

Sino-Bangla Relations

Qian Qichen, vice-premier and foreign minister of China, is now in the city on a four-day visit to Bangladesh. During his stay in the capital, the Chinese foreign minister is likely to concentrate on Sino-Bangladesh relations in the context of the unprecedented changes in global politics, particularly in the Asian part of it. Qian Qichen, fourth in the Politburo ranking, had already been to Islamabad and his diplomatic mission is expected to take him to Sri Lanka and the Maldives — all members of the South Asian Association for Regional Co-operation (SAARC). Clearly, this high-profile visit tends to cover not only the bilateral issues but also regional ones.

No doubt in the Asian context, China is a key player so far as the relations between and among the states are concerned. Given Bangladesh's special ties with China, the overall Chinese initiative for fresh contacts in South Asia assumes great importance to Dhaka. A whole process of polarisation of power and permutation and combination of equations between and among countries have been set in motion after the breath-taking events that took place in the former Soviet Union and the East Europe. Along the line, Asia today discovers itself in a fundamentally changed context in terms of geo-politics.

This new Chinese urgency to mend fences with old foes and also to take its small neighbours into greater confidence relates, of necessity, to the changed perspective of international politics. A dramatic improvement in the relations between China and India is a most positive development in this regard. In fact, starting with Rajiv Gandhi's visit to Beijing followed by a return visit by the Chinese premier, the Indo-Chinese relations have grown gradually warmer. This is a development we unreservedly welcome because of the potential it holds for defusing of tension in the entire Asian region.

How close the two large neighbours of Asia in the meantime have become can be gauged by the fact that during the Chinese vice-premier's stay in Islamabad not a single statement did he make on the Kashmir issue, supporting Pakistan, against India. This should be an unerring indication of the Chinese concern to avoid references involving its neighbours. Bilateral trade and economic co-operation between the two Asian giants are increasing. The prospect of China's emergence as a world economic power too looks very much real — its double-digit growth rate only rules out any doubt about its economic future. There are things to learn from China.

One of the major strands of Bangladesh's foreign policy has been the close relationship with China. For Bangladesh, therefore, ties with this powerful country have a special bearing — both politically and economically. Bangladesh has found in Beijing a patient listener of its problems and an ardent supporter of its causes. This visit of the Chinese vice-premier-cum-foreign minister, let us hope, will provide a new impetus to the Dhaka-Beijing relations.

Signs are encouraging. An agreement on the allocation of a credit worth 8.5 million US dollars — that too free from any conditionalities — is likely to be finalised during Qian Qichen's visit. The same good work has to be further extended. However, Bangladesh's huge trade imbalance with China, which stood during the period of 1981-1991 like this: Bangladesh's export to China was 168.19 m US dollars as against its import of 697.2m US dollars, calls for urgent attention. Closer economic ties with provision for an increased volume of Bangladeshi goods going to China can scale down the trade gap. Given the size and the accelerated pace of growth in China, reduction in the trade gap should not be difficult.

Towards a Take-off in Livestock

Shortage of bullock is affecting farming adversely in Madaripur. The Daily Star report of Thursday in fact applies to the whole of the nation. And whereas the Madaripur report points only at the increasing difficulty, in the absence of enough bullock, of finding something to draw the plough, nationwide the problem is more compounded.

Natural calamities have been cited as one big reason for the loss of cattlehead. Stealing for selling cows to the butcher has also been a factor in the dwindling of cattle population in Madaripur. Cyclones and tsunamies have for decades been playing havoc with our livestock resources in the southern districts, at times killing tens of thousands at a stroke. This has only aggravated the existing problem of there being not enough cattlehead for a 120-plus million population — in terms of the four big uses they have for us — by way of supplying food, fertiliser, draught power and last but not the least, hides. The number of cattlehead in absolute terms as well as a proportion of the human population has ever been falling into irrecoverable levels in spite of what little the government has been doing in this sector. Significant capital investment in the private sector in this area of supreme national importance is still very much wanting.

Cattle population does not gain by leaps and bounds. The mass killing of cattle by Kuliaks in the wake of the Great October Revolution of 1917 inhibited the livestock situation for the whole seven-decade duration of the Soviet Union. How can we help our national livestock situation knowing full well that there is not going to be any radical departure in the governmental efforts in the matter while private capital wouldn't also be forthcoming by the billion?

Meat is eaten in the cities and not significantly in the villages. And the cities are soon going to hold more and more people of our population. Serious attempt should be made by the government as also by social activist groups to devise mechanisms that can cut sizeably down the meat intake of the city populace. Of all possible actions geared to coping with our impossible livestock situation, this seems to be the most feasible. We need to get a golden breather that could allow our cattle population to travel to a take-off position.

