

## Impetus to Bilateral Ties

Optimism is in the air that Indo-Bangla relations characterised hitherto by unresolved issues are on the mend. The upbeat, somewhat cautious at the moment, follows the Indian Foreign Secretary Salman Haider's goodwill trip to Dhaka undertaken on behalf of the country's Prime Minister Deve Gowda and Foreign Secretary I K Gujral. What made his visit so important was the installation of new governments in Delhi and Dhaka with a sea change occurring in Bangladesh as Awami League rode back to power after a lag of two decades.

It is satisfying to note that the first direct contact between the two governments has not only materialised at the earliest convenience of each other but this has also gone to register India's readiness to resolve the long-standing bilateral issues with a marked sense of urgency. We dare read into the new Indian overture a sign that she is prepared to go beyond the routine and the mechanical that had so characterised the earlier interactions between governments of the two countries. It truly devolved upon India that as the bigger neighbour she took the first crucial steps to break the spell of barren negotiations on the pressing bilateral questions.

The decision for an early ministerial-level meeting in search of quick solutions to the bilateral disputes is a step forward as it signifies taking up things on a high political pedestal. While this promises to germinate a political will to impact positively on issues it will only remain for the two prime ministers to authenticate and deliver it with a finality.

The ministerial meeting on all bilateral issues will not hopefully deny focused attention to the Ganges water sharing problem and the tribal repatriation issue. An early Joint Economic Commission meeting on the growing trade imbalance seems happily on the cards; but then we would very much appreciate an early scheduling of a meeting of the Joint Rivers Commission given the burning nature of the Farakka problem.

Inter-play of the positive moods notwithstanding, both sides seemingly placed all their cards unhesitatingly on the table during the Salman visit. The transit question surfaced, and in an interview with this newspaper the Indian FS stated, "I would not say it is connected with some particular issue (water-sharing), but definitely it is a subject which needs to be addressed." Water Resources Minister Abdur Razzak in his interview with us said, "Once the Farakka problem is resolved, the relationship between the two countries would improve further. In a friendly situation, we would be in a position to discuss other problems including the transit issue." We think dealing with the issues separately and in their respective parameters would be the most efficient and effective approach to take.

## Children without Support

A few may know there's a thana called Tanore in Rajshahi. Fewer still would know there is a village there by the name of Chapra. Still we choose to talk of this almost nameless — Chapra means a meagre tuft of grass only — village because it has a most unusual feature. It has an institution for children whose parents have died.

The Daily Star correspondent in Rajshahi has written in this journal to complain that the children there have been leading an inhuman life for many years and that there are none to share their sufferings. The Shishu Sadan — we highly appreciate the good sense behind the naming — has 53 children and they and their one super and two tutors live in the very six small rooms the set-up had started with. The government pays for the upkeep of only 38 children — why we don't know — at the rate of 400 Taka per head. Distributed among the 53 it comes to about 268 Taka per head. Then deduct the establishment and running costs, and what are the children left with?

But then the impecunious situation may not be all that bedevils children's institutions. We complimented the Chapra institution for avoiding the word orphanage. But the picture accompanying The Daily Star story of Sunday looks exactly like that of any and all orphanage groups in the land. It speaks of regimentation which is an anathema to the growth and maturation of a child.

The existing outfits of good samaritans are, possibly with some rare exceptions, heartless places enforcing discipline or kowtowing to wrong things — through maybe corporeal punishment.

Compared to the national situation Chapra should be a brave endeavour — if it has hope burning inside its leaders. What about girl children left behind by dead parents? Theirs must be a worse plight. Will the new government address these problems?

## Close-circuit TV

Police authorities are reportedly thinking of installing close-circuit TV for an effective vigil on some 60 accident-prone points of the city. This will help them make up for their inadequate numerical strength with which they are currently having to let go with myriad traffic rule floutations. Not only that, they are now helpless by-standers to the frequent decamping of the violators whose numbers have unsurprisingly been on a steep rise. Close-circuit television promises also to keep an eye on the policemen on duty reducing thereby the supervisory load of the higher-ups.

We have a feeling that such all-seeing TV eyes could also enable the control room to spot the traffic jams in the making so as to prevent them snowballing.

The upfront money required for the purpose of laying the network may not be prohibitively large, but the overall project hardly looks like a cost-saver even when viewed as a substitute for the missed strength in the police force. As a matter of fact there will be bills to foot for training up a specialised cadre, procuring a large number of wireless sets and some other gadgets and adding to the fleet of police vehicles.

