Legal Preparations

Though a tripartite diplomatic impasse clouded the trial of the Pakistani POWs, the Bangladesh Collaborators (Special Tribunals) Order 1972 was announced to try the local war criminals. Bangladesh also continued to amend its legal system in preparation for the trials of both Pakistanis and local collaborators.

On July 15, 1973 Bangladesh amended its constitution for the first time to ease the process of the war crimes trials. Article 47 (3) of our national constitution, added under the first amendment, states that:

47 (3) [N]o law nor any provision thereof providing for detention, prosecution or punishment of any person, who is a member of any armed or defence or auxiliary forces or who is a prisoner of war, for genocide, crimes against humanity or war crimes and other crimes under international law shall be deemed void or unlawful."[28]

It is clear that the 195 Pakistanis were not freed without charges.

On July 20, 1973, the International Crimes (Tribunals) Act, 1973 was announced "to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under international law."[29]

Interestingly, though the trials of the collaborators were abandoned, Article 47(3) and the International Crimes (Tribunals) Act, 1973 -- which offers the trial of war criminals including the "auxiliary" forces for their crimes against humanity -- were not cancelled by any government and are still applicable.

Simultaneous trial and Pakistan's apology

In response to Bangladesh's desire to keep the 195 Pakistanis out of the simultaneous repartition process, Pakistan government in the last week of April 1973 issued a statement saying:

Pakistani government rejects the right of the authorities in Dacca to try any among the prisoners of war on criminal charges, because the alleged criminal acts were committed in a part of Pakistan by citizens of Pakistan. But Pakistan expresses its readiness to constitute a judicial tribunal of such character and composition as will inspire international confidence to try the persons charged with offenses.[30]

After about one year, Bangladesh finally accepted Pakistan's proposal, fearing for the fate of 400,000 Bangalis trapped in Pakistan and to gain the much-needed access to the United Nations. With faith that Pakistan would hold the trial of the 195 Pakistanis involved in the wartime atrocities, Bangladesh withdrew its demand for trying the Pakistanis in Dhaka. Upon the formal understanding, the last group of 206 detained Bangladeshis was allowed to return home on March 24, 1974.[31] It is clear that the 195 Pakistanis were not freed without charges, rather they were handed over to Pakistan so they could be prosecuted by the Pakistani authorities.

Bangladesh's position was then formalised on April 10, 1974 through a tripartite agreement among Bangladesh, India, and Pakistan. It was reported internationally that Pakistan government offered apology to Bangladesh on the same day.[32]

Article 14 of the tripartite agreement noted that the prime minister of Pakistan would visit Bangladesh in response to the invitation of the prime minister of Bangladesh and "appealed to the people of Bangladesh to forgive and forget the mistakes of the past in order to promote reconciliation."

At that time, Bangladesh continued the trial of local collaborators and hoped that Pakistan would keep its promise and try those soldiers for the horrific crimes they committed against humanity.

1 Pro-BNP, Jamaat lawyers threaten to resist trial of war criminals, The Daily Star, April 17, 2010
2 For details on genocide and atrocities committed by the anti-liberation forces, see www.genocidebangladesh.org
3 Yohn, T. (2001) Letters to the Editor: Who Cares About the Bengali People? The New York Times, Dec 31, 1971; pg. 18
4 Text of Indian Message, The New York Times, Dec 16, 1971; pg. 16