

Law and Our Rights

Three Million Deaths: Martyrs or Victims of Genocide?

Towards the Understanding of Bangladesh Genocide

by Ziauddin Ahmed

THE purpose of this article is to analyze the issues related to the question whether those who died, numbered 3 million, during the liberation struggle and war, between March and December, 1971 in Bangladesh, were martyrs or victims of genocide or both. The question is pertinent because of different legal consequences under national and international laws that arise out of such a determination.

The martyr is a person who suffers or is killed because of his religious or political beliefs and consequently, martyrdom is the murder or enforced suffering of someone because of their religious or political beliefs. The best examples of martyrs are the brave freedom fighters, hundreds and thousands of them, who volunteered to fight the occupying Pakistani soldiers to liberate the country from the clutches of enemy forces, and laid down their lives. An element of consent or conscious decision or free will is ingrained in the mind frame of a martyr. The risk is known or largely predictable, and a martyr believes the cause more worthwhile to pursue than his life.

In Bangladesh, the exact number of martyr freedom fighters remains yet to be determined. However, from the number of different types of fighters engaged in the battle to oust Pakistani military, it may safely be concluded that most of the people killed by the Pakistani soldiers and their collaborators were not the active armed fighters, but innocent non-combatant civilians. They were killed not in the battle fields but the target of an annihilation plan carried out by the Pakistanis. In other words, most of them were the victims of genocide.

Each year, specially on the independence and victory days, the nation remembers all the martyrs. On 25th year of independence and victory, the whole country joined in paying tributes, irrespective of political views, to all the martyrs whose sacrifice led to the birth of Bangladesh. Remembering and honouring the dead, specially those who gave their lives, are the least we, who are alive and benefitting as a citizen of an independent country, can do to pay our eternal debts to those people who are not present.

But what is often missed,

overlooked or absent in these tributes is the question of responsibility, for causing death to so many of our fellows. It will be wrong to assume that 3 million who died in 1971 'gave' their lives for freeing the country, while, the real reason being, they all were victims of genocide carried out by the Pakistani government and with the helping hands of their local collaborators. They did not volunteer to die. They were killed as a part of a grand 'design' and the killers had defined purpose to fulfill.

THE NATURE OF BANGLADESH GENOCIDE:

According to the International Commission of Jurists (ICJ), the atrocities committed against the population of East Pakistan (now Bangladesh) were part of a deliberate policy by a disciplined force. It quoted a significant statement made by Major-General Shaikat Riza, the Commander of 9th Division in Dhaka: "You must be absolutely sure we have not undertaken such drastic and expensive operation both in men and money for nothing. We have undertaken a job. We are going to finish it, not hand it over half done to the politicians so that they can mess it up again. It has a more important task. I assure you that when we have got through with what we are doing there, there will never be need again for such an operation."

The Pakistan government meticulously carried out the policy of total destruction of the

infrastructure and economy of the country. Ten million people were driven out of the country to India and another 20 million people were internally displaced. Fifteen million houses were set on fire. Five hundred and sixty seven bridges were damaged. Another feature of the genocide was the whole-sale rape of women and young girls by Pakistani soldiers. It is difficult to find the precise numbers of victims, but it is believed that 300,000 women were raped by Pakistani soldiers and their collaborators. The ICJ report claims that 'the officers turned a blind eye to this savagery, and when challenged denied that it occurred. In many cases the officers themselves kept young girls locked up to serve their pleasure.'

Thus, the terms of the definition of genocide contained in Article II of the United Nations Convention for the Prevention and Punishment of the Crime of Genocide (1948) are clearly fulfilled in the case of Bangladesh. From March to December, 1971, Pakistanis, "with intent to destroy, in whole," targeted: a) all Bengalis, especially the pro-independence people and the members of Awami League, b) Hindus, who were marked out because Pakistani regime consid-

ered them to be the 'Indian agents' who had subverted the Muslims of East Pakistan, c) the Bangali military and police were hunted because they represented the only trained groups which could offer resistance to the Army, d) the students, Bengali intellectuals such as professors, doctors and other professionals, the overriding purpose be-

which provided detention, prosecution and punishment of persons for genocide, government realised the impossibility of putting all the Prisoners of War on trial, because of the growing international pressure. Political necessity of international recognition complicated the issue of war crimes trial. Moreover, by then the POWs

began with Pakistan. After a tripartite talk in Delhi, Pakistan expressed 'deep regret' for the crimes committed in Bangladesh had Bangladesh decided 'not to proceed with trials as an act of clemency' and agreed to repatriate the 195 alleged war criminals to Pakistan.