All said and done, we are strongly in favour of close circuit TV for traffic management.

As it is seen, the economic policy of a country is sadly enough, inextricably linked to the political interests of its ruling party. Sadly, because most parties focus on popular measures such as artificially high wages, low taxes and other measures that do not always have the long-run interest of the country in mind.

Last month, when Awami League came to power, it was not clear what this change meant for Bangladesh's economy. Of late, though it has taken some positive measures that, if followed through, bode well for the nation. Commerce and Industries Minister, Tofael Ahmed initiated a move that resulted in doing away with permits and special allotment for essentials such as newsprint, sugar, salt, paper, fertiliser etc. Removal of permit licenses and other bureaucratic red-tape is supposed to promote efficiency and diminish incentive for corruption. If the Commerce and Industries Minister's actions are extended to other sectors and are made more comprehensive in nature, then supposedly, it will be most promising for Bangladesh.

According to Forrest Cookson's (Financial Sector Reform Project) recent talk at the recent Eminent Speaker Series at North South University, when rules and regulations are imposed in an environment

of extreme poverty and where it is possible to create very large gains then the inevitable result is pervasive corruption. The flip side of this is that the existence of corruption encourages the continuation of rules and regulations. The endless requirement for permits and licences, so common in Bangladesh, not only creates potential for corruption but also means that resources do not reach the intended target group.

One of the major recommendations of every financial reform project in Bangladesh has been that the excessive red-tape be done away with, that the official structure become less bureaucratic and that efficiency and effectiveness be emphasised over procedure. If this attitude is applied to every sector and not just in this limited area, it bodes well for the economy. However, it is not clear that this process will be continued. Recently, the Canadian High Commissioner to Bangladesh Jan J. Scott said he hoped that the new government would accelerate the process of deregulation, decentralisation and

privatisation, reflecting the hopes of foreign investors.

From the administration's recent actions, it seems that the majority of its efforts will be directed towards the comparatively non-controversial areas of deregulation and decentralisation. It was previously thought that the government would probably not touch the privatisation issue. Then it was announced that a regulatory board will be set up for management of the country's telecommunications system, thus dashing the hopes for its privatisation. Privatisation of the telecom system would have acted as a magnet for foreign investor and would probably have put the Dhaka Stock Exchange (DSE) on the world's financial map, not to mention the boon it would have been for frustrated Bangladeshi consumers.

This feeling was partly reversed on the other day when it was announced by Minister Mohammad Nasim that there would be private sector participation. Competition would be introduced between public and private companies. This would ensure that the most efficient

companies survive. This would also be applied to cellular phones because more private companies will be allowed to participate in this industry. A positive note was definitely struck when Minister Nasim admitted that there was widespread corruption and inefficiency in the telecommunications system. This is the first step that is needed before any reform can take place. Any reform in the telecommunications sector, mammoth as it is, will have positive effects on different sectors of the economy.

Another recommendation made by financial reform experts is that the government should be seen as important but secondary while ensuring that investments are made to the most profitable returns possible. A step in that direction would be eliminating subsidies to sick industries that have little or no chance of recovery. If the present government takes the initiative to start putting an end to subsidies, it will be contributing to the country's economic progress.

Recently, Communications

Minister Anwar Hossain stated firmly that Bangladesh Railway must be made into a subsidy-free organisation thus indicating that no special advantages will be given to it and also indicating that the taxpayer will not be paying for an inefficient organisation. Whenever subsidies are given, in the end it boils down to a simple fact: the taxpayer is paying for organisations that are inefficient and unproductive. One can also conclude from this that such subsidised organisation has no incentive to be efficient since it will always know that no matter what its financial statements look like at the end of the year, the government will pay for the losses.

If the above statements by the ministers of the administration are attempts of political manoeuvring, then these does not hold much hope for us. However, if those point to a trend towards privatisation, that may be encouraging. Privatisation is the key to promoting rapid growth of the economy through promotion of competition and free market. It is also important, in the con-

text of Bangladesh, to recognise that removal of scopes of corruption plays a vital role in this process. Privatisation is just one way to fight corruption but there are many other things in our system that promote corruption such as red-tape, artificially low wages, subsidies etc.

Every time there has been a positive announcement by the government, regarding abolition of licenses or privatisation, the DSE's All Share Price index has not shot up.

