

Trial of War Criminals: Options for Bangladesh

According to the sources at Mukti Juddher Jadughar (The Liberation War Museum), a mass grave was discovered on 27 July 1999, which is believed to be a killing field used by the occupying Pakistani army in 1971. The Liberation War Museum immediately began extensive excavation work and recovered human skulls, hundreds of human bones, hundreds of human bones and other objects.

The museum reported on 16 August, "From the first batch of 216 intact bones and broken pieces they (the experts) estimate those belong to 7 bodies. They have identified 4 scull (upper portion) four jaws (lower portion). Of these only one pair of jaw and scull match. We can deduce from this that we are yet to recover 3 more skulls. That brings the total number to 7. There are 21 long bones, of them 6 seem to belong to one person. Since others belong to different persons they couldn't be matched but seems to be of 6 different people. Of the bones found one belongs to a woman aged between 25-35. The rest are men aged between 25-35."

The report further stated, "There are signs of bullet injuries in four sculls, one at the lower part of the spinal cord (sacrum), one hip bone and one in the shoulder blade (scapula). Besides other bones have evidences of injuries. One scull shows signs of a sharp weapon were shoved inside the eye socket. Most of the shoulder blades are broken showing sign of some force being used."

In addition, parts of weapons and ammunitions have been found and unexploded mines.

The report understandably is not complete, as the excavation has long way gone yet, when full horror will perhaps be revealed.

With the Liberation War Museum, Bangladesh Army has come forward to participate in excavation. Army Chief Lieutenant General Mustafizur Rahman should be commended for sending his troops.

Bangladesh Army has its own motivation, to find out their missing comrades. In one incident alone, it is believed, that in Mirpur, which was under the control of Pakistani military and collaborators, 40 soldiers went missing when reputed film personality Jahir Raihan went there to search of his brother. The soldiers and Mr. Jahir Raihan, all disappeared.

Confronting the Past
The discovery of the mass grave at Mirpur immediately raised questions about what to do next. The unanswered question of trial of the perpetrators of the genocide surfaced again, especially at a time, when memories remain rather fresh following recent genocides in Bosnia and Rwanda, beamed worldwide by television.

The Liberation War Museum already has made international appeal, "to find the truth" and has set up a team of legal experts to proceed to international court to take this evidence of genocide to hold those

By Ahmed Ziauddin

government of Bangladesh can lodge a complaint before International Court of Justice against Pakistan for breach of the Genocide Convention and in particular, its obligations under Article 1. This will require acceptance of ICIJ's jurisdiction by Pakistan, where only the State of Pakistan could be condemned, if proved, that in 1971, the government and military carried out or failed to prevent perpetration of genocide. Individuals responsible, in any way, cannot be judged in the World Court.



Excavating the Past at Muslim Bazar

Photo: Liberation War Museum.

However, such a possibility is too remote to perceive, considering the attitude of the major political parties, including the party in power. This will jeopardise relations with Pakistan, which no government stomachs to sustain.

Options after Mirpur

What then the people of Bangladesh, human rights activists, NGOs and even the government should or could do as the bones from beneath demand answers? There are four way forward, two international and two national.

Complaint to ICIJ

Although late in days, the

responsible for the crime guilty and punished. A local Bangla newspaper also has launched a similar international appeal.

This article will analyse steps possible future course following aftermath of Mirpur's mass grave.

Hunt War Criminals Abroad

A number of countries either got their own brand of legislation for genocide and war crimes or subscribes to Genocide Convention in application could be an effective forum against war criminals, torturers or perpetrators of genocide. Many Pakistani Generals, who actively planned and executed

tears for the collaborating police force. He now has to spend rest of his life in prison.

Sawonru was tried under the War Crimes Act 1991, which permitted prosecution of suspects who are not British residents at the time of crimes not committed on British soil. Since the 1991 War Crimes Act came into force, a special police unit of the Metropolitan Police has investigated 376 cases, which included three killers of Bangladesh genocide living in UK, exposed by the Channel Four programme in May 1995.

By exercising similar jurisdiction, British Courts have upheld

Proceedings under Ordinary Criminal Law

One other option for justice after genocide could be to file complaints against named individuals involved in carrying out killings, looting, rapes, destruction etc. in 1971, under local criminal laws.

The younger sister of Professor Glasuddin Ahmed of Dhaka University, who was kidnapped and killed by known and notorious collaborators, filed such a case with Ramna police station on 24 September 1997. The investigation still continues.

In addition, several other measures could be taken in a post-genocide society.

Disqualification

The idea being, those who

An Engaging Re-Reading of Shari'a Law

By Dr Shahdeen Malik

the most comprehensive and systematic exposition of the traditionalist viewpoint on modernist approach to the problem of legal reconstruction. (at p. 52). The MFLO has changed certain parts of the Muslim Family Law rather drastically. However, it was refreshing to learn that these reforms were put forward not by Lawyers but by the 'laymen'. Professor Serajuddin informs

that the book is not intended to be a mundane uncritical narration of rules of Muslim law superficially understood and normalised by the Privy Council or High Courts of British India. The book, instead, posits the philosophical, social and textual foundations of reform and its impact.