As the principal perpetrators of the genocide were released without punishment, the basis of the accusations against the local collaborators virtually crumbled. The government had to retreat and on 30 November, 1973, under an amnesty order, all those held or convicted under the Collaborators (Special Tribunals) Order, except for those charged with murder, rape or arson, were released. In reality, because of corruption, favouritism and misuse of powers, all the collaborators, including the prominent ones, were set free.

The clemency towards the alleged war criminals and the subsequent amnesty to the local collaborators meant that the perpetrators of the genocide in

Bangladesh went free and unpunished. It aroused powerful emotions among all those whose near and dear ones had been victims of the genocide.

The General Assembly Resolution no. 3074, passed on 3 December, 1973, says, war crimes and crimes against humanity, wherever are committed, shall be subject to investigation and persons against whom there is evidence that they have committed such crimes shall be subject to punishment. Rule of law, and cardinal principle of the constitution of Bangladesh, also obliges the government to uphold the law, which means, the alleged war criminals and their collaborators, be prosecuted and punished.

In this respect, the Prime Minister Sheikh Hasina is reported to have instructed the Home Ministry to take measures to bring the three alleged war criminals, Chowdhury Mueen Ud Din, Abu Syeed & Lutfur Rahman, now living in United Kingdom as British citizens, back to Bangladesh for trial.

At the same time, the government also should begin diplomatic moves to demand the least the top planners of the genocide, both civilians and military officials of Pakistan, are either brought to justice in Pakistan or else, handed

over to Bangladesh, to face the tribunal for committing genocide, an international crime. Government can also claim, from Pakistan, adequate reparation for the victims of genocide, as the German and Japanese governments have accepted responsibilities and paid compensation.

Further, serious attention should be given to find ways to initiate criminal cases against the noted war criminals in Pakistani courts. Pakistani courts are mandated under domestic and international laws to bring proceedings against the war criminals. Also, a specialised centre should be set up to follow the movements of the prominent war criminals so that if they are found to be living in a country, who are more likely to adhere to their obligations under international laws, that legal measures against them could be taken promptly in that country.

At the same time, preparatory work should begin with an aim to bring the war criminals before the International Criminal Court. The International Criminal Court is likely to come into existence by the year 2000, if enough progress are made by the Preparatory Committee on the Establishment of an International Court at its conference in 1998. In this regard, concerned individuals and organisations should support the NGO Coalition for an International Criminal Court in their campaign for a permanent International Criminal Court.

Meanwhile, the campaign against the war criminals, both at national and international level, should also continue unabated until the objectives, set out above, are achieved.

In fine, terming 3 million victims of genocide as merely martyrs and paying regular homage to the such martyrs, however sincerely, in effect absolves the war criminals of their crimes. It tells to the perpetrators of genocide that we care less about justice and the victims of their crimes.

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What does 'Genocide' Mean?

The word 'genocide' comes from the Greek 'genos,' meaning 'race, nation, or tribe,' and from the Latin 'caedere,' meaning 'to kill.' It was first coined by R Lemkin, a Polish Jewish jurist, in 1944. See R Lemkin, *Axis Rule in Occupied Europe*, Washington, DC: Carnegie Endowment for International Peace, 1944. Subsequently, many scholars have contributed towards an all embracing definition of genocide. For various aspects of the concept, see Helen Fein, *Genocide: A Sociological Perspective*, London: Sage Publications, 1993.

However, Raphael Lemkin's definition of genocide was later incorporated into the United Nations Convention on Genocide (1948), and defined the crime as: 'Acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such; or killing members of the group; or causing serious bodily or mental harm to members of the group; or deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group.' See Leo Kuper, *Genocide*, Harmondsworth, Middlesex: Penguin Books Limited, 1981, p-19.

ing to deprive Bangladesh, once it came into existence, of the minds that could guide it. The ICJ concluded that 'there is a strong prima facie case that the crime of genocide was committed against Hindus.'

