The Daily Star
Founder-Editor : Late S. M. Ali
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The Disturbing Trend

Internecine feud in the Jatiyatabadi Chhatra Dal (JCD), the student wing of the ruling Bangladesh Nationalist Party (BNP), has once again vitiated the education atmosphere of Jahangirnagar University. For two consecutive days the two feuding groups unleashed a reign of terror on and around the JU campus. Divided on the lines of local and non-local brands, the JCD cadres have freely used firearms, crackers and other lethal weapons in capturing halls and fighting each other. During the time, the JCD factions fighting for superiority held the law of the land in contempt and, at the same time, showed total disregard for the university authority together with the government.

This is a most disturbing trend all the student wings of the country's political parties are heir to. But when the student factions of the ruling party resort to open wielding of different types of arms — and that too at such a level — there is no mistaking the message that the party in power has given rise to serious questions about being sincere in establishing the rule of law. Power without responsibility is demonic and without proving one's respect for and unfailing adherence to law one has no right to ask compliance for legal provisions from others. Over the years, the JCD has been blamed for violence not only at the JU campus, but also in different educational institutions. The Jatiyatabadi Jubo Dal and the ruling party itself are not immune from internecine fighting either. Only the other day, a rift in the BNP in Khulna brought two groups to fall at each other's throat. Opinions ought to differ but that does not warrant indiscriminate use of firearms and other weapons to settle the score. By resorting to such gangsterism, the ruling party's organs not only disqualify themselves to be responsible components of the organisation ruling the country but also find themselves relegated to the rank of terrorists.

It is exactly at this point the government faces the hard choice of getting rid of the bad blood by a painful operation or of allowing the rot to spread in the whole body. In this situation the government may appear to be condoning the crime — by default or otherwise. It is unbelievable that the government can do nothing when the feuding factions continue to occupy university hall for days together by sheer fire-power. If such a large-scale use of arms cannot be punishable under the Anti-terrorism Act then what else will be?

In fact, the crux of the problem lies here. Any government serious enough ought to deal with this campus problem with sincerity and firmness of purpose. The country's political parties have always backed out from making a decisive move against the armed cadres. In a democratic set-up, the onus of making that crucial move certainly lies on the elected government. On this count, the BNP government has so far failed to take the lead and prove its credibility as the supreme upholder of law and order. Rather, the incidents like the factional fighting between its student groups in Dhaka University or Jahangirnagar University, sends an ominous signal for other rival student parties in particular and for the anti-social goons in general.

What happens as a consequence is people's confidence dwindles in the government's intention and ability to establish the rule of law. Any government determined to establish the rule of law must bring its own house in order first and its legitimacy will largely be decided on this question.

Palliatives wouldn't Do

The government is 'actively contemplating' setting up English language training institutions in each of our 64 district headquarters. Bangladesh is a land where nothing surprises and nothing shocks. Nothing happens here out of the expected. Or conversely, whatever happens here is unexpected, so much so that its citizens have long given up nurturing any kind of hopes and expectations. The above piece of information attributed to the Education Minister and published in Tuesday's Daily Star discomfited many who were hard put to it to rationalise the weird message. Some thought this was being done to help the sizeable population of skilled manpower or intermediate-range technical people having good openings abroad but handicapped by a miserable grasp of English. No, that wasn't the idea.

These institutions, whatever their status and level of education to be offered by them, are to be charged with 'imparting education on English to the school and college students'. This is so far the most open admission of the abject failure of our schools and colleges as far as teaching of English as a foreign language was concerned. One thought our educational authorities would have done well to go into the question of this costly failure before arriving at effective ideas of how to make this gap up.

Education Minister Jamiruddin Sircar told a British NGO chief who called on him the other day that 'English has been made a compulsory subject from class one to the degree level to improve the system of teaching and make students sound in English'. Even after discounting the ineptness of the agency newswriter's language it is all too clear that making it compulsory all the way from the lowest to all but the highest level of education hasn't either helped much in making the students 'sound in English'. Why this fantastic step has also failed to deliver? How can we be certain that the new institutions, one for, say, every five colleges and a hundred schools, can each help 10 to 20 thousand pupils improve upon their command of English?