There was a bullish trend over the whole week. Market capitalisation rose from 64.23 billion to 67.18 billion. DSE's All Share Price index recorded gains in all sessions of the week. On 29 June the index was 951.15. It went up to 989.40 on 4 July without any fall (steady rise). Further reform in areas specific to DSE such as the lock-in issue will further push the index up.

All said and done, what we are reacting to are mainly announcements and positive initial moves by the government. However, if this trend continues then one can safely say that the new government attempting to inspire faith among the nation's business and financial sector.

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# Economy: A Positive Note?

by Tanya Gupta

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# Doctrine of Parliamentary Sovereignty: Bangladesh Case-study

by Asad Hossain Choudhury

THE people are the dominant factors to the conceptual aspects of the principles of democratic values that have got to work in a system of integrated whole. In a situation of parliamentary sovereignty holding sway in a country like England, Parliament is the supreme; but in a country like the USA, the Supreme Court reigns supreme to supervise and control the legislative actions. The constitutional position of Bangladesh on this point is the fusion of the two systems. But the fact remains that the system of Government of Bangladesh is out and out parliamentary in the order of the Westminster style democracy.

In dwelling upon the point more elaborately, it is to be stated that Art 65 of the Constitution of Bangladesh provides for a unicameral legislature called Parliament (Jatiya Sangshad) in which is vested the legislative powers of the Republic. The dominant characteristic of the British Constitution is the supremacy of Parliament which means the power of the British Parliament in enacting laws is without any fetter or restraint. It can really pass any, no matter whether it is unreasonable or arbitrary. The British courts cannot hold any Act of Parliament unconstitutional or refuse to enforce it. But they have the power to interpret the law and in exercise of this power they remove any unjust or unreasonable element in an Act of Parliament stating that Parliament cannot be ascribed an intention of prescribing something unreasonable or arbitrary. Under our constitutional dispensation, it is the Constitution, and not Parliament, which is supreme. Parliament's legislative power is subject to the provisions of the Constitution and any law to the extent of inconsistency with the provisions of the Constitution is void. (Art 7 and 26).

The Supreme court has been given the power of judicial review to see that Parliament does not overstep the limits set by the Constitution. Just to delve deep into the doctrine in question, we need to focus into the classical tests in this context so as to really perceive the realism of the very theory in the practical application to the case-study of Bangladesh which is, but struggling to emerge from the mind-boggling constitutional aberrations on the point born out of parliamentarians' confusion and nonchalance.

In the British context, the analysis on the point goes on to say that (1) Parliament has the right to make or unmake any law whatever; (2) No person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament; (3) The right or power of Parliament extends to every part of the Queen's dominions. Despite recent criticism, it is still true to-day as a proposition of the law of the United Kingdom to say that Parliament has the right to make or unmake any law whatever. Nor can any court set aside the provisions of an Act of Parliament. All that a court of law can do with such an Act is to apply it, i.e. to interpret the meaning of the enactment. It is worth remembering that the idea that a court of law can determine the legality of legislation does not come from any English or Scotch court. It is

Bill legislation. In *Lee v. Bud and Torrington Junction Railway Company* (1871) L.R. 6 C.P. 576 at p. 582; K & L. It is held that the control of the procedure for enactment rests with the two Houses of Parliament as a matter of privilege which each House asserts separately to the exclusion of the courts. Thus the court refused to take any notice of the procedure in Parliament whereby the Bill came to be enacted. (2) That the judicial process does not lie where Parliament has exclusive jurisdiction has been recognised by decision of the courts both in the field of privilege and in Private Bill legislation. It is more than seventy years since Mr Justice Stephen in *Bradlaugh v. Gossett* (1884) 12 Q.B.D. 271; K & L 144, examining the area of judicial control over

ambit of territory. This is itself in accordance with international law. Parliament does on occasions, however, pass legislation controlling the activities of its own citizens when they are abroad. In this respect the territorial conception of law is stronger than that of most other countries; in practice, only a few of the more serious criminal offences are punishable in the courts of the United Kingdom no matter where they may be committed by a British national here the question is not so much the competence of Parliament but the practical difficulty of law enforcement. Thus one may say that the supremacy of Parliament is limited not only by the possibility of disobedience or resistance on the part of the subjects, but also by the impossibility of enforcement.

It is ruled out for guaranteeing the Sovereignty of the Parliament. And the Sovereignty of Parliament is a condition precedent to the good governance. So what is needed at this stage is to see that the apparatus of the Parliamentary Government is made to work in full gear to the fullest extent.

