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## **AWAMI LEAGUE'S POLITICS OF VENGEANCE**

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# **AWAMI LEAGUE'S POLITICS OF VENGEANCE**

**MARYAM MASTOOR\***

Awami League, the ruling political party of Bangladesh, has vociferously adopted vengeful politics since it has come into power in 2009. Instead of focusing on development and betterment of people, it is seeking revenge from political opponents. Awami League established a domestic tribunal named the International Crimes Tribunal (ICT) on 25 March 2010. Its purported objective was to detain, prosecute, and punish persons responsible for committing genocide, crimes against humanity, war crimes, and other transgressions under international law. According to experts of international law, this tribunal does not meet the international standards for dispensing justice. They argue that its establishment is aimed at discrediting and maligning the political opponents.

Awami League won two consecutive elections in 2009 and 2014, respectively. However, the 2014 elections were ‘scarred by violence’. According to Human Rights Watch, hundreds were killed in the

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elections of 2014, making them the bloodiest since independence.<sup>1</sup> The elections were boycotted by the second major political party of the country Bangladesh Nationalist Party (BNP) and its allies. Out of 300 seats in the parliament, 154 were uncontested, which made Awami League contestants ‘victors’ on 127 of the 154 uncontested seats.<sup>2</sup> The voter turnout was as low as 22 per cent.<sup>3</sup> Amidst violence, low voter turnout, and boycott, the leader of Awami League Sheikh Hasina was sworn in as the Prime Minister of Bangladesh. In her 2014 election manifesto she pledged to continue the so-called trials of war criminals.

Instead of moving towards the future, Awami League has decided to take refuge in the past. If vendetta was the norm of international relations, Finland would have started seeking revenge from Russia after its independence. Finland got independence from the Soviet Union after a civil war in 1918.<sup>4</sup> It was a short but brutal conflict of three months, causing around 38,000 casualties.<sup>5</sup> Since then, Finland has not tried to implicate the Soviet Union (now Russia) in any confrontation. In fact, even during the Cold War, Finland based its policies on ‘active neutrality’.<sup>6</sup> Consequently, Finland holds number one position in the rankings as per the world prosperity index, the human capital index, and the world education index.<sup>7</sup> Revenge generates negativity; it is negativity that has engulfed Bangladesh. Consequently, until today, 31.5 per cent of Bangladesh’s population lives below the poverty line.<sup>8</sup> A recent study by Human Rights Watch indicated that almost 43,000 people die each year in Bangladesh by drinking arsenic-laced water.<sup>9</sup>

Europe, which is now an epitome of peace, has embraced the idea of forgetting the past and cooperating with each other for mutual good. Germany and France had a brutal fight, the battle of Verdun in 1916 (21 February-18 December). It is the longest, deadliest, and the most devastating fight of the First World War. Some 300,000 were killed in it.<sup>10</sup> The forest, where the battle was fought, is a no-go area in France, as it is still toxic even after a century.<sup>11</sup> Despite this fierce fight, Germany and France are peacefully coexisting and helping each other in ensuring better future for their citizens. France was the largest trading partner of Germany from 1961 to 2014.<sup>12</sup> There is wisdom in forgetting a dreadful past, if a nation wishes to grow and prosper.

This paper focuses on the politics of vendetta propelled by Awami League. It is divided into three sections. The first explains the historical facts surrounding the 1971 conflict. The second section describes Awami League's political vendetta, which is being sought through the ICT, while the third demonstrates how Awami League is silencing voices of dissent. The three sections are followed by a conclusion.

### **Historical synopsis**

It has been 44 years since East Pakistan seceded from Pakistan and became Bangladesh. It was a difficult and painful birth with India playing the role of a midwife. Bangladesh got independence to change the plight of Bengalis, but what is happening there is contrary to what was envisaged. One might wonder why Awami League has opened this Pandora's Box after so long, even though the founding father of Bangladesh Sheikh Mujibur Rahman himself tried to bury the hatchet.

On 16 May 1973, Sheikh Mujibur Rahman gave general amnesty to collaborators of West Pakistani military personnel.<sup>13</sup> He visited Pakistan in February 1974 for the Organization of Islamic Cooperation (OIC)<sup>14</sup> Summit and gave a forward-looking message to Pakistan. On the occasion, Pakistan officially recognized Bangladesh as an independent country. Zulfikar Ali Bhutto, the then prime minister of Pakistan, in his speech said, “The country was dismembered, the unity was sundered and a yawning gap was opened between you and us. In a sense it may be too late to cry on what has happened already, but it is never too late to repent, to say *tauba*, from the depths of our hearts. As I said earlier, the people of Pakistan respect your decision. They and the government of Pakistan recognize and respect the sovereignty and independence of Bangladesh. More than that, we wish you rapid progress and prosperity. We extend to you all our goodwill, and we are prepared to cooperate with you to the extent that you desire.”<sup>15</sup> It was a heartfelt demonstration of repentance. Later, in order to normalize relations between Bangladesh, India, and Pakistan, a tripartite agreement was signed on 10 April 1974.