A whole elaborate and direct system of education involving 14 years of teaching is very evidently failing to enable the pupil to express himself or herself correctly in English even for the length of a few sentences. Why is that so? How has this impossible performance come to be possible? Is there something more left on this game, namely government-run English language institutions, to add to the mystery of that performance?

The industrially developed nations, be it Japan or Germany, Russia or France require the foreign aspirants for higher education to take a one-year course in the native language. Our 14-year schooling in English does not add up even to the level of those taking that one-year course. This is unbeatable as a case of wastefulness and inefficiency, wrong planning and a total lack of accountability in the organisation-to-output relationship.

The government must find an answer to why students, even at the end of full 16-year schooling, do not turn up as language proficient truly educated people even in Bengali? The answer would easily apply to the case of English. The action is needed there and only after that answer is home. Piecemeal and ad hoc palliatives for educational problems should be avoided at all cost.

The Status and Rights of Judges in South Asia

by Dr Kamal Hossain

IN the countries of the South-Asian Region which prior to 1947 had been part of the British colonial system (Bangladesh, India, Pakistan and Sri Lanka), the tradition of judicial independence was substantially developed even prior to independence. Post independence constitutions thus included a number of provisions designed to uphold, safeguard and further strengthen the independence of the judiciary.

Appointment of Judges

The power of appointment of judges in India and Bangladesh (and some of the other countries in the region) vest in the President but the President before exercising the power has a duty to consult the head of the Judiciary, the Chief Justice. This is required in some cases by express provision in the constitution and in others by constitutional convention and practice which has been strictly observed over the years. Throughout the long period of British rule, although the Governor General had the power to appoint the Chief Justice and judges of every High Court he had always consulted the Governor who in turn consulted the Chief Justice of the High Court, and invariably the advice given by the Chief Justice was accepted by the Governor General.

Writing about the judiciary in Pakistan their former acting Chief Justice had written that: "The appointment of... Supreme Court Judges ... is made by the President who is ... required to consult the Chief Justice. I know at least one occasion where President appointed the judges of the Supreme Court against the advice of the Chief Justice. This cannot but undermine the independence of the judiciary. I cannot think of any reason which could justify the President in rejecting the advice of the Chief Justice."

Chief Justice Amin Ahmed, who was the Chief Justice of the Dhaka High Court both prior to and during the 1958 Martial Law had recorded in his book that no appointment of a High Court judge was made either during the pre-Martial Law or post-Martial Law period without prior consultation with him. In every case his recommendation was respected by the President. He also mentions the case where in the British period a judge had been appointed against the recommendation of the Chief Justice. The Chief Justice had in that case declined to assign any work to that judge.

The practice in Bangladesh has always been to consult the Chief Justice before any appointment to the Supreme Court. This was expressly required by the express provisions of Article 95. Even after Article 95 was amended the practice has continued to be observed during every successive administration including those of President Sayem, President Ziaur Rahman and even during the Ershad period when the independence of judiciary had otherwise been seriously assailed.

The appointment of judges announced on 4 February, 1994 was the first example of

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appointment of judges without consultation with the Chief Justice and thus marked a departure from time-honoured tradition and practice which during different periods have been secured by express constitutional provisions or by constitutional convention and has been scrupulously observed. It is, therefore, expected that any appointment to be made to the Supreme Court must be done after consultation with the Chief Justice. This is so because the power of appointment of judges conferred by the constitution cannot be exercised arbitrarily or whimsically or by way of personal or political patronage but based on an objective assessment of the demonstrated competence, standing, integrity and reputation based upon the performance of a lawyer or member of the judicial service who is a candidate for appointment as judge. Under Article 95 of the Bangladesh Constitution any lawyer who has been an advocate of the Supreme Court for not less than ten years or has held judicial office for not less than ten years in Bangladesh and is a citizen is eligible to be appointed a judge. Thus, it is evident that for the power of appointment under the Constitution to be exercised in a responsible manner it is necessary for the appointing authority to consult the Chief Justice who is in a position to provide an objective and informed assessment about a lawyer or a person who has held a judicial post, since he is in a position to evaluate their performance. It is inconceivable that the power of appointment can be responsibly exercised without the benefit of such consultation with the Chief Justice and obtaining an objectives evaluation of prospective candidates for appointment as judge.