Such a critical examination was over due, and more so in view of a number of recent

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us that "[f] or the theoretical foundation of their recommendations the Commission reopened the door of ijtihad which was considered to have been closed at the beginning of the tenth century." (at p. 35).

Unlike conventional books on "Muslim" Law, it is divided into four main chapters woven around the areas of personal law which were 'reformed' by the MFLO — inheritance, polygamy, divorce and maintenance.

The other three chapters cover the usual introductory, overview and concluding remarks. Such an arrangement itself indicates the approach of

judgements of our courts which are often inattentive to the dynamic nature of Muslim Law and its evolution in other Muslim countries. Nevertheless, the fact that our courts have begun to interpret different provisions in different manners is indication enough of such a cynicism of Muslim law. Examples of very recent judgements indicating different interpretations would include Khadeja Begum vs Md. Sadeq Sarkar, 18 (1998) BLD 31 and Md. Chan Miah vs Rupnagar, 18 (1998) BLD 329 on restitution of conjugal rights, while an earlier case on the same issue with dif-

ferent rationale would be Nelly Zaman vs Giasuddin Khan, 34 (1982) DLR 221. Similar disagreements in interpretations of restitutions of conjugal rights can also be traced back to a judgement almost a century and a half ago [Moonshee Buzloor Rahman vs Shumshoonissa Begum, 1 (1867) Moore's India Appeals]. On polygamy, the recent judgement of the High Court Division in Jesmin Sultan vs Md. Elias, 17 (1997) BLD 4 has been overruled by the Appellate Division in Md. Elias vs Jesmin Sultan 19 (1999) BLD (AD) 122. However, the Appellate Division seems to have over-looked a somewhat similar interpretation by another Division of the High Court on this issue of polygamy in Makbul Ali and Others vs Munwara Begum, 39 (1987) DLR 181. No less importantly, reverting back to the book under review, we are informed that Turkey, Cyprus and Tunisia, and among the Druzes of Lebanon and of Syria and the Ismaili Khoja community of East Africa, polygamy has been altogether prohibited (at p. 152).

Traditional Muslim Law issues such as custody of children [A. Baker Siddiqui vs SMA Baker, 38 (1986) DLR (AD) 106]

and past maintenance [in Jamila Khatun vs Rustom Ali, 48 (1996) DLR (AD) 110] have, over the last few decades, certainly found new interpretations which are very different from the past ones. The point, taking cue from the book under review, is that Muslim Law in this subcontinent, as in most Muslim countries, has traversed an interesting path of evolution.

The refreshing aspect of the book under review is, as indicated, that it situates the debate within the context of not only of textual positions but socio-economic reality of the country.

The MFLO, even after almost four decades of its enactment, has not drawn as such 'official' support as it should have, particularly in terms of legal awareness of the reforms engineered by the Ordinance. More importantly, in discussing various viewpoints, the author certainly provides arguments for further reform, particularly in light of those advanced in other Muslim countries.

SHARI'A LAW AND SOCIETY: Tradition and Change in the Indian Subcontinent by Alamgir Muhammad Sirajuddin Asiatic Society of Bangladesh, 1999, price Tk. 500/-

A Compromise between Tradition and Equality?

By A H Monjurul Kabir

may be an oppressive institution for women, she also sees its potential to honor and protect women. The main objective of the research, as stated, is to assess the effects of recent family law reforms on women in Bangladesh. And the parameters of the book as a whole are clearly defined in chapter 1.

Chapter 2 begins by focusing on the patriarchal arguments for the subordination of women in Bangladesh in the socio cultural setting of women's legal status. It then attempts to balance the position of women in Bangladesh by investigating the forces that protect and strengthen the position of women.

The first part of Chapter 3 examines to what extent British colonial imperialism contributed to the subordination of women in South Asia. The second part of chapter 3 shows how family law was gradually interfered with by the British and considers how the legal reforms have affected the position of Muslim women. The relevant judicial decisions discussed in this chapter provide a historical background to the more recent family law reforms in independent Bangladesh.

Chapter 4 provides a detailed exposition and critical analysis of family law reforms in Bangladesh in response to the

needs of the new state. The analysis of women's rights under the constitutional framework indicates the disparity between the religious family law and the constitutional rights. It also reveals the internal contradictions within the Constitution between granting sexual equality and making special laws for women. The major focus of this chapter is whether the new laws ameliorated women's rights or whether they were simply rhetoric.

Chapter 5 tries to explore what is the attitude of the judges and the opinion of the court regarding women's status in Bangladesh and how far they are aware about the needs of women. It also focuses on the question whether women in Bangladesh stand to benefit from judicial activism or more sensitivity in involving women in the welfare of women and safeguarding them from abuse.