### **Pakistan’s recognition of Bangladesh and the tripartite agreement of 1974**

In 1973, the Awami League government identified 195 people as war criminals. Those suspects were all Pakistani army officers. Amazingly, no Jamaat-e-Islami leader or any of its supporters was on the war criminal list of 1971. The 195 Pakistani soldiers who were accused of war crimes, however, were given amnesty and repatriated to Pakistan following a tripartite treaty between Bangladesh, India, and Pakistan, known as the Bangladesh-India-Pakistan Agreement of 1974.<sup>16</sup>

Regarding the 195 war crimes accused, the treaty stated:

“In the light of the foregoing and, in particular, having regard to the appeal of the Prime Minister of Pakistan to the people of Bangladesh to forgive and forget the mistakes of the past, the Foreign Minister of Bangladesh stated that the Government of Bangladesh had decided not to proceed with the trials as an act of clemency. It was agreed that the 195 prisoners of war may be repatriated to Pakistan along with the other prisoners of war now in the process of repatriation under the Delhi Agreement.”<sup>17</sup>

The current political turn taken by Awami League is quite contrary to what the nation’s founding father Sheikh Mujibur Rahman intended. After secession, Sheikh Mujibur Rahman had also called for the trial of 195 Pakistan Army officials. Pakistan’s stance, however, was that those who were captured were defending their own country against India. Later, the matter was resolved through the tripartite agreement. Moreover, it was clearly expressed by Pakistan government that any excesses that were committed during the war were regrettable and condemnable.<sup>18</sup> The current stance of Awami League implies that it may also consider the nation’s founding father a traitor, for ‘forgiving’ the wrong doers.

In a 1992 speech to the parliament, Sheikh Hasina (then opposition leader) declared that amnesty to West Pakistani military personnel, given by Sheikh Mujibur Rahman, was only enacted to ensure the repatriation of 250,000 East Pakistanis who were being held at that time in West Pakistan.<sup>19</sup> One might argue that it is very easy to associate something to a person who is not there to defend it. In late

2015, Awami League had also announced to hold mock trials of the 195 Pakistani military officials accused of war crimes.<sup>20</sup>

Sheikh Hasina has revitalised the ‘vendetta politics’, mainly implicating leaders of the opposition and specifically Jamaat-e-Islami leaders who were not identified as ‘collaborators’ in 1971. The US embassy in Dhaka expressed its concern over the behaviour of Awami League towards opposition parties in a cable leaked by WikiLeaks. An official of the US embassy said, “There is little doubt that the hardliner elements within the ruling party (Awami League) believe that the time is right to crush Jamaat and other Islamic parties.”<sup>21</sup> It seems that Awami League wishes to eliminate opposition by playing politics over painful memories of the nation.

### **Awami League’s ‘questionable’ political turn**

Awami League has targeted various members of the opposition, Jamaat and BNP, by charging them with mass killings in the military operation of March-December 1971. Capital and other forms of punishment have been given to them by the controversial ICT in Dhaka. The controversy deepened, on indigenous and international level when former assistant secretary general of Jamaat Abdul Quader Mollah, who was earlier awarded lifetime imprisonment by the tribunal, was sentenced to death by the Bangladesh Supreme Court through a recently amended law and was executed. According to Human Rights Watch, the turning of life imprisonment to death sentence was a ‘retroactive application of amended legislation’ which was a violation of international law.<sup>22</sup> He was 65 years old on execution.

David Bergman links the proceedings of the tribunal with political interests of Awami League. He wrote, “Since the Awami League came to

power again in 2009, it has tried to use the emotions surrounding the 1971 war to justify a move toward authoritarian one-party rule. In its version of history, only the Awami League is the party of liberation, and therefore of government, and opposition parties are branded as ‘pro-Pakistan,’ and therefore dangerous and disloyal.”<sup>23</sup> It is also interesting to note that after the creation of Bangladesh, Sheikh Mujibur Rahman banned all other political parties and established a one party system, in which only Awami League could rule.

Majority of Bangladesh’s population is fed up with the continuous political rancour between Awami League, Jamaat, and BNP, as it is the common citizen who is suffering as a result of the unabated strikes carried out by warring political parties. Large-scale corruption, nepotism, and bad governance in the state have further augmented a sense of pessimism among the masses regarding the future of Bangladesh. Amidst this pessimism, the leadership of Bangladesh has decided to dwell on negativity by clinging to the bitter past.

### **Living in the past: setting up of the International Crimes Tribunal by Awami League**

The ICT is a domestic judicial mechanism set up by Awami League in 2009 under the principles and guidelines enumerated in the International Crimes Tribunal Act (ICTA) of 1973.<sup>24</sup> It is termed as ‘international’ because it is supposed to deal with the internationally recognized crimes such as war crimes (including customs and laws of war such as improper treatment of civilians and prisoners of war) and crimes against humanity (murder, enslavement or deportation of civilians, or persecution on political, racial or ethnic basis).

Geoffrey Robertson (the first President of the UN war crimes court in Sierra Leone), is of the view that to use the 1973 Act for the proceedings of the ICT ‘is a mistake’, as this law is outdated and does not comply with the modern human rights standards.<sup>25</sup> The 1973 Act was drafted on the pattern of Nuremberg trials. The Nuremberg trials present the first model for trying the accused for war crimes. It was set up by the Allies (victors of the Second World War) to try Nazi war criminals. On the one hand, these trials are regarded as the first step towards the enforcement of international law; on the other, various analysts consider them examples of victor’s justice. Harlon Stone, chief justice of the US at the time of Nuremberg trials described them as ‘sanctimonious fraud’ and a ‘high grade lynching party’. A former associate of the chief justice William O Douglas described the Allies as preservers of ‘power’ over principle.<sup>26</sup>

Nonetheless, the Nuremberg trials provided a precedent for trials of the Japanese war criminals in Tokyo (1946-48), and the establishment of a crimes tribunal to try the accused for war crimes committed in former Yugoslavia (1993) and Rwanda (1994). It is argued, however, that the victor of any conflict gets the benefit of such trials as it is always determined by the victor as to who is guilty and who is not. Those who defended East Pakistan as part of Pakistan are being tried for treason in Bangladesh. If East Pakistan had remained a part of Pakistan, those who fought against the state (of Pakistan) would have been charged with treason.

