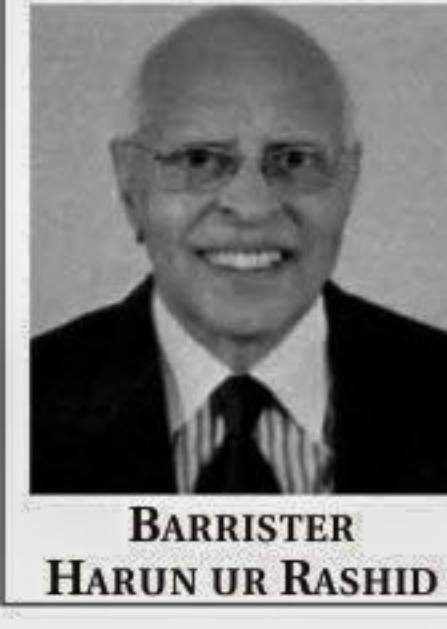


## BOTTOM LINE

## German Chancellor's visit to India



**O**N May 31, Chancellor of Germany, Dr. Angela Merkel, paid a high-profile visit to India, Asia's second-fastest growing economy. The visit to New Delhi took place on the occasion of the 60th anniversary of the establishment of diplomatic relations between the two countries.

Merkel was accompanied by seven ministers and executives from Siemens AG, BASF SE and Thyssen Krupp AG as they sought to tap a growing middle class and boost bilateral trade that is about a ninth of Germany's commerce with China.

Merkel received the Jawaharlal Nehru Award for International Understanding, whose previous winners include Mother Teresa in 1969, Nobel Peace Prize winner Aung San Suu Kyi in 1993 and former Brazilian President Luiz Inacio Lula da Silva in 2006.

In recent years, political bilateral relations have intensified considerably. The heads of government have agreed to meet regularly, and the foreign ministers will meet annually.

Former German Federal President Köhler went to India on a state visit from February 1 to 7, 2010. He inaugurated the Indo-German Max Planck Centre at IIT Delhi.

During the first official visit to Germany by Prime Minister Manmohan Singh, Chancellor Angela Merkel and the Indian prime minister signed a "Joint Declaration" on April 23, 2006. It emphasised the strategic partnership of both countries, focusing on future cooperation in the fields of energy, science and technology and defence.

A similar declaration -- signed during Chancellor Merkel's visit to India on October 31, 2007 -- had taken into account the fast progress in Indo-German relations and set ambitious goals for their development in the future. India and Germany are important partners on the international stage.

India is looking for investments and technology transfers to power its fast-paced economic growth while Germany is seeking to tap into India's booming market.

During the visit, officials from the two sides signed four agreements for cooperation in science and technology, nuclear physics, vocational education and training, and medical research.

Nearly 75% of the 175 German firms operating in India said that the economy would rise above 8% for the next three years, according to a survey conducted by the Indo-German Chamber of Commerce this month. More than half expect sales to rise more than 20% in the year ending in March.

"India is a destination right now that no large foreign company can afford to miss," said Jagannadham

Thunuguntla, chief strategist at SMC Global Securities Ltd. in New Delhi, adding that opportunities were particularly attractive for infrastructure, energy and consumer goods companies. "Everyone is increasingly fighting to get a part of the business here," he said.

"Siemens and Bosch have made gigantic investments in India but, clearly, there's still a lot of potential," said Dirk Mutter, regional director of the German-Indian Chamber of Commerce in Dusseldorf. "But if I look back to the time when I started, in the early nineties, the phone is clearly ringing more often nowadays."

India is the third most attractive retail market for global companies among the 30 largest emerging mar-

a press conference.

The European Consortium is prepared to share the most modern technology of fighter aircraft with Indian partners. The Eurofighter Typhoon represents the most advanced and most cost-efficient combat aircraft for the Indian Air Force.

Merkel also made a strong pitch on behalf of a European consortium for a multibillion-dollar deal to supply 126 fighter jets to India. Germany is part of the consortium producing the Eurofighter Typhoon, which is competing with the French made Rafale fighter for the \$11 billion contract. "We are convinced that we have the best product on offer," she told reporters.

India dropped Boeing Co., Lockheed Martin Corp., Sweden's Saab AB and Russia's OAO United Aircraft Corp. last month after completing technical evaluations.

Angela Merkel and Manmohan Singh reviewed regional security and pledged to work together against terrorism and promote stability in South Asia. The situation in Afghanistan, with a projected withdrawal of Nato forces by 2014 and the efforts to engage with sections of the Taliban figured prominently in the talks between Merkel and Singh.

"We discussed the developments in Pakistan and Afghanistan. Terrorism is a serious challenge which will have to be fought on all fronts and not selectively," Singh told a news conference after the talks. He did not elaborate.

Merkel said Germany, which was hosting the next Afghanistan conference by the end of the year, would insist on reconciliation of all the forces in the war-torn country provided "they fulfill the condition of renouncing the use of force." She said Afghanistan needed "an independent security architecture, which would be the best possible protection against terror attacks there."

