

Justice After Genocide:

Justice After Genocide: Ways To Deal With The Past

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Ms. Farida Banu, younger sister of Dhaka University teacher Mr. Giasuddin Ahmed filed a case with Ramna Police station on 24 September 1997, about kidnapping and killing of his brother. This case could very well be one of the routine FIR that Ramna police receives daily but in reality, it was not. A sister demanding justice for his slain brother filed it after long twenty-six years of the incident. Her brother was a victim of 1971 genocide. All over the country, still there are, like her, relatives of other three million or so similar victims of genocide, who are still waiting for acknowledgment and accounts.

The Criminal Investigation Department (CID), which swung into action immediately, believes he was killed "under the same blueprint" as all other intellectuals, at the fag end of the liberation war. The Investigators, according to press reports, have assumed Chowdhury Mueen Uddin, Ashrafuzzaman and others behind this killing. Chowdhury Mueen Uddin, whose picture was printed in the newspaper as the principal Al-Badar killer over Bangladesh after independence, was also investigated by the British television, Channel Four, in a program 'War Crimes File' in 1995.

The German writer Jurgen Fuchs once said to Adam Michnik, a leader of the Polish opposition to communist rule about crimes committed during the communist regime in East Germany that "if we do not solve this problem in a definite way, it will haunt us."

The past has a curious habit of coming back, again and again, if a proper strategy is not followed by the successor governments. In Bangladesh, past has never left even after its twenty-six years as the burden of the past could not be shaken off if no justice is done.

Tormented societies cannot forgive and forget and go on to the order of a new day unless ways are found to bring the society to come to terms. Filing of Ms. Banu's case and the police investigation exemplifies that in Bangladesh, past has, as yet, remained to be solved.

The purpose of this article is to find out the strategies, in general, for a nation to cope with its past. It then intends to examine the process adopted in Bangladesh to deal with the past, in this case, 1971 genocide. Finally, some conclusions to devise appropriate ways to live with the past will be made, which batters the society daily.

Criminal Prosecution:

By bringing action against perpetrators, their superiors and collaborators, a new regime can signal to victims and to the whole community that the state no longer considers the victims to be outcasts. The judicial process itself can also permit individual survivors and relatives and friends of victims to tell their stories, to document the torment and the suffering and to ventilate the feelings and emotions that have remained pent-up inside.

Another important reason for prosecuting those who commit and those who order genocide is that those who have been the direct victims will then see that justice has been done. For victims, seeing their tormentors brought to justice can have a strong therapeutic effect. Punishing the perpetrators of the old regime advances the cause of building or reconstructing a morally just society. Justice be done to put back in place the moral order that has broken down. Justice be done as a moral obligation to the victims of the repression. Post- genocide justice serves to heal the wounds and repair the private and public damage done. It also acts, as a sort of ritual cleansing process. A country in which such cleansing remains unfinished are plagued by continuous brooding and pondering.

Criminal prosecutions also strengthens fragile democracies. Survival of the successor regime depends on swift and firm action against the perpetrators and their following. If the prosecution issue remains untouched, other forms of social and political disturbance may be triggered, with perhaps a risk of vigilante justice with summary executions. It may also give birth to conspiracy theories in which the leaders of the successor regime are labeled as the hidden agents of the old order that they are treating in a too soft and ambiguous way.

Failure to prosecute may generate in the populace cynicism and distrust toward the political system. Unless the crimes of the defeated are investigated and punished, there can be no real growth of trust, no implanting of democratic norms in the society at large, and therefore no genuine consolidation of democracy. Prosecutions are seen as the most potent deterrent against future abuses of human rights. A civilized society must recognize the worth and dignity of those victimized by abuses of the past. This has been the official policy toward collaborators in all West European countries which, during World War II, were occupied by Germans.

After Hitler's occupation and genocide, the slogan in occupying countries were; "no place left for those who had betrayed their country." The number of unpatriotic citizens who suffered punishment in one or another form was about 100.000 in Belgium, 110.000 in The Netherlands, and 130.000 in France. The figure was remarkably high in Belgium and The Netherlands, which had in 1945, population of 8.3 and 8.8 million respectively. The number of death penalties was 6.763 in France, 2.940 in Belgium, and 152 in The Netherlands. Various prison sentences were awarded to 53.000 in Belgium, 49.000 in The Netherlands, and 40.000 in France. Imprisonment was almost always accompanied by other sanctions: a fine, confiscation of personal goods, police supervision after the end of the prison term, the obligation to reside in a specific town. In Belgium, damages had to be paid to the state, out of marital goods or from their heirs if necessary. Tens of thousands of Dutchmen suffered the loss of nationality. In Germany, international community put the principal perpetrators of holocaust on trial, and others were tried too.

