

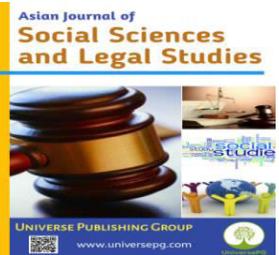


Publisher homepage: www.universepg.com, ISSN: 2707-4668 (Online) & 2707-465X (Print)

<https://doi.org/10.34104/ajssls.023.01540159>

Asian Journal of Social Sciences and Legal Studies

Journal homepage: www.universepg.com/journal/ajssls



Reparatory Justice for the 1971- Bangladesh Genocide

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ABSTRACT

The 1971 conflict in Pakistan caused tremendous damage to both people and property. As a result, Pakistan has a responsibility to reimburse Bangladesh. In some cases, several countries may pay for damages without admitting guilt, making the concept of reparatory justice difficult to establish. Reparation must be carried out in accordance with the victim nation's demands. The prosecution of war criminals after World War II brought attention to humanitarian law and customary international law, which recognizes the global repercussions of genocide. Reparations are actions done by the state to address ongoing transgressions of "Human Rights Law" and "Humanitarian Law" through monetary compensation and restitution. They are used in the framework of transitional justice. Victims of transgressions of international or humanitarian law may pursue restitution. Pakistan must still pay compensation even though it was responsible for the slaughter in Bangladesh in 1971. The tragedy of 1971 and the crimes against humanity it entailed were recognized as genocide by the international community. In order to mend relations, Pakistan should apologise to Bangladesh and find a peaceful settlement.

Keywords: Customary international law, International humanitarian law, Transitional, and Restitution.

INTRODUCTION:

Genocide is the deliberate and systematic murder of a population due to that population's race, religion, nationality, or ethnicity. Raphael Lemkin, a lawyer of Polish descent who provided guidance regarding the term 'genocide' to the American Department of War in World War II (Lemkin, 1944). According to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the term "genocide" refers to particular acts committed with the intent to wholly or partially eradicate a national, ethnic, racial, or religious group. The Reparatory System of Justice is a component of the transitional justice procedure, which implies to how nations appearing from periods of conflict and oppression address large-scale or systematic human rights violations that are so extensive and severe that the traditional justice system will be unable to respond adequately. The genocide that took place in Bangladesh was one of the most terrible and destructive ones of the 20th century (Jones, 2014).

The Bengalis had to deal with "the most incredible, orchestrated thing since the days of the Nazis in Poland," according to Time magazine correspondents (Asia Dialogue, 2018). Following the conclusion of years conflict, Bangladesh adopted the Rome Statute in March 2010, and the following week authorized the inauguration of a special war crime tribunal to conduct hearings against individuals alleged of war crimes committed during the 1971 Bangladesh Liberation

battle. After that, the first concern was whether the death of hundreds of intellectuals by the Pakistani Army and its supporters in Bangladesh in December qualified as genocide under Article 03 (02) (c) of the International Crimes (Tribunals) Act 1973.

Since then, the Tribunal has issued charges of crimes against humanity against a number of those who were involved in the atrocities committed during the 1971 conflict. Both the people and the property were severely harmed by Pakistan. Pakistan must therefore compensate Bangladesh. Many countries have been known to compensate victims without acknowledging guilt, which makes it difficult to establish the notion of reparatory justice in specific circumstances. Reparation must be carried out in accordance with the victim nation's demands. In general, especially near the end of the conflict, the notion of the state responsibility for significant international wrongs has been seen as compensation for crimes against humanity, genocide, and other serious violations of international humanitarian law (Hasan and Rupa, 2021).

Looking at the current situation in Bangladesh, it is evident that Bangladesh has the right to ask Pakistan for monetary reparations, but Bangladesh has never done so. Instead, it only requests an honest apology from the Pakistan, which would be the best form of restitution for the genocide that took place in the Bangladesh in 1971.

Objectives of the study

The objectives of this research are articulated as follows,

- 1) To get an idea of whether the atrocities was committed in 1971 is genocide or not under customary international law and the Genocide Convention.
- 2) To learn about the idea of reparatory justice.
- 3) To learn about who is to pay reparations.
- 4) To learn about what initiatives Bangladesh has already taken to get the expected reparatory justice.
- 5) To learn about the role of international community in compelling Pakistan.

