

ASSURANCES OF SAFETY AND SECURITY

Removing the trust deficit

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Our assurances will continue to sound empty unless the killers of the four bloggers and the two innocent foreign citizens are apprehended and demonstrably punished.

IN the current war against terrorism, a standard practice among western countries is to fall into a failsafe mode to protect their citizens at the first sniff of a threat of terror. This includes operating all of their institutions, all modes of transport and other vulnerable areas in a maximum state of security within the country. Citizens are advised or even warned about travelling to countries considered vulnerable; some countries even issue bans on travelling to places that they consider risky. The US State department routinely publishes in its travel advisory a list of countries where citizens should exercise caution or even defer from visiting. Safety is so paramount that United Nations agencies and other international organisations take cue from US advisories on travel and restrict travels of their staff to countries considered unsafe.

We may not like it, but Bangladesh has often been viewed by the foreign media as vulnerable to militancy. It started in 2002 when an article in the formerly published *Far Eastern Economic*

Review accused Bangladesh of harbouring "fundamentalism, religious intolerance, militant Muslim groups with links to international terrorist groups". Although much of the contention in the article was based more on speculation than on documented facts, it first drew the attention of people to the potential of a rise of religious militancy in Bangladesh. However, despite attempts by the then BNP-led government to debunk the hypothesis, more incidents in 2005, with synchronised bombing in 64 districts, and rise of a self-declared zealot (Bangla Bhai) in North Bengal with his band of jihadists, made Bangladesh even more of a target for western media interest.

The self-declared jihadist and his band were later arrested, tried and hanged, but his actions proved the apprehension of foreign media about the potential for similar groups to thrive and operate in Bangladesh. In recent years, we may not have had the kind of militant activities that Bangla Bhai had once spawned, but in the last few years, our law enforcing agencies apprehended many individuals

suspected of ties with cross-border militant organisations. They may not have unleashed a militant activity of the scale in Pakistan or India, but their existence and strong ties with other organisations did not go unnoticed in foreign media.

The latest concern of our western partners is obviously not based on past media speculations of the potential threat of terrorism in Bangladesh, but rather on what has been happening in the country in the last six months. Four Bangladeshi citizens were brutally murdered, two in open public view, because they espoused a secular society and politics. None of these murder cases have been solved. Close on the heels of these tragic events came the killing of two foreign nationals in two separate cities in broad daylight.

If I were a businessman operating in a city, the first sign for me to halt business operations is when I find the local goon(s) threatening the safety of my employees while I don't get any protection from law enforcement agencies. The situation gets worse for me when I hear that the goon is going around threatening others as well. In

this context, will it be too shocking for us to find a country preventing its nationals to visit Bangladesh because it finds the country not secure enough?

Arguments have been put forward and are being bandied around that crimes happen in all parts of the world, even in the most secure cities. If people were to abandon travelling to a country because murders are reported, not many countries would have foreign citizens visiting them. The main problem with such arguments, however, is that in most countries, along with crimes there are adequate and very capable preventive mechanisms in place. People in most major cities of the world can move around safely because they have reliable and demonstrably efficient law enforcement forces to protect them. They can trust these forces.

Our Home Minister and the Foreign Ministry have been trying relentlessly to assure foreign embassies in the country that their citizens will be accorded the highest level of security. They may be told that the recent killings are not linked to any militant organisation, and that Bangladesh will not tolerate the

presence of any form of militancy in the country. All of this may be true, but how do we guarantee that similar killings will not happen in the next few weeks or months? How can we assure our development partners that the murder of four of our own nationals and the killing of two foreigners are not linked?

To be honest, no one in any country can guarantee that a murder will never occur in a particular place; even the most sophisticated or highly skilled law enforcement agency cannot do it. But what a skilful and adept law enforcement agency can guarantee is that no murder will go unpunished. It will secure the apprehension of anyone who commits such crimes and ensure that they are duly convicted. Our assurances will continue to sound empty unless the killers of the four bloggers and the two innocent foreign citizens are apprehended and demonstrably punished. Until then, the trust deficit between us and our foreign partners will remain a serious challenge.

The writer is a political analyst and commentator.

APPOINTMENT OF JUDGES

How to make the judiciary more independent?

