

Law and Our Rights

"All citizens are equal before law and are entitled to equal protection of law"-Article 27 of the Constitution of the People's Republic of Bangladesh

What Is To Be Done About the War Criminals and Collaborators

THE issues of war criminals and collaborators refuse to go away from Bangladesh even after years of independence. With the assumption in power of Awami League in 1996, various demands about war criminals and collaborators receded for essentially two reasons: Firstly, the party that led the liberation war in 1971, being back at the helm of the affair, would take decision on its own volition about the criminals and collaborators. Other reason was, as the Awami League had to tread on very thin line to come back to power after so many years, thus many chose not to rock the boat at the very outset.

In many ways, the issues of liberation war and its spirit and aspirations of independence were seen as exclusive Awami League matters. The two major parties, BNP and JP, those alternately ruled the country, freely persons with within their folds, persons with serious questionable roles in the liberation war. This and other policies to change basic ideals of independence alienated both these parties. The responsibility, thus, have fallen on Awami League, whether rightly or wrongly.

However, as the best part of the Awami League's term in office has passed, but the government has not even uttered a word. So, there are again increasing talks about the war criminals and collaborators.

It, however, must be accepted that matters of war criminals and collaborators are not on the top of the agenda of the general mass in Bangladesh. Majority are pre-occupied with problems relating to mere survival and to meet bare necessities. To them, prices of daily commodities, insecurity etc., are far more important now, and obviously so.

Recently, United States Senate has adopted a legislation titled "Denying Safe Havens to International and War Criminals Act of 1999". Where for the first time, it has empowered the Attorney General, among others, to transfer international criminals in custody for prosecution. The Immigration and Naturalisation Service to deny admission or remove aliens who have committed torture abroad.

In February '99, Belgium has adopted a law on crimes. Empowered by this new legislation, on 22 November 1999, a Brussels engineer has filed a case, seeking extradition to Belgium of Morocco's recently sacked interior minister.

Recently, Truth Commission in South Africa, apologies of British and Dutch Queens, prosecution of senior official of French collaborator government Papon, agitate minds across the world. Especially, in Bangladesh where people were subjected to atrocities.

Thus, when General Pinochet has been arrested for torture and other crimes, now questions are being raised about Pakistani Generals. When International Tribunals have put people on trial, so questions are asked, then why tribunals should not try Pakistani war criminals. When US legislates no sanctuary law, then voices are raised from various quarters to focus attention on criminals and collaborators living in safe havens in USA and Canada.

Recently, discoveries of mass graves at Mirpur-Bangladesh have forced the discourse to the fore. First came the Muslim Bazar, where mosque extension bared the grisly past. Country's pioneer institution, Liberation War Museum, immediately went into action to excavate and reveal the truth.

Gradually, the Museum succeeded in exhuming some remains of genocide victims of 1971. After the Muslim Bazar excavation, the Museum authority excavated nearby Jal-lakhana (slaughterhouse) site, with the help of Bangladesh Army. They recovered 70 skulls and 5,392 various human bones here.

The remains of genocide victims at Mirpur have been an "eye opener" for many, as people visited the sights. According to Museum's Director, "Most of those who have come forward in the actual excavation and exhuming work or extended their support in many ways, belong to the generation who either have not seen the liberation war, or they were very young at the time. The Army personnel those participated most also belonged to that generation."

In fact, the symbolic trial of Jammal Gholam Azam on the 25th anniversary of our independence on March 26 1992, had "triggered a wide movement in the nation demanding the trials of war criminals of 1971". The Mirpur mass grave discovery had been a massive reawakening of national consciousness on Bangladesh genocide. The bones and other effects hidden so long have come to force their successors to re-visit history and conclude chapters on the war criminals and collaborators.

In addition, December and March ceremonies have almost compelled even the most reluctant to remember the victims of genocide and the brave martyrs. Internet also has offered possibilities to transmit and transact information freely and fast, which has brought, almost literally, all kinds of people together. Expatriate Bangladeshis now communicate and contribute in ways which was never known before. Through dailies and weeklies published in Bangladesh, expatriates regularly contribute, thus adding the knowledge of the readers. They also daily update news on Bangladesh, through web-based Bangladesh and other newspapers.

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By the time the Awami League government was overthrown in a bloody military coup in 1975, the issues of war criminals and the collaborators were virtually settled. All the Pakistani POWs were returned and local collaborators received unilateral amnesty without any corresponding commitment.