Apart from this debate, the proceedings of the trial are also marred by incompetence and injustice. John Cammegh, a prominent British lawyer wrote, “Over the last 20 years, international criminal justice has developed rapidly, and most people see this as a change for the better. But a trial now

starting in Bangladesh risks making a mockery of that principle. Indeed, it serves as a terrible warning of the way in which the ideals of universal justice and accountability can be abused. Facing ill-defined charges of crimes against humanity, which carry death penalty, are five elderly men who lead the country's Islamist party, Jamaat-e-Islami. (A sixth defendant is a central figure in BNP, an erstwhile political ally of Jamaat.)”<sup>27</sup>

Every judgment until now has dedicated considerable attention to the role of Jamaat in the conflict. An accused’s association with Jamaat, even if only indirectly, has often been the key basis for his conviction.<sup>28</sup> For example, in the case of Professor Ghulam Azam, the accused’s affiliation and membership of Jamaat was the only reason for his conviction. The evidence for his conviction was taken from non-attributable newspaper articles.<sup>29</sup> Twenty-six people have been convicted so far by the ICT. All belong to the opposition: Jamaat and BNP.

### **Opposition under siege**

The 90-year-old Ghulam Azam was Jamaat’s leader until 2000. He died appealing against his conviction. He was an alleged collaborator in the 1971 war because he was against separation of East Pakistan from Pakistan.<sup>30</sup> It needs to be borne in mind, however, that Mujibur Rahman also proposed a confederation between East and West Pakistan in February 1971. However, this proposal was rejected by the imprudent military elite of Pakistan.<sup>31</sup>

Another renowned leader of Jamaat Delwar Hossain Sayeedi was found guilty in February 2013 on charges including murder, torture, and rape. The 72-year-old former member of parliament had his death sentence overturned on appeal and is now serving life in jail.<sup>32</sup> One of the witnesses of Sayeedi named Mustafa Howalder was killed by a machete at his home, as no

protection was provided to him by the police.<sup>33</sup> Motiur Rahman Nizami, another Jamaat leader of its Islami Chatra Sangha wing was convicted at the age of 71 for killing a man in 1971. Although the defence managed to produce evidence of the birth of a daughter in 1976 of the man he had allegedly killed in 1971, the court ignored this record and relied on hearsay documents provided by the prosecution.<sup>34</sup>

Ali Ahsan Mohammad Mujahid, former secretary-general of the Jamaat and an influential figure within the party, was executed in November 2015. He had served as social welfare minister in the BNP-led government from 2001 to 2006. His defence requested to represent 1,500 witnesses to the court, but the court allowed only three. He was hanged for instigating his subordinates to commit abuses, despite the fact that none of the subordinates was identified.<sup>35</sup> Syed Mohammad Qaisar, former BNP member of the parliament, was indicted for crimes against humanity in 2014 while in London.

Former minister Salahuddin Quader Chowdhury was the senior-most leader from BNP to be sentenced for crimes against humanity. The tribunal found him guilty on nine out of 23 charges including genocide, arson, and persecuting people on religious and political grounds. He was executed in November 2015. In Chowdhury's case, the court refused to accept any of his alibi<sup>36</sup> witnesses. The court allowed to call 41 witnesses of the prosecution, and only four of the defence.<sup>37</sup> Chowdhury complained at the time of his conviction that the verdict had come "from the [law] ministry," saying that it had been available on the internet before it was formally announced in the court.<sup>38</sup>

The trials of both Ali Ahsan Mohammad Mujahid and Salahuddin Quader were referred to as ‘miscarriage of justice’ by Amnesty International.<sup>39</sup> Former US ambassador for war crimes Stephen Rapp also expressed his concern over the fairness of trials of Muhammad Mujahid and Salahuddin Quader. He said, “Throughout my engagement, my first interest has been to achieve justice for the victims and survivors through trials and appeals that would establish the undisputable truth and hold the major surviving perpetrators to account. For such a process to stand the test of time, I urged that the judicial proceedings of the International Crimes Tribunal respect the highest legal standards. It saddens me to say that I do not believe that was done in the cases of Salahuddin Quader Chowdhury and Ahsan Mohammad Mujahid. Under the provisions of international law that Bangladesh has bound itself to uphold, the imposition of sentences of death in these cases is not justified.”<sup>40</sup> Does it mean, that these two men are ‘murdered’ by the state, as they were not given a fair chance to defend themselves against the charges levelled against them?

Another senior member of Jamaat Mir Qasim Ali was convicted and sentenced to death by the ICT in November 2014. The process of his trial was widely criticised by Human Rights Watch. The Supreme Court upheld his conviction despite criticism by the Chief Justice on performance of the prosecution. Chief Justice Surendra Kumar Sinha said, “What prevented the investigation agency to produce sufficient witnesses to prove the charges? ... The prosecution and the Investigation Agency need to produce sufficient evidence to support a conviction... We feel really ashamed when we read the prosecution evidence.”<sup>41</sup>

It is astonishing that the defence was allowed to represent only three witnesses. Lawyers were threatened with five million Takka fine when they asked the judges to review their order limiting the witnesses.<sup>42</sup> Government minister Qamrul Islam even demanded ‘removal’ of the Chief Justice for criticizing the trial process.<sup>43</sup>

Muhammad Kamaruzzaman, former assistant secretary-general of Jamaat, was found guilty in May 2013 of masterminding what the prosecution described as ‘one of the bloodiest single episodes in the independence war’.<sup>44</sup> He was hanged in April 2015. According to Human Rights Watch, the court “arbitrarily limited the ability of the defence to submit evidence, including witness and documents.”<sup>45</sup> The UN also said that his trial did not meet ‘fair international standards’.<sup>46</sup>

The international community strictly opposes the death penalty. Asia director of Human Rights Watch Brad Adams said, “Human Rights Watch opposes the death penalty in all circumstances as an irreversible, degrading, and cruel punishment. It is particularly problematic when proceedings do not meet fair trial standards and where the right to appeal against a death sentence by an independent court is not allowed... Delivering justice requires adhering to the highest standards, particularly when a life is at stake. The death penalty is irreversible and cruel, and Bangladesh needs to get rid of it once and for all.”<sup>47</sup> Bangladesh government’s insistence on the death sentence is prohibiting it from getting foreign funds for the trials. It seems that Bangladesh does not want any foreign observation on its dubious methods of dispensing victor’s justice.