Chapter 6 extends the review of the issues of women in Bangladesh to disputes concerning dowry and cruelty to women asking whether the new legislation introduced to curb these social evils affecting women was successful or not.

The last chapter encapsulates the legislative enactments in Bangladesh and explains the trends in judicial decision

making. A sincere attempt is also made to recommend how the existing gaps in law and practice can be compressed if not totally eliminated.

The book comprehensively analyses to what extent the legislative enactments in family law have contributed to provide women in Bangladesh a better legal status. All relevant enactments are added as appendix to the book. Such addition will, no doubt, benefit its readers.

The method applied in the present study is not a unique one; neither it is based on empirical investigation. The writer rightly comments, "Given the restraints of post-graduate legal research, which was the basis for this work, the present book has to focus mainly on the official law and its various manifestations. Only extensive fieldwork could provide us with the basis for a detailed analysis of socio-legal realities."

The impact of legal practice is revealed by reported and unreported cases, from which the views of the judiciary about the application of the laws for the betterment of the women of Bangladesh can be traced.

Dr. Taslima Monsur, the author of the erudite study is in the Faculty of Law, University of Dhaka. Dr. Monsur, a former consultant to Women in Development mission of UNDP,

has already contributed numerous scholarly articles in national and international journals of repute. Dr. Monjurul Kabir, an honorary consultant to "Institutional Development of Human Rights in Bangladesh (IDHRB)" project of the Government of Bangladesh was also a legal advisor to Bangladesh Girls Guide Association for a decade.

The study cuts through the intimidating maze of family law terminologies, historical perspectives, and contemporary debates, contexts that surround gender equality issues and presents them in a lucid way. In fact she has persuaded a model of sexual equity in the study, which should, according to her, enable the women of Bangladesh to cope with the reality of their existence and to assist them in articulating their grievances within existing social and legal contexts.

This is a resource book for study, action and reflection for jurists, academics, researchers, students and even community activists. As usual in this book also, the University Press Limited has maintained its standard of quality publication.

From Patriarchy to Gender Equity Family Law and Its Impact on Women in Bangladesh ISBN 984 06 1455 5 by Taslima Monsur. The University Press Limited. Price: Tk. 550.00

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Bangladesh Centre For Genocide Studies

BANGLADESH Centre For Genocide Studies (BCGS) was set up in Brussels in 1994 as a result of a research paper on comparative genocide.

While researching for documents and published materials on genocide in this century, huge amount of information were gathered in a short time. However, none of the books, articles or documents referred to Bangladesh

In international conferences, genocide scholars discussed every other genocide in this world but Bangladesh.

When asked, noted genocide scholar Israel W. Charny said, you got to study your genocide first, bring out horrors for the world to read and hear. He was right. In fact, genocide was documented, studied, analysed principally by the victims or survivors of that genocide. The entire population engaged in attempts to understand the genocide. The Holocaust and Armenia are glaring examples.

Bangladesh Centre For Genocide Studies, thus, began the arduous journey to project Bangladesh genocide in in specialised organisations.

BCGS essentially is a research body, however, it carries out some campaign work.

The Centre has produced a number of research articles, essays for newspapers on aspects of Bangladesh genocide. It has linked up with other similar entities, in Europe and North America. The Centre is an affiliate to the International Association of Genocide Scholars, Institute of Genocide Studies, Montreal Institute of Genocide and Human Rights Studies, Centre for the Study of Ethnonationalism, Interdisciplinary Research Program on Root Causes of Human Rights Violations.

One of the major predicaments of BCGS had been its location, and its physical distance from Bangladesh. It's more active representation in Bangladesh would have produced additional quality output.

My 30 Lacs People ...

THE figure 3 million was first estimated by Bangabandhu Sheikh Mujibur Rahman, the Prime Minister of Bangladesh. In an interview with British journalist David Frost on 18 January, 1972 in Dhaka for New York television programme "David Frost in Bangladesh", Bangabandhu Sheikh Mujibur Rahman: A Pictorial Biography, Dhaka: Dynamic International, 1996; also Sardar Fazlul Karim, Rumi Amna O Annana Probondha (in Bangla), Dhaka, Jatiya Sahitya Prokashani, 1989.

The figure quoted by Bangabandhu has now been confirmed by a number of internationally-reputed genocide scholars. Professor Ted Robert Gurr of University of Maryland and Professor Barbara Harff of US Naval Academy in Annapolis in a study on "Victims of the State: Genocides, Politicides and Group Repression from 1945 to 1995" set the upper limit as 3 million which ranked Bangladesh next to the holocaust of Hitler, where 6 million Jews were killed. For details of their finding see Albert J Jongman (ed), Contemporary Genocides: Causes, Cases, Consequences, Den Haag: PLOOM, University of Lieden, 1996.

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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, ethnical, racial or religious group, as such a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about physical destruction in whole or 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.

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