Even today, we do not find any outlined plan how to deal with the war criminals, and when it came up, the strategy

had a fatal flaw. The government separated the local 'collaborators' and the 'Pakistani Army', though both carried out the genocide in unison.

Firstly, a law was promulgated by the government, known as Bangladesh Collaborators (Special Tribunals) Order, 1972, which provided only a new forum, but was asked to deal with the aftermath of a revolutionary situation with the peacetime prevailing legal norms. That was totally unsuitable for such an extraordinary situation.

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With limited resources, but for the same goals, a number of other organisations have campaigned to put the war criminals and collaborators on trial. They mounted high profile campaigns when Pakistani government leaders visited

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Bangladesh or players came to play. One such organisation is the Movement for the Trail of War Criminals of 1971.

Again, what is seen here is incoherent, piecemeal and largely individual activism, which is probably going to lead the issues to nowhere. There are not even any effective networking between various organisations and activists.

What Should be Done: Mrs. Jahanara Imam's frustration still persists. The government, headed by the party that led the liberation war continues to fail to resolve the past, either by holding trials of the war criminals or otherwise.

The government has extended co-operation, and rightly so, by allowing the Army to help exhumation process, but is unable or unwilling to go further. The government, however, deserves thanks for such co-operation, but its inability to move in the right direction and to correct mistakes of the past governments are highly disappointing.

Thus, it's again the non-government actors to continue and invigorate the moves, but first of all, appropriate strategy has to be devised to achieve any meaningful success. And since a non for such a strategy is being developed, between the wide consultation between the organisations and individuals involved in the process. Only by extensive consultation, we could possibly expect to proceed ahead in a significant way.

I have tried to outline probable options in some of my articles. Here, too, I shall attempt to elaborate further on aspects of the strategy to deal with the past.

Desirable and achievable:

In an ideal world, all the Pakistani soldiers, those who surrendered and others, who participated in genocide but left before December 16, and all the local collaborators, ought to have been brought to the book. That would have been highly desirable, but equally unrealistic. Putting on hundreds and thousands on some form of trial was not possible then, nor even now.

Facts and Factors:

Full facts of Bangladesh genocide has not come out even after almost thirty years. We only have partial view of what had happened. We must find out full facts about who did what, when and how. However, I am mindful of the fact that all facts, in its minute details, will never be known. But then again, there are others, which we

ought to have known but do not. The government has caused volumes of documents on liberation to be published, a worthwhile project indeed. But these volumes raise more questions than those answer.

The government should disclose all documents it had, relating to planning and executing the genocidal plans after the Pakistani army surrendered. In a number of articles, it should also release dossiers about the war criminals.

From international archives, informations are leaking out. One such notable contribution has been the research work carried out by Professor Rahim at Nixon Library, where he discovered new documents revealing other documents revealing other knowledge, and roles of some leaders like Mushatque Ahmed. His findings were serialised by the Daily Independent.

Collection and preservation:

When the National People's Enquiry Commission conducted investigation against the named war criminals, it discovered a great deal of information dating to the genocide period had been destroyed. Although the Enquiry Commission failed to mention the nature or kinds of documents so destroyed, but those papers in government offices are believed to have been destroyed either deliberately or negligently.

Moreover, local history and documents should be preserved locally, and a central mechanism should be devised at National level to preserve evidences of genocide in totality.

Documentation and Accessibility:

Bangladesh genocide can be called as one of the most undocumented genocide of this century, and that has given rise to concoction and denial. For example, only major documentation is the one that published in 1988 on whereabouts of killers and collaborators.

Thus, the need of the hour is a massive effort to document Bangladesh genocide and to preserve these for the generation to come. Documents should also be made accessible to general public. In this matter, information technology, if used, is hoped, will greatly help to document history of Bangladesh genocide. American archives are gradually opening up, and the two other most important sources are yet to open: archives of India and Pakistan. India has no reason not to open up its archive, and in case of

Pakistan, the pressure has to come from within.

Educating and Enlightening:

One of the major contradictions we find is absence of genocide studies in Bangladesh educational curriculum. After so many years of the genocide, neither the government nor the universities have even attempted to study Bangladesh genocide systematically and scientifically. The universities are yet to be on board in the study of Bangladesh genocide. Dhaka University, only recently, announced to open a new discipline: Liberation War Studies.

The present generation must be enlightened about Bangladesh genocide and the responsibility of that rests on the government, on the educational authorities, and on the participants of the liberation war and also those witnessed the genocide.

Identification and Reconstruction:

The Liberation War Museum has exhumed numerous skulls and other human remains recently. Neither the Museum nor others have any clue about number of other mass graves scattered all over the country.

