

Judiciary Not Above Board: Chief Justice

The arrears of cases in the courts is a matter of regret for the Chief Justice of India. He has convened a conference of the high court chief justices to discuss the problem specifically. His proposal is that the retired high court judges be reinducted temporarily to hear pending cases.

CHIEF Justice J S Verma is in a frantic hurry. He has very little time between now and the mid-January next year when he retires. His plate is more than full. That may explain why he is working on several subjects simultaneously: how to fight corruption; which machinery to set up to appoint judges and what should be done to bring down the arrears of cases in the courts.

He is hard to fool. He has the gift of analysis and clear forceful statement. Above all, he uses his gifts for common people and not for the spotters, political or economic. He follows principle rather than master. His ideas are novel. For example, he wants an intelligence agency to be autonomous but not independent. That is the reason why he criticised former CBI director Joginder Singh for hogging publicity and found no fault with the government on his transfer.

During one-and-a-half-hour long interview with the Chief Justice of India at his official residence, I got the impression that the Jain hawala case had not yet seen the end. He seemed keen on doing something to not let the matter reach the anti-climax point. He gave no specific hint. But he said he would deliver the judgment before the judge sitting with him on the bench, retired at the end of November.

No, he did not discuss merits or demerits of the case. But he did not sound happy. It was obvious. He was the head of the bench which said on November 25, 1994, "If we are meant only for punishing people for petty offences and let the people go scot-free who spend lakhs of rupees on birthdays, we better then close down the court." He wants the investigating agency above taint. As a government department, Chief Justice Verma is convinced that CBI, constituted as it is, cannot resist political and administrative pulls. Whatever set up he recommends, he wants to associate with it public men of impeccable credibility.

Chief Justice Verma makes no secret of the fact that the judiciary has got contaminated over the years. "The judges are also not above board," he admits. "I am telling them during my talks and in the lectures I deliver that cleanliness brings no compromise. He regrets that the climate prevailing in the country is having an adverse effect on the judges.

But Chief Justice Verma is not leaving at that. He wants to single out those among the judges who have not maintained the highest standards of integrity. Will their transfer help? He would not mind going beyond provided there was a candid proof. With all types of allegations floating around, he is not taken in easily. He is keen on getting facts.

He was reluctant to talk about the charges appearing in newspapers against his No. 2 Justice M M Puri. Chief Justice Verma is aware of his duty on recommending the name of his successor to the government. But he is against the suppression of judges unless there is strong evidence against a particular person. He wished there had been a Lokpal to look into the allegations against the high-ups, including the judges. But the Supreme Court must not be dragged into politics. No man is essential to his country well-being as is the sustained integrity of the courts.

"At this juncture when the credibility of all institutions appears to be eroded, I cannot ignore the reality that the image of the judiciary is tarnished and needs to be refurbished," says Chief Justice Verma. "We must devote ourselves wholeheartedly to devised the proper means to refurbish the image of the justice-delivery system which is essential for effective operation of the rule of law."

Austere in living and still more austere in habits, the Chief Justice of India does not like the cult of consumerism that is taking over the urban population. He tends to withdraw from ostentatious gatherings and glittering parties.

He is against judges socialising. Left to him he would like to spend all the time in the midst of books, which take nearly 16 to 18 hours. His wife, who comes to ensure that the tea is properly served, says that he goes from bed to office and then to the Supreme Court. He prefers to stay out of public affairs, to be obliged to meet only those with whom relationship would be confined to law.

Chief Justice Verma is keen on having the best person appointed as judges to the High Courts and the Supreme Court. "The best among lawyers do not accept the position," he says. "They are busy making money." He feels that the rule of law is very much dependent on the quality of judges. He believes in wider consultations before the appointments. In the recent process of selection, he not only talked to the two senior most Supreme Court judges but also to the juniors in hierarchy, up to No 10. Not only that, he sought the advice of leading Supreme Court lawyers, including the young ones.

Some kind of judicial commission for the appointment of judges meets his approval. But he does not want the commission to be confined to judges and lawyers. "I want to associate with it eminent people from the public." Different points of view should come in.

Fairness is his byword. Chief justice Verma says how the judiciary has evolved principles which form part of the constitutional law. Right to speedy trial has been

held to fall within the guarantee of Article 21. Right to privacy in telephone conversation, so that unauthorised telephone tapping is illegal, has been accepted. Domiciliary visit by the police without authority of law, was held to be violative of Article 21, assuming right to privacy as a fundamental right derived from the freedom of movement under Article 19 (1) (d), as well as personal liberty under Article 21. "Right to know" is read in 19 (1) (a) which guarantees freedom of speech and expression.