LEGAL SEQUENCES: After the defeat of the Pakistani Army on 16 December, 1971, the new government promulgated two sets of special laws, one to deal with the collaborators, the Bangladesh Collaborators (Special Tribunals) Order, 1972 (PO No 8 of 1972) on 24 January, 1972 and the other, the International Crimes (Tribunals) Act, 1973 on 20 July, 1973 to put on trial the major war criminals.

A large number of people mainly the Razakars, Al-Badars and Shanti Committee members were arrested on charges of collaboration with the Pakistani forces. Under the International Crimes Act,

were on Indian soil under Indian custody. Pakistan also threatened to prosecute Bengalis living in West Pakistan, and arrested a large number of Bengali civil servants, doctors and teachers and removed them to detention camps. International pressure too on India mounted to release the Pakistani troops as they did not commit any crime in India. Under this circumstance, Bangladesh government decided to put on trial 195 major war criminals, against whom overwhelming evidence of genocide, war crimes, crimes against humanity, breaches of Article 3 of the Geneva Convention, murder, rape and arson had already been collected.

But finally, as Pakistan announced recognition of Bangladesh as a sovereign and independent state on 24 February, 1973 and Bangladesh reciprocated, direct negotiation

Who are collaborators?

The law defined as 'collaborators persons who had: 1. participated with or aided or abetted the occupation army in maintaining, sustaining, strengthening, supporting or furthering the illegal occupation of Bangladesh by such army; 2. rendered material assistance in any way whatsoever to the occupation army by any act whether by words, signs or conduct; 3. waged war or abetted in waging war against the People's Republic of Bangladesh; 4. actively resisted or sabotaged the efforts of the people and the liberation forces of Bangladesh in their struggle against the occupation army; 5. attempted to aid or aided the occupation army in furthering its design of perpetuating its foreseeable occupation of Bangladesh by making a public statement or by voluntary participation in propaganda within or outside Bangladesh or by associating in any delegation or committee or by participating in purported by-elections.'

Crimes against humanity, war crimes and other crimes under international law, a three members prosecution team was constituted with Advocate Sirajul Huq as convener and Aminul Huq (later Attorney General) and Ismailuddin Sarker (later Judge of the Supreme Court). The law did not create new offenses, it merely established a forum for the prosecution within Bangladesh of international crimes already in force at the time, except the fact, under Section 3(2) of the Act, the definition of genocide was enlarged to include 'a political group.'

Ombudsman For Children : A Swedish Experience

by Abul Hasnat Monjurul Kabir



Courtesy: UNICEF

The Swedish Ombudsmen

Protecting the rights of individuals in their contacts with authorities is fundamental to the process of law in Sweden. In this context, the Swedish ombudsman system is a guarantee against oppressive measures and misgovernment in the judiciary and public administration. The Swedish Parliamentary Ombudsman (JO) are appointed by parliament (Riksdag) and help to maintain public confidence in the activities of law-courts and other authorities.

Other Ombudsmen exist in a number of special areas. These are appointed by the government (and, accordingly are subject to the JO's supervision) but have similar duties of surveillance, each in a particular sphere. There is also a Press Ombudsman who, rather than being a public institution, is sponsored by media.

Ombudsman For Children

Fifty years ago, in the aftermath of the most devastating war in history, UNICEF (United Nations Children's Fund) was established on 11 December 1946 to provide succour to children. Its creation stemmed from the concern that children would not be adequately protected in the over all relief effort under way in Europe. The international recognition that required special attention was revolutionary at the time.

At the end of the postwar reconstruction period, developing countries emerging from the colonial era invoked the same principle to demand that children be given specific attention in international co-operation. UNICEF's initial relief mandate was enlarged to include the survival and development of children.

Now the international approach to children has changed dramatically once again. The idea that children have special needs has given way to the conviction that children have rights, the full spectrum of rights of adults, civil and political, social, cultural and economic.