Disqualification:

Disqualification of the perpetrators, of their agents or of other willing participants, is a second way to address the question. The idea being, those who have acted against the people or have collaborated, forfeited some of their rights, including political and civil rights, sometimes disqualification accompanies a criminal conviction, as occurred in post-war Belgium, France, and The Netherlands.

These countries also introduced some form of 'national indignity', which implied a series of civic disqualifications and a prohibition of some kinds of professional activity. In other instances, as in most of the post-communist countries of East and Central Europe, disqualification has been preferred as a way to sidestep criminal prosecution.

Amnesty:

Post-genocide traumatized society often has to make a dichotomous choice between two perilous options, should the perpetrators be prosecuted or should they be amnestied in the interests of national reconciliation? For purely politically motivated crimes, granting of unconditional amnesty could be an option. In some instances, the outgoing government unilaterally award themselves self-amnesty. In other instances impunity, is the outcome of negotiations between old and new leaders.

Amnesty endangers the inculcation of codes of conduct based on rule of law. It is discriminatory application of criminal law, privileging certain defendants, which breed cynicism toward the rule of law. Moreover, States have the duty to prosecute violations of international law like genocide. Such crimes cannot be unilaterally forgiven; even a victim society cannot forgive crimes against humanity.

Truth Commission:

Amnesty, but not amnesia, is the substance of the fourth strategy. The first goal of such a commission is to investigate the fates, under the occupying regime, of individuals and of the nation as a whole. A truth telling operation, including full disclosure of human rights abuses, ensure that "the facts" are not forgotten but remain alive in the memory.

The perpetrators come out openly, reveal all the facts and face the victims publicly and see the results of their actions. Recent examples are the Chilean National Commission on Truth and Reconciliation (1990), the United Nations sponsored Truth Commission in El Salvador and ongoing Truth Commission in South Africa. However, for some, general knowledge of the truth is not enough. An official recognition of the injustices that have been suffered is necessary.

Reparation:

For the families of victims and survivors, compensation serves as immediate public recognition of their pain and trauma. The most concrete form of reparation is monetary compensation. Financial constraints may not permit large-scale payments, but it is still important to provide financial compensation to the victim family either individually or the whole community. Examples are abound, Germany's reparation to Jews and Israel, Japan's to Korea.

Permanent Reminders:

Establishment of permanent reminders of the past, such as monuments, museums, public holidays, and ceremonies together with support group, provide a channel of non-violent __expression of pain, frustration and anger.

Public Airing Of Grievances:

The public airing of grievances in a non-criminal context could possibly promote an atmosphere in which some kind of national reconciliation would be feasible. Publicly acknowledging the torment and suffering of victims and survivors can help in the recovery of their social and political well being as it helps them psychologically and contributes to defusing potential cycles of revenge and victimization.

Documentation:

It is very important to establish a permanent historical record that would inform and educate future generations to prevent similar atrocities. Future generations must be taught about the dangers of repeating the past.

Thus, documentation of genocide and identification of the violators in some kind of public record at the national or at the international should be done. Oral histories of survivors and other witnesses can be collected. Testimonies of perpetrators and their superiors can be recorded. Findings of the Commissions, trial transcripts, or the perpetrators own documentations should be published.

Voices Of The Victims:

Another avenue of redress could be forums with opportunities for survivors in communicating their stories. First hand testimonies of survivors could be incorporated into programs in military and police courses, medical and law schools. Similarly, they could be invited to lecture in primary and secondary schools, in history and social studies classes, and in university in various relevant courses. In press and broadcasting, victims perspectives are particularly pertinent.

Bangladesh: Botched Strategies

Bangladesh had to deal with the aftermath of genocide soon after the perpetrator's defeat. It became an inescapable task for the new democracy. The incidents of private revenges began to be noticed, and the state quite rightly made choices to prosecute the perpetrators and the collaborators.

It was expected that by applying the law firmly and fairly, the state will avoid vigilantism. But the new government, it transpires, did not have a well thought out strategy to deal with the post-genocide society. In Bangladesh, the genocide was carried out by the Pakistani government and its army, alongside the war of occupation. In Pakistan, the leadership and the elites, mostly migrated from India, were essentially racist, held "superior race" view vis-à-vis Bangladeshis. This was epitomized by General Ayub Khan, when, as early as 1954, he jotted down his thoughts that Bangalees "have all the inhibitions of down-trodden races and have not yet found it possible to adjust psychologically to the requirements of the new-born freedom." (Mohammad Ayub Khan, *Friends No Masters: A Political Biography*, 1967, page 187).