In England, the Lord Chancellor's office consults not only judges but senior members of the bar and others who may be in a position to provide reliable information regarding the professional performance of prospective candidates for judicial office. In the United States, judges have to undergo scrutiny by the Senate Judiciary Committee in order to ensure that they possess the necessary qualifications and their career and personal lives can stand up to public scrutiny.

Under the Indian Constitution, the President is required to consult the Chief Justice, other judges and certain other functionaries with regard to the appointment of judges.

The 'consultation' requirement has been judicially considered in India in the context of transfer of judges under Article 222 of the Indian Constitution, which requires transfer to be made after "consultation". In the judgment of Bhagwati J, he held that a power to transfer without consent was subversive of the independence of the judiciary.

"If the power of transfer could be exercised by the executive and the High Court judge could be transferred without his consent, it would be a highly dangerous power because the executive would then have an unbridled power to inflict injury on a High Court judge by transferring him from the High Court to which he originally agreed to be appointed to another High Court, if he decides cases against the Government or delivers judgments which so not meet with the approval of the executive. That would gravely undermine the independence of the judiciary for the High Court judge would then be working constantly under a threat that if he does not fall in line with the views of the executive or delivers judgments not to its liking he would be transferred maybe to a far-off High Court .. This would not only have a demoralising effect on the High Court judiciary, but it would also shake the confidence of the people in that administration of justice in cases where the Government was party."

The majority judgment of the Supreme Court held that Article 222 did confer a power to transfer a judge without his consent, laying great emphasis, however, on the fact that "the President, has no power to transfer a High Court Judge for reasons not bearing on a public interest but arising out of whim, caprice or fancy of the executive or its desire to bend a Judge to its own way of thinking" and that consultation with the Chief Justice must be "a real, substantial and effective consultation based on full and proper materials placed before the Chief Justice."

The Constitutional safeguards of the independence of the Judiciary

The constitutional provisions made in the Government of India Act, 1935, were carried over with further improvements in the post independence constitutions. The "constellations of provisions" which served as "hands off judges" clauses in the Indian Constitution (and other post-independence constitutions) have been succinctly summarised in a recent judgment of the Indian Supreme Court. The relevant portions of the judgment are reproduced below, indicating against each the corresponding provision in the Bangladesh Constitution ("BC"):

(a) Appointment of judges after due consultation with the Chief Justice (Arts 124 (2), 217 (1)), (B.C Art. 95-Original) and by Constitutional convention.

(b) Judges of the High Court hold their tenure not at the pleasure of the President but till they attain the age of 62 years:

Art. 217 (1): (S.220(2). G.I Act, 35) (B.C Art. 96-65 years).

(C) Their salaries and allowances are charged on the Consolidated Fund of the State: Art. 203 (3) (d) Sec. 78 (3) (d) G.I Act, 35) (B.C Art. 88) so that under Art. 203 (1) they are not subject to a vote of the Legislative Assembly: (Sec 19 (1), G.I Act, 35) (B.C Art 89).

(d) The pensions of High Court Judges are charged on the Consolidated Fund of India: Art. 112 (3) (d) (iii) (Sec. 33). Their pensions are not subject to the vote of Parliament (Sec. 34 (1), G.I Act, 35). Further, under Art. 221 (2), "neither the allowance of a judge nor his salaries in respect of leave of absence or pension are to be varied to his disadvantage after his appointment" (Art. 221, proviso, G.I Act, 35) (B.C Art. 147). Since the salaries payable to the judges are prescribed by Schedule II of the Constitution, they could not be varied without an amendment of the Constitution.

