

Law and Our Rights

Trial of War Criminals

by Adilur Rahman Khan

Bangladesh is celebrating its 25th year of independence this year. When the perpetrators of Holocaust have not been spared from punishment and when the Bosnians and Rwandans have succeeded in pursuing the International Community to form war crime tribunals for genocides in Bosnia and Rwanda, the people of Bangladesh are still waiting for similar steps from the Bangladesh government and from the International Community to establish a similar kind of war crime tribunal to try the perpetrators of the genocide of 1971.

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against humanity and Mr Syed Amir Khasru was a collaborator during the liberation war. Mr Rahim was made the Secretary to the President. Mr Saifdar was appointed in the President's Vigilance Team and Mr Syed Amir Khasru was made the Joint Secretary of the Ministry of Relief and Rehabilitation by Sheikh Mujibur Rahman, the founder President of Bangladesh — who later became the Prime Minister and continued in that office until the single party BAI (SAL) system was introduced through the 4th amendment of the Constitution in January 1995, which made him the President again.

Sheikh Mujib Era
Although the Bangladesh Collaborators (Special Tribunals) Order of 1972 was published in the Bangladesh Gazette on 24th January 1972 and accordingly a 3-member prosecution team was formed — headed by a Senior Advocate of the Supreme Court, Mr Sirajul Huq, where other two members of the team were late Mr Aminul Huq, Advocate and later on Attorney General of Bangladesh and late Mr Ismailuddin Sarkar, Advocate and later on a Judge of the Appellate Division of the Supreme Court — the govern-

ment of Sheikh Mujibur Rahman did not provide any scope to this team to function and it was suddenly dismissed by the then government after sometime without any reason. The first Parliament of Bangladesh also enacted the International Crimes (Tribunals) Act, 1973 (Act 19 of 1973) to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law. On the other hand the government of Sheikh Mujibur Rahman was busy in rehabilitating persons like Mr Abdur Rahim, Mr ABS Saifdar and Mr Syed Amir Khasru. Mr Abdur Rahim was the Director General of the Razakar Forces, Mr ABS Saifdar was involved with the Intelligence Bureau and collaborated with the Pakistan Army in its crime

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Successive Governments
The successive military governments of Lt General Ziaur

Rahman and Lt. General Hussain Mohammad Ershad followed the path of Sheikh Mujibur Rahman to bridge the difference with the collaborators of 1971 and were also instrumental in promoting the collaborators and war criminals in key political posts of the government, including the post of Prime Minister. Mr Shah Azizur Rahman, a notorious collaborator of Pakistan army during the war of independence was made Prime Minister by Lt. General Ziaur Rahman, when some other collaborators were also made Ministers of the Zia Government. Lt. General Ziaur Rahman also repealed the Collaborators (Special Tribunals) Order of 1972 during his time. He was killed by some conspirators on the dead of night of 19th May 1981.
Lt. General Hussain Mohammad Ershad, who was

the Chairman of a tribunal in Pakistan set up during our liberation war, to try and punish Bangalees caught by the Pakistani Forces while attempting to cross the border to India and join our liberation war from there, usurped power and declared martial law on 24 March 1982. Ershad followed the familiar path of rehabilitating the collaborators, like his predecessors, and promoted some of the war criminals to some top posts in his government.

Khaleda Zia
After the downfall of Lt General Ershad and after the Parliamentary election of 1991, Begum Khaleda Zia, widow of late president Lt General Ziaur Rahman, became the Prime Minister of Bangladesh with the support of the religiously fascist Jamaat-e-Islami and transformed her government from a Presidential to a Parliamentary one.

During Khaleda's time some progressive people of the civil society got organized under the leadership of the late Jahannara Imam, the mother of a martyred freedom fighter, and formed a National Coordinating Committee to realize and rekindle the spirit of the liberation war and to annihilate the killers of 1971.
The Committee started to campaign again for the trial of war criminals and many civil rights groups, activists and NGOs joined with them in their campaign. This Committee, on 26th March 1993, a successfully organised a public trial of Golam Azam, the Ameer of Jamaat-e-Islami, the fascist party and one of the architects of the genocide in 1971, who returned to Bangladesh in 1978 with a Pakistani passport. Azam was found guilty by the Judges of the People's Court which after considering the

volume of his crime that he committed during our liberation war, declared his offence punishable with a death sentence.

Investigation Reports
After the public trial of Golam Azam the National Coordinating Committee organised an investigation team to unearth the crimes of other war criminals to make them public. Two consecutive reports on these war criminals were published by the National Coordinating Committee, but the third report has not seen the light of day yet.

In the meantime the political scenario was undergoing a

change. The Awami League started its movement to realise a neutral caretaker government with the assistance of the Jatiya Party of former dictator Lt General Ershad and the Jamaat-e-Islami, the fascist party of Golam Azam. A continuous movement of two years, led by the Awami League, Jatiya Party and Jamaat-e-Islami, forced Khaleda Zia to pass the 13th Amendment of the Constitution in the 6th Parliament — and to hand over power to a neutral caretaker government headed by a former Chief Justice.

The national elections of 12th June 1996 brought Sheikh

Hasina and her Awami League to power which formed a coalition government with Lt General Ershad's Jatiya Party and ASM Abdur Rab's JSD in the name of a national consensus government.

Whither the Coordination Committee
In the meantime most of the leaders of the National Coordinating Committee have aligned themselves with the Awami League and have become extra careful not to embarrass the Awami League at the time of joint movement or when the League is in power with the Jatiya Party by raising the question of the Jamaat-e-Islami or

the trial of war criminals. The intellectuals who are known as Awami League supporters argue that, if the Awami League is successful in implementing their programmes and ideals of Sheikh Mujib, the dreams of the martyrs would be realised and therefore the question of trying the killers after 25 years will be resolved and the nation will thereby be spared from a political conflict. This theory is totally unacceptable to the common people, democratic intellectuals, the new generation of youth and also to the family members of the martyrs. To them it is the foremost duty of the government to try and punish the killers of 1971 for their crime against humanity by establishing Special Tribunals under Act No 19 of 1973.

In the meantime some international and national NGOs, democratic intellectuals and activists have taken initiative to organise a public hearing in December 1997 at Dhaka, where the Bangladesh Centre for Genocide Studies (BCGS) and EL TALLER, an international NGO, will take part as initiating organisations.
Finally, if the government, led by Sheikh Hasina, claims their position in the pro-liberation camp, then they should take steps to try the perpetrators of genocide of our liberation war and prove their commitment in this respect.

Adilur Rahman Khan is an advocate of the High Court Division of the Supreme Court of Bangladesh.



Students killed indiscriminately at Iqbal Hall (now Zahurul Huq Hall) of Dhaka University. — Courtesy: Dhaka-1971

Law Scape

Rule Nisi Against Eviction

UPON a writ petition filed by Mr Sudatta Bikash Tanchangya and Ching Thong Marma, the two inhabitants of Rajshahi, Rangamati, a Division Bench comprising of Mr Justice Mainur Reza Chowdhury and Mr Justice Md Ittekkar Rasul of the High Court Division of the Supreme Court of Bangladesh issued Rule Nisi on 27.11.96 calling upon the government of Bangladesh and five others to show cause as to why the impugned notification on Memo No Pa Ba Ma (Sha-315/94/34) dated 18.6.96 declaring 15,893.80 acres of land in 6 mouzas of Rajshahi and Kaptai thana as reserved forest shall not be declared to have been passed without lawful authority and in an unlawful manner. Their lordships were further pleased to direct the respondents to maintain status-quo.

It was submitted on behalf of the petitioners that in passing the said notification the authority did not comply the provision of forest act. Even no compensation or rehabilitation were allowed and the required notices were not served and propagated among the people of the locality and they were not given any chance of hearing and as such the impugned notification has been passed without any lawful authority.

Dr Kamal Hossain along with Md Nizamul Huq Nasim and Karuna Moy Chakma appeared for the petitioners.

Trial Advocacy Workshop

Continuing Legal Education Programme (CLEP) of Legal Education and Training Institute of the Bangladesh Bar Council is going to arrange a Intensive Trial Advocacy Workshop for Lawyers from the 17th December to the 20th December 1996 in Legal Education and Training Institute of the Bangladesh Bar Council Bhaban. A team of eleven distinguished senior barristers headed by Mr Brian Harrie Kerin Donovan QC alongwith Mr David Bennett QC, President of the Australian and New South Wales Bar Association (all QCs from Australian Advocacy Institute), and equal number of instructors of CLEP will conduct the workshop. The arrangement of the workshop is for 80 advocates. The registration fee is Tk 500.00 for each participant. Registration fee includes course materials and snacks only. All other expenses including accommodation, food, and local transport to be borne by the participants themselves. Upon successful completion, participants will be awarded certificate of participation.

Name of the interested participants including registration fees must reach Barrister M Amir-ul Islam, Chairman, Executive and Legal Education Committee of the Bangladesh Bar Council, Ramna, Dhaka-1000 on or before December 05, 1996.

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