Ali Ahmed Mujahid was 64 when he was hanged to death. Not only is the death sentence itself objectionable, but also the hanging of the elderly.

The factor of time is also important while dispensing justice. In utter insistence on trying the alleged war criminals after 46 years of the conflict, many trials are being conducted in absentia in Bangladesh.

### **Trials in absentia**

AKM Yusuf, the former *naib ameer* (vice president) of Jamaat who died in February 2014, is still facing 13 war crimes charges. The prosecution requested the tribunal to proceed with Yusuf's case despite his death.<sup>48</sup> Prosecutor Syed Haider Ali said, "The matter cannot be ended with his death." He appealed to the court to deliver a judgment or at least dispose of the case with some observations, terming it 'a demand of the nation'.<sup>49</sup>

When the tribunal asked the prosecutor to give instances of the continuation of trial from home and abroad even after the death of the accused, he cited the case of Slobodan Milosevic, the former president of Yugoslavia who died during his ongoing trial at the International Criminal Tribunal for the former Yugoslavia (ICTY). Although the ICTY put an end to Milosevic's trial after his death in 2006, the International Court of Justice (ICJ) announced the order [formal end to his trial] 'ineffective'. The prosecutor insisted that the case was not a usual one as the gravity of Yusuf's offence was severe. As per the domestic law of Bangladesh, however, an accused gets discharged after his or her death.<sup>50</sup>

British-Bangladeshi Muslim community leaders Chowdhury Mueen-Uddin and Ashrafuzzaman Khan were also being tried in absentia by a special tribunal in Bangladesh. They were found guilty on 11 charges relating to abduction and killing of 18 independence supporters.<sup>51</sup> It seems that the ICT is constituted to convict whosoever is accused of crimes against humanity by the state.

### **The ICT: constituted to convict**

There are various procedural difficulties and issues of fairness related to the working of the ICT. As Awami League has become the ruling party without facing any competition, it has the power to legislate whatever it wishes. The contentious amendment in articles 47 and 47-A of the constitution removed vital protections previously accorded to the defendants under ICTA.<sup>52</sup> Various amendments that curtail the rights of the war crimes accused are inconsistent with the values embodied in the constitution, therefore, they are unconstitutional.<sup>53</sup>

Other than this flaw, there are various other fairness issues related to the working of the ICT. For instance, the treatment of alibi represented by the defence at the ICT needs to be true to the extent of ‘absolute certainty’.<sup>54</sup> It implies that the burden of proof remains on the defendant rather than the prosecution. The ICT used judicial notice to ‘accept’ some widely believed notions, which were presumed as facts in Bangladesh. For instance, it took judicial notice for the following:

1. The auxiliary groups to the Pakistan army provided moral support, substantially contributed to, and physically participated in the commission of atrocities;<sup>55</sup>
2. Thousands of incidents took place throughout the country as part of the organized and planned attack. Target was the pro-liberation Bengali civilian population, Hindu community’s pro-liberation political group, freedom fighters, and intellectuals;<sup>56</sup>
3. The war of liberation constituted an ‘attack’ and it was systematic;<sup>57</sup>
4. Pakistani occupation army organized militias like *Razakar* and *Al Badr* for the purpose of operational support in implementing

its atrocious activities in furtherance of policy and organized plan;<sup>58</sup>

5. Genocide occurred in Bangladesh;<sup>59</sup>
6. There was a policy and plan to commit genocide.<sup>60</sup>

According to Geoffrey Robertson, “Genocide must be proved, not assumed.” He further says, “The difference between a newspaper and a court is that the court requires to be satisfied to a certain standard that an event happened and should not act until it is.”<sup>61</sup> Neglecting the requirements of criminal law, the ICT decides on the basis of widely accepted notions. There has never been any legal mechanism of proving whatever is ‘said’ and ‘believed’ regarding the 1971 war in Bangladesh. Sadly, people are being hanged in Bangladesh on the basis of ‘assumed’ notions.

#### **ICTA 1973: the Hangman’s Charter<sup>62</sup>**

To understand the contentious working of the tribunal, it is important to grasp both the full extent of the powers conferred by ICTA on the tribunal and the prosecution, and the extent to which the rights of the accused are curtailed in proceedings that allow for the death penalty.<sup>63</sup> This is the first statutory attempt to create a war crimes tribunal after Nuremberg. According to John Cammegh, a barrister in London, even a minor examination of ICTA casts shadow on the fairness of trials of the tribunals.

Cammegh believes that Awami League government wishes to eliminate opposition figures for political gain through ICTA. In ICTA there is no right to have a lawyer present during a pre-trial prosecution.<sup>64</sup> For instance, when the first arrestee, Jamaat’s leading cleric Delwar Hossain Sayeedi, was interviewed, his attending lawyer was forced to ‘observe’ the

proceedings from an adjoining room. He could not understand anything as there was no window to hear what was being said.