The Convention on the Rights of the Child, unanimously adopted by the United Nations General Assembly, contains a comprehensive set of international legal norms for the protection and well being of children. All governments are urged to promote earliest possi-

ble ratification of the Convention, where it has not been ratified. The Convention has produced a profound change that is already beginning to have substantive effects on the world's attitude towards its children. The Convention defines children as people below the age of 18 (article 1) whose 'best interests' must be taken into account in all situations (article 3). And Sweden, termed by many as the land of Ombudsmen has opened a new horizon in protecting the rights of the Children for the sake of their best interests by introducing an office of the Children's Ombudsman (BO).

Children and young people in Sweden up to the age of 18 have had their own ombudsman since 1 July 1993. On that date a completely new authority, the Office of the Children's Ombudsman (Barnombudsmannen, BO), was established with the task of ensuring the best outcome for the children and young people in all situations. A law and an Ordinance, containing directive for the BO from the basis of the office's work.

The principal function of the Swedish Children's Ombudsman is to watch over juvenile rights and interests. The basis of this work is the United Nations Convention on the Rights of the child, which Sweden ratified in 1990. One important task is to ensure that Sweden fulfills its obligations under the Convention.

Although the material circumstances of youngsters in Sweden are good, a great deal remains to be done to develop

child-oriented attitudes in society at large. Children and young people have difficulty in making themselves heard. Their interests in the community are often subordinated to those of adults. Their scope for participating in social debate and influencing their situation is very small. In order for juvenile rights and interests to be given attention, some one must speak on behalf of youth and look after their interests. Another requirement is for some one to enhance public awareness of young people's rights and to consider social development from their perspective.

The BO is particularly engaged in issues relating to youngsters in problem situations. These may involve loneliness, divorce, custody disputes or abuse of various kinds.

Being in direct contact with youth and perceiving life with their eyes are preconditions for the work of the Children's Ombudsman. As their representative, the BO must accumulate knowledge of and listen to young people, in order to be able to present the best possible proposals. The BO has therefore installed a telephone line for children and young people up to the age of 18, BO Direct. This is primarily a channel of information, enabling youngsters to ring and say what they think about various matters, and what they want the BO to deal with. They can also obtain information about their rights, about the UN convention and about how the BO works.

The Children's Ombuds-

man's (BO) work is largely a matter of taking part in public debate, moulding opinion on priority issues and influencing society's attitudes towards the conditions of children's and young people's lives.

The BO works according to a general plan. Accordingly, the BO considers youth as a social group, and exerts influence on the public authorities, companies and organisations to safeguard juvenile rights and interest in all conceivable contexts. But specific matters often serve as the basis for the principles defined by the BO, and the legal amendments or other measures that it proposes to improve the situation of children and young people.

Co-operation with organisations and authorities that deal with youth issues at various level in society is a pre-condition for the BO's work. One specific task is the active monitoring of research and development-work relating to children and young people.

Once a year, the BO must submit a report to the government. This includes an account of how far the BO considers that the UN Convention on the Rights of the Child has been complied with in Sweden during the year. The report also contains views and proposals on which the BO thinks the government should take an official line. All in all, the report can serve as a description of the status and development of the child Convention in Sweden from one year to the next. At the same time it forms the basis for the government's reports to the UN Committee for Children's Rights in Geneva, which has the task of monitoring how well the countries that have signed the convention are living up to it.

The work of the children's Ombudsman is organised in four subject areas: the condition in which children aged 0-12 and young people aged 13-18 grow up, psychosocial issues and child safety and social planning. Its staff also have particular skills in the fields of law, publicity and opinion moulding.

To assist it, the BO has a council of 12 experts appointed by the government. The BO chairs the council and direct its activities. The council has a consultative role, providing advice on various specialist issues and concerning the BO's work as a whole.

