding overwhelming military might or brutal tactics in favour of smart, focused operations mounted in concert with broad hearts-and-minds campaigns. Just as important, Southeast Asian states have kept Western support indirect and relative to operations in Afghanistan, Iraq and Somalia -- relatively modest. The Americans, for example, have provided funding and counterinsurgency training to police in Indonesia and soldiers in the Philippines, but have sent no combat troops to either country.

Few would have predicted such major successes early in the decade. In the aftermath of the September 11 attacks -- which were conceived and partly planned in Southeast Asia -- Indonesia seemed to be in complete denial about its homegrown extremists, despite warnings from local and US intelligence that JI had links to Middle Eastern and South Asian jihadists. Historically, radical Islamist political parties had never been popular in Indonesia, and extremist groups had been brutally suppressed by Suharto's military dictatorship. But after Suharto fell in 1998, Indonesia's transition to democracy



Philippine military helicopter downed by militants.

ushered in a quick succession of hapless leaders. JI used the opportunity (and government fears of looking "un-Islamic") to grow. After 9/11, radical groups like the Indonesian Mujahedin Council openly started pushing to turn Indonesia into an Islamic state and seemed to be gaining ground. Analysts warned of a "creeping fundamentalism" that the government seemed unable or unwilling to do anything about.

Then came the Bali attacks of October 2002, when JI bombed two discos and killed 202 people, mainly foreign tourists. Suddenly Jakarta was forced to confront the horror on its doorstep. JI was found to have links to Al Qaeda. Other local groups, such as the Laskar Jihad and Laskar Mujahedin, began waging jihad against

Christians in Indonesia. Still others, like the Islamist Defenders Front, commenced vigilante campaigns, smashing bars and other businesses deemed un-Islamic. Finally, the government swung into gear. Its first step was to improve the quality of its national police. Spun off from the military in 1999, the force was underfunded, poorly trained and ill equipped. But after Bali, aid from the United States, Australia and Britain began flowing in. The support included advisers, high-tech surveillance equipment and funding for training schools, forensics and DNA-testing facilities. Indonesia established two armed counter-terrorist units, known as Detachment 88 and Team Bomb. Both are considered model units today, and have racked up impressive arrest records.

From day one, Jakarta knew it had to paint the campaign against JI as a domestic affair. Although the vast majority of Indonesia's 190 million citizens are religiously moderate, disdain for U.S. foreign policy is widespread so any overt American role would have raised hackles. Jakarta's First World allies understood the imperative. "Taking a back seat as a foreigner [was] paramount," says one former Western counter-terrorism official in Indonesia who asked not to be identified because he has retired. Throughout, Indonesian forces took the lead in counter-terrorism operations, with Western countries supporting them from behind the scenes.

Jakarta also realised it could

accomplish more with a velvet glove than a mailed fist. Accordingly, it instructed police to use much gentler interrogation tactics than they had in the past. JI terrorists in custody were given special treatment if they agreed to cooperate, including money for their wives and children and phones to call home. Coercive methods like shouting, beating and sleep deprivation were strictly forbidden and largely abandoned, something that outside experts like Conboy confirm. The goal? To persuade terrorists to help the police and to deprogram them from radical Islam. "I don't want to compare this to Abu Ghraib," says Ansyaad Mbai, head of the Indonesia's counter-terrorism coordinating body, but "the police are aware that if they use physical force on the terrorists, they will become more militant and [withhold] information." The strategy seems to have paid off; though there are still complaints about the counter-terror squads' rough arrest tactics, the change in interrogation methods has won over numerous radicals. Mbai says that the government captured Zarkasih and Abu Dujana after JI members in custody told the police their whereabouts.

A similar strategy was employed in the southern Philippines, where the Abu Sayyaf group has been fighting to create a fundamentalist Islamic state (in the Mindanao region, particularly the islands of Sulu and Basilan) since 1991. Thought to have 500 armed members at its peak in 2001, the group advocates an extreme version of Islam and has known links to JI. It has claimed responsibility for numerous attacks on Philippine citizens over

the years; in July, Human Rights Watch blamed it for the deaths of almost 400 civilians in Mindanao alone.

To strike back, Manila launched a campaign called Oplan Ultimatum one year ago. The Philippine military started by targeting Basilan, where it succeeded in uprooting Abu Sayyaf from its birthplace. Remnants of the group then fled to Sulu. The Americans helped the campaign by providing logistical aid, intelligence for combat operations and training in night combat and information gathering. Washington also kicked in funding for anti-poverty programs. But throughout it all, the Americans stuck to the background. "This is their fight, their operation," said Col. David Maxwell, head of the U.S. advisory force.

Like Indonesia's antiterror police, the Philippine military realized that winning the battle would require soft as well as hard power. Accordingly, it began promoting what it called CMO, or Civil-Military Operations. These aimed to deprive the terrorists of mass support by improving local conditions. Sulu, a largely Muslim island with about 600,00 inhabitants, is poor, often neglected by Manila and lacking in basic infrastructure. So the military -- with US funding and aid -- began a range of aid projects, building public toilets, bridges and hospitals; repairing dilapidated mosques, and providing medical and dental services to villagers. The charm offensive paid off in very real terms: for example, Abu Sayyaf leader Khadafy Janjalani was killed after a local villager, grateful to Philippine marines for installing a water system in his

community, led them to the terrorists' camp. By last year Abu Sayyaf had been whittled down to fewer than 200 fighters.

Despite the recent successes, neither Indonesia nor the Philippines have fully eliminated their terrorist threats. JI may even be regrouping. "They're not blowing things up but, in a larger perspective, these guys are adopting the Hamas model of social welfare with a very small, clandestine militant group," says Zachary Abuza, a JI expert at Boston's Simmons College. With more than 100 million Indonesians subsisting on less than \$2 a day, there are fears that poverty will breed further radicalism. Indonesian and Western counter-terrorism officials also complain that Saudi money continues to flow in to fund madrassas or religious schools that specialise in radical Wahhabi teaching.

Meanwhile, in the Philippines, Abu Sayyaf remains a threat, according to the government, and the danger of a big bombing remains real in both countries. But it's important to note that 2007 could go down in history as the first year in recent memory that a major terror attack didn't happen in either place. And it's important to remember how that victory was achieved: through subtle, sophisticated tactics that proved more effective than the overwhelming and often brutal approach now favored by Washington. If the progress holds, it'll spell some rare good news, both for the region and -- if the approach is adopted in other settings -- for the global War on Terror at large.