(e) Article 221 prohibits a discussion in the Legislature of a State with respect to the conduct of his duties (Sec. 40) (1) G.I Act, 35).

(f) Article 215 confers upon the High Court a power to punish for contempt of itself.

(g) The provisions of Article 211 show that the judges are protected from criticism of their judicial acts from the Legislature which is a political assembly, and the provisions of Art. 215 show that the High Court has power to protect itself against interference in the course of the administration of justice from whatever quarter it may come.

(h) Under the general law of civil liability (tort), words spoken or written in the discharge of his judicial duty by a judge of the High Court are absolutely privileged and no action for defamation can lie in respect of such words. This absolute immunity is conferred on the judges on the ground of public policy, namely, that they can thereby discharge, their duty fearlessly.

(i) The form of oath prescribed in the 3rd Schedule for a Chief Justice or a Judge of the High Court emphasises the absolute necessity for judicial independence if the oath is to be adhered to because it requires the judge to swear that he will perform the duties of his office "without fear or favour, affection or illwill". These words have been added to the form of the judge's oath prescribed by the G.I Act, 35, Schedule IV, 2 (B.C Art. 148: Third Schedule).

(j) The independence of the High Court is emphasised by Article 229 (B.C Art. 113), which provides that appointments of officers and servants shall be made by the Chief Justice or such other judge or officer as he may appoint.

(k) Article 50 (B.C Art 22), which is a directive of State Policy, directs the State to take steps to separate the judiciary from the Executive in the public services of the State, thus emphasising the need of securing the judiciary from interference by Executive. These provisions do not stand alone. Chapter V of part VII of the Constitution deals with High Courts in the States. Chapter IV deals with subordinate courts and Articles 233 and 235 (B.C Articles 114-116), which as judiciary interpreted provide that in respect of promotion, transfer and disciplinary action, the subordinate judiciary are under the full control of the High Court and not of the executive government in order to secure judicial independence.

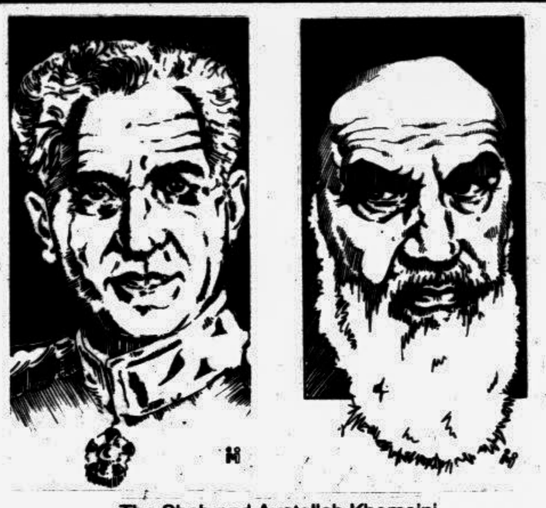
(End of part one)

The author is a senior advocate of Supreme Court, Vice-Chairman of the Bangladesh Bar Council, and President of Gono Forum.

Pious Poverty Marks 15 Years of Islamic Iran

by Hazhir Teimourian

Fifteen years ago the Middle East's most populous nation overthrew its monarchy and replaced it with an Islamic theocracy. As Iran celebrates the anniversary (on February 11) amidst economic difficulties, Gemini News Service reviews the state's successes and failures and investigates whether 15 years' experience of government has tempered the fervour of the revolutionaries.



The Shah and Ayatollah Khomeini

THIS year's celebrations for the 15th anniversary of the Islamic revolution in Iran will be muted. There will be no loud music, and certainly no dancing. Such expressions of earthly happiness are generally forbidden in a state run by theologians.

Instead, there will be competitions to discover who has learned the most tracts of the holy book of Islam, or who has mastered the finer points of Islamic theology. Prizes will include a pilgrimage to Mecca.

At the same time, observers sense a degree of half-heartedness in the planned celebrations, as if there is official recognition that the achievements of the revolution fall far short of expectations.