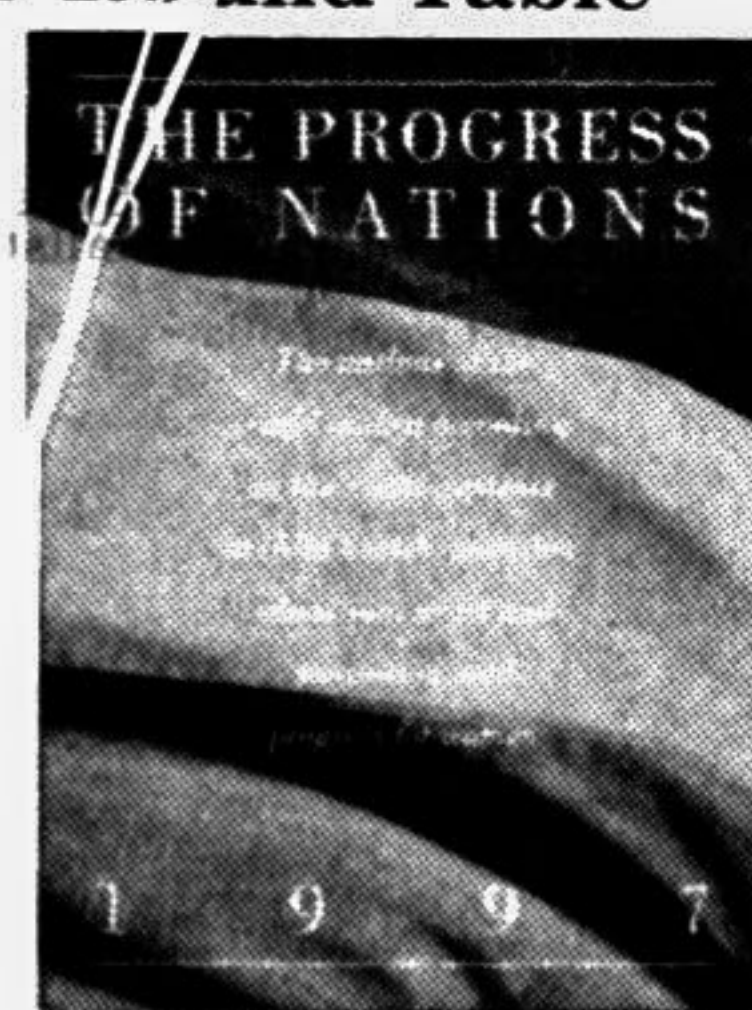
The office of the Ombudsman for children can make a crucial contribution to the protection of child rights in Bangladesh also. Being freely accessible and unencumbered with any rigid formalism or procedural constraints, it can provide children from every strata of society with a remedy against various sort of deprivations and oppression which would otherwise not be available. In addition, the independent investigative power permits the taking of immediate action in defence of child rights. In fact the existence of such institution in this country will ensure the attainment of quick remedy and justice for the millions of destitute children, the future generation of Bangladesh.

The Law Watch Round Table

A Round Table on 'The Progress of Nations 1997' will be held in the city on 14th August 1997 under the aegis of the Law Watch, a platform for legal and human rights studies and action, in collaboration with the UNICEF, Dhaka.

The format of the event will be a topic-wise discussion on the issues like water and sanitation, nutrition, health, education, women, special protections, interlink between healthy cities and healthy children etc. with participants intervening as and when they feel the need. The idea is to get a whole range of views on the report (The Progress of Nations) with participants engaging in a lively discussion with each other.

The round table, to be held at Games P. Grant Conference Hall, UNICEF, from 2.00 pm to



4.30 pm will be conducted and participated by the activists of law watch and a selected group of youths.

Old enough to be a criminal?

CHILDREN below a certain age are too young to be held responsible for breaking the law. That concept is spelled out for nations to establish a minimum age 'below which children shall be presumed not to have the capacity to infringe the penal law.' But the Convention does not set a specific age, and it varies greatly.

International standards, such as the Beijing Rules for juvenile justice, recommend that the age of criminal responsibility be based on emotional, mental and intellectual maturity and that it not be fixed too low.

The Committee on the Rights of the Child, which monitors countries' implementation of the Convention, has recommended that the age be guided by the best interests of the child.

In the U.S. the age of criminal responsibility is established by state law. Only 13 states have set minimum ages, which range from 6 to 12 years old. Most states rely on common law, which holds that from age 7 to age 14, children cannot be presumed to bear responsibility but can be held responsible.

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