Afterwards, excited investigators briefed the expectant press on the suspect's 'confession', duly sensationalized in the national press and on the internet the following day. The Act's impact on the trial process is equally disturbing. As with investigators, all judges on the tribunal panel are to be appointed by the government, proceedings may continue in a judge's absence, and there is no right to challenge judicial appointments. Judges have an autonomous right to question witnesses with no right for defence counsel to re-examine.<sup>65</sup>

The International Centre for Transitional Justice (ICTJ) has also raised some serious concerns over the death penalty, independence of the process, and limits on the rights of suspects and accused in the ICT.<sup>66</sup> Toby Cadman who is an international defence counsel at the ICT wrote that the real purpose of the tribunal "is to legitimize state-sponsored revenge without regard for the fundamental and universally recognized principle that those accused (dare I suggest it?) are innocent until proven guilty."<sup>67</sup>

Zakir Hafez, an international law professor in the School of International Service at American University, remarked that everyone in Bangladesh wanted to see the perpetrators prosecuted, but he could not see 'truth and independent justice' in the composition of the tribunal judges or its rules. Professor Hafez then summed up by saying, "If the Tribunal is not in accordance with international justice and the rule of law, it will not be a good legacy for Bangladesh."<sup>68</sup>

Nevertheless, other than the contentious proceedings of the ICT, the question arises whether Bangladesh can hold such trials? The conflict in 1971

was an intrastate conflict, which later became interstate with the intervention of India, since Bangladesh was not born then. Can this fact bar Bangladesh from convening the trials of war criminals, as Bangladesh did not even exist at the time of conflict?

The precondition at Nuremberg was the actuality of an international armed conflict between at least two states when the crimes were committed. Barrister John Cammegh is of the view that if the ICT in Bangladesh intends to apply the Nuremberg precondition of an international armed conflict, still applicable in 1971, it would be unlawful according to "*the nullum crimen sine lege* [no crime without law] maxim enshrined within Article 15 of the International Covenant on Civil and Political Rights (ICCPR)." <sup>69</sup>

Cammegh believes that the ICT in Bangladesh is certainly not qualified to try crimes against humanity. He further adds that owing to the amended constitution's bar on interlocutory appeals, there is no higher court available to inform the authorities about this legal hitch.

"Instead, the tribunal is left with the indignity of entertaining charges on an indictment where nobody—not the prosecution, nor the defence, nor even the judges themselves have a clue about what must be proved for crimes against humanity conviction to stick. The tribunal's announcement that they may at a later stage in the proceedings choose to adopt developments on the definition of crimes against humanity from recent tribunals adds insult to injury: the suggestion doesn't just amount to a tacit admission that they are undecided about the law, it also suggests the judges are open to making up the law as they go along." <sup>70</sup>

It is imperative to understand the non-seriousness of the government-backed ICT about legality, or even the appearance of a fair trial. Article 31 of

the constitution states, “To enjoy the protection of the law, and to be treated in accordance with the law, is the inalienable right of every citizen.” Article 47(3), as amended, effectively removes that protection from those charged under ICTA. Thereby, the ICT suspects are rendered second-class citizens before the law. Just to emphasize the point, in proceedings brought against the amendment, a Supreme Court judge held that a reasonable distinction could properly be drawn between the rights accorded to “ordinary citizens and other citizens accused of war crimes.”<sup>71</sup> The ICT is also planning to try Jamaat as a criminal organization. Legislation has to be done, however, for trying the entire organization for crimes against humanity.<sup>72</sup>

### **Silencing voices of dissent**

Those who accuse the process as devoid of justice are also held accountable for their opinions. A local news agency *Amar Desh* and then *The Economist* published a leaked skype conversation between the Head Judge of the International Crimes Tribunal Justice Nizamul Huq and the prosecution, which revealed that the government was pressurizing the tribunal’s chairman for deciding the case of Delwar Hossain Sayeedi on 16 December. In response, *the Economist* was summoned for contempt of court, and *Amar Desh* was ordered to “stop publishing and its editor was charged with sedition.”<sup>73</sup> A court in Dhaka imposed ‘contempt of court charges’ on 49 civil society members for just criticizing the trial process.

In the case against the *Daily Star* (leading English-language newspaper in Bangladesh) editor Mahfuz Anam, it is alleged that he published stories against the Awami League government in the past without verifying them independently.<sup>74</sup> Anam is facing 79 cases against him in 53 districts of Bangladesh.<sup>75</sup> Brad Adams, Asia Director of Human Rights Watch, views

sedition charges against the *Daily Star* editor as a “clear attempt to intimidate all media in the country.”<sup>76</sup> In October 2015, the government warned business enterprises that they would be ‘penalized’ if they would publish advertisements in the *Protom Alo* and the *Daily Star*.

These actions of Awami League demonstrate a forceful mechanism of silencing free speech in Bangladesh.<sup>77</sup> It seems as if the Awami League government wishes to have a ‘mute’ population. The most famous case put forth by the government on just expressing one’s thoughts is of David Bergman.

### **Case against David Bergman who dared to question**

David Bergman is the author of a popular blog about the ICT. He wrote on his blog, “The tribunal in its order does not provide or refer to any evidence or material on record to support the figure of 3 million fatalities, treating it as a historical fact. Although this number is treated as though it is an official government figure, there is as far as I can see little evidence, if any, to support it.”<sup>78</sup>

On the basis of this mere ‘observation’, Bergman was prosecuted by a Bangladeshi court. While not convicted for this ‘offence’, he has been convicted for his other blogs. Critics believe that Sheikh Hasina’s government has deliberately exaggerated the number of people killed as a way of refuting unease from abroad about the faulty trial process which lacks any international oversight. If the government’s official toll is taken as a fact, an average 11,000 people died every day in the nine-month conflict which saw the former territory of East Pakistan secede from the United Pakistan.<sup>79</sup>

Bergman, in a blog post on November 2011, questioned whether there was evidence that supported the official figure and mentioned other studies suggesting that the real figure could be much lower.