METHODOLOGY:

This research employed Doctrinal and Non-empirical research approaches. As a result, this project makes use of internet databases and various e-learning tools. The three legal research approaches are utilized in alongside: Descriptive methodology, Analytical methodology, and Comparative methodology. This paper did not require any field data or sample collection because it was a doctrinal study, hence there are certain limitations on data collecting. I mainly used main and secondary sources of information. The resources are studied from a critical and analytical perspective. Secondary sources contain thorough analyses of numerous texts from the legal and non-legal sections, related publications, research papers, relevant cases, and so on.

Whether the Atrocities of the 1971 Genocide or Not

In 1971, the West Pakistani Army and its supporters in East Pakistan killed many people in one of the most heinous holocausts in recorded history. This could be compared to the genocides carried out by the Nazis on the Christians in the Ottoman Empire during World War II and the First World War (Asia Dialogue, 2018). In a law of the International Crimes Tribunal, Bangladesh adopted the term "genocide" to refer to the widespread murder that occurred in 1971. (Rafid, 2017). If we classify the atrocities of 1971 as genocide, the 1948 Genocide Convention and customary international law both require proof. According to any of the following acts performed with the intention to wholly or partially annihilate a national, ethnic, racial, or religious group will be recognized as genocide, according to Article II of the 1948 Convention on the Prevention and Punishment of the Crime and Genocide. The acts are,

- 1) Group members are being killed.
- 2) bringing about extreme bodily or mental agony for the group's members.
- 3) creating harm to the organization with the purpose to physically destroy it completely or in part.
- 4) imposing limitations to prevent births inside the community.

It can be determined whether or not the crimes committed in 1971 constituted genocide if all of these actions are taken into account. The Pakistani army

launched Operation Searchlight against the innocent, free, and patriotic Bengalis on March 25, 1971, with the clear purpose of eradicating their ethnic and racial identities (Wikipedia, 2016). This horrifying deed ought to be regarded as genocide because,

- 1) The Pakistani army murdered about 3 million Bangladeshis, fulfilling the first condition genocide. of a comprehensive
- 2) The Bengalis suffered physical and mental harm at the hands of the Pakistani army, Razakars, Al-Badr, and Al- Shams. Numerous Bengalis were subjected to torture and rape. Actually, they went after the Bengali ethnic group.
- 3) Mass murder, rape, the property damage, and a refugee catastrophe were the results of the nine-month liberation conflict. In reality, the Bengalis paid the biggest price in blood for their liberation.
- 4) Both pregnant ladies and children were killed by the East Pakistani army. The women were raped and coerced into giving birth. Many women who were raped by them become pregnant after the liberation battle. The Pakistani army sexually assaulted approximately 1.5 lakh women (Wikipedia, 2016). They actually did this to transfer kids to the Bengali group. During the Liberation War, more than 70,000 children were born.

So, It seems clear that the 1971 incident qualifies as genocide in light of the 1948 Genocide Convention. The definition of genocide found in Section 3(2)(c) of Bangladesh's International Crimes (Tribunal) Act is the same as that found in Article II of the 1948 Genocide Convention.

Following World War II, the prosecution of war criminals put the spotlight on humanitarian law (Smith, 1981). The worldwide repercussions of genocide are now recognized under customary international law. In accordance with established international law, committing a crime of genocide requires a group of people to act together with the intention of causing great harm. In the case of Bangladesh, Pakistan's principal goal was to cause the Bengali people to lose their collective moral identity. The Genocide Convention of 1948, according to the ICJ, merely contains the broad principles of international law (*Bosnia and Herzegovina Vs. Serbia*, 2015). Whether a genocide actually took place or not can be legally determined by a required judicial body. The world society and United Nations already regard the horrors of 1971 as genocide. And Bangladesh has already taken action against some local offenders who took part in the atrocities (trial of Razakars, Al Badr, Al- Shams). A resolution titled "Resolution to Declare the Crimes Committed during the 1971 Bangladesh Liberation War as Genocide, Crimes against Humanity, and War Crimes" has also been adopted by the International Association of Genocide Scholars (IAGS) (IAGS, 2023). The IASG resolution is a significant worldwide acknowledgment of the crimes perpetrated during the 1971 Bangladesh Genocide. Although some academics disagree, genocide was not committed in 1971 (Beachler, 2007).

However, there is academic agreement that the incident in 1971 in Bangladesh was undoubtedly genocide (Simon, 2013).