SHAKHAWAT LITON

THE Indian Supreme Court's recent verdict scrapping a constitutional amendment that had proposed for the introduction of a National Judicial Appointments Commission provides fresh food for thought regarding the appointment of judges in our higher judiciary.

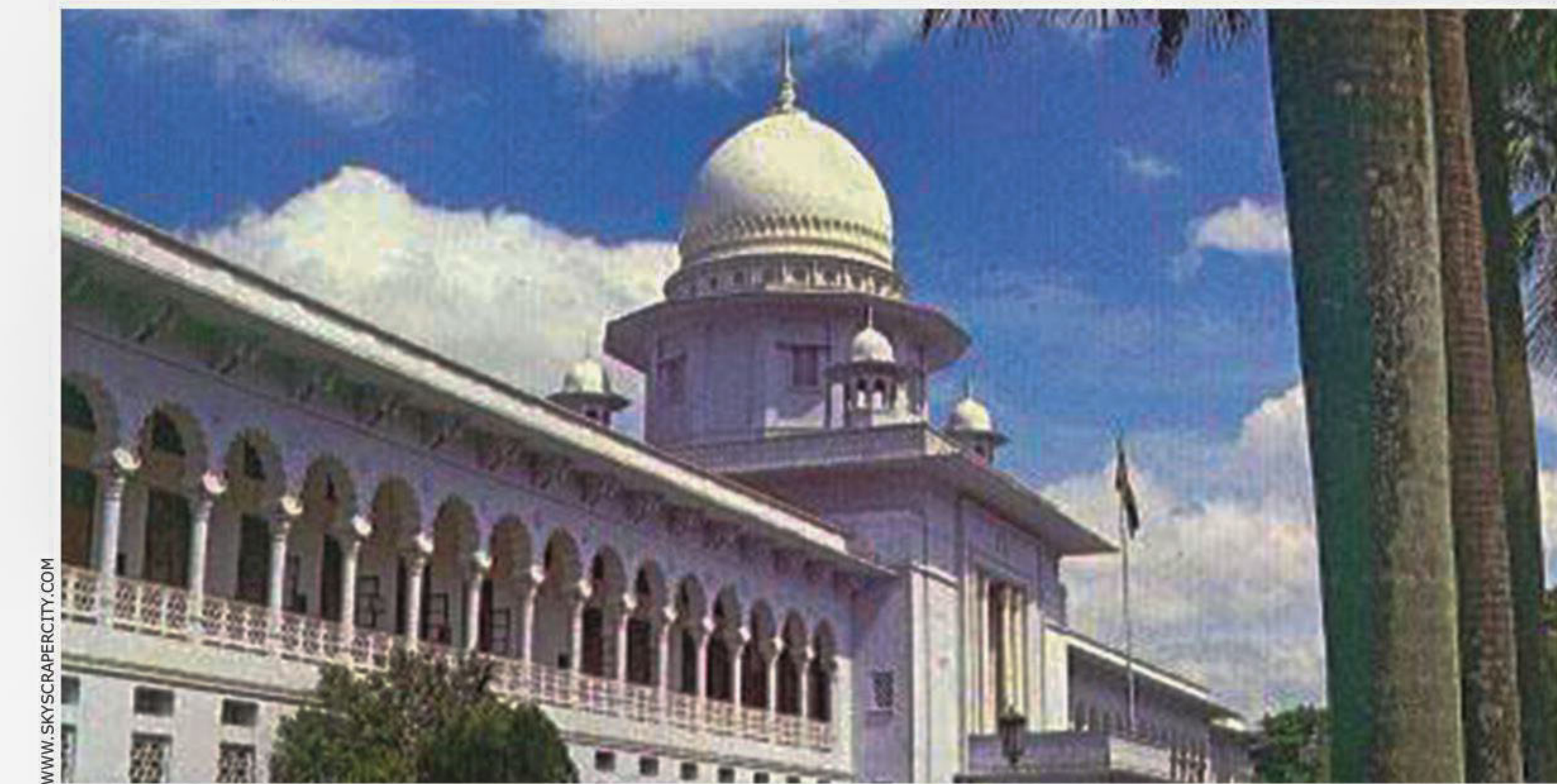
The Indian government had amended the Constitution last year by ensuring a significant role for the executive in appointing judges in the higher courts. The constitutional amendment had proposed that all the appointment of judges in the High Courts and Supreme Court be done by the six-member commission, headed by the chief justice of India. The members of the commission were two senior most SC judges, the union law minister and two "eminent" persons. The two eminent persons would be selected by a panel including the prime minister, the chief justice of India and the leader of the largest opposition party in the Lok Sabha.