### **Discord over casualty figures**

Most independent estimates say that the actual toll would be hundreds of thousands. Sayyid A Karim, who wrote a biography of Sheikh Mujibur Rahman, *Sheikh Mujib: Triumph and Tragedy*, wrote that the prime minister's (Sheikh Mujibur Rahman's) office told him that the death toll of three million has been taken from *Pravda*, the Soviet newspaper.<sup>80</sup> According to an American writer Lawrence Lifscultz, a survey conducted in Bangladesh to investigate the death toll in 1971 'was abruptly shut down'.<sup>81</sup> Since then, there has never been a sincere attempt by the Bangladesh government to authenticate the death toll. Other attempts have been made though.

In the Hamoodur Rehman Commission report, produced by the government of Pakistan, the death toll from the military operation in the then East Pakistan is 26,000. The report also drew attention towards the atrocities committed by Awami League against the Bihari community of East Pakistan by citing a work done by Mr Qutubuddin Aziz. It stated, "According to various estimates mentioned by Mr Qutubuddin Aziz, between 100,000 and 500,000 persons were slaughtered during this period [East Pakistan crisis] by the Awami League militants."<sup>82</sup> In a study, a UK-based independent researcher Sharmila Bose wrote, "From the available evidence discussed in this study, it appears possible to estimate with reasonable confidence that at least 50,000-100,000 people perished in the conflict in East Pakistan/Bangladesh in 1971, including combatants and non-combatants, Bengalis and non-Bengalis, Hindus and Muslims, Indians and Pakistanis.

Casualty figures crossing one hundred thousand are within the realm of the possibility but beyond that one enters a world of meaningless speculations.”<sup>83</sup>

Richard Sisson and Leo E Rose have also attempted to tackle the question of how many were killed in the conflict of 1971. They wrote, “India set the number of victims of Pakistani atrocities at three million and this is still the figure usually cited. We interviewed two Indian officials who had held responsible positions on the issue of Bangladesh in 1971. When questioned about the actual number of deaths in Bangladesh in 1971 attributable to the civil war, one replied ‘about 300,000’. Then when he received a disapproving glance from his colleague, he changed this to, 300,000 to 500,000.”<sup>84</sup>

BBC correspondent Mark Dummett believes that between 300,000 and 500,000 died in 1971.<sup>85</sup> The Peace Research Institute Oslo along with Uppsala University in Sweden has collected information on the number of deaths in all wars since 1900. Their estimates suggest that about 58,000 people died in the 1971 crisis.<sup>86</sup> General Kamal Matinuddin in *Tragedy of Errors: East Pakistan Crisis, 1968-1971*, wrote that the commander of Pakistani troops during the conflict General Tikka Khan admitted 34,000 casualties. The missionaries in East Pakistan estimated the loss of life at about 30,000.<sup>87</sup> The most recent account on the subject is given by Garry Bass in *Blood Telegram*. He too describes the figure of 3 million as ‘inflated’.<sup>88</sup>

It is regrettable that excesses were committed by the autocratic regime of Pakistan at the time against its own citizens. But what Bangladesh is doing now is also objectionable, as it is denying freedom of speech and the fundamental right of every citizen to have justice. The conflict in 1971 was an

outcome of suppression by a dictatorial regime. Bangladesh is once again curtailing the freedom of its people by silencing the voices of dissent.

In 2013, a lawyer Abul Kalam Azad filed a petition proclaiming that Bergman's piece on the war toll and two other articles were in contempt of court.<sup>89</sup> The court accepted the plea and initiated a case against Bergman in April 2014 after rejecting his assertion that the articles were 'accurate'. Azad adamantly said, "The three million death toll in the war is a settled issue. For 43 years there was no issue about these figures. Yet David has tried to unsettle it by raising questions."<sup>90</sup> The 49-year-old Bergman declined to comment for fear of prejudicing his case.

Analysts say that the case seriously undermines reporters' bid to highlight independent narratives of the war. They believe that Bergman is being prosecuted for highlighting alleged shortcomings of the tribunal. Bergman's ground-breaking work exposing alleged war criminals who took refuge in the United Kingdom was highly appreciated. His film won a British television award in 1995. Bergman's lawyers have argued that the articles at the centre of the case were "accurate, fair, and logical" and his comments about the court "fell well within the permitted limits of fair criticism."<sup>91</sup> Bergman, who is the editor of a local English-language daily *New Age*, has been living in Bangladesh for more than a decade.

Tibra Ali, the Canada-based editor of the popular Bengali blog site Alal O Dulal, said, "This case is very important for the country's freedom of speech... Our historical narratives have become much politicised. This case is very important for depoliticisation of these narratives. We want an atmosphere in which anyone can probe or research our history without any fear."<sup>92</sup> Bangladesh government is also planning to draft a law 'Liberation

War Denial Crimes Act'. This proposed legislation would prosecute anyone who would question the official figure of death toll in 1971.<sup>93</sup>

More astonishing is a sedition case filed by an Awami League activist against Khaleda Zia, the leader of BNP, on the basis of her speech referring to the official figure of the death toll. In December 2015, she said, "There is a debate about how many hundreds of thousands were martyred in the liberation war. Different books give different accounts."<sup>94</sup>

Bangladesh has recently celebrated its 46th birthday on 26 March. Birth of Bangladesh was the outcome of a systemic failure in Pakistan. If Pakistan was lucky enough in establishing democratic institutions like India, Bangladesh would never have been born.