Expose and Profiles:

Like the genocide, we really have no idea about number of perpetrators belonged to local and Pakistan army varieties. How many Razakars (para-military force established by law), were in Al-Badars, in Al-Shams or in members of Shanti Committee? How many Pakistani soldiers carried out genocide in Bangladesh? Number of Pakistanis taken as Prisoners of War was differently stated, but what about others, those left before 1971?

Prosecution and Punishment:

The world is a changed place now, as cold war has ended. The global communication has developed so much so that prosecution of a war criminal, though very hard, but still is possible. In the case of Pakistani war criminals and collaborators, many of them are already being naturally extinct, prosecuting them either at national or foreign forums, are possible.

If General Pinochet could be detained, then there is no reason why General Niazi, though 83 now, cannot be questioned about Bangladesh, during his next visits to US or Europe.

Might of the Pen is Least Understood

By Martin Saldamando

The press that lacks maturity, needs training. Simultaneously we need to work on media ethics. Guidelines for journalists should be developed by relevant experts and media professionals, published and then perhaps circulated to the government and non-government organizations. Right to Information is too important to entrust it to the press in Bangladesh. If we are to make our government transparent then we need a legislated Right to Information for the citizens.

Journalists the rule that it takes two sources to verify their facts. How many journalists in Bangladesh follow this? We know that newspapers provide news. In Bangladesh, the same news is produced in so many ways. One doesn't know what is the 'real' information. Many people read two or three newspapers and then make their own assessment of the facts. On the other hand, journalists obtain information on even mundane matters from official government sources. It is a different matter altogether that such information as is provided, is often misleading. Do to this, news can often be wrong. Some high-profile statements of the Prime Minister recently that the press too should be taken under effective scrutiny in order to ensure transparency and accountability, stem from her offense at a rude and uncivilized behavior in the newspapers. It may be that the official source of the information was to blame for the offending reports. Sheikh Hasina also said that the journalists and the media should also observe transparency, and they should always operate in an accountable and responsible manner. Perhaps a start could be to recommend to the government that they set-up a spokesman to clarify and provide information to citizens, the press and lawyers simply put, to set-up a point of information-access. Besides a lot of mundane information generated everyday, there is much that is extremely valuable for the public to know, and it is very important to find a way to have access.

This issue of professionalism and journalistic ethics was also raised by the editor of this very newspaper at a recent seminar on 'Right to Information in South Asia', held in Dhaka. In summary he said, that in Bangladesh the press does not have the public's belief nor has it earned credibility. The press should convince the public that whatever they do with a legislated Right to Information, it is in the public interest. Or else, the public would be hesitant about giving them a legislated Right to Information. The press has not become mature enough to get the faith of the public. In Bangladesh, the society is also completely politicized and the press is divided into camps. This extends into the individual newspapers. He said, "If the public sees that we are like this, why should they give us a (legislated) Right to Information?"

The ethics of journalism must be improved. Deviants and non-ethical publishers and reporters must be ostracized. What is the press doing to be in a privileged position? We must rise to the level of deserving this. The might of the pen is least understood by the journalists themselves in Bangladesh. A careless reporter who doesn't check his sources can ruin a man or woman's whole career by tainting that person's character in a report. Sure, there would be an apology and a retraction, but the damage could never be undone. Similarly, he said the personal corruption of a single reporter can destroy the whole edifice a newspaper is founded on.

A Right to Information-for the citizens would promote the growth of some healthy practices which are very much needed in order to really bring about transparency and reduce corruption. For instance, a tradition of publishing a record of the nation's tax-payers in the newspapers, also, as was the case for a short time in Pakistan, every political candidate had to reveal his occupation, source of income, taxation base and if he has paid his utility bills. It was to be a public document, and any citizen, it didn't have to be an opposing candidate, anyone could challenge this and if it proved to be false, that would disqualify the politician from running for office. These changes were made via an ordinance, and when the ordinance lapsed the government in Pakistan did not renew this. But that should not make us skeptical, rather take these as lessons on which way to go forward. The balance sheet and sources of income for every political party should be a public document, but that right is always denied. In India, the Election Commission made it compulsory for political candidates to sign an affidavit regarding whether that candidate has a past criminal record, and it is a public document. They have also asked for information on funding sources, especially funding by corporations.

