

## War crime trials: Our failure and future



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**T**O quote from the August 2004 report of the Redress Trust (London): "In Bangladesh, there was apparent political will to prosecute and punish those accused of perpetration of crimes relating to the 1971 events. The then government of Sheikh Mujibur Rahman decided to try those members of the Pakistani army who had surrendered, reportedly more than 95,000 in total, on charges of international crimes. Following an investigation, a decision was made to put on trial 195 'major war criminals' against whom strong evidence was said to be available."

"The First Amendment to the Constitution in 1973 provided legal

backing for this course of action by envisaging the introduction of special laws allowing for the trial of persons charged with genocide, crimes against humanity, war crimes, and other crimes under the International Crimes (Tribunals) Act, 1973.

"However, the act did not come into force as the official notification to set it into motion was never issued by the government. The act provided for the establishment of tribunals which would have the power to try and punish any person irrespective of his nationality, who, being a member of any armed, defence or auxiliary forces commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this act, any of the following

'crimes' -- namely crimes against humanity, crimes against peace, genocide, war crimes, violations of humanitarian rules applicable in armed conflicts laid down in the Geneva Convention of 1949, and any other crimes under international law. Notably, the act included the crime of genocide committed against a political group, broader than the definition of genocide recognised in international law.

"The other category of war criminals were the 'Bangladesh collaborators.' In 1972, the Bangladesh government issued the Bangladesh Collaborators (Special Tribunals) Order, 1972. Several special tribunals were established with exclusive jurisdiction over offences covered by the order. The

schedule of the act specified and divided several offences in four different parts according to their seriousness. Whereas homicide and murder carried the death penalty, most acts of torture were covered by offences listed in part two of the schedule that were punishable with rigorous imprisonment for a term not exceeding ten years and a fine.

"A large number of persons were charged and some convicted under this order. However, less than two years after the order had come into force, the then Bangladeshi government issued an amnesty and released the majority of persons held or convicted under this order, approximately 35,000 in total. While the amnesty did not apply to those charged with murder, rape or arson, apparently a large number of persons falling into this category, including prominent collaborators, were also released. The order was finally revoked in 1975."

To elaborate further, it must be mentioned that just after liberation there was a big hue and cry both inside and outside the country regarding the horrendous atrocities of the Pakistan army. The savage torture and brutal genocide incited every conscious person to raise his or her voice in favour of trial of the perpetrators of the genocide and crimes against humanity.

After release from prison in Pakistan, Bangabandhu Sheikh Mujibur Rahman stated from London on January 8, 1972: "There will be trial of perpetrators of genocide." On January 18, Robert Ozel, head of the International Criminal Court, sent a message to Sheikh Mujib mentioning that formation of a court was under process to address the crimes against humanity that occurred in Bangladesh.

At that time, a national investigation team was formed under the leadership of Deputy Inspector

General of Police, Nazrul Islam, to unearth preliminary information. A report of the daily Iffeqa, dated May 9, 1972, mentioned 42 cases regarding the killing of intellectuals in Dhaka. The news agency, Ena, wrote on May 10 that allegations of war crime and crimes against humanity had been constituted against 1,500 perpetrators.

On June 6, 1972, the then foreign minister of Bangladesh, Abdus Samad, stated that there would be open trial of war criminals. He added: "Mr. Bhutto is creating pressure to release war criminals, [but] Bangladesh is not ready to resile from intention of holding the war crime trials." Meanwhile, on July 5, Sayed Abdus Sultan, high commissioner of Bangladesh to UK said: "Bangladesh has formed a tribunal for holding the trial of war criminals."

Meanwhile, Mr. John Connolly, special representative of US President Nixon, visited Dhaka with a 50-member team. He handed over a special message of President Nixon to Prime Minister Sheikh Mujibur Rahman. At that time, he mentioned to the press that he would not expect any country in South Asia to take any decision that would further complicate the situation in the area. That was a signal from the US to deter Bangladesh from the initiative to hold a trial. Nixon took a position opposing trial of war criminals. He raised a question regarding the legitimate right of the Bangladesh government in connection with the trial of Pakistani perpetrators.