This is certainly the unmistakable message between the lines of reports in the press, which is subject to heavy censorship and was recently criticised by President Akbar Hashemi Rafsanjani.

"I become really worried," he said at a Friday prayer meeting in Tehran, "when I see some proven revolutionary individuals in our country use statistics to depress the morale of the nation without justification. Foreign radios such as the BBC, the Voice of Israel and the Voice of America then repeat such statistics and double the despair of the people. This is a major sin."

The President said that the state would easily survive the present financial crisis, caused by low oil prices. "If a factory was going to take us two years to build, now we'll build it in five years. We can live with that," he said.

But even apart from the obvious implications of such economic slowdown for unemployment, the true extent of which is unknown, the general prospects for Iranians appear gloomy.

While the country had virtually no foreign debt in 1988 at the end of the eight-year war with Iraq, it is now groaning under a burden of some $32 billion. Of this, about $8 billion are arrears that the state cannot meet.

A top Western banker said that he was advising his clients not to do business with Iran. Russia recently announced that it had postponed the sale of a third submarine to Tehran because it could not pay.

Nateq Nouri, the Speaker of the *Majlis* (parliament), has predicted that foreign currency expenditure will have to be cut by more than one-third in 1994.

"If the present trend in the devaluation of the rial continues," said the director of the Foundation for the Deprived, the state-owned charity which is one of the biggest industrial employers in Iran, "most industrial and economic establishments will go bankrupt soon."

Mahmoud Ahmadpour was referring to the fact that, over the past 15 years the currency has declined from 80 rials to the dollar to 1,800 rials to the dollar.

According to the government's own figures, the average standard of living has fallen more than 50 per cent since the revolution, while the population has risen from 38 million to about 60 million. Illiteracy rates have gone up, health levels have dropped.

Nor have Iranians achieved the political freedoms for which they yearned under the Shah. Iran was then a one-party-state, as it is today. Although all political parties are banned, the ruling clergy constitute a real, though invisible, party.

In addition, the population has lost most of its former social freedoms, such as family visits to the beach. There is pressure from Islamic militants for segregation on public transport. Watching foreign television programmes and films is a punishable offence, though a thriving market has developed for illegal satellite dishes.

Abroad, the country suffers from diplomatic isolation as severe as when Ayatollah Khomeini died in 1989. Despite President Rafsanjani's successful manipulation of the Lebanese Hezbollah to free its Western hostages, Iran itself continues to be accused of terrorist acts in the West. One example is the present row between Switzerland and France over the decision by Paris to release two suspected Iranian terrorists instead of extraditing them to Switzerland.

Other suspected Iranian intelligence agents will soon go on trial in Germany and, perhaps, France for the assassination of a Kurdish leader in Berlin and the 1992 killing in Paris of the former Iranian prime minister Shahpour Bakhtiar.

From the point of view of the rulers, the record is not one of complete failure. The regime lacked political experience when it came to power, facing international isolation and a Western-backed Iraqi invasion, and has lost the respect of many Iranians. Yet it has consolidated its hold. But even though all opposition has been crushed and exiled figures have either died, been assassinated or failed to forge an organised following inside the country, the royalist camp is still strong.

Perhaps the greatest failure of the 1979 revolution has been its inability to initiate a religious reformation, even while it was still popular and had a charismatic leader such as Khomeini.

The Ayatollah certainly had the power to free the faith from its seventh-century Arabian outlook to make it more suited to our time. Instead, he pushed Iranian women back into the home and established another dictatorship. A rare opportunity for Islam was lost.

HAZHIR TEIMOURIAN is the Middle East specialist of 'The Times,' London.

To the Editor...

Letters for publication in these columns should be addressed to the Editor and legibly written or typed with double space. For reasons of space, short letters are preferred, and all are subject to editing and cuts. Pseudonyms are accepted. However, all communications must bear the writer's real name, signature and address.