The rank of a Member of Parliament is above the rank of the Secretary pursuant to the Warrant of Precedent and that as M.P. is a national leader representing the whole of Bangladesh though he is returned from a particular constituency. But it is unfortunate that an MP is not provided with an office to carry on his work which has a bearing and weight of national import; this cannot be the lie of the land; something must of necessity be done now or never when avowed policy of the government is for materialising the hopes and aspiration of the people in shaping democracy into an institutionalised form.

The reports have it to the effect that the World Bank as a mouth-piece of the donor agencies is found to be voicing protest to our Committee System and Parliamentary practices. It has gone a long way to pin-point the procedural lapses and sangs with suggested measures by way of restructuring them for its onward success in a meaningful existence. World Bank, the agency that speaks for donors community made the following recommendations in a report "Government that works, reforming the Public Sector" is a case in point that should serve as an eye-opener for the Government-to-be awaiting installation into power.

Before embarking on giving the details of the measures suggested by WB, it is relevant to allude Art. 77 to bring into picture the office of Ombudsman as a corrective to the abuse of power by the administrative officials. Our Parliament passed the Ombudsman Act, 1980 and empowered the government to bring it into force by notification in the official gazette but to no effect.

Art 76 of our Constitution provides for the following standing committees: (a) a public accounts committee; (b) a committee of privileges; and (c) such other standing committees as the rules of procedure of Parliament require. The World Bank has come out with the following recommendations, such as: (1) that Ministers should be restrained from heading the Parliamentary Standing Committees to eliminate potential conflict of interest; (2) strengthening of the Public Accounts Committee; (3) to ensure parliamentary accountability, enable MPs to keep a continuous watch on the government; (4) heavy weighing of power of the Executive be reduced; (5) role of PM as seemed to be in the likeness of the President after 1990 be applied strict corrective; (6) MPs should be provided with properly equipped offices, paid research staff and funding support for investigative works so that they could participate knowledgeably in debates and committee discussions; (7) there should be provision for questioning the Prime Minister in each week of the Parliamentary session; (8) for establishing the office of Ombudsman to monitor the functioning of the Executive agencies and adjudicate dispute and grievances.

Actual state of affairs of our Parliament is laid bare as home-truths: There is, generally, inadequate debate on policy and legislation in parliament. Indeed many matters are not discussed in parliament at all. Most policy is formulated in secret and even announced at all in parliament, so it is not surprising that such policies have little public understanding and are often implemented half-heartedly.

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otherwise in the United States with federal type of constitution where the function is assumed by, or more often in modern times, given to, the courts. It is the case that in most countries with a unitary constitution the powers of the legislature are limited, it does not follow that it is the prerogative of the court to override legislation. Dicey was concerned to show that there were no restrictions on the powers of Parliament whether on the part of the courts or any other authority, so far as the Parliament of Westminster was concerned. He has been criticised because he failed to support his assertion of principle by authority that criticism can be met if one is content to view the issue, as Dicey himself did, from the legal angle by showing authority of the court in support of certain propositions. These are: (1) a court will not take any note of the procedure in Parliament whereby a Bill comes to be enacted; (2) a court will not allow a judicial process to be used in the sphere where Parliament, and not the courts, has jurisdiction; (3) Parliament cannot bind itself as to the form of subsequent legislation, and therefore the provisions of a later Act, so far as they are inconsistent with an earlier Act, must prevail.

For the first (1) proposition it is necessary to go for an example to the field of Private matters relating to internal procedure of the House of Commons, recognised that its privilege of regulating its own internal proceedings invested it with a judicial character. No court to-day would seriously challenge that matters concerning the proceedings within either House are to be discussed and adjudged in that House and not elsewhere. (3) Dicey, citing Coke and Blackstone, never had any doubt that the legislative authority of an existing Parliament could not be limited by the enactments of its predecessors, but he did not cite any authority from a court in support of his proposition. The sovereignty of Parliament is not limited by the rules of public international law though Parliament normally gives effect to these rules since they are accepted by the Executive. The courts, however, will not accept a plea that the legislature has violated such rule. No Act of Parliament can be held ultra vires on any ground of contravention of generally accepted principles of morality or of law. It cannot be said that the capacity of Parliament to override public international law is a consequence of the sovereignty of the Parliament. Nevertheless this capacity of Parliament is an illustration of its omni-potence. Parliament normally restricts the operation of legislation to its own territories. British ships, wherever they may be being included in the