Pakistan's President, Zulfikar Bhutto, expressed his vehement anger by threatening to derail the peace talks with India if Bangladesh went ahead with war crime trials and, on December 4, 1972, threatened from Pindi: "If he [Sheikh Mujib] tries any prisoner of war then I would try same number of Bangladeshis stranded in Pakistan."

In the midst of that political row, a dialogue was going on between Pakistan and India regarding prisoners of war and other issues. Describing the events, D. N. Dixit, former ambassador as well as security adviser of India mentioned in his book, *Liberation and Beyond*:

"Four rounds of talks were held between India and Pakistan between February and late June 1972, with Aziz Ahmed, Secretary General of the Pakistan Foreign Ministry leading the Pakistani delegation. Haksar visited Dhaka twice during this period to get Mujib's concurrence on resolving issues related to the prisoners of war and the holding of war crimes trials.

"By April, Mujib had reduced the number of potential war criminals for trial from 400 to 195 and then to 118. And even in these reduced number of cases, the Bangladesh government was not expeditious enough to gather evidence or prepare the case documents. One wonders whether this was deliberate, on the basis of some understanding through back channels between Bangladesh and Pakistan at that time, or whether it was a genuine failure of not being able to gather credible evidence for an international court to try these war crimes. There was no doubt among the Bangladeshis public that war crimes had been committed."

An extraordinary constitution of the country was written just after liberation of Bangladesh. Many laws were incorporated in it to defend human rights and to uphold the secular democracy. Politics based on religion was banned by the Constitution as per Clauses 12 and 138.

Collaborators of the perpetrators of genocide were not legally allowed to participate in the election and cast vote as per Clauses 66 and 122. All these good laws were

nullified by Gen. Ziaur Rahman after his assumption of power through a series of coups d'etat. All safeguards to prevent the political rights of war criminals and perpetrators of crimes against humanity were revoked by Gen. Zia through the Second Proclamation Order (No. 3) of 1975 and 1976.

In the process, those terms of Article 38 of the Constitution were erased that prevented politics based on religion. He also revoked Article 122 and, thereby, allowed the collaborators of heinous crimes to register themselves in the voter list.

As a result, most of the collaborators involved in war crimes, genocide, and crimes against humanity became staunch supporters of Gen. Zia and his party. It was Gen. Zia who revoked Clause 12 of the Constitution through Proclamation Order (No. 1) of 1977 to allow citizenship of those criminals who were leading a fugitive life in abroad. Thus, Golam Azam, the head of the Jamaat-e-Islami, who lost his nationality through the Citizenship Act Presidential Order (No. 8) of 1972 vide gazette dated April 18, 1973, got the opportunity to reclaim his citizenship and permission to enter the country.

Many conceived that the lack of experience and non-availability of lawyers experienced in international criminal law disabled the government when it came to the trial of perpetrators of war crimes and genocide. As a result, international support for the trial had evaporated by 1974.

However, even after that, in context of the menace of impunity, the trial is still possible. For that, what is foremost necessary is political will, next to that detailed documentary and forensic exhibits would be necessary to substantiate cases. FIRs of 1972 and records of instructions of perpetrator would be matter of paramount impor-

tance. As per the law, instructions of perpetrators and their collaborators, propagated through radio, television, wireless and print media can be used as court evidence.

In spite of the long delay and great many negative developments, the trial of the real perpetrators and their local collaborators is still possible and they can be put in the dock for their participation and collaboration in the acts of mass killing, rape, torture, and other crimes against humanity. To ensure that what is primarily required is correct political decision and firm commitment of the people. They must be put on trial to ensure the dignity of mankind and establish justice.

On this issue, the government of Bangladesh is bound by international obligations as well. Bangladesh ratified both the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on October 5, 1998.