Greater Sylhet

Sir, Due to long deprivation, injustice and sufferings undergone by the people of greater Sylhet area demand for a Division has gathered momentum recently. Greater Sylhet is the most resourceful area in the country. But educationally its position is only second from bottom that is just above Chittagong Hill Tracts. So far employment is concerned, representation of grater Sylhet area in Govt and Semi-Govt offices presents no better picture.

Resources are being transferred from greater Sylhet to rest of the country at a far greater scale than that from erstwhile East-Pakistan to West-Pakistan. People of greater Sylhet feel that if a new administrative division is created, probably their lot would improve. But I personally feel that will have very little impact on development work of the area.

To attain real improvement in the life of the people of that area, a separate province with control over its resources, foreign exchange earning etc is more appropriate. This will have some immediate impact on living standard of the people. There is so much resource in the area that if control over the resource is established, per capita income would be doubled immediately. Huge foreign exchange earning of the area will give a tangible boost to industrial development. Backward communication of the area can be improved a lot through local level planning. Upgrading of Sylhet airport into an international one will enable bigger aircraft to land there and will reduce the sufferings of thousands of wage earners. These are only a few fields to be cited.

May I therefore, request our government, parliamentarians and public leaders to ponder over the matter dispassionately and do something concrete in this regard.

Zaidi Ahmed Jafri
Fulbari, Sylhet

Harassment

Sir, May I draw the attention of Dhaka Metropolitan Police authority to how I was harassed by a police sergeant in front of the Bangladesh Bank traffic island on the 30th January while going to Sylhet by a microbus at about 7-30 am. The police sergeant, may be an S I or ASI stopped my vehicle by raising hand and wanted to examine the documents of the vehicle. In good faith I gave him all the papers. There was nothing wrong in the documents — but the sergeant, after examining the papers, asked me to wait by the road side. As there was no fault, I wanted the documents back. I also told him that I was to drive a long way. But the sergeant instead of returning the documents then ordered me in a harsh tone to wait by the road side. I refused flatly to comply with his order as there was no reason to keep me waiting for the documents. An altercation then followed and I became a hostage in the hands of the police sergeant. By the time a few passersby gathered who wanted the sergeant to return the documents of the vehicle without causing further harassment and the sergeant had to return the documents.

May I request the Police authority to enquire the above complaint and stop recurrence of such incidents which are simply acts of excesses.

Ahmed Kabir Choudhury
136, Housing Estate, Sylhet.

Bosnians and Palestinians

Sir, What a great tragedy, injustice and sorrow it is that in this modern civilised world, where universal declaration of human rights, days of reasoning, arguments, jurisprudence and logic are supposed to prevail, the Palestinians have been turned into strangers and captives in their own homeland and the foreigners and immigrants from distant lands now settled in there have become the owners and masters of Palestine.

Similarly the Serbs are carrying out a reign of terror against the Bosnian Muslims rooting out and killing hundreds of them in the name of ethnic cleansing and building up a gargantuan empire in Europe.

While the Palestinians and the Bosnian Muslims have been following a 'live and let live policy' some Israeli and Serb leaders are indulged in inborn wickedness, treachery and turpitude are threatening the world peace. The historic Israeli-PLO peace accord signed in Washington appears to have been jeopardised due to backing out by Israel from her promise to complete the military withdrawal from Gaza and Jericho by December 13,1993. The Bosnian peace talks in Geneva also have ended in failure several times due to mockery and aggressive policy of some Serb leaders.

Palestine is the homeland for millions of Arabs since the 8th century AD and the Muslims are born, brought up and settled in Bosnia since twelfth century. If the Whites (former Europeans) who are settled in South Africa for the last 200-300 years only can proudly proclaim Black South Africa as their motherland, the Americans and the Australians (the former people of Europe) who are living in the USA and Australia for the last 300-400 years can call the USA and Australia as their own countries respectively, under what canon of law or argument are the Palestinians and the Bosnian Muslims denied of their citizenship, human rights and freedom.

It is time we all must realise that 'justice is delayed, justice is denied' and, simultaneously, people all over the world should stand by the side of the Palestinians and the Bosnians to alleviate their inhuman sufferings without further delay.

O H Kabir
Dhaka