ment. Even in the case of an offence committed abroad and therefore beyond the jurisdiction of the English courts, there is nothing to prevent the enforcement of the statute if and when the offender comes within the jurisdiction. If the rule of Parliamentary sovereignty simply expresses the relationship of the courts to parliament as a legal conception, it may be objected that legal sovereignty is not sovereignty as such but merely a rule for lawyers which is accepted and acted upon because it suits political conditions that the unrestricted power of law-making should rest in Parliament alone. While it can readily be admitted that political expediency operates to limit the working of the legal rule, the question "Where lies sovereignty?" as a political concept remains unanswered, except that in the last resort the power of government, and with it the power to control Parliament depends on the result of a general elections.

The judicial obedience to Acts of Parliament — has been examined by H W R Wade in his article *The Basis of Legal Sovereignty*. He finds that the rule enjoining judicial obedience to statutes is one of fundamental rules upon which the legal system depends. The sacrosanctity of this rule, he argues, is an inevitable corollary of Parliament's continuing sovereignty. He cites Salmond: *Jurisprudence, for the propo-*

## To the Editor...

### PM's visit to Tungipara

Sir, On the third day of her assuming the office of the Prime Minister, Sheikh Hasina went to Tungipara to offer Fateha at the Mazar of Bangabandhu Sheikh Mujibur Rahman. The PM went to Tungipara by a helicopter and the trip was considered to be an official one. Newspaper reports reveal that another helicopter was used for taking the relatives of the PM to Tungipara. I do not know whether the relatives of the PM are entitled to enjoy such facilities. Even if they are, then considering our national economic condition and honouring her promises for national economic condition and for austerity and people's development, the PM could send her relatives to Tungipara by any other mode of transport which they used to avail earlier for going there. That would have saved the poor nation from a few lakhs which could be used for national development.

Our new PM is known to be 'Jana Netri'. Her actions should be different from those of others.

In this connection it may be noted that the major dailies of the country failed to highlight

this incident. On the contrary, some of those liked to 'box' the news of the ministers riding 'rickshaw van' at Tungipara, of course along with their close-up snaps. We must remember that while praising their good deeds, we must also point out the faults. In that way we will be helping the government to learn from their faults. Our new PM also said so in her speeches on many occasions.

Abul Hasanat Mohammad, 28, Green Road, Dhaka.

### Shaheed Intellectuals' Monument

Sir, The anti-liberation forces brutally assassinated our leading intellectuals in the eve of the victory in the War of Independence in 1971. An epitaph was erected on behalf of the martyrs' successors' organisation 'Prothoma 71' in 1990. The then government undertook a project for building a monument at Rayer Bazar, the site where many of our intellectuals were assassinated. Some 10 bighas of land was acquired for the project. An architectural design competition was subsequently held and

one design was approved. The Ministry of Works undertook the project for implementation. But after that, no physical work of the project has been done as yet. It appears that the project has been abandoned.

But it is of immense national importance to recognise the contributions of the shaheed intellectuals who laid down their lives for the cause of the nation. The nation and the next generations can prosper only on the inspiration of the sacrifices made by the valiant Shaheeds. And here comes the importance of implementing the project without further delay.

Atique Rahman, 180, Rayer Bazar, Dhaka.

### UN Secretary-General

Sir, The five-year term of the UN Secretary-General Boutros Boutros Ghali is going to be over soon. There is little likelihood of his reappointment to the post. The US has already said that it would veto if B B Ghali seeks for the second term.

Today the UN is beset with multifarious narrow-minded administrative and political problems and acute financial crisis. We need a change to revamp and to reactivate this organisation. We need a new blood, a bold, courageous, experienced, capable and broad-minded and strong neutral personality to give a fresh lease of life to the UNO.

Who is going to succeed Mr. Ghali and who would be able to accomplish the herculean task of saving the world body from falling down?

The importance, onerous duties and responsibilities, powers and functions of the post of the UN Secretary-General cannot be overemphasised. There may be some good candidates of national and international repute to fill up the post of the UN Secretary-General.

We strongly feel that Dr. Kamal Hussain of Bangladesh, an eminent lawyer of national and international fame, a human rights activist, a true democrat, an able administrator and a great statesman is the only right man in the right place for the post of UN Secretary-General.

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