Besides all international obligations, Bangladesh has its own law and constitutional mandate to address such matters. Above all, it is the people's desire and dream for justice that makes the trial imperative. The mass people of Bangladesh have never relinquished their demand for trial of the war criminals and perpetrators of genocide and crimes against humanity. The absence of trial has truly thrown the nation into a cycle of denial of justice, eroding the moral fabric and self-confidence of the nation. Now the government has to take the initiative to form an enquiry commission and tribunals to break the silence of impunity.

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## Intellectual killing and the war crimes of 1971

**We failed to try the war criminals! But it is never late to mend. One government's failure to do that should not justify other government's indifference to it. What we have already had is a tremendous popular support about this trial. On the other hand, there is always a considerable public disquiet about the government's inaction as to it.**



RASHID ASKARI

**T**HE mother of a thief talks big. As this Bengali proverb goes, so go the recent remarks of the trio of Ali Ahsan Mujahid, Quader Mollah, the two Jamaat top brass, and their sincerest sympathiser Saha Hannan.

These men were trying to deny such a naked truth that their attempts seem like those of the proverbial thief's mother who loudly denounces others while her own son is an inveterate criminal. The clever mother speaks up so that her boastful gesture may give people a good idea about her son and let them not mistake him for a potential thief.

This is simply laughable, because it is a futile attempt at concealing an offence, which is already exposed. The Jamaat-e-Islami leaders Mujahid, Quader Mollah, and Shah Hannan's position is like that of the thief's mother who is unavailingly trying to cover up the full extent of crime through loud voice and boastful lies.

It is as clear as anything that the valiant people of Bangladesh have fought a war of independence in

1971 against the Pakistan occupation army and their lackeys -- the local collaborators. They were known as Razakars, Al-Badr, and Al-Shams and were heavily made up of the leaders and votaries of the then Jamaat-e-Islami nor Jamaat-e-Islami Bangladesh.

That ours was a war of independence has been globally acknowledged, and that Jamaat-e-Islami was opposing it has been substantiated by one hundred and one evidences. Therefore, when this bragging, overbearing, and bumptious trio term it a "civil war," deny the existence of war criminals, and distort the sacred motive behind our joining the liberation war, they surely hurt the feelings of freedom-loving millions with their virtual negation of the very existence of Bangladesh. This is, frankly, virtually sedition, a crime against the country, a serious offence.

Our liberation war is the most glorious event in our history; our freedom fighters are the most valued persons of our country while the Razakars are the enemies of the state. Headed by Golam

Azam, the Razakars were the collaborators of the Pakistan occupation army.

Golam Azam was a party, directly and indirectly, to the atrocious genocide, the rapes and molestation of millions of Bengali women, and the most barbaric act of killing hundreds of pro-liberation intellectuals. In these vile occurrences, he was assisted by his top associates, Nizami and Mujahid. Their participation in the intellectual killing mission has had a number of tangible proofs.

For instance, in a picture recovered from the archives of Pakistan military intelligence, Golam Azam along with his chief accomplice Nizami is seen to hand the list of the names of pro-liberation Bengali intellectuals over to Pakistani generals (The New York Times, 30, July, 1971). He was the ringleader of 70,000 Razakars working under different factions with different names.

Another camp of the non-Bengali Muslims was added to them and the combined force forged some paramilitary units, which were trained by the Pakistan

army. The paramilitary units named Al-Badr and Al-Shams played the key role in the heinous task of intellectual killing.

In June 1971, the Pulitzer Prize winning journalist Sydney Schanberg made a candid report on that. In his words: "Throughout East Pakistan the army is training new paramilitary home guards or simply arming 'loyal' civilians, some of whom are formed into peace committees. Besides Biharis and other non-Bengali, Urdu-speaking Moslems, the recruits include the small minority of Bengali Moslems who have long supported the army-adherents of the right-wing religious parties such as the Muslim League and Jamaat-e-Islami led by Golam Azam and Matiur Rahman Nizami. These groups collectively known as the Razakars, the paramilitary units spread terror throughout the Bengali population. With their local knowledge the Razakars were an invaluable tool in the Pakistani Army's arsenal of genocide."

