



LAW opinion

THE ORIGINAL SIN

Justice for 1971 crimes

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BANGLADESH still has not dealt with its past and past never left her. For any society, traumatized by serious crimes and widespread victimizations, dealing definitively with past is critical, or else, it will hunt present and future. A tormented society cannot just be expected to forget or even forgive, unless ways are found to bring the society to terms. In nearly four decades, Bangladesh has failed to reconcile with its past, an 'original sin' according to a noted commentator.

Societal victimizations have innate characteristics. It also victimizes succeeding generations. It would be wrong to assume that passing off those directly victimized would lessen traumas, pains, grievances of their successors. It would not. Only 'justice' guarantees compressive closure and that is what is precisely needed now in Bangladesh.

If the current Caretaker Government has its way, it's not likely to take steps to initiate the process of long denied and demanded justice for 1971 crimes. In that case, the Government risks being accused of exploiting sensitivities of 1971 for short-term political gains, like many of its predecessors. The Chief Advisor and Chief of Army, two key players of the current administration, early in their regime, in a synchronized way, raised spectrum of expectations of justice. That opened up torrents of pent-up feelings and emotions of pains as well as hope that those responsible would finally be brought to account and victims get justice.

Crimes of 1971

It's very difficult to decipher how in Bangladesh 'War Crimes' and 'War Criminals' became only issue to denote 1971. All campaigns, for justice or otherwise, organizations, newspapers and other medias, commentaries 'exclusively' focus on War Crimes. It is as if, only one crime was committed in Bangladesh in 1971. Trial of War Criminals is the only call that emanates from Bangladesh today and this excessive focus on War Crimes has enabled those allegedly responsible, to spin and play around legal technicalities of definition of War Crimes.

In reality, most victims in Bangladesh in 1971 were victims of Genocide and Crimes against humanity, two most abhorrent crimes known to the world. National, ethnicity, racial and religion determined fates of victims of 1971.

Pakistani military and their local cohorts intentionally targeted Bangalis, to destroy in part or whole, because of their national, ethnic, racial identities. Others were exclusively targeted because of their religion, such as Hindus. Once transposed, such facts neatly fit the Crime of Genocide as defined in the Genocide Convention of 1948 and the International Crimes (Tribunals) Act of 1973.

The next crime, which victimized large numbers of other victims, was Crimes against



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humanity. In short, international laws, it means, widespread or systematic attack directed against any civilian population, with the knowledge of attack. In other words, Crimes against humanity are large-scale attacks, and inhumane acts against or persecutions of civilians. In 1971, most victims were unarmed civilians and not armed combatants. For those carrying weapons, different laws apply but under no circumstances, civilians could be targeted.

So, it's very important to keep in mind while demanding justice for crimes committed in 1971, that one particular crime is not overemphasized so that it becomes synonymous to 1971.

Highest criminal responsibility

Anyone who has committed any of these crimes or ordered, solicited, induced, facilitated, aided, abetted, incited or contributed in any other way in furthering the criminal activity with the knowledge, should be individually held accountable. However, it's important that attention is given to those in superior authority, who planned or organized or ran criminal organizations like Al Badar, bore highest criminal responsibility, and should be pursued in all earnest. Bringing those to justice with higher criminal responsibility should thus be made a priority.

Duty to prosecute

Investigation and prosecution is not an 'option' for a State but a 'duty' under international and national laws for international crimes like Crime of Genocide, Crimes against humanity, War Crimes etc. The Government as the authority of the State, is obliged to 'prevent' the commission of Genocide in the first place, and committed, investigate and

then prosecute those responsible.

In regard to Bangladesh Genocide, this is precisely what the Government of Pakistan said in its case against India concerning Trail of Pakistani Prisoners War on 11 May, 1973. Pakistan filed a case on that day before the International Court of Justice (ICJ), the judicial organ of the UN that mainly resolves disputes between its members and is based in The Hague, Holland, to prevent India from transferring 195 POWs accused of Genocide, Crimes against humanity and War Crimes to Bangladesh for trials in Bangladesh.

In its application, Pakistan maintained that 'Pakistan has an exclusive right to exercise jurisdiction over one hundred and ninety-five Pakistani nationals or any other number, now in Indian custody, and accused of committing acts of genocide in Pakistani territory, by virtue of the application of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and that no other Government or authority is competent to exercise such jurisdiction.'