### **Pakistan's stance on the birth of Bangladesh**

It is true that the state of Pakistan is responsible for a 'tragic' birth of Bangladesh. Various leaders and eminent persons of civil society of Pakistan have expressed their deep sorrow on the emergence of undesired conditions in East Pakistan that eventually gave birth to Bangladesh. On 29 July 2002, former president of Pakistan Pervez Musharraf visited the national memorial at Savar on the outskirts of Dhaka to pay homage to the country's liberation war heroes. He wrote in the visitors' book at the memorial, "I bring sincere greetings and good wishes from the Islamic Republic of Pakistan for their Bangladeshi brethren and sisters. We wish this land and its people peace, progress and prosperity... Your brothers and sisters in Pakistan share the pain of the events of 1971. The excesses during that unfortunate period are regrettable. Let us bury the past in a spirit of magnanimity. Let not the light of the future be dimmed. Let us move forward together. I am confident that

with our joint resolve Pakistan-Bangladesh friendship will flourish in the years to come.”<sup>95</sup>

Imran Khan, Chairman of Pakistan Tehrik-e-Insaf, the third largest political party in Pakistan said, “The Army operations always created hatred in Pakistan and we must apologise to Bangladeshis. We must learn lessons from our past mistakes and we should not repeat these mistakes in Baluchistan and tribal areas where we have started Army operations on the US pressure.”<sup>96</sup> A renowned journalist of the *Jang* group, who has also been awarded ‘Friend of Bangladesh’ award said, “Pakistan must make an unconditional apology to Bangladesh for the atrocities the Pakistani occupation forces committed during the 1971 Liberation War.”<sup>97</sup>

A renowned and highly respected professor of humanities in Pakistan Tariq Rehman said, “I also appealed to the Pakistani government to apologise to the people of Bangladesh for the military action and the atrocities committed from March till November 1971. But, of course, I added that in my view, the Bangladeshi government, too, should offer apologies to those Biharis and families of West Pakistanis who were killed before the military action and once the surrender took place.”<sup>98</sup>

At that time Pakistan was diseased with dictatorship, which eventually led to the painful secession of East Pakistan. Bangladesh and Pakistan share the tragedy. The journey of changing the plight of Muslims of the subcontinent was started by mutual efforts of all ethnic groups of Pakistan. Alas, that dream of betterment of all Pakistanis could not be materialized. Nonetheless, the people of Pakistan wish better future for Bangladeshis.

## Conclusion

Bangladeshi people deserve to have democracy, prosperity, and progress. It would be better if Bangladeshi government focuses its energies on betterment of the country. The vengeful atmosphere in the Bangladesh is creating intolerance. The recent brutal attacks on bloggers (Avijit Roy, Bijoy Das, and Washiqur Rahman) for their secular views can be considered in this context.

Awami League is using the trials to discredit its political rivals. Many of the trials have been marred by faulty procedures. Some analysts accuse the ICT of prohibited contact by referring to evidence of intercepted communications between the prosecution and the judges. The ICT files contempt charges against those who raise questions about the trials. It is an adamant attempt to silence criticism. Human Rights Watch, journalist David Bergman, and journalists of *The Economist*, the *Daily Amar Desh*, and the *Daily Star* have been tried for contempt for publishing articles critical of the trials.

On the death of Ghulam Azam (war crimes accused Jamaat leader), editor of a Bangladeshi newspaper the *Daily Star* wrote:

“Now that Ghulam Azam is dead, should this nation take this opportunity to start the healing process? Should we stop the corrosion of hatred before it corrodes us further? Hatred's distribution has gone from wholesale to retail. Mutual contempt has gone to our blood. Whether we love or hate this man is no longer relevant. Perhaps it was never relevant for him in the first place. He returned to this country as if nothing had happened. He never showed a twitch of guilt for diabolically opposing the creation of this state where he has lived and died! The best revenge on him and his band of brothers

could have been a prosperous, peaceful, and democratic Bangladesh thrown in their face. Instead, the hatred they sowed in nine months of 1971 proved contagious for us. Ghulam Azam may have had the last laugh because, infected by the virus he masterminded, we've been fighting against each other for 43 years.”<sup>99</sup>

The latest events in Bangladesh will only deepen the wounds in Bangladesh and Pakistan. It was certainly a systemic failure in Pakistan that led to the creation of Bangladesh.<sup>100</sup> It may be said that if decision-making elite in Pakistan had been predominantly Bengali in origin in an autocratic setup, Punjabistan or Sindhudesh could have emerged as independent states from systemic failure. This assumption can be supported by the fact that major political parties of both East and West Pakistan supported Fatima Jinnah in the 1965 elections to get rid of the autocratic regime of Ayub Khan. However, the elections were not fair, and Fatima Jinnah could not win. It establishes the fact that resentment against the autocratic regime was in the air all over Pakistan, but unfortunately the East Pakistan populace became a victim of unsolicited military operation.

‘Velvet divorce’ in case of Czechoslovakia is an example of nonviolent secession. A referendum for independence of Scotland in September 2014, which was voted against is also an example that can be followed whenever there is a widespread clash of opinions on a state level. It may be argued that separation of East Pakistan from West Pakistan could have been nonviolent and peaceful; unfortunately this was not the case because Pakistan was not democratic at the time.

Atrocities were committed indiscriminately against the rebels and non-combatant civilians during the civil war in East Pakistan. Therefore, it may also be suggested that Pakistan should at least acknowledge the atrocities

committed by its military.<sup>101</sup> For the government of Pakistan, it would be better to respond on the ‘faulty trials’ conducted by the Awami League government against its political rivals rather than responding to the question of ‘how many were killed’ in the 1971 war. An official stance may be taken that unjust killing of one human is equivalent to the killing of the entire humanity and is highly condemnable.