After Schanberg made a number of eyewitness accounts for the New York Times, the Pakistan army expelled him from the country on June 30, 1971.

It was December 1971. The occupation army was coming near to a crushing defeat. The marauding forces were on the verge of turning tail. Sensing their impending danger, they hit upon a wicked plan to cripple our social and cultural advancement by killing the standard bearers of our country -- our intellectuals. They shot the last bolt. On December 14, the Pakistan army let loose the paramilitary units to kill the intellectuals -- teachers, politicians, scientists, physicians, lawyers, journalists, and others.

The way the highly valued children of our soil were killed was diabolical. They were rounded up like cattle, bound, blindfolded, and led to torture chambers at Mirpur, Muhammadpur, Nakhla Para, Razabag, and finally taken to Rayerbazar, where they were gunned down like sitting ducks.

Stranded intellectuals killed between March 25 and December 16, 1971 across the country are among others: Dr. G.C. Dev, Dr. Munir Chowdhury, Dr. Mofazzal Haider Chowdhury, Dr. Anwar Pasha, Dr. Fazle Rabbi, Dr. Alim Chowdhury, Sahidullah Kaiser, Nizamuddin Ahmed, Selina Parvin, Altaf Mahmud, Dr. Hobibur Rahman, and Dhiren Dutt. The final toll rose to over 200.

What we today call war crime has a long history. In fact, perfidy has existed in human society over the centuries. It has been tried under customary laws. In the Hague Convention of 1899 and 1907 these customary laws were clarified. The modern concept of war crime however, has developed through the Nuremberg trials which were held basing on the definition of the London Charter published in 1945. The customary law defines war crimes as crimes against peace, against humanity.

Over the last century, many other treaties also introduced positive laws that put constraints on belligerents in light of which the nature of war crime can be determined. War crimes include mistreatment of prisoners of war or civilian and mass murder or genocide. Under the Nuremberg principles, the supreme intentional crime is that of waging a war of aggression. In addition, the war crimes that are defined in the statute, which established the International Criminal Court include:

- Breaches of the Geneva Convention, such as deliberate killing or causing great suffering or serious injury to body or wealth.
- Torture or inhuman treatment.
- Unlawful deportation, confinement, or transfer.

The people who killed or helped to kill the intellectuals of Bangladesh are war criminals by any definition of the term. They were in breach of the Geneva Convention and crossed all limits of simple human decency in their treatment of the intellectuals.

They joined hands with Pakistan occupation force that willfully launched an armed war of aggression against the innocent peace-loving people and unarmed civilians. They caused untold sufferings, irreparable physical and economic harm to them, and wanton destruction to national wealth. They made the stranded intellectuals undergo barbaric torture and unlawful confinement in the torture chambers, until finally they were killed.

They have successfully fulfilled all the criteria for being war criminals. They should have been brought to justice much earlier on the sovereign soil of independent Bangladesh. But quite unfortunately for us, they are seemingly beyond the reach of the law.

The long arm of the law could

not even touch a hair of their heads. Little by little they have gained ground. Backed by the opportunist power hunters of the right-wing coalition, they too, have been able to have the taste of power. So, naturally, they don't give a damn what the pro-liberation folks think.

Not only that, the war criminals could go to the extent of passing most derogatory remarks on the Liberation War itself and denying the existence of the anti-liberation forces. This well becomes them to belittle the image of our Liberation War since they were (and are) the enemies of the state of Bangladesh, if not enemies of the people of Bangladesh.

Mujahid, who now does not see the existence of any war criminal in here, was erstwhile president of East Pakistan Jamaat Chhatra Shagha and one of the top brass of Al-Badr force. He helped the occupation army in carrying out the bloody massacre, plunder, and rape. He, too, it is credibly alleged, had his role in the brutal killing of the intellectuals on December 14 in 1971. Quader Mollah was dubbed as "butcher" in his neighborhood. He, it is credibly alleged, started killing people even before the occupation army launched genocide.

