# Trial of War Criminals

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In any society good works are to be rewarded and bad deeds punished to identify the good and bad. This is essential for the development of value system. Rational Value system is a necessity for the establishment of discipline without which it would have been difficult to establish the rule of law.

In Bangladesh, during the period from March 26, to December 16, 1971, Pakistan armed forces were engaged in murder, torture, rape and persecution against the civilian population of Bangladesh. They declared that they would destroy part or if necessary the Bangali population living in Bangladesh and fill it up with people brought from Pakistan. They did everything to suppress the sovereign right of the people of Bangladesh in the name of saving the integrity of Pakistan.

In that act, forces like Razakar, Al Badr, Al Shams created by the Pakistan Army with volunteers recruited from local youths collaborated with them. Political parties like Jamat-e-Islami, Muslim League, Nezam-e-Islami supported the Pakistan occupation forces. The leadership of those parties took active part in organising these forces as leaders and encouraged party workers to become members of the collaborating forces.

War crimes, crime against humanity and genocide fall within the category of international crimes. These crimes are recognised internationally. It is not only the country where these crimes were committed but all countries of the world who are parties to the 1948 Genocide Convention and the 1998 Rome Statute of International Criminal Court are authorised to deal with the offenders like arranging for their trial.

War crimes are actions during war that are defined as not acceptable in 1949 Geneva Convention of Armed Conflicts. This includes disproportionate use of power and action against civilians. Crimes against humanity include murder, extermination, torture, rape and persecution or other inhuman acts as part of a widespread or systematic attack directed against any civilian population. Genocide includes any act of killing with intent to destroy in whole or in part, a national, ethnic, racial or religious group.

Acts committed as described above by the Pakistan Army, their auxiliary forces and with the cooperation of other collaborating forces on the civilian population of Bangladesh can fall under the criteria of international crimes of all the above three types. They can be considered as war crimes because of the brutality and systematic attack against a civilian population. It falls within the category of genocide as it was intended to destroy a part or whole of the Bangali population of Bangladesh.

On December 16, 1971, the occupation army of Pakistan surrendered to the allied forces. Afterwards measures were taken for the trial of war crimes. Amendments were later brought to the Constitution of Bangladesh to facilitate the trial. In 1973, the Constitution (First amendment) Act was passed inserting sub-article (3) in Article 47 and adding 47A (1) and (2). The amendment has provided scope for detention and trial of war criminals keeping the same out of provisions of part III (of the constitution) relating to fundamental rights. This means the accused in war crimes and similar cases as above cannot get any protection under fundamental rights granted by constitution that would be applicable to other accused.

Article 47 (3) of the constitution says, "Notwithstanding anything contained in this Constitution, no law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defense or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law