The Holy Quran says:

“For that cause We decreed for the Children of Israel that whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind. Our messengers came unto them of old with clear proofs (of Allah's Sovereignty), but afterwards lo! many of them became prodigals in the earth.”(5:32)

By forgetting the bitter past, Bangladesh and Pakistan can unleash various avenues of progress and prosperity. If Afghanistan also joins hands, the trio can make a Muslim bloc in South Asia. This ‘Muslim bloc of South Asia’ can cooperate in economic, social, and educational sectors. Together Afghanistan, Bangladesh, and Pakistan, can start an era of ‘positive engagement’ for the betterment of their people.

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**Annex I:**

Examples of international level apologies/acknowledgements of atrocities

- October 23, 1985: In an address to the United Nations, Japanese Prime Minister Yasuhiro Nakasone apologizes for Japan's role in World War II.
- August 10, 1988: The Civil Liberties Act apologizes on behalf of the people of the U.S. for the internment of Japanese Americans during World War II. The Act also authorizes \$1.2 billion for payments of \$20,000 to each of the roughly 60,000 internees still alive and for the establishment of a \$50 million foundation to promote the cultural and historical concerns of Japanese Americans.
- April 13, 1990: After 40 years of denial, the new East German parliament issues an apology for Nazi crimes and says it is willing to pay reparations and to seek ties with Israel.
- January 22, 1997: In a joint declaration, foreign ministers from Germany and the Czech Republic apologize to each other for conflicts in the 1930s and 1940s.
- January, 1998: The Canadian government formally apologizes for its historic mistreatment of indigenous peoples.
- January, 1998: Japanese Prime Minister Ryutara Hashimoto offers his "heartfelt apology" to the British government and expresses "Deep remorse" for Japan's treatment of British POWs in World War II.
- January, 1998: British Prime Minister Tony Blair apologizes for the 1972 "Bloody Sunday" massacre of 19 civilians in Northern Ireland.
- April 27, 1998: The German Parliament formally apologizes for bombing the Spanish village of Guernica on behalf of Gen. Francisco Franco on April 26, 1937 during the Spanish Civil War.
- March 14, 1999: Former Guatemala rebels apologize for atrocities committed during their 36-year civil war.
- February 17, 2000: German President Johannes Rau apologizes before the Israeli parliament for the Holocaust.
- August, 2000: Former Australian Prime Minister Malcolm Fraser calls for a national apology for the "stolen generations," the one in ten Aboriginal children who were

removed from their families between 1920 and 1971 in a government effort to "civilize" them by assimilation into white society.

- November 7, 2000: Prime Minister Paavo Lipponen of Finland apologizes to the Jewish community for the extradition of eight Jews to Germany in 1942.
- June 23, 2001: Australian Prime Minister John Howard says he is personally sorry for mistreatment of Aborigines but opposes a formal national apology because it could encourage claims for compensation. (Cf. 8/27/99.)
- July 4, 2001: Russia's Duma passes a resolution calling on the president "to apologize on the state's behalf to ethnic Germans in Russia who, in the years of reprisals, lived in the USSR territory, met with arbitrariness, were forcibly resettled and restricted in rights for many years."
- September 9, 2001: Indonesia president Megawati Sukarnoputri visits the troubled province of Aceh and says she is sorry for mistakes by past governments in the region's separatist war that has left thousands dead.
- October 8, 2001: Japanese Prime Minister Junichiro Koizumi apologizes and expresses condolences in China for those Chinese who lost their lives in World War II.
- February 6, 2002: Belgium apologizes for participating in the 1961 assassination of Patrice Lumumba, Congo's first Prime Minister, and establishes a memorial fund to assist Congolese youth and democracy.
- February 7, 2002: The Hausa community in Idi-Araba, Nigeria, apologizes to Governor Bola Tinubu for ethnic violence in which over 100 people were killed.
- May 29, 2002: Nigerian President Chief Olusegun Obasanjo apologizes to Nigerians for years of rights abuses by previous governments, on the occasion of the country's third anniversary of establishing democracy.
- July 17, 2002: The Irish Republican Army apologizes for civilian deaths over its thirty year struggle to unite Northern Ireland with the Republic of Ireland. (Cf. August, 1998.)
- October 7, 2002: The German media company Bertelsmann expresses regret for its collaboration with the Nazi regime and notes that it has joined over 6,000 other German companies

that have agreed to pay \$4.5 billion to people who performed forced labor under the Nazis.

- October 27, 2002: Russian President Vladimir Putin apologizes on television to the families of dozens of hostages who died when Special Forces gassed the theatre where they were being held by Chechen rebels.
- November 28, 2002: President Bush apologizes, via the U.S. ambassador in Seoul, for the deaths of two South Korean girls hit by a U.S. military vehicle in June.
- December 7, 2002: Iraqi President Saddam Hussein apologizes for invading Kuwait in August, 1990.
- December 11, 2002: Deputy Secretary of State Richard Armitage issues another official apology to South Korean President Kim Dae Jung for the deaths of two South Korean girls crushed by an American armored vehicle in June.
- December 17, 2002: The Norwegian Parliament votes to compensate the estimated 12,000 children of German soldiers who occupied the country during World War II for discrimination they suffered growing up in Norway after the war.
- December 30, 2002: Leaders of a rebel group in Ivory Coast apologize for firing on French troops near Duekope.

**Source:** Purdue North Central University, <<http://www.upenn.edu/pnc/politicalapologies.html>> .