NURSES at the All India Institute of Medical Sciences (AIIMS) in New Delhi go on mass casual leave without a twinge of remorse. Violence, arson and suicide follow the mere renaming of a university in Maharashtra. Teachers in Bihar skip schools to run private tuition shops. The state administration in Karnataka comes to a halt when the charade of conciliation between the defiant party assembly members and the insensitive chief minister goes on for days. And none is held accountable for the Rs.15000 crore bank scam despite a joint parliamentary committee's indictment of government and its financial institutions.

They indicate some of the failings. This is what India has been reduced to in 44 years after the constitution in 1950 made the country a republic. When adopted, it was considered one of the most democratic and liberal constitution in the world. Who distorted it? Were the framers of the constitution so stary-eyed that they did not visualise that the men of no substance would follow once the old guard disappeared. Or is it the fault of those who were entrusted with the task of implementing the constitution?

However firm in contours, the constitution is only a set of principles that can be misinterpreted and mutilated. It is a legal document but aims at humanising the society. It guides, does not administer. Therefore, the blame for distortions lies on the shoulders of those who have been members of parliament and the state legislatures. The brunt must, however, be borne by the rulers since they were the guides as well as the guardians. They have defeated both the

A Republic in Name Alone

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letter and the spirit of the constitution. All that was promised is now in a shambles. The constitution enshrines justice but it is hard to obtain; liberty has got buried beneath a pile of repressive laws; equality sounds hollow in the face of ever-lengthening slums; and, fraternity has been rechristened by the fundamentalists and the caste zealots as hatred and violence.

Still worse is an array of forces which the rulers and the would-be rulers have unleashed to make any orderly functioning impossible. Democratic urges are understandable, power politics is not. Those who are using caste for articulating their demands are no better than those who are exploiting religion. Both want the gaddi and do not bother how they make it. But then those who have stayed in power too have done little to sustain faith in the status quo.

In fact, the biggest problem facing India today is how to reinvigorate the people, who had all the confidence when they won independence, and who have practically nil today even though they go over the exercise of elections again and again. They have shown their annoyance by defeating most sitting candidates and the party in power in the recent assembly polls. But they are a disillusioned lot and wonder who can lead them to their destination.

Insecurity has made them greedy and selfish. But who is

to stop them? Even the highest in the land is not without the taint of corruption or nepotism. Many say tall things but when it comes to them they are found wanting. Chief election commissioner TN Seshan, who preaches morality like an evangelist, is one example. He recently took a ride in a business tycoon's plane. That Seshan paid for it is not the point; the issue is moral. Just as moral values have had the worst beating, toler-

Activities (Prevention) Act and the police *zulum* is proverbial. The makings of bigoted approach I saw within a few years of the establishment of the republic because of the assassination of Mahatma Gandhi there was none to hold up the mirror to the nation. But I was even then confident that with the passage of time and economic development, the animosity among religious and caste groups would go. It has not happened.

mixture of exuberance, over confidence and over expectation. But left unharnessed, enthusiasm was bound to change into disillusionment.

Hope could have been rebuilt if the institutions had not become effete. Parliament, a vehicle for peaceful change, has zeroed itself to raucous zero hours. The ruling elite has not risen to its social responsibility (the ruling elite does not mean only the Congress (I) but all those who occupy positions in various fields). The government machinery has not been responsive. And the fact remains that the five-year plans and efforts at building an egalitarian society — again the constitution's aim — have benefitted only a minority. Half the population still goes without one meal four days in a week.

On the other hand, the people are generally more conscious of their substandard living. The election campaigns and transistor-radios and televisions have awakened them to their needs — and their importance. They are still diffident, still withdrawn, and still tethered to tradition. But they are beginning to turn.

The present agitations or the ones which may erupt in the near future may not directly involve them or benefit them but the scales will ultimately tilt in their favour. Their very number is bound to do so. For some time there will be distortions. Those who apply the pressure, the rich

among the lower castes, the middle farmers and white collar workers, will be able to garner most of the gains. But this is a temporary phase. All countries which have undergone a social change have experienced this. The majority takes over in the long run. The battle for a change may come to have communal or factional overtones. There may be an effort to keep out some on one ground or the other. Vested interests do that. But the prejudice cannot last long because when the movements for economic betterment begin, they wash away, like an avalanche, all impediments and barriers.