He wants the government also to have a say in the appointment of judges. In his scheme of things there is joint responsibility. At a recent conference of the SAARC Chief Justices at Lahore, he argued that the executive and the judiciary should co-operate, not be in a state of confrontation against each other. (In the context of Pakistan it has greater meaning because the judiciary there is up in arms against the government for 'interference' in appointments and transfers of judges.)

The arrears of cases in the courts is a matter of regret for the Chief Justice of India. He has convened a conference of the high court chief justices to discuss the problem specifically. His proposal is that the retired high court judges be reinducted temporarily to hear pending cases. "It is no justice if it is delivered after a lapse of several years," says the Chief Justice of India. He takes credit for bringing down the arrears of cases in the Supreme Court.

He commends public interest litigation and he tells about his contribution to the practice even before it was initiated. But what he proudly recalls is his judgement against an order by the Shajapur district magistrate during the emergency. Chief Justice Verma, then a High Court judge, said: "Arbitrariness and capriciousness are the very negation of rule of law, the system which governs us. The executive authorities have to avoid these pitfalls by constant vigilance. It is more so in the present context of emergency, resulting in necessity, in curtailment of citizen's rights and conferment of wide powers and discretion in executive authorities."

The chief justice insisted on walking up to the verandah and waving me goodbye as my car started moving. His humility leaves a lasting impression. So does his anxiety to remove the taint which has gathered on the face of the judiciary.

BETWEEN THE LINES

Kuldip Nayar writes from New Delhi

GOOD GOVERNANCE The Necessary Cliche of Our Times

Instead of chewing the cud of frustration and disappointment, and waiting like damsels in distress to be rescued from despair by some external force in shining armour, we should organize ourselves better, create strong citizen bodies, muscled by social conscience and animated by a political spirit.

IT is said of Gandhi that, once when asked about what he thought of Western Civilization, he said, "I think it would be an excellent idea." Something tells me that he would have made the same response if asked about that new buzzword of 'Development Assistance - Good Governance.' As an idea it is unarguably excellent as a frame of reference for developing countries, providing a policy guideline to help poor nations solve their problems, and a checklist of goals for them to aim for; but to what extent this would be successful in pushing governments to actually implement it, is subject to speculation, bordering on pragmatic cynicism. After all, a prescription does not constitute or determine a cure. Patients have to want to be cured for any medicine to be effective; and good governance is merely the well articulated and well intentioned credo of the new religion of sustainable human development; to make it work miracles, nations have to take the great leap of faith, become converts, passionate believers. But then, what else do the dispossessed have except optimism - that optimism of those whom even conventional religion has forsaken? And what else can they do but listen to the message of hope, as if in the mandate for good governance something original had been discovered.

So, although no one can be expected to say anything that has not been said before, perhaps we still need to hear the old rhetoric of a state's obligations to its people repeated: respect for human rights and women's rights, respect for the rule of law; political openness, participation and tolerance; accountability and transparency; administrative and bureaucratic capacity and efficiency, et al. Perhaps we do need to hear it reiterated that "development does not occur in a political vacuum" and maybe, governments themselves need to be reminded about what the basic principles of good governance are. Needless to say, the onus of achieving sustainable development and prosperity with social justice, lies on the shoulders of the political power-brokers in any developing country, and specially so in the context of Bangladesh. Every facet of good governance, be it transparency, or equity, consensus orientation or rule of law, is mutually overlapping and contiguous, and the whole cannot be honed to its proper brilliance without taking into account the sharp edge of the political powers that be. All this, obviously, has the ring of a recurring refrain: Without the commitment of political parties that dictate the destiny of a nation, we cannot make a single move in the direction of development, however clear the signposts are.

But the most significant aspect of these signposts of good governance, of course, is in the pressure it creates for governments to be more accountable and responsible, to develop good laws and efficient institutions, to promote democratic participation towards the empowerment of vulnerable groups and the sustained well being of all its population. However, as a member of the civil society, which along with the private sector and the State are defined to be the main domains of governance, I feel a strong compunction towards the role of the middle class in creating the grounds for good governance. Yet, at the very moment that I admit to the obligations of the educated and adequately fed towards the destitute and deprived, I must confess that I have always thought the middle class to be as vulnerable and marginalized as the more prominently disadvantaged groups like the poor, but in a different way.

It is easy to muffle the needs of a strata of society, however valid the needs are, in the interest of the more urgent necessities of another class. But needs can be ignored, they cannot be discounted. While the poor and vulnerable groups of

society certainly require the lion's share of a nation's resources, we cannot overlook the special requirements of the toiling middle classes, to improve their quality of life. It is my belief, therefore, that it is in our own interest to be an active part of this new surge towards the goal of democratisation of prosperity, aiming to create an enabling environment where we can fulfil our own needs as well as those of others, in both independent and interdependent ways, without constantly looking towards or blaming the government.