Pakistan further said, 'That the allegations against the aforesaid prisoners of war are related to acts of genocide, and the concept of "crimes against humanity" or "war crimes" is not applicable.' In other words, Pakistan accepted that 195 POWs, who were top ranking military leaders in Bangladesh, committed 'acts of genocide' and thus reinforcing what Bangladesh has always maintained. Pakistan's sojourn to the World Court, however, failed as India did not recognize jurisdiction of the ICJ.

Unfortunately, despite admitting Genocide before the International Court of Justice, Pakistan negated from its claim to investigate and prosecute of those of its

nationalists for committing Genocide, and so also Bangladesh, whose nationals were victims and on whose territory, crimes were committed. The losers, at the end, were those millions of victims.

The Government of Bangladesh thus cannot circumvent its duty to investigate and prosecute crimes of 1971 on any pretext, such as, failures of previous Governments, or shortages of time, or on other grounds. Obligation to investigate and prosecute is a duty that the Government cannot withdraw from and further perpetuate culture of impunity that is so endemic in Bangladesh.

Two laws, same crimes

Why Bangladesh adopted two different sets of laws for the same sets of crimes committed in 1971 has since been an enigma.

The first legislation, proclaimed within weeks of liberation of Bangladesh on 24 January, 1972, the Presidential Order no 8, titled the Bangladesh Collaborators (Special Tribunals) Order, 1972, was designed to prosecute 'certain persons, individuals or as members of organizations, directly or indirectly have been collaborators of the Pakistan armed forces, which has illegally occupied Bangladesh by brute force, and have aided and abetted the Pakistan armed forces in occupation, in committing genocide and crimes against humanity.' etc. In other words, the law was for prosecution of collaborators.

The other one passed a year and half later on 20 July 1973, the International Crimes (Tribunals) Act, 1973, was to try and punish any member of 'armed forces, defence or auxiliary forces' who committed seven major crimes, including Crimes against humanity, Genocide and War Crimes. It baffles many, why it took so long to enact this law, purportedly to judge main protagonists of these crimes, while within five weeks after victory from occupations; laws were ready to try locals!

The two laws dealt with collaborators and members of armed forces differently for committing very same crimes. In fact, no members of armed forces were ever brought under the International Crimes Act 1973, while several thousand collaborators were brought under the net.

This duality, apparently with no plausible justifications, essentially went against an important principle of law, equal treatment under law, and as a result, when final batch of 195 POWs were allowed to return to Pakistan, for whom the International Crimes Act 1973 was primarily meant for, then the Collaborators Order lost some of its edge. If there was one law, for the crimes committed in 1971 and given adequate constitutional protection, perhaps that law would have played more significant roles.

Non-prosecution or amnesty

Several Special Tribunals under Collaborators Order processed numerous cases and leading members of East Pakistan Government

headed by Dr. M.A. Malik were convicted. Senior Jamaat leaders were also convicted for participating and collaborating in crimes. Many more were being investigated and thousands of others remained detained.

The Government, on 16 May, 1973, for the first time, declared clemency to certain categories of persons who had been convicted for or charged with the offences under the Bangladesh Collaborators (Special Tribunals) Order, 1972. On November 30, 1973, the Government made second announcement of clemency to those who had been convicted or accused of offences under the Collaborators Order, except those accused of murder, rape or arson. The en masse release was premised that this would contribute to national reconciliation but in reality, it had exact opposite effects.

There was no consultation of any sort with victims of 1971 crimes, who lost most and thus, the proverbial first seed of the 'original sin' was planted through this unilateral decision. Not only small fries but big fishes then wiggled out of prison because of corruption, favoritism and misuse of powers.

The amnesty order was also legally flawed, in that, only the President of Bangladesh under Article 57 has been authorized to grant pardons to 'convicted' persons, not those accused or under trial. Under the misnomer of amnesty, the Government in fact stopped all prosecutions, did not press charges further and released others. It acted illegally in releasing those convicted.

If analyzed, it transpires that what happened was, in absence of better expression, non-prosecution, where the Government decided not to pursue complaints. This was in no way clemency or amnesty, and therefore, successive Governments are under no legal obligations not to prosecute because this amnesty order. This amnesty order in no way is a hindrance to initiate investigations against those freed. Moreover, another similar order could easily replace that amnesty order.