According to a member of the Human Rights Commission - Pakistan, the public lost faith in the press in Pakistan because like in most South Asian countries, the general people have been very active in politics for decades, and now you have a large segment of media staff in Pakistan who are propagating their own political ideology through the news, or they are connected to intelligence, plant

misinformation, act as agents of builders, developers, land-grabbers, loan defaulters, mafia or they are simply black-mailers, etc. All of this is very damaging to the image of the press in general, and hampers the ability to be free. These people even use the press and electronic media to influence the government to advance their own personal agendas and business deals. Those who are seeing the emergence of a nascent electronic media, like in Bangladesh, must be ever vigilant and cautious not to get caught by these corrupt hands while media proliferates.

In India, the development of the Right to Information as a part of the constitutional law of the country started with petitions by the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression. In the case of 'Bennet Coleman & Co. vs. Union of India', (AIR 1973 AC 783), the Judges remarked: "Freedom of Speech and Expression includes within its compass the right of all citizens to read and be informed." This principle was even more clearly enunciated in the later case, 'Indian Express Newspapers (Bombay) Pvt. Ltd. vs. India', (AIR 1985, 1 SCC 641), where the court remarked, "The basic principle of Freedom of Speech and Expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know." These cases echo the development of the Right to Information in Western countries, where the roles and the freedoms of the press also started the development of the Right to Information for the public. The phrase 'Freedom of Information' originated in the United States. There is a widely held view that the United States has one of the world's most open and transparent systems of government. But Sweden, in 1766, was the first to enshrine a right of access to information in its laws. The oldest [Freedom of Information] law (anticipating the rest of the world by two centuries) is called the 'Swedish Freedom of the Press Act', though its right to information-access provisions are not limited to the press at all. Interestingly, it was not until the latter part of the twentieth century that the US Supreme Court interpreted that the guarantee of Freedom of

Speech and Expression directly ensures the public's Right to Know. In a judgment of Justice Thurgood Marshall, pronounced in 1972, the right to inform others and be informed about public issues is considered to be part of the process of free speech; but, whereas the rights to speak and hear are referred to as two sides of the same coin, the right to information is not distinctly recognized. Indeed, it is nearly impossible to discover a definition of the Right to Information which is not somehow linked to forms of expression. Perhaps, therefore, an appropriate metaphor is that 'information is the metal from which the coin of expression is minted.'

In the area of civil liberties, the courts in India have built up the right to have a transparent criminal justice system free from arbitrary police action. The most recent judgment enumerating in detail the procedural safeguards for arrest and custody were given in a case, 'D.K. Basu vs. State of West Bengal'. Most of these directions translate into the right of the accused or his kin to have access to information regarding his arrest and detention such as preparation of a memo of arrest to be counter-signed by the arrestee and a relative or neighbor, preparation of a report of the physical condition of the arrestee, recording of the place of detention in appropriate registers at the police station, display of details of detained persons at a prominent place at the police station and at the district headquarters, etc. Developments in administrative law also strengthened the Right to Information. In 'State of U.P. vs. Raj Narain', a case calling for the disclosure of documents pertaining to the security arrangements and expenses of the then Prime Minister of India, the Supreme Court said: "While there are overwhelming arguments for giving to the executive the power to determine what matters may prejudice public security, those arguments give no sanction to giving the executive exclusive power to determine what matters may prejudice the public interest. There are few matters of public interest which cannot be safely discussed in public." Justice K.K. Mathew went further to say: "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country

have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption."

In some ways the 'Free Media Movement' within different countries in South Asia has given a push to the issue of Right to Information, and prompted it towards getting a legislated Right for the public. In this regard the Supreme Court of Sri Lanka issued an interesting judgment in 1987. It required that any restriction on freedom of expression, the right within which access to information can be subsumed - be narrowly drawn. The Court observed that: "Laws that trench on the arena of speech and expression must be narrowly and precisely drawn to deal with precise needs. Over-breadth in the area has a peculiar evil, the evil of creating a chilling effect which may deter the exercise of that freedom. The threat of sanctions may deter its exercise as patently as the application of sanctions. The state may regulate in that area only with narrow specificity." The first such case was when a progressive Jaffna newspaper was shut-down by the state authorities in Colombo. Readers of the newspaper approached the Supreme Court saying that their Right to Information was being denied. Also, in 1996, the Sri Lankan Broadcasting Authority, which is state-run, abruptly closed down an interactive radio talk show. A listener petitioned the Supreme Court on the basis that his Freedom of Expression and Right to Information had been curtailed. These examples illustrate that more and more in South Asia it is the public's 'right to know' which is the basis of a Right to Information.

