

THE ROLE OF INTERNATIONAL CRIMES TRIBUNAL OF BANGLADESH IN THE DEVELOPMENT OF INTERNATIONAL HUMANITARIAN LAW

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ABSTRACT

International Crimes Tribunal of Bangladesh (ICT-BD) is a domestic court that deals with the issues of international crimes like war crimes and the crimes against humanity. Since its inception, the court has been playing remarkable roles in the formulation, application and thereby, promotion of international humanitarian law (IHL) which is categorized in this paper into four domains of evaluation—normative, theoretical, practical and the strategic roles. After providing conceptual clarification, however, the paper illustrates the roles of ICT-BD in each of these four domains and then draws in conclusion a general claim that the roles of ICT-BD in the development of international humanitarian law are so significant that it will remain an ever fresh example for the present as well as future generations of the world.

I. INTRODUCTION: BACKGROUND AND CONCEPTUAL CLARIFICATION

A. Concept of International Humanitarian Law

In general, International Humanitarian Law is a set of rules, established by treaty or custom, applicable in situations of armed conflict. It is inspired by considerations of humanity and the mitigation of human suffering. It is especially applied to armed conflicts. It is also called the law of armed conflict or law of war. Generally, international humanitarian law can be defined as the body of international law governing the conduct of armed conflicts.¹

However, International Humanitarian Law deals with two of the most significant global concerns. On the one hand, it directs the rules and regulations of war and the combatants; on the other hand, it facilitates security for the non-combatants. Thus, in broader perspective, it is a particular segment of international law governing conditions of armed conflict or war. It tries to delimit the effects of war with delimiting means and methods of warfare. It is also a body of rules that says that belligerents should leave individuals who do not take part

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¹ Crowe, J. and Weston-Scheuber, K., *Principles of international humanitarian law*. Edward Elgar Publishing (2013).

in hostile actions in times of conducting armed conflict. IHL is, however, intended to make a balance between humanitarian concern and military necessity.

B. Concept of International Crimes Tribunal

ICT-BD is created under the International Crimes (Tribunals) Act, 1973. In general, international crimes tribunal is a legal body that tries persons indicted of war crimes or crimes against humanity as defined in section 3 of the Act.² The aims of such tribunals are to achieve justice, promote peace-building, encourage reconciliation and take remedial action. Some remarkable examples of war crimes tribunals include the Nuremberg Trials (1945), the Tokyo War Crimes Trials (1946), the International Crimes Trial for Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994) and the Special Court for Sierra Leone (2002).³

C. Background of the ICT-BD

The Liberation War of Bangladesh experienced severe violation of international humanitarian law. It was mostly committed by the Pakistani Army with the help of their local collaborators. From the commencement of war campaign, the Pakistani military had a strong tendency of exterminating the freedom loving Bengali people. During the war and genocide, Pakistani military recruited Razakars who included Urdu speaking ethnic Biharis and pro-Pakistani Bengalis to systematically rape and massacre intellectuals, college students, politicians (especially those involved with the Awami League), union leaders, members of the military, and the general civilian population.⁴ In that ferocious genocide, an estimated one to three million Bangladeshis died,⁵ millions of refugees fled to India and anywhere, from 200,000 to 400,000 women were systematically raped and kept in the camps of Pakistani warring forces.⁶

Soon after the emergence of Bangladesh as an independent nation, several measures were taken to bring the violators or their collaborators before court. For this purpose, the International Crimes Tribunal Bangladesh Act-1973 was

² Bass, G.J., *Stay the hand of vengeance: the politics of war crimes tribunals*. Princeton University Press, 2014.

³ Askin, K.. D., *War crimes against women: Prosecution in international war crimes tribunals*, Martinus Nijhoff Publishers, 1997.

⁴ Ouassini A, Ouassini N, "Kill 3 Million and the Rest Will Eat of Our Hands": Genocide, Rape, and the Bangladeshi War of Liberation. Available at: file:///C:/Users/WIN10/Downloads/10.1515_9783110659054-003.pdf (Last accessed on July 27, 2021).

⁵ Chaudhuri K., *Genocide in Bangladesh*, Orient Longman, New Delhi, 1972, at p. 22.

⁶ Ziauddin A., "The Case of Bangladesh: Bringing to Trial the Perpetrators of the 1971 Genocide," in *Contemporary Genocides: Causes, Cases, Consequences*, ed. Albert J. Longman, Leiden: PIOOM, 1996, at p. 99.

enacted.⁷ Though there were 92,000 Pakistani prisoners of war,⁸ only 195 were found guilty of committing war crimes.⁹

It is to be noted here that there was a politics behind the decrease of the number of war criminals. Around 4,00,000 Bengali freedom fighters, military officials, and civilians were remained in Pakistan.¹⁰ In one point, Bangladesh was keen to bring back her citizens from Pakistan. On the other point, it was also trying to prosecute the war criminals. Beside, post-war existence of Bangladesh needed recognition from the UN and from other countries of the world. The geo-politics of India, China and Pakistan made the situation more complex.¹¹ So, considering these complexities, Bangladesh has chosen recognition and repatriation of Bangladeshi citizens from Pakistan as a means for exchanging the POWs with taking the promise from Pakistani government to prosecute the most notorious 195 war criminals.

Consequently, Bangladesh had to focus on only those local war criminals who directly or indirectly collaborated the Pakistani war criminals.¹² For this purpose, the Bangladesh Collaborators (Special Tribunals) Order 1972 was enacted. Provisions of this law provided numerous penalties covering death penalty for some specific crimes. But it is a matter of great regret that little was known about charges, trials, and acquittals under this law. However, this process had also been halted for several reasons. For example, the nation building desire by all the population of Bangladesh after independence and the trial was blamed as problematic because of systematic flaws in justice system of the country.¹³ As a result, a general amnesty was heralded that did not cover the criminals with sever war crimes and crimes against humanity. Unfortunately, the law was repealed by the Ziaur Rahman-led government in December 1975. But demands for justice were coming from all corners of the country which was vividly seen in 1991. Finally, when the Awami League government came into power in 2009, then it set up tribunals (I and II) and the trials started in 2010. Throughout the court's

⁷ Longobardo, N., (2014) *The spoils of war: Transitional justice in Bangladesh*. American University.

⁸ Kharas, J. G., "Case Concerning Trial of Pakistani Prisoners of War (Pakistan v. India): Request for the Indication of Interim Measures of Protection" (PDF), 1973, *International Court of Justice*. Retrieved June13, 2014.

⁹ Hoque, R., "War Crimes Trial in Bangladesh: A Legal Analysis of Fair Trial Debates". 17 (1) (2016) *Australian Journal of Asian Law*.

¹⁰ *supra* note 8.

¹¹ Hoque, R. and Oette, L., "The Long Shadows of 1971", in Mizanur Rahman (ed), *Post-Conflict Justice, Peace and Human Rights*, Dhaka, Palal Prokashani, 2009.

¹² Linton, S., "Completing the Circle: Accountability for the Crimes of the 1971 Bangladesh War of Liberation", 21 (2010) *Criminal Law Forum*, at p. 203.

¹³ *ibid.*, at p. 205.