The rulers' reaction will be panicky. Already the way they are cutting the duration of the sessions of parliament and assemblies shows that they do not want to face criticism. When the protest was limited, they went to the extent of imposing the emergency. This time they may do worse.

Yet, in this sombre scenario when some people somewhere take upon themselves the task of reknitting the nation, a glimmer of hope brightens the dark corners of despondency. One such effort will initiate the message of harmony through a human chain across the country on January 30 at 11 am. Men, women and children will come out of their houses and offices on the road and hold each other's hand to pledge togetherness.

Many harmony-like gatherings will be required in the days to come. They will not be initiated by politicians but ordinary people, the concerned citizens. The next Republic Day may see the nation reconquering the territory which the chaotic forces of communalism, caste and provincialism are occupying at present.

BETWEEN THE LINES

Kuldip Nayar writes from New Delhi

ance has been the biggest casualty. Burning cities and mutilated bodies have turned stomachs across the world. It was wrong to assume that the barbarity had been excoriated from the country. More people have died in communal riots since the formation of the republic than in the entire 150-year-long British Raj.

Communal elements have been curbed but not crushed. They are now busy polluting the countryside. The next explosion may not be much more than a hand grenade's toss from its killing fields. The law and order machinery wants more stringent laws and more police, although there are roughly 50,000 people in detention without trial. Under the Terrorist and Disruptive

We may not be able to wipe off tears from every cheek, but we will create a society where none will starve," I used to say. And when the people talked of a competition between two systems, the open society of India and the closed system of China, I had no doubt that we would make it.

In the first few years after becoming a republic there was, no doubt, over-emphasis on past glory but none minded it because there was also among the people a fervour — and willingness — to build the country. I think many like me nourished a naive belief that the problem of underdevelopment and poverty would find an easy, if not automatic, solution with the dawn of independence. It was a strange

The Role of the Chief Justice in the Appointment of a Judge — II

by Md Abdur Rashid Advocate

UNDER Article 217 of the Indian Constitution, every Judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court.

All the judges were of the view that 'consultation' means full and effective consultation after placing full and identical materials before such functionaries. It does not mean concurrence. By majority, it was ruled that the opinion of the Chief Justice of India can not have primacy over those of two other functionaries. Justice Bhagwati started his judgment by quoting the famous words of Holmes, J in Northern Securities Co v US (193 US197) 1904 that 'great cases like hard cases make bad law'.

The prophetic words of Justice Holmes came to be true after twelve years when the Supreme Court of India in a very recent case decided on 6 October, 1993 overruled the bad law enunciated in the aforesaid S P Gupta case on the role of the Chief Justice of India in making the appointments and transfers of Judges. This time the Bench was comprised of nine judges of the Supreme Court of India who delivered the seminal judgement by a majority of seven against two. The leading judgement was given by Justice J S Verma on his behalf and on behalf of four other Judges. Two other Judges (Pandian J and Kuldip Shing J) also agreed with the principal point by concurrent judgements giving their own reasons. Two Judges, Ahmed J and Panchhi J dissented. The judgement of the case SCAORA (Supreme Court Advocates on

Record Association) vs Union of India was delivered on a reference to the larger Bench of Nine Judges made in the case of Subash Sharma v Union of India reported in 1990 Suppl (2) SCR433.

It was held amongst other by clear majority that: a) In the appointment of judges to the Supreme Court of India and High Courts of various States the opinion of the Chief Justice of India after consulting with two seniormost judges of the Supreme Court will have primacy and will be binding on government except in a couple of exceptional cases;

b) The government can not make any appointment to the Supreme Court or the High Court unless it is in conformity with the opinion of the Chief Justice of India;

c) The recommendation of the Chief Justice of India is to be arrived at by a detailed process of consultation including the views of the Government, two seniormost Judges of the Supreme Court and any other Judge of the Supreme Court whose opinion would be regarded as significant, and

d) The decision of the Supreme Court in S P Gupta v Union of India (1982) 2 SCR365 (a Bench of seven judges) stands overruled.

(*pl see LAWASIA Comparative Constitutional Law Newsletter, vol 1 no 7, December, 1993*)

Now, let us consider the events in those seven tumultuous days in the history of our judiciary in the light of the principles laid down in the above case with unbiased mind.

On 4th February, appointments of nine Judges of the Supreme Court of Bangladesh of whom three from the judicial service being the seniormost and the rest are advocates of the Supreme Court were reported by the national media. In the afternoon of the same day, the Chief Justice of Bangladesh in inaugurating the Lawyers Conference of the Bangladesh Bar Council (a statutory body of lawyers) with heavy heart declared that he is 'Mr Nobody' meaning that he was not aware of such appointments. By this time the lawyers gathered there as representatives of the entire community came to learn that the President made appointments without any consultation with the Chief Justice. The following day the learned advocates of the Supreme Bar Association assembled in an emergent meeting to consider such appointments of Judges and after long deliberation unanimously condemned the action of the president in making the appointments without any consultation with the Chief Justice and demanded cancellation of the appointments.

In another resolution, the Bar requested the Chief Justice not to administer oath to the newly appointed judges. The meeting formed a fourteen-member committee to communicate its decisions to the Chief Justice, the President, the Speaker of the Parliament and the Prime Minister. The Bar Council also adopted similar resolutions condemning the appointments. The whole nation also was stunned at the stand of the Government in the matter of appointment of judges of the Supreme Court. Then, hectic meetings and discussions were held with the aforesaid functionaries. The Prime Minister assured the nation through the Bangladesh Television that the convention and practice of consultation with the Chief Justice in the matter of appointment of a Judge of the Supreme Court would be followed. The senior members of the lawyers' committee also happily informed the general members of the Supreme Court Bar on 8 February, 1994 that the appointments would be cancelled and the convention and practice of consultation with the Chief Justice would be reestablished. The media was also of the similar view. By the evening of 9 February, 1994, it became clear that the government got the names of seven judges of the original list cleared by the Chief Justice and the two seniormost candidates from the Judicial service were replaced by two judicial officers.

It was also known that the newly appointed judges would

take oath on the following morning.

In the aforesaid circumstances, the Supreme Court Bar could not convince itself that the main purpose for consultation with the Chief Justice was achieved when they saw all the six names of their fraternity were in fact there in the list. The Bar knows its members better than any body. When a deserving member is elevated to the Bench the Bar is elated. When the contrary happens, it reacts. So, the agitation of the Supreme Court Bar as expressed in the meeting of 10 February, 1994 was natural. The Bar decided not to accord any felicitation to any of the newly appointed Judges being of the firm belief that there was no such consultation as was enunciated by the decision of the Indian Supreme Court in the case of SCAORA.

Hence, the danger remains. That is why the Bar is so much concerned. This time many weaknesses were felt in the struggle for independence of the judiciary and the rule of law. The media showed tremendous interest in covering the day to day developments over the crisis. But in the end, they were vacillating about which way they should go, perhaps, for the legal position was not clear to them. Now they can take a stand in view of the legal position of the Chief Justice as discussed herein. In India, the decision in S P Gupta case was

convinced that it functions on the public confidence which has been given by the constitution. It should remember that the lawyers are not the only standard bearers for the independence of judiciary and the rule of law. To maintain and strengthen the public confidence what is expected of a Judge has been best told by J Bhagwati in the following terms: 'The concept of independence of the judiciary is a basic feature of the constitution, a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the constitution, it is the principle of the rule of law and under the constitution, it is the judiciary which is entrusted with the task of keeping every organ of the state within the limits of law and thereby making the rule of law meaningful and effective.'

The Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says, 'Be you ever so high, the law is above you.'

The fate of independence of the judiciary in Bangladesh will not be secured unless it is accepted that the opinion of the Chief Justice should have a primacy over the opinions of other functionaries in the appointment of a Judge. (Concluded)

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.

Jamuna bridge

Sir, I congratulate the honourable Prime Minister for declaring the date of starting construction of the multi-purpose Jamuna bridge. The bridge has been found viable in all respects by the experts of international repute. Any discussion or controversy at this stage may create misgivings in the minds of many which may prove to be harmful.

Some of the dissesants have said that the construction of the bridge will not help poverty alleviation. I do not agree with them. During the construction period of the bridge, thousands of employment will be created. This huge expenditure will generate economic activities in the area and that will help development at the macro level too. When completed, the people of the entire country will be able to perform trade and business very easily. Those who are opposing the construction of the bridge are simply doing it for opposition's sake. They do not want even distribution of development in the country.

The construction of Kamalapur Railway Station, Hotel Shahbagh now IPGMR and the New Market was also vehemently opposed at the initial stage. But these have in the long run proved to be very useful. How can the country reap the benefit of the development keeping some parts of it undeveloped and uncommunicated?

Taj Mahal Road

Sir, I congratulate Mohammad Hanif on his being elected to the exalted position of Mayor, Dhaka City Corporation. This august civic body is responsible for the proper management and maintenance of roads, lanes, by lanes, alleys, environmental pollution etc.

Of all the above sectors, a major portion of Dhaka city roads, barring posh areas, are lying in a state of dilapidation. One such area is Taj Mahal Road, particularly Road Nos. 17 and 16, where the condition of the roads is better seen than described. These two roads are pot-holed, have snuggled surface with cracks and fissures, having been lying in worst form of disrepair for the last decade or so. It has not been repaired despite numerous public complaints,

causing untold sufferings to the residents of these roads.

We the residents of this locality would earnestly urge the newly elected Mayor, Mohammad Hanif, to take immediate steps on a priority basis for the repair and carpeting of these two roads to reduce the sufferings and inconvenience caused to us.

N H Sufi
Mohammadpur, Dhaka.

..... backlash of reforms

Sir, I have read with great interest what appeared in The Daily Star of 18 February, 1994, under the heading 'Policy dialogue with cabinet colleagues Saifur refuses to take all blame for backlash of reforms'. Mr. Saifur Rahman is partly right in saying so. But then there should be no doubt that as the Minister holding the Finance portfolio he was immediately responsible for the reform measures not suited to the conditions in Bangladesh. Although as the Finance Minister he has to accept that for most of the measures which have been taken he is primarily responsible, it should also be made clear that the entire cabinet is collectively responsible for the reforms and all other measures.

Under the circumstances, it appears to me (others probably may have the same view) that the Prime Minister should be gracious enough to advise the President to dissolve the entire Cabinet and, thereafter, the President should have the

pleasure of requesting the leader of the majority party to form a new Cabinet. This procedure will be a blessing for the country as well as for the political parties in respect of their organization or reorganization and for everybody.

It may be noted that probably the size of the Cabinet, in a poor country like Bangladesh, should not go beyond 20-25 members, including all categories of Ministers, namely, the Cabinet Ministers, the Ministers of State and the Deputy Ministers. We should all learn how to subordinate our individual interests to the collective interests. I am writing this particularly taking into account the situation prevailing in the country after the recent Mayoral election results. I believe that what I have said is completely in keeping with democratic practices, traditions and precedents.

M T Haq
4/5 Pallabi, Mirpur, Dhaka

Public Opinion

Sir, After the construction of the 'Bijoy Sharani' road, I was much pleased with the creation of the wide road island with trees. The vast tracts on the two sides of the road were simply crying out to be developed in the same manner. With the shifting of the airport from Tejgaon it was now possible to create a beautiful green wonderland, which could act as a breathing space for the city. We all know how vital open green spaces are for large cities, and, at the

same time, how scarce they have become.

During the 'autocratic' Ershad regime we saw portion of it taken for the 'Defence Forces Museum'. What an exemplary undertaking it would have been if the whole patch of land was developed in the same manner as the 'Zia Uddin'. It would have been a sight indeed after the bustle of the Farmgate area.

Another question surfaces in this regard. What is the need for such an enormous museum at present, when we have a national museum, here in Dhaka. Do we really need another museum to display war machines? (which we do not even make). I can name hundred other important sectors in which we can spend the money. What do the public benefit from such an undertaking? And speaking of money, we have seen how funds allocated in the five year plans for housing, have been diverted for building five star hotels and palaces for various rulers. This type of spending of funds, allocated in the budget for one purpose, into others has been a common practice in the past. I earnestly urge the people to think about this matter and make their choices be known.

Another matter that came into my notice recently is the effort of our city corporation to beautify the look of the 'Bijoy Sharani'. There was the 'famous fountain', built during the Ershad regime, and now we have a fighter plane on the other side and facing the 'Sangad Baban'. Does such

decision reflect the people's choice? If it does then I must congratulate the concerned authorities for their selection of the 'war machine' as a sculpture. The setting of such a 'toy-like' object in front of the Parliament building gives a sense of 'tension' and 'Mockery' as well.

A Citizen
Dhaka

'Learning to Live with India'

Sir, The very caption of the article 'Bangladesh is Learning to Live with India' by Kuldip Nayar (DS 18 Feb. 94) is disingenuous. It's an insult to our injury caused by India as a punishment for our alleged ingratitude to India who 'gained independence for Bangladesh' as claimed by the government, political parties, and media of that country.

'Bangladesh is learning to live with India' instantly brought to my mind a cruel joke which I had read long ago: It goes like this: A young lady who was married a few months before and was not in good terms with her husband went to a fortune teller to know what fate had in its store for her. The fortune teller said, 'You will have to suffer like this for two or three years'. She paused a while and asked eagerly, 'What next?'. The reply from the astrologer was grim. 'Thereafter you would learn to live with your misfortunes, peacefully'.

K R Zakhrni,
Khulna