

Reconciliation: Problems and prospects

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Some of us are like ink and some like paper.

And if it were not for the blackness of some of us, some of us would be dumb;

And if it were not for the whiteness of some of us, some of us would be blind.

- Kahlil Gibran

Does the truth really lead to reconciliation? That is a fundamental question. Unplanned unveiling of truth may not yield result at the end. Even if it is planned and the truth really gets uncovered, true reconciliation may remain unreachable, if it is not properly solicited. Indeed, it is the social longing to settle conflict, in general,

Confession of the accused may not be sincere. Off the court the perpetrator may not have any guilty feelings; expressed remorse may be very insincere. So the hazy concept of reconciliation may lead someone to a trap of deception.

Formal Tribunal Versus Transitional Justice System

"The tribunal, an international court set up by the UN on the ad hoc basis to respond to the horrendous crimes in the former Yugoslavia having all operational mandate could not deliver real impact on the society; it did not carry anything for local dynamics, proceedings and decision undertaken in

Milosovich was a farce as the procrastinated trial did not yield result in due time, allowing the victim die in custody.

Even after that, many argue that formal trials are preferable to truth commission not because they input justice, but because trials in themselves reveal the truth. Very less has been written about aborted trials particularly divisive and costly trials due to lack of political will and lack of international support.

Transitional Justice System and Reconciliation

Adjudging all these facts some may divulge in skepticism or realism and knowingly push some conflicting countries in those remarkable transitional justice systems known as Truth Commissions. Of two dozens Truth Commissions constituted within the year 2000, a few were of illustrative nature and claimed to be substantial. The five commissions in Argentina, Chile, El-Salvador, South Africa and Guatemala (in chronological order) offer significant insight into the working of these truth commissions.

The greatest success of that widely circulated "South African Truth Commission" was a meaningful reconciliation. Probably the secret key of the success was that innovative idea of the commission, which attributed it with the most controversial power to grant individual amnesty for politically motivated crimes committed between 1960 and April 1994. Reparation was another alluring idea.

Promotion of National Unity and at Historical Reconciliation at South Africa

"After considerable input from civil society, including two international conferences to explore the transitional justice policies instituted in other countries, and after hundreds of hours of hearings, the South African Parliament passed the Promotion of National Unity and Reconciliation Act in mid-1995. Following a public nomination and selection process, seventeen commissioners were appointed, with Archbishop Desmond Tutu as chair. The commission was inaugurated in December 1995, although several months of setup delayed their first hearings and investigations until April 1996.

"With a staff of three hundred, a budget of some \$18 million each year for two-and-a-half years, and four large offices around the country, the commission dwarfed previous truth commissions in its size and reach.

"The commission took testimony from over 21,000 victims and witnesses, 2,000 of which appeared in public hearings. Media coverage of the commission was intense.

Reconciliation

Reconciliation is part of a process of restoration of social life to move forward together with agreed norms of civil conduct. The question of restoration of a healthy social life in Bangladesh, however, goes beyond mechanical questions of reconciliation between two sides in the conflict of 1971 and is entangled with deeper differences in "national ideology which needs, therefore, to be addressed." A process of reconciliation is workable only when the perpetrators open their heart and they do suffer from guilt. When there is no confession and remorse the reconciliation would be matter of only academic exercise.

Deep understanding about peace and human regard may add deep inspiration for reconciliation.

Question of reconciliation comes when the perpetrators confess their crimes and their offences are worth apology. Moral and legal questions about apology are literally bound to guilty feelings, inner remorse, understanding the impact of the crimes committed as well the price of life. Truth revealed in trials may offer equal opportunity to the perpetrator to

accept the truth with dignity and get himself free from the haunted life of a criminal. At the end of the day he has the opportunity to open the window of his mind to truth, love and empathy towards life.

Future is built on the past

"Bury your sins, and they will reemerge later. Stuff skeletons in the closet, and they will fall back out of the closet at the most inauspicious times. Certainly, resolving disagreements and airing latent conflicts can help ease tensions.

"Reconciliation is often cited as a goal in national peace processes, but it is rarely clear exactly what is meant by the term. The Oxford English Dictionary defines "reconcile" as "to bring (a person) again into friendly relations... after an estrangement... To bring back into concord, to reunite (persons or things) in harmony." In the context of political conflict or violence, reconciliation has been described as "developing a mutual conciliatory accommodation between antagonistic or formerly antagonistic persons or groups." It has been widely asserted that knowing the truth about the past is necessary for reconciliation to take place. In places like South Africa, this has been a fundamental tenet in the call for a truth commission."

There should be a distinction made between individual reconciliation and national or political reconciliation. The strength of a truth commission process is in advancing reconciliation on a national or political level.

On an individual level, however, reconciliation is much more complex, and much more difficult to achieve by means of a national commission."

Reconciliation in Bangladesh

The impunity offered to the perpetrators of 1971 genocide has pushed the country virtually in the grip of deep internal divisions and conflict.

The question of reconciliation in Bangladesh is not merely one of reconciliation between human rights violators and their victims but also of "national ideology" on which the society is bitterly divided. The conflict between expounder of secularism and promoter of muslim nationalism must come to an end.

What can we do?