Approaches followed

Nobody could imagine seismic effects of Genocide, Crimes against humanity and War crimes on lives, properties and future of Bangladesh. The new Government just could not get grips over tsunami of pains and sorrows. Victims were helped in some ways but mostly left to fend for themselves. Many new civil society actors emerged and organizations formed, but nobody organized the victims that would have given them some voice. There was no 'policy' produced to deal with victims and aftermaths of Genocide and a Liberation war.

In some ways, however, Bangladesh, even in absence of a policy, victim's organizations or effective consultations, made attempts to deal with consequences. It picked up local

collaborators to avoid private vendettas. Law to prosecute and punish collaborators was brought in, and Special Tribunals started to operate.

Some key individuals were stripped of their citizenship; a strategy though received initial supports, was legally flawed. Such disqualifications were not made as a part of punishment, after a legal process, but done with executive fiat. All such disqualifications were subsequently reversed.

Amnesty, perceived to be panacea of reconciliation, simply collapsed on weights of injustice. Those beneficiaries of amnesty or non-prosecution, regrouped, eventually re-energized and mounted opposition to very ethos of Bangladesh, a liberal and secular society. Today's Islamists are by and large same individuals, believing in same ideologies, and belonging to same organizations that benefited reconciliation gesture.

Virtually nobody received compensation in a meaningful way, nor was lost properties restored. Obviously, there was no question of reparations and victims then forced to pick-up themselves and move on. Some monuments and mausoleums were constructed, symbolizing struggles and sufferings. Even within victims, some sort of artificial hierarchy emerged though marking of Intellectual Martyrs Day on each 14th December, while million other victims have not got such a day for collective grievances and reflection. As yet, Bangladesh doesn't commemorate a Victim's Day or even a Genocide Day.

Conclusion

Those who thought that with disappearances of victims, calls for justice would also die. They could not be more. Now the nation united in calling for justice for crimes of 1971. The past has returned with force, that many tried to bypass.

Bangladesh has to deal with its past, and now, or else, schism and fault lines developed on 1971 would further widen. The wounds are too deep to heal without justice.

All out efforts should be made to organize victims of Genocide and other crimes of 1971. Victims should be reminded that their pains are felt and shared by all. Victims should also be made center of all activities and all approaches should be victims centric.

Without prosecutions, there would be no healing. In post conflict societies, peace only comes with justice. The Government of Bangladesh cannot shirk off its responsibilities, if it aims at a democratic, developed and peaceful Bangladesh. It has to fulfill its obligations, without which, all aims will remain elusive. Experiences around the world tell us, justice is the best healer and that; there is no peace without justice.

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FOR YOUR information

HUMAN TRAFFICKING

Steps to restore rights of victims

Z.A.M. KHAIRUZZAMAN

LIFE changed for Rabeya (not a real name) when she was separated from her family. 'I got separated from my family when a man took me to Bombay in India promising a good job,' said Rabeya, a 16-year-old girl at Krishnapur village of No-2 Lakhanpur union in Sharsha upazila, Jessore. 'Siddique, an acquaintance, asked me about my family. I told him that life was very difficult as we were very poor. He said that my sister and brother-in-law already agreed to go to Mumbai in India with him because he promised them jobs of Tk 5,000 a month. If I accompany them then I shall also be offered such a lucrative job, Siddique promised. On return home, my sister and brother-in-law said they would try their luck in Mumbai; I should accompany them if I want to change my fate. Thinking helplessness condition of day-labourer father, I agreed to their suggestion.'

'One day we set for Mumbai with Siddique'. On arrival in Mumbai, the man sold us to a dance bar owner. 'A few months later, my sister and brother-in-law escaped the 'hell', but I was forced to stay back to do flesh trade there against my will,' Rabeya said. 'For Allah's sake don't ask me any more question', the ill-fated girl sobbed.

On a query, she said that her sister and brother-in-law had informed her father

about her misery. 'When my helpless father charged Siddique, he threatened him the dire consequences through armed cadres of another ferocious man, Rouquatullah. But my father did not give up and created constant pressure on Siddique. Finally, Siddique yielded to his pressure. After a long trek back his men brought me to Shikerpur ghat (terminal) on Benapole border.

When Rabeya finally returned to her village after nine months, she was initially met with scorn. After a brief time, her neighbours came to understand what happened to her and embraced her return.

Finally, a facilitator of Dhaka Ahsania Mission (DAM) located her. DAM helped file a case against the traffickers. 'But still Siddique's men threaten us to withdraw the case. I am now insecure and attacked with various diseases', murmured the frail girl.