Pakistani leadership mixed racial chauvinism with religion, and the resultant cocktail was the basis of genocide. The politics just triggered off the genocide mechanism. Pakistanis were led to believe both by their political and religious leaders, about the "imported" nature of Islam in their part of Pakistan and as such "purer" than "converted" Bangladesh Muslims from lower caste Hindus.

In 1970, when the people of Bangladesh overwhelmingly voted for virtual autonomy to run their own affair and not to remain a market for overpriced Pakistani products and source of capital for Pakistan's development, Pakistani military and political elites jointly drew-up two plans, firstly, to unleash unimaginable terror, killings and destructions, to cow the people and then to "cleanse East Pakistan once and for all of the threat of secession" and planned to "kill off two million people and ruling the province as a colony for 30 years." The combination of racial hate, religion and politico-economic interests converged and formed classic background for a genocide.

Hitler too believed Jews to be 'unclean' plague and threat to German Aryan race. He was weary of Jews growing hold over economy who conspire against Germany. Pakistanis too never trusted Bangalees where it mattered most, in power. Bangalees fought back, first, in defense and then to get the country free from Pakistani occupation. The war started and the Pakistanis began a losing battle. Pakistanis too, on one front, faced the valiant Freedom Fighters, guerrillas and regular sorts and on the other hand, meticulously carried out genocidal plan. The result: total destruction of infrastructure and economy of Bangladesh, ten million people driven out of the country, twenty million people internally displaced, fifteen million houses set ablaze, three hundred thousand women raped and three million killed. The new government, within six weeks of victory, introduced laws, the Bangladesh Collaborators (Special Tribunals) Order, 1972 (P.O.No.8 of 1972), to deal with the collaborators who had "participated with or aided or abetted the occupation army in maintaining, sustaining, strengthening, supporting or furthering the illegal occupation of Bangladesh by such army." The Collaborators Order did not contain punishment for planning or organizing genocide, which took over a year and half to produce.

In July, 1973, the parliament passed the International Crimes Act (Tribunals) Act, 1973 (Act No. XIX of 1973) to provide for detention, prosecution and punishment for genocide, crimes against humanity, war crimes and other crimes under international law. The Act was to set-up a Tribunal with power "to try and punish any person irrespective of his nationality who, being a member of any armed, defense and auxiliary forces commits or has committed, in the territory of Bangladesh, crimes against humanity, crimes against peace, genocide and war crimes, whether before or after the commencement of this Act." The law, at last, provided forums to prosecute the principal perpetrators and planners of genocide, the army and the members of paramilitary organizations like, the Razakars, Al-Badars, Al-Shams etc.

Thus, the government chose to put the collaborators, mainly the local people, who participated or aided the occupation army in maintaining illegal occupation, on trial first, instead of the principal planners and perpetrators of genocide. A number of them were picked up and faced the Special Tribunals. However, in November, 1973 the government decided to release, under an amnesty order, all those held and convicted under the Collaborators Order for national reconciliation. The amnesty was massively misconstrued and widely abused. In the end, all the collaborators of genocide were freed.

As the later events showed, not a single individual was finally prosecuted and tried for genocide in Bangladesh. The new elites this botched strategy of criminal prosecution for genocide failed. It did not do any justice to the victims who died, did not satisfy people like Ms. Farida Banu, immediate families

of the victims. Finally, it failed to generate any reconciliation between the perpetrators and the victims because the government acted alone in deciding the strategy and then granting amnesty.

The victim families and the nation at large was not consulted in any manner. The high principles of rule of law was sacrificed. Questions began cropping up, if one was not punished for crime like genocide of three million, then what crime merited punishment?

Secondly, Bangladesh also tried "disqualification" strategy again not in any cohesive manner. Disqualification was not to be a part of criminal prosecution as there were not much prosecution to start with. Even disqualification was not practiced independently of criminal prosecution.

As such, the collaborators did not forfeit any civil or political rights despite their collaboration. No one was disqualified from exercising civil and political rights in a new country whose birth they opposed in participating in genocide.

The government, instead, prohibited politics based on religion. Article 12 of the newly adopted Constitution declared: "The principle of secularism shall be realized by elimination of (a) communalism in all its forms; (b) the granting by the State of political status in favor of any religion; (c) the abuse of religion for political purposes; (d) any discrimination against, or persecution of, persons practicing a particular religion." However, Article 12 of the Constitution of Bangladesh containing fundamental state principles of secularism was removed by General Ziaur Rahman through Martial Law Proclamation Order No. 1 of 1977.