Both countries will join forces in their commitment to tackling the challenges of the globalised world. Both are currently members of the UN Security Council and they cooperate with each other in the Council. Both India and Germany abstained in the vote in the Security Council on March 17 authorising military intervention to protect civilians in Libya.

Furthermore, they have successfully tried to find common answers to the problems caused by climate change and international terrorism, and as to whether and how the United Nations' Security Council can be adapted to the needs of the 21st Century.

The writer is a former Bangladesh Ambassador to the UN, Geneva.



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ket, US consulting group AT Kearney said in a June report. The growing middle class, expanding economy and increasingly brand-conscious population will help push retail sales up by 35% over the next three years, the consultant said.

Germany is India's largest trading partner in Europe. India and Germany hope to boost annual bilateral trade, which currently stands at around €15 billion (\$21 billion), compared with about €130 billion with China. The two sides set target of increasing trade to €20 billion by 2012.

Germany's specialisation in banking and insurance, sectors in which India restricts foreign ownership, has held back business. During the trip, the German government pressed India to pass an insurance bill that raises a cap on foreign investment from 26% to 49%, German Ambassador to India Thomas Matussek said at

the meeting.

The writer is a former Bangladesh Ambassador to the UN, Geneva.

## Corruption in emerging Asia

## HABIBUL HAQUE KHONDKER

**I**remember having a conversation on corruption with late Professor Syed Hussein Alatas, a leading scholar on corruption and a sociologist. While discussing various issues he remarked: "Look at Singaporeans -- here is an entire generation who grew up without having to pay a single bribe." This is a remarkable achievement on the part of Singapore's leadership. Singapore's founding leader Mr. Lee Kuan Yew and his colleagues had a very low level of tolerance for corruption. Corruption was unacceptable, corrupt people were prosecuted and punished swiftly.

In 1990, Mr. Lee stepped aside from the post of prime minister and became a senior minister in the cabinet headed by Mr. Goh Chok Tong who succeeded him. Later on, Mr. Lee served as minister mentor when his son Mr. Lee Hsien Loong took over as prime minister. This was an innovation in governance but it gave continuity and provided the new leadership the benefit of the wisdom of the founding leaders. In May 2011, Mr. Lee Kuan Yew stepped down from the post of mentor minister after the recent elections.

No wonder Singapore shares the enviable position of No. 1 with Denmark and New Zealand in the 2010 corruption perception report of the Transparency International as the least corrupt country in the world. Singapore is the only Asian country which belongs to that distinguished company.

Mr. Lee Kuan Yew always believed that a well-run society based on the rule of law is preferable to noisy and messy democracy. Some western analysts do not give him high marks for democracy, but no one can question the economic success of Singapore and its significant achievements in education, housing, health

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care and social stability. Its democracy has been termed by some academics as "illiberal democracy." Singapore accepted Westminster style parliamentary democracy with squeaky clean elections. It is a strong state where rules are transparent, and is least bothered by how others characterise it.

Whether corruption can be best tackled under democracy or under authoritarian rule is often debated. The two countries that are often cited are India and China. China is ranked 78 and India 87 of the 178 countries in the 2010 Transparency International Report. How best corruption can be fought is an issue of governance.

Many would agree that China has better governance than India at this point in time. But when it comes to corruption, top Indian leaders are definitely not soft. In recent years, India has seen major corruption scandals involving the Commonwealth Games and more recently involving 2G telecom licensing. The top officials in both cases, the former Commonwealth Games chief Mr. Suresh Kalmadi and the former Telecommunication Minister Mr. Andimuthu Raja, were arrested.

In China, in 2009, 106,000 officials were found guilty of charges of corruption and were punished. Many high party and government officials in China were also not spared from harsh punishment and public shaming.

In both China and India, media -- especially news media -- played an important role as whistle-blowers, which drew public attention to corruption. In China, Human flesh search engine has played a central role in exposing corruption. In India in 2010, a website Iapadabribe.com has been created, which collects, publishes and exposes incidents of corruption at various levels.

One has to be made aware of the certainty of the delivery of punishment and the cost of crime. The cost of crime must be higher than the benefits. In one case, when a Singapore Airlines crew was caught for ill-begotten property he was punished and his property auctioned off, and the money was returned to the airlines.

In order to reduce the level of corruption, alongside certainty of punishment, a concerned and conscious citizenry can play a vital role. The culture of impunity is often associated with a culture of tolerance of corruption. Someone who pays a bribe is in effect complicit and party to corruption. Citizens must resolve not to be part of a corrupt system. It is a hard choice, where a high-level of personal integrity and a mindset of sacrifice is needed. They can be effective watchdogs.

Important lessons can be drawn both from China and India on different methods of fighting corruption. Corruption and various scams have been part and parcel of rapid economic growth in these two giant economies, as they had been in the early stage of capitalist development. At the same time, the fight against corruption -- somewhat slow in India and swift in China -- has also begun in full swing.

Surely, Bangladesh has also moved up several notches with its current rank of 134 with dozens of countries below her. Not too long ago Bangladesh was at the bottom of the heap. Now that dubious reputation goes to Sudan with its current ranking of 178.

Surely Bangladesh has made some progress but much needs to be done.

The writer taught at the National University of Singapore from 1986 to 2006. Currently, he is professor at Zayed University, Abu Dhabi.

## Putting the cart before the horse

## MIZANUR RAHMAN KHAN

**T**HE issue of the Caretaker Government (CTG) is political, not legal. The Appellate Division (AD) in its 1981 judgment stated that the Court will refrain from resolving political questions if the same could be done in another way. The leader of the House has breached the norms of parliamentary procedure by declaring the fate of the 13th Amendment on the basis of a judgment which is yet to be published. The opposition's hasty hault also shows that they are not apathetic to resorting to violent means to press their demand.

The split judgment and the decisive opinion of the leader of the house came at a time when a special committee was handling the matter. The committee was formed on a motion brought by the leader of the house. It was supposed to submit its report to the Parliament under 266 of the Rules of Procedure.

The PM stated that she only echoed the voice of the court when she said "no" to the CTG. The government thinks that there is no scope to retain the CTG since it has been declared illegal by the highest court, though they are not "rigid" on the issue. Former Law Minister Abdul Matin Khasru told me on May 31 that holding another two election under the CTG is not binding because it is "obiter dicta," which means "things said by the way."

The government's position was impulsive, not only politically but legally as well. It is apparent that the written verdict might be substantially different from what was understood at the time of oral judgment. The government machinery never carried out any verbal court order. In a recent judges' case, the AD has issued a "short order" considering the urgency of the matter. The nine judges took oath immediately; the written text came later.

The decision on the CTG case has three components -- the introduction of the CTG was unconstitutional; scope for holding the next two elections; and discouraging the retired judges from being part of the CTG. Some jurists have rightly questioned the rationale of the majority decision. It would be interesting to see how they rationalise the "illegality" of the 13th Amendment. Illegality of the CTG must embrace the term void ab initio (invalid from its birth). Illegality

cannot be on a bit by bit basis. If the court declares that the CTG was void ab initio then it has to see whether it may give any post facto ratifications or invoke the doctrine of condonation regarding all acts and deeds, including holding elections, since 1996.

The story will not end there. The tenure (1996-2011) in question might be treated as the nation's transitional period. Again, it is to see how the court contains and continues this unique illegal "transitional period" in the post 5th Amendment "reprinted constitution."

Why am I raising this intricate question? The answer

**Both the treasury and the opposition should maintain a status quo until they get the certified copy of the verdict. They should remember Cicero, who said: "We put the cart before the horse, and shut the stable door when the steed is stolen."**

is: Article 150 has been regarded as only a source of validation of all sorts of transitional periods from the pre-constitution Mujibnagar days to military regimes. Justice A.B.M. Khairul Haque, in his landmark High Court verdicts on 5th Amendment case, annulled the blanket validation of the first military regime and directed wiping out of the "safety paragraph" from Article 150.

But the AD, while "modifying" the HCD verdict, not only reversed this order segment but also expunged every word that negated depicting the military regime as transitional period. But the rebellious law "clerks" who seemingly got blessings from powerful quarters reprinted the constitution, defying the order of the AD. Later, the law ministry filed an atypical review petition against the said order segment relating to Article 150. BNP lawyers were kept in the dark.

Now the AD has reversed its earlier decision and inclined towards the position taken by Mr. Justice Khairul Haque in 2005. One of the influential members of the Special Committee opined that it was an

infringement on the part of the highest court while the matter was "people's subjudice" in a parliamentary body duly constituted and empowered under Article 76 of the Constitution. This review verdict is yet to be published and might have an impact on the decision of the 13th Amendment case.

There might be the issue of "prospective validation." I am eager to know how the court will deal with the question of validity if the legislature opts for "two terms" alternative.

Thus, the utterances of the treasury bench's "No to the CTG" in outside Parliament were misconceived, unparliamentarily, and even premature. Senior jurist Rafiqul Haque said that the "two terms" alternative is not an observation, it is the part of the operative segment of the verdict. Nonetheless, it is not a watertight compartment in absolute terms.

A decades old Allahabad Court verdict maintains that "obiter dicta" (observation) is binding if it is given by the highest court. The Chief Justice of India-led five member bench, in its 1995 verdict, opined: "Normally even an obiter dictum is expected to be obeyed and followed." In Director of Settlements, A.P. v. M.R. Apparao, the SC of India said that an obiter of the Supreme Court, though not binding as precedent, is worthy of respect and of considerable weight. (2002) 4 SCC 638]

In 1886, US C.J. Morrison R. Waite's passing remark got so much weight that it became a doctrine. Whether or not Justice Waite's remark constitutes binding precedent is arguable, but subsequent rulings treat it as such.

Every sensible citizen expects that there could be guidelines in clearest terms from the highest court that may show the path to avoid the looming political crisis. The parties should be ready to give due weight to each and every intention of the verdict, including minority views. The committee has no or little option but to wait for the said two verdicts if they really mean business.

Both the treasury and the opposition should maintain a status quo until they get the certified copy of the verdict. They should remember Cicero, who said: "We put the cart before the horse, and shut the stable door when the steed is stolen."

The writer is Associate Editor, *Prothom Alo*.