According to a report of the United Nations Children's Fund (Unicef), 400 women and children fall victim to trafficking each month. Most of the victims of trafficking end up in the commercial sex industry, where most of the sex workers are within 12 to 16 years of age. Conditions of poverty and high unemployment make teenage and young girls - and their families - extremely vulnerable to the promises of work in India, Pakistan and Middle East, not realising the realities of what awaits them.

DAM initiated a programme titled,

'Prevention of Cross-Border Trafficking in Women and Children between Bangladesh and West Bengal, India (C-BAT) Project' in October, 2005. It was aimed at reducing human trafficking as well as for repatriation, reintegration and rehabilitation of the victims.

At present, women and children learn how to protect themselves from trafficking after launching of the programme. The project is being implemented by Concern Universal, Bangladesh. It is progressing in 27 border areas of 10 unions in four upazilas of Jessore and Sathkira districts.

In Jessore district, the unions are Sadar, Pativila and Sarupdia in Chowgacha upazila and Benapole, Lakhanpur and Bahadurpur unions in Sharsha upazila. In Sathkira, the unions are Ratanpur, Dhalbaria and Mothurespur in Kaliganj upazila and Noornagar union in Shyamnagar upazila.

European Commission and Irish Aid are supporting the project.

Two Indian NGOs, Socio Legal Aid Research and Training Centre (SLARTC) and Women's Interlink Foundation (WIF) are working in close collaboration with DAM.

Poverty, illiteracy, cultural practices, money power and above all low status of girls encourage and help perpetuate such exploitation. In recent decades, cross border trafficking in women and children is assuming dangerous propor-

tions threatening the social fabric in the region. This widespread and multi-dimensional problem involves humanitarian, social, moral and legal aspects.

Trafficked people are generally forced into bonded slavery, servitude, serfdom and very often prostitution. In the Middle East, some children from Bangladesh are being used as 'jockeys' in their traditional camel race in the desert. These poor women and children are also used in the nefarious trade of human blood, kidney, cornea, skull and other organs including human skeleton. It is becoming a growing profitable business for the traffickers while enhancing the misery for many as their prey. The prevailing socio-economic and geographic conditions provide a fertile ground to the traffickers for easy trafficking and for trading with the victims in the criminal underworld.

C-BAT Project Coordinator Rowshon Ara said education is being used as a strategy to combat child trafficking and exploitation through practical life-skills education, livelihood development support and community awareness and mobilization.

The C-BAT programme helps girls, in particular, learn relevant, practical skills including basic and reproductive health, nutrition, hygiene, and HIV/AIDS prevention, as well as reading, writing, critical thinking and problem-solving skills. Schoolgirls are directly involved in awareness-raising activities in communities where they live and speak out about traf-



ficking issues during public events, she said. Rowshon Ara took us to Benapole High School to show a regular session.

Headmaster Md Nazrul Islam said both boy and girl students of his school learn about the dangers of trafficking through these sessions. He said his students talk to families about the dangers that exist in their village or beyond, and tell them how they can help protect their children.

Because of the open atmosphere that has been created by the C-BAT Programme, parents and community leaders have become less fearful of

discussing child trafficking issues in public and have embraced the leadership demonstrated by their wards.

Under the programme, school children are learning skills to help their families and others better understand how to change conditions of poverty. They talk about the dangers of trafficking and the tricks traffickers can use to get young girls to leave their villages under the false promise of good employment.

No-2 Lakhanpur Union Parishad (UP) chairman Mohram Ali said child marriage is the major cause behind woman

trafficking. Because of decrease in incidents of child marriage, human trafficking reduced in and around his union.

For building up a social movement to prevent human trafficking by through regular courtyard meetings, mass dramas, seminars, discussion meetings especially in border areas, DAM conducts campaigns in collaboration with GOs and NGOs. The C-BAT project coordinator said DAM succeeded in making the awareness building programme reach to about 40,000 out of 80,000 poor families in Jessore and Sathkira districts.

Priority is being given on capacity building of local government institutions like Union Parishads to make the programme a complete success. Local administration as well as police and para-military BDR personnel are trying to combat trafficking in collaboration with people. Public representatives, members of law enforcement authorities, local administration officials, teachers and community leaders were given training for the purpose.

Meanwhile, 17 rescued victims were given shelter at the shelter home of DAM in Jessore where they were provided psychological counselling, food and clothing, basic education and skill training such as embroidery to make them self-reliant.

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