After 37 years, we are at last on the verge of forming a few tribunals and commission of enquiry to adjudge horrendous crimes of 1971. There is a popular demand for trial of perpetrators of war crimes, genocide and crimes against humanity that took place on Bangladeshi soil at that time. People in general not only nodded for the assertive actions regarding trial, they have vehemently voted in favor of the issue and the ruling majority party has unanimously decided to resolve the issue within immediate future.

We have mandate of our constitution and specific law like 'International Crimes Tribunal Act 1973.' And the international community is willing to support us. Proposed support of the UN would be something supplementary- technical as well as cooperative assistance adding a moral bearing to the procedure. The trial must be fair and has to be perceived as fair globally. So that no one can term the UN and human rights body as an appendage of a politically motivated tribunal and commission.

In view of that, little amendment of the International Crimes Tribunal Act have to be done. A few international criminal laws and their subsequent clarifications have to be incorporated into the jurisprudence of the previous laws (International Crimes Tribunal Act).

Laws regarding torture, persecution, outrage upon personal dignity, forced migration and enforced disappearance have to be included in the law with new clarification. Violence against women has to be seen as an instrument of genocide. Crimes against humanity such as rape, sexual slavery, enforced prostitution, forced

pregnancies, sexual violence have to be seen with a new eye, Clause 7 and 8 of the "International Crimes Tribunal Act" have to be changed to encompass a wider group of perpetrators other than Pakistani army and the auxiliary force. In this act, there should be room to accommodate international jurist as prosecutor. They should be allowed to examine evidences against heinous perpetrator of war crimes genocide and crimes against humanity.

International jurist either form UN or other human rights body including NGO like The International Commission of Jurists (ICJ), International Center for Transitional Justice (ICTJ) may be allowed to be members of the enquiry commission. For all these to be materialized a perfect "terms of reference" for the trial has to be declared by the government.

Considering the ultimate goal truth, justice, human regard, restoration of national pride, honor, individual dignity and collective peace everything has to be twined with fine hand.

There comes the opportunity of laying the lattice of possible reconciliation without which the trial may be counterproductive or meaningless.

To make the ground relatively smoother and favorable the trial has to be made acceptable to the victim as well as the perpetrator. For that, opposition has to be brought under the broader wing of confidence of the government and socioeconomic condition of the country should be turned as palatable as possible. People should be motivated to accept odds solemnly for a better future. They should be taught to forbear difficult time if the situation is not even. And their hopes should be brought down to earth. As a whole the nation should be united and foresee the goal.

Simultaneously, the nature of the tribunal should be of Hybrid variety. So that when the formal one fails to achieve the cherished goal, the informal justice system and the transitional justice system moves on undaunted and unhindered.

Jurists of ICTY (International Criminal Tribunal for the Former Yugoslavia) had echoed justification of hybrid court. "In 1997 three international experts on the Tribunal recommended "the Office of the Prosecutor should be provided with an additional mandate and staff to serve as a high-level truth commission responsible for the purpose of creating an accurate and unbiased historical record of the ethnic cleansing and genocide which occurred in Bosnia."

"Historical Clarification Commission" has to be thought about to record and relate the sequence of events during the period of liberation war, 25th March '71 to 16th December 1971. It will record all the crimes committed by the Pakistan army and the collaborators who launched the war of aggression against the unarmed civilians within the territory of independent Bangladesh. Alternative courts should be held at grass root level. Establishment of such commission side by side to a formal tribunal can prevent the nation from plunging into disarray and frustration.

Conclusion

A thoughtful nation must be able to imagine its goal. We expect our nation to be equally thoughtful, wise and prudent at this crucial time. It is difficult, yet our nation should prepare itself to have a vision of that situation expected after a successful trial. We are not seeking trial for endless persecution. No one should move forward with vengeance. Victims and accused perpetrators must embrace justice with dignity for their own relief.

Needless to mention that our entire nation is carrying a heavy heart with brunt of old wound. We want perfect healing and end of the inferno. Trial and justice can perhaps close a sad chapter.

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people's quest for peace, inner drive of the nation for unity and desire to get over the gulf of differences, which make reconciliation possible.

Trial and tribunals are some of the formal procedures to establish truth, justice and reconciliation. The transitional justice system is an informal process of wider justice usually encompassing bigger number of conflicting people of an unstable society gradually evolving for peace. On the other hand truth and the reconciliation process are something in-between justice and sanctified impunity.

There are more than metaphysical differences among truth expressed, truth related, truth translated and the truth perceived. Evidences validated by the court may be true for some people or in some circumstances; yet, it is easy to imagine that court has its limitations in law as well as in prosecution.

Hague, received little attention from the press and public within the county."

"Many argue that trials are preferable to truth commissions not only because they impart justice, but because trials in themselves reveal the truth. This is true, but trials have its own limitations, history proves that they can never encompass a wider spectrum. Besides they cannot stir the society to a level to add impetus for expected forward movement.

A quick glance at recent and remote past clears that successful trial of perpetrators are uncommon.

At the outset, following the Second World War only ten could be tried at Nuremberg Court in the year 1945. Trials of 22 Japanese were only possible on the devastated soil of Japan. Tens of thousand criminals with horrendous record could escape justice. Trial of