The theoretically privileged middle class live in congested cities, a glorified slum, with a monstrous traffic problem; the youth are forced to be crowded into a few schools, that are basically shops that sell poor quality education, and which tyrannize the parents knowing that they have a captive population of clients; there is a lack of proper leisure and amusement facilities which deprive both the young and the active from healthy and creative outlets; the list can go on, but basically, except for the moneyed minority, the middle class is all dressed up and nowhere to go, nowhere meaningful that is. And yet, we should be able to dictate where this stable, educated, potentially gifted class can go, which could be further than its grasp.

Traditionally this is the class which provides society's leaders, educators and intellectuals. But what good can a section of people, who are also the most disgruntled and frustrated, do except either resort to indifference or form an ungodly complicity with a system where corruption is a form of salvation. The middle class is the backbone of society and, at the risk of stating the obvious, I think the business of straightening our spine is up to us. Instead of chewing the cud of frustration and disappointment, and waiting like damsels

POSTSCRIPT

Neeman A Sobhan

In distress to be rescued from despair by some external force in shining armour, we should organize ourselves better, create strong citizen bodies, muscled by social conscience and animated by a political spirit. Be it a consumer protection group, a vigorous parent-teacher organization, an environment protection lobby, a cooperative or a protest group, it must be constructively oriented, incorporating all the rules of good governance within it, and working towards well defined goals.

The middle class has been termed the engine for growth, and growth is the sine-qua-non of development. If en route to development, good governance must be instituted, it must be done on our steam. Of the three domains of governance, the State, the private sector and civil society, I can only speak for the section where I belong. We, the members of civil society have a unique role to play in promoting sustained human development, which is not another esoteric term for rural uplift only. It is about improving the quality of urban living conditions too, it is about making life worth toiling for. And to this end, at least, the educated members of society must make it a point to be involved in the decision making process at every level; insist on the free flow of information, put pressure on policy makers and power holders for greater transparency and efficiency. Taking the cue from rural women, urban women and educated housewives must become self-sufficient and politically astute, insisting on having a voice in decision making in economic, political and legal levels of society.

One of the characteristics of Good Governance is strategic vision. How we want our society and nation to develop, and what short and long term perspective we visualize, must be transmitted to our political representatives. We must guide them, even force them to deliver, out of the cliché of governance rhetoric, a new more acceptable world.

BANGABANDHU MURDER CASE

Verbatim Text of Cross Examination of 32nd and 33rd Prosecution Witnesses

Continued from yesterday Cross-examination of PW-32 in Bangabandhu murder case, Havildar (ret'd) AKM Sajedul Haq, began when the court resumed on Tuesday.

Following are excerpts from his examination by advocate TM Akbar, defence lawyer for accused Lt Col (LPR) Muhiuddin:

Q: Where you asked to halt any army vehicle while you were on duty in front of Tejgaon airport? A: I was not given such order. Q: The road where you were posted is a very busy road. Many vehicles ply on the road. Isn't it? A: Yes, but no civil vehicle moved on the road on that day. Q: You have been taught about "pretext night parade", "bluff". A: No, I told the truth. The night parade was a pretext and we were bluff.

Q: Did you tell anyone about this pretext and bluff? A: No, I didn't feel the necessity. Q: You have been taught that Major Muhiuddin (Artillery) was involved in the incident. None mention his name. A: No, I came to know about their participation from the eye witnesses - Havildar Aziz, Lance Naik Khaleq, Naik Yasin and others.

Examination by advocate Khan Saifur Rahman, defence counsel for accused Lt Col (dismissed) Syed Farooqur Rahman: Q: How many people died in your village in 1975? A: It was not known to me. Q: Didn't you go to your village home on leave in 1975? A: Yes, but I can't recall the period. Q: Do you take advantage of indiscipline? A: No. Q: Did you get increased salary after the August incident? A: I can't recall. Q: Were the ammunition looted? A: No. Q: Did you mean it that you could have looted ammunition taking the opportunity of indiscipline on that day? A: I don't know what is looting. Bullets were not looted on that day. But the system of distribution of ammunition indicated that it was indiscipline. Q: How did you take ammunition? A: Naik Shamsul Islam brought 10 bullets for me. Q: Did Shamsul Islam keep an account with him before giving you the bullets. A: No.

Q: There was no bluff in giving and receiving the bullets between Shamsul Islam and you. Correct? A: I don't know. Q: Did you load the bullets in your SLR? A: Yes. Q: The radio announcement was: Army took over power under the leadership of Khan-dakar Mushtaque Ahmed. Did you come to know it? A: No, I came to know Khan-dakar Mushtaque became the President. Q: You claimed that you described what you came to know. A: I came to know from the eye witnesses. Q: Did they see you on the spot? A: No. Q: Then you, after watching them on the spot, confirmed that they were eye witnesses. A: No. Q: Did you support the killing? A: I discharged my duty where I was posted. Q: Did any killing take place on your duty point? A: No. Q: Did you take oath while entering the job? A: Yes. Q: Did you violate the oath on that night? A: No, because I followed the order of my officers. Q: Did you discharge your every duty on that night and morning as part of your night parade? A: No, I was posted in front of the airport that was not part of the night parade. The activities were done by us at the orders of our officers were not part of the night parade. We only carried out the orders of our officers. Allah pardon me, officers are next to Allah in army.

Examination by advocate Sharful defence lawyer for accused former state minister Taheruddin Thakur: Q: Did you continue your service with dignity and honour after the August incident for a long time? A: Yes. Q: Did you discharge duties on August 16, 17 and 18 in 1975? A: Yes, but I can't recall where.

No democratically elected government of any civilised country takes such instances of gross human rights abuse lightly. May we expect that our government will prove its sense of responsibility and justice by removing the officers concerned permanently from the Foreign Service and by taking such legal actions for their atrocious conduct as permitted by the law of the land.

Mrs Zohra Choudhury 140/A (New 31) Dhanmondi R/A Road-2, Dhaka-1205 Similar stories of atrocities committed by Bangladeshi diplomats on their domestic staff have been reported in the past. It is not known what actions have been taken against the diplomats concerned by the governments then in power.

humble request would be please give peace a chance. Ours is a very small country and we must accommodate all our fellow countrymen with diverse feelings, emotions and aspirations. Please make the beautiful landscape of CHT more green, serene and peaceful.

Torture of domestic help Sir, I was shocked to read the story of Hanufa - the way she was tortured by her employer, a responsible officer of the gov-

ernment serving abroad, is heartrending. I am surprised by the fact that the officer concerned instead of being punished and removed permanently from service abroad, has since advanced in the Foreign Service to be posted in the coveted position of a Charge d' Affaires at an important Embassy of Bangladesh.

To the Editor... CHT - hopes and aspiration Sir, it is indeed a matter of joy that at long last we are about to witness an honourable and just solution to the Chittagong Hill Tracts (CHT) problem. Precious time and lives have been lost due to mistrust and adventurism by a few and this had been aggravated by ventilation of emotions and vengeance by others. However, we should leave behind all these past but shouldn't forget the lessons learnt. As expected this 'deal' will come under close scrutiny of all interested quarters. My

nel slept there? A: I can't recall. Q: Was the firing one sided? A: I heard firing only from the south until I fainted. Q: What were you doing after waking up? A: The shell blasted as soon as we came out of the room. I didn't get a single moment to think or do anything. Q: What kind of resistance stives were taken by the army and police sector and civil society at Bangabandhu's house? A: I didn't notice them. I was busy with ourselves. Q: You told the IO: Major Dalim came to Ganobhaban at about 4 pm on August 14, 1975. He had hot exchange of words with Captain Bashar and JCO Subedar Kabir. Later Major Dalim left the Ganobhaban abusing them. A: I can't recall whether I said this to him or not.

Examination by advocate Gazi Zillur Rahman, state defence counsel for absconding accused Lt Col (dismissed) Khandakar Abdur Rashid: Q: Did you do any patrol duty around Bangabandhu's residence before August 14? A: I didn't. Q: You were responsible for everything taking place around the house. A: Yes. Q: Were all of you seven scheduled to discharge duty together? A: No, in turn. Two sentries at a time. Q: There was no scope to sleep. A: No, there was scope as the duty was in turn. Q: Did you take part in the Liberation War? A: Yes. Q: You were a courageous freedom fighter. A: Yes. Q: You witnessed many deaths and injuries at that time. A: Yes. Q: You continued the fight despite witnessing such deaths and injuries. A: Yes. Q: But you didn't faint. A: No, I didn't faint. But I also didn't face such attack. - UNB

Further texts of cross examination will be published as and when received.

33rd Prosecution Witness Following are the excerpts from cross-examination of PW-33 Havildar (ret'd) Selimuddin, by advocate MA Wahed, state defence counsel for absconding accused Major (ret'd) Shariful Haq Dalim: Q: How many rooms were there where you slept? A: There was only one room. Q: How many army person-