Concept of Reparatory Justice

When a community has experienced genocide, it is crucial to develop reparative justice for that community. Before establishing the justice process, the ideas and elements of reparatory justice should be clarified. Reparations, damages, remedies, redress, recompense, restitution, rehabilitation, etc. are essentially what "Reparatory Justice" refers to. The idea of "Transitional Justice," which refers to judicial and extrajudicial actions to carry out human rights legacies, is where the idea of reparatory justice originated. The purpose of transitional justice is accomplished through the use of the reparatory justice system. Direct attention was given to the victim's circumstance. The issue of reparatory justice, which conflicts with historical state oppression and retrograde victim compensation aspirations, is often inherited by the succeeding regime in the public debate about what should be done about the past evil-legacies (Law Explorer, 2017). Reparatory justice exacerbates personal or societal struggles in defining times of change. Reparations are meant to help victims receive justice. This is regarded to include not just war-related losses but also compensation and other actions taken by the community at large to make amends for grave human rights breaches (L, 2007).

Components of Reparatory Justice

Reparations are measures the state takes as part of transitional justice to redress persistent violations of "Human Rights Law" and "Humanitarian Law". The legal concept of reparation has two components,

- 1) The right of a person who has been hurt to get restitution
- 2) It is the responsibility of the perpetrators to pay compensation (2005)

Through court systems, one might individually or collectively seek reparatory justice. Additionally, the state may create laws to address the interests and concerns of a larger population. Here, the first is a tool for setting legal precedent, and the second is a practical means of taking more people's concerns into account.

Way to Establish Reparatory Justice

The following approaches can be used to establish reparatory justice.

Restitution

The victim can put things back where they were before the crime was committed by doing this. But it is essentially not achievable.

Compensation

This is for demonstrable financial harm that might be appropriate or the commensurate to how serious the breach was.

Rehabilitation

This refers to the method used for providing victims with medical, psychological, social, and the legal assistance.

Satisfaction

This method includes stopping the violation of human rights, seeking the truth, looking for missing people, and other things.

Apology

This is another significant method of restitution. Despite the fact that this is related to contentment. However, it is crucial for the victim's enjoyment of thought.

Guarantees of non-repetition

This genuinely guarantees stopping current abuses and providing protection for human rights. For Bangladesh, establishing reparatory justice must first result in an apology and satisfaction.

Why Should Reparatory Justice Be Established?

As a matter of accepted principle, those who have experienced violations of humanitarian or international human rights legislation are entitled to compensation. Pakistan was the perpetrator of the genocide in Bangladesh in 1971, hence the subject of who will pay the reparations is frequently asked. The situation in Bangladesh is special since its founding president, Sheikh Mujibur Rahman, selected the "forgive and forget" strategy when Bangladesh declared its independence from Pakistan in 1971. Although the nation is prosecuting local Bangladeshi accomplices for war crimes committed in the 1971 four decades later (Asadullah, 2021). Reparations were not a topic of discussion at the Nuremberg or Tokyo trials. Victims have the option to pursue restitution in domestic courts through both the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY). Following Sheikh Mujibur Rahman's return from Pakistan in 1972, the Bangladeshi government identified 194 members of the Pakistani army - three from its air force and three from its navy - as significant war criminals for humanitarian reasons. After talks between India and Pakistan, Bangladesh signed the Simla Agreement in July 1972, reaffirming its commitment to prosecuting war criminals. The government had originally planned to prosecute about 1,100 Pakistani military prisoners on March 29, 1972. Bhutto however played devil's advocate by holding 400,000 Bangladeshis in West Pakistan prisoner. He desired to use them as a negotiating chip to release war criminals from Pakistan. Additionally, West Pakistani army officers from Bangladesh were sent to incarceration camps. More than 100 war criminals are still leading opulent lives in Pakistan, which has never carried out its promise to prosecute war criminals (Sing, 2017). It is commonly known that the Pakistani military and its local allies murdered 3 million East Pakistanis, raped 200,000 women, and committed some of the most heinous war crimes during the biggest genocide of the 20th century. Pakistan must therefore compensate Bangladesh. However, the Pakistani government hasn't done much to uphold its legal obligations. Bangladesh merely demanded Pakistan's apologies for the genocide of the 1971 in the way of reparations. The

Bangladeshi government should break off all diplomatic relations with Pakistan if Pakistan does not quickly repent of its plot against Bangladesh (According to Muktiyuddha Mancha).

What Initiatives has Bangladesh Taken?

It has been determined that Pakistan must make up for the genocide that took place in 1971. Bangladesh should first demand restitution from Pakistan for their infringement in front of the international community. