

# BDR carnage and International Crimes Tribunal Act, 1973

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MODERN history's worst massacre of armed forces officers during peacetime is yet far from a resolution for which the nation together with the families of the victims is eagerly awaiting. Although little has been revealed, there is a nagging apprehension in the minds of many that this has been the result of a conspiracy that was aimed at rocking the very foundations of Bangladesh. It is everybody's hope and prayer that such a conspiracy, if it existed in reality, will be revealed and those responsible for it dealt with under the law.

What is known though is that the brutality of the massacre is too gory for print. The bodies of the officers were mutilated and dumped into holes. Clearly, the killers committed crimes against humanity for which they must face the harshest penalty under the law. Unfortunately, there seems to be confusion among those talking about it in public and that includes the government as well. One un-nerving piece of information being talked about is that the crimes committed by these criminals have to be tried under the BDR Act where the punishment is too benign, given the gravity of the crimes committed and the way it has affected the psyche of the nation. The Government has hinted that if need be, laws will be enacted to mete out the harshest punishments, a move that could run into conflict on the principle of retroactivity.

There is, however, no reason for confusion. The February 25th incident is clearly a crime against humanity that is in no way different from the genocide of 1971. There is also no reason to resort to the BDR Act and allow these criminals a chance of reprieve. Nor is there any reason to enact new laws. In July 1973, the Government of Bangladesh enacted into law the International Crimes (Tribunal) Act that gives the present

Government clear and unequivocal directions and guidelines to try the perpetrators of the February 25th carnage in Pilkhana by defining their crimes as crimes against humanity and not as mutiny or otherwise. Once this is done, the perpetrators can then be brought to stand trial through the setting up of a Tribunal and be punished in a manner deserving the seriousness of the crimes they have committed.

The Act also gives the government the laws required to bring under its purview the local perpetrators of the 1971 genocide and crimes against humanity. The provisions of the Act also allows, in case of the 1971 genocide, not to get entangled with war crimes issues that could raise questions about the rationale of trying the local collaborators while not trying those who masterminded the genocide in the first instance. Provision 2 (a) of the Act on "auxiliary forces" removes the confusion, if there is any, on whether BDR personnel can be tried outside the BDR Act. The same provision brings the Razakars and Al Badrs created in 1971 under the purview of the Act. In fact, the details of the Act give the Government all the legal cover to try 1971 and February 25th crimes without the need to create any new law and punish the perpetrators. It is also imperative that Bangladesh should use the 1973 Act to try these crimes against humanity successfully bearing in mind that in 1974 it was Bangladesh that had hosted the Third International Criminal Law Conference which was participated by the most distinguished jurists, legal experts and criminologists of the time. It was this conference that had inspired the signing of the ICC statute in Rome in 1998 that is such a significant milestone in bringing the perpetrators of crimes of genocide and crimes against humanity to justice. Many of the provisions of the 1973 Act have been incorporated in the ICC Statute.

There are two issues that are crucial



to the explication of the February 25th massacre. First, the Government must, through the due process of investigation, prove to the nation that the PM's decision saved the civilian population from harm, and that those dead were killed in the initial hours of the massacre. It cannot push this crucial matter under the table; it would be totally unfair to the families of the martyrs and their comrades. Second, it must deal with the military whose anger is understood but the manner in which it has been demon-

strated clearly brings into focus issues that are crucial to democracy and democratic way of governance. The civil-military issue has unfortunately assumed a major significance that must be settled positively by punishing the perpetrators of the February 25th carnage under the law in a transparent manner, above politics, so that it is just not resolved in the context of civil-military relations but that it sets deterrence so that such crimes are not committed in future.

Analysis of events such as 1971 and

February 25th by hindsight can be utterly subjective and lead to wrong conclusions. At this stage, the inquiry on the massacre should be conducted fairly and transparently. Pending this, the government has to take a dispassionate look at events. Mistakes were made that are apparent even to the most subjective observer. There is no doubt that the Prime Minister could have acted only in the manner that she has acted, that is going for a peaceful solution. But then, there are politicians with military background in her party whose advice she could have taken.

As the events unfolded that day, many inexperienced politicians were seen running between Pilkhana and the PM's residence. Be that as it may, it is in the aftermath of the massacre that she needs to show the nation her statesmanship. She must seek the cooperation of all, including the opposition, to lead the future course of action after the inquiry commissions submit their reports. The media's role in their "breaking stories" that created favourable opinion for the criminals at the expense of the martyrs must also be brought to focus, particularly because these reports distorted the fact that those who died were among the best in the armed forces whose professionalism and integrity have changed the BDR into an institution in which the nation can take pride.

The February 25th carnage has ravaged the nation's soul in the same manner as it had in 1971. At this stage, the nation must stand behind the Prime Minister, for the country's very existence is integrally linked to whether she succeeds or fails. The Prime Minister, on her part, must bear in mind that she is leading the entire nation.

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