Thus, however commendable, this strategy to deal with genocide failed too. Government's compensation scheme for the victim families has not worked either nor other attempts of reconciliation, rather the fault-line has expanded to divide the society right in the middle.

Ways Ahead:

Finally, Bangladesh must now devise appropriate strategy to deal with the past from various alternatives. The worst solution would be to try to ignore the problem; the cost of cover-up are simply too big as the last twenty-six years have demonstrated. But the leaders should never forget that the lack of political pressure to put these issues on the agenda does not mean that they are not boiling underground, waiting to erupt. They will come back to haunt. There are some who believe economic development will be the panacea. They are wrong. Developed countries like Germany, France, Germany are still struggling to come to term with the past despite building affluent societies. Social harmony, peace and human rights are necessary ingredients for human and economic development and without justice, there cannot be harmony, piece and human rights.

Reconciliation is seen as a crucial prerequisite for the consolidation of a young democracy. To some analysts, reconciliation can only be produced if the successor elite refrain from prosecuting the previous regime. Others, however, argue that impunity precludes the coming of reconciliation. In Bangladesh, lack of prosecution has failed to bring reconciliation or the strengthening of democracy.

In post-genocide Bangladesh, the religious fanaticism, extremism and fundamentalism have made solid inroad into the society. Successive governments have, for political convenience, compromised and on occasions cajoled Islamic fanatics. The Collaborators, even after amnesty, continued activities to throttle down the spirits of liberation, which has given rise to demands for new laws to curb the activities of Islamic fundamentalist and communal elements. These Islamic parties propagate same brand of Islam which resulted in genocide in 1971, the communal, sexist, hate and violence.

Hence, for justice and reconciliation, some prosecutions must go ahead. No new laws, however, are required. The Collaborators Order, though has since been repealed, the International Crimes Act, 1973 still remains a valid law. The Act is a complete law in itself. It provides setting-up a Tribunal to try four specific offenses, namely, crimes against humanity and peace, genocide and war crime; with provisions for prosecution, investigation, procedure of trial and appeal. Under Section 21, a person convicted and sentenced shall can appeal to the Appellate Division of the Supreme Court.

Under the Act, those who were members of the auxiliary forces in 1971, either structured or shadowy, should be investigated and then brought to justice. People like Mueen Uddin should be tried under International Crimes (Tribunals) Act, 1973 for genocide and not under the conventional penal law. These people are not the usual criminals, but, planners and executioners of genocide and should, therefore, be punished for committing genocide. The investigators have reportedly said, they would try to deal with the killings of all the intellectuals as all of them were killed under the same blueprint by the same group. The blueprint was that of genocide and as such, the investigators should press charges under the International War Crimes Act.

Successive governments have also failed to obtain any reparation from Pakistan for genocide and destruction caused in 1971. No Pakistani leader has yet offered any apology to the people of Bangladesh. Even the Queen of The Netherlands has recently apologized to the people of Indonesia for the atrocities committed during the colonial period. So also the Japanese king and the President of Germany. Instead, the average Pakistanis are still being fed with concocted history. Few Pakistanis have any idea how their best army, composed of martial races, lost to ragtag irregular Freedom Fighters and to inferior Indian forces. The modern technology has offered us the opportunity to put our side of the story directly to Pakistani people via Internet, and create opinion based on true facts. Pakistani government is, under international law, obliged to try the war criminals and perpetrators of genocide, besides payments of compensation.

In 1971, the genocide, which was carried out while the war was on, also has international ramifications. The government of the United States of America was at the time helping the genocidal regime of Yahya Khan. It is, therefore, necessary to find out more of the official role of the United States government to determine how much US government was aware of genocidal plans and what, if any, was done to stop it. In this regard, a campaign for a US Congress hearing, in line with the Cambodian hearing, should be launched and the members of the Bangladesh community in United States could take lead in this matter.

As already observed, in Bangladesh, the liberation war and genocide have often been equated, though both occurred *pari passu*, liberation war and genocide were separate events. The fallen heroes of the liberation war are rightly honored when the nation ceremonially pays its respect on Independence and Victory days, but, three million victims of genocide are not remembered in the same fashion on a given day. A day, on the other hand, is observed as "Buddhijibi Hotta Dibosh" in December to mark the killings of the intellectuals, which could easily be expanded to include all the victims of genocide and the day could be observed instead as "Gonohotta Dibosh," as a remembrance day of all the genocide victims. In fact, killings of the intellectuals was the final chapter of Pakistani genocidal plan to deprive the nation of its finest brains and thus, it became a total genocide.

When a regime ends violently because of war against an occupying army or a civil war or genocide, anomia is inescapable. But the duty of the successor government is to strike a balance and draw up the strategy that delivers justice.

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