We know it full well who the war criminals are. The party they belonged to remained banned until 1976. After the ban was lifted, they have resumed their activities with renewed interest and are posing serious threats to the hard-earned ideal of our Liberation War, i.e. a secular democratic state.

We failed to try the war criminals! But it is never late to mend. One government's failure to do that should not justify other government's indifference to it. What we have already had is a tremendous popular support about this trial. On the other hand, there is always a considerable public disquiet about the government's inaction as to it.

The present caretaker government has by this short time trod paths where its predecessors had not. The present government has settled the long borne Mujib-Zia dispute and saved history from distortion. So people are looking forward to seeing the government make sure that the war crimes will be tried and that the criminals will be punished.

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## Homage to a mentor

**My teachers' wide brow, intelligent eyes and affectionate smile are imprinted on my memory permanently. His loss is something I cannot reconcile with.**

RAZIA KHAN

**H**IS was not a face which could be easily forgotten. Along with the imprint of intelligence on that face there were also a ready smile of kindness on the lips and a twinkle of good humour in the eyes. He never displayed any indifference to people around him.

The only time I saw sadness on his face was on the memorable convocation day of Dhaka University in 1970, just before the Pakistani army crackdown. The then representative of the British Council Mr. Robert Sykes had thrown a pre-convocation lunch for us, academics so that we could walk to the campus.

Dr. Thakurta asked his wife whether his clothes had come from the laundry. When she answered in the negative he said with great displeasure: Even Govinda will be better dressed than me! He was of course referring to Dr. Govinda Dev, the philosopher who was proverbially careless about his clothes. It was at this convocation that the historical statement was made by Dr. Kudrat-e-Khuda, in his keynote speech, advising young people to take military training. We soon realised the wisdom of his words.

Dr. Thakurta succumbed to his end after being shot at by the predators when he was with his family in his university apartment. When asked by his friends to leave for Calcutta for safety, he had refused to do so. He had not apprehended any attack as he was a truly peaceful citizen.

In my long association with him I had never heard him mention even his alleged allegiance with the radical humanism of M. N. Roy. He kept his beliefs to himself; never mixing them with his vocation as a teacher.

His doctoral work on modern British drama came out in book-form. Mrs. Thakurta gave me a copy. But the most valuable gift from Dr. Thakurta came to me on my wedding day; it was Buddha Dev Bose's Bengali translation of Kalidasa's 'Meghadoot'. On the fly leaf he had written: "The work of



Dr. Thakurta, an extraordinary teacher.

the most brilliant student of the department to another bright student." Some heartless book-thief has stolen this from my shelves.

Dr. Thakurta, as my tutor, groomed me as a competent examinee which I had never been. When I became a colleague we met socially very frequently I would not miss his dinner parties for anything. But the last dinner he threw, I could not attend. The political ambience was heating up. There was a trace of foreboding in the air. There was a reception at the Chinese embassy. I had to choose between the two. Transport problem made me skip Dr. Thakurta's party. My heart was heavy. I clearly felt that I could not have a similar opportunity ever again in my life.

When curfew was lifted after the holocaust of March 25, 1971, I heard the news that his body was in the morgue. His wife and child were protected by the nuns of the Holy Cross. Up to this day his daughter Dr. Meghna Thakurta is not safe. Threats by thugs led her to leave Dhaka University. She endured these threats as long as she could till they became unbearable.

In 2006 I wrote a play on the last days of Dr. Thakurta. 'Jyoti' was enacted by the students of the university of Liberal Arts during freedom day celebrations. My teachers' wide brow, intelligent eyes and affectionate smile are imprinted on my memory permanently. His loss is something I cannot reconcile with.

Razia Khan is a former Professor of English, DU.