The court, however, reversed the government's move, terming it as interference in the independence of the judiciary. In a landmark verdict, the SC on Friday [October 16] scrapped the constitutional amendment terming it unconstitutional for "the significant role of the executive." In the apex court's view, the appointment of judges, coupled with primacy of judiciary and the Chief Justice of India, is part of the basic structure of the Constitution and the parliament has no power to tinker with this structural distribution.

The apex court said: "...primacy of judiciary and limited role of the Executive in appointment of judges is part of the basic structure of the Constitution. The primacy of judiciary is in initiating a proposal and finalising the same. The chief justice of India has the last word in the matter." After 35 years, a constitutional amendment was scrapped by the SC. With the amendment scrapped, the previous system was revived. From now on, judges' appointments shall continue to be made by the Collegium system in which the chief justice of India will have "the last word".

The 20-year-old collegium system prescribes appointment of judges by a panel comprising five senior most judges of the SC and High Courts, with the power to confirm appointments despite resistance, if any, from the government.

Let us now look at our constitutional provisions regarding the appointments of judges in the Supreme Court. Our government still retains sweeping powers to appoint judges in the higher judiciary. The constitutional provisions empower the president to make the appointments



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and as many in numbers. And in doing so, he must act on the advice of the prime minister. Therefore, the appointments are made in line with the government's wishes.

The chief justice is consulted by the president in making the appointments. But this consultation only takes place when the president makes permanent appointments to the High Court and to the Appellate Division.

Yet, this provision did not exist in the Constitution for quite a long time. The provision for consultation was restored in the Constitution only in 2011. The original Constitution of 1972 had the provision, but was abolished in the constitutional fourth amendment in 1975.

The chief justice is not, however, consulted by the president when the latter appoints additional judges to the High Court Division for a two year term. After the two year term, additional judges are either confirmed as permanent or may be appointed for another term as additional judges.

The original Constitution of 1972 had the provision for consultation with the chief justice with regard to the appointment of additional judges. But this provision was abolished in the fourth amendment in 1975 and has not yet been restored.

There is another disturbing side. The Constitution asks for the enactment of a law specifying additional qualifications of individuals willing to be a judge of the Supreme Court. In the absence of law, a person, if he is a citizen of Bangladesh, and has been an advocate of the SC for at least 10 years or has been holding judicial office for 10 years, is eligible for appointment as a judge to the apex court. S/he needs no other qualification. There is no other mechanism to scrutinise the efficiency of individuals willing to be judges of the apex court. This situation has kept benefiting the government, not the higher judiciary.

Given the present situation, in light of the Indian SC verdict, does our government interfere in the independence of our judiciary by retaining sweeping control over the appointments? And who has the last word in making the appointments - the prime minister or the chief justice?

In India, Justice J S Khehar, who led the SC bench to declare the constitutional amendment void, highlighted immense significance of proper appointment of judges.

"The sensitivity of selecting judges is so enormous, and the consequences of making

inappropriate appointments so dangerous, that if those involved in the process of selection and appointment of judges to the higher judiciary, make wrongful selections, it may well lead the nation into a chaos of sorts," said Justice Khehar.

His views were supported by Justice Lokur, who rejected the Attorney General's submission to "give National Judicial Appointments Commission a try". If during experimentation, he said, the independence of the judiciary is lost, it is gone forever and cannot be regained by simply concluding that the loss of independence is a failed experiment.

The independence of the judiciary is not physical but metaphysical, said Justice Lokur, adding that the independence of the judiciary is not like plasticine that it can be moulded any which way.

It has been a long settled principle across the globe that without upholding the independence of the judiciary, no country will be able to strengthen democracy. It is because independent courts are the hallmark of a strong democratic society. Our leaders should think and discuss it again with an open mind.

The writer is a senior journalist of *The Daily Star*.

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A WORD
A DAY

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September 2015

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