Ultimately there should be accountability and transparency across the board, and we should keep in mind that the survival of an independent Press - like the survival of the Judiciary - depends solely on the public's belief in it. The press that lacks maturity, needs training. Simultaneously we need to work on media ethics. Guidelines for journalists should be developed by relevant experts and media professionals, published and then perhaps circulated to the government and non-government organizations. Right to Information is too important to entrust it to the press in Bangladesh. If we are to make our government transparent then we need a legislated Right to Information for the citizens.

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Defending Rapists A Crime in Itself

by Saira Rahman

THERE has yet to be a war where there has not been any violence against women and children. It is a fact that wars, regardless of their size and the boundaries they are contained in, have used sexual violence and rape as weapons of war. The violence during the Partition of 1947, our liberation war in 1971, the civil war in Bosnia-Herzegovina, World War Two, the conflicts in the North East of India and Sri Lanka - all these conflicts and wars have used and are still using, rape as a weapon against community identity and for establishing or maintaining ethnic or religious purity. Rape in conflict has become an effective weapon to demoralise a community.

In light of the above fact, General Niazi's comments during a interview with the Pakistani news agency, PPI, on 10 December 1999 can only be expressed as being ridiculous. The fact that he denies that his 'brave, Muslim soldiers' were too busy killing freedom fighters and had no time to rape anyone and the fact that it is common knowledge and that there is concrete evidence showing that women were raped during the war of 1971, only shows that the General is protecting his then soldiers from being smeared with the further insult of being rapists.

According to American journalist Joseph Fried, in the New York Daily News of 27 December 1971, "A stream of victims and eye witnesses tell how truck loads of Pakistani soldiers and their hiring razzakars swooped down on villages in the night, rounding up women by the hundreds, some were raped on the spot. Others were carted off to military compounds. Some women captives were still there when Indian troops battled their way into Pakistani strongholds. Weeping survivors of villages razed because they were suspected of siding with the Mukti Bahini told of how wives were raped before the eyes of their bound husbands, who were then put to death."

Again, a report in the Indian newspaper The Statesman of 28 December 1971, titled "International Red Cross rescues 51 girls," states that the "International Red Cross have rescued 51 girls from various secret places in Narayanjan and Dacca cantonments in the last few days, reports UNI. Most of the girls aged between 14 and 30 were found in rooms locked from the outside by Pakistani troops before their surrender. They had been starving. The girls narrated harrowing tales of atrocities committed on them. More than 3000 girls are missing from Dacca city alone."

The Pakistani army could not have captured and raped women alone. In the unfamiliar terrain of rural Bangladesh, where would they look? The razzakars and collaborators helped, of course. These so-called religious forces have played a large part in destroying the lives of many women during the war. Now they want to cover up their deeds committed during '71, just as General Niazi wants to cover up his troops activities. During a protest rally organised by the Shomolito Nari Shomaj on 12 December 1999, in retaliation to General Niazi's statement, the effigy the women had made of the General was snatched away by supporters of so-called religious political parties. Happily, another effigy was produced by the women's group and burnt in disgust.

The activities of these so-called religious parties during Bangladesh's war of liberation, and their subsequent activities in an independent Bangladesh - including the most recent attack on the anti-Niazi Shomolito Nari Shomaj procession - only show how necessary it is to bring identified collaborators and razzakars to trial under the existing Act, no. XIX of 1973 - The Trial of War Criminals Ordinance. This Act specifies that it is to provide for the "detention and prosecution and punishment of persons guilty of crimes against humanity, genocide, war crimes, and other crimes under international law". According to the said Act, crimes against humanity include murder, confinement, torture, rape and "other inhuman acts committed against any civilian population". The leaders of the fanatic forces in Bangladesh have been accused of committing both war crimes and crimes against humanity. Unfortunately, beginning with the granting of general amnesty, successive governments of this country have treated these self-proclaimed religious parties with kid gloves. The present political party in power, which prides itself as the political force which rallied the Bangalees towards independence, should now seriously bring those collaborators remaining today to task and see that justice is meted out.

Furthermore, the good General should realise that history cannot be changed, nor can its cruel, cold realities be hidden. The international community is very much aware of the genocide, rape and other acts of violence perpetrated by the Pakistani occupation forces in Bangladesh during the 1971 war and the people of Bangladesh will always remember the nightmare of having their near and dear ones taken so cruelly away from them. An apology to the Bangladesh population, for the atrocities perpetrated under the given circumstances, is definitely due. Other countries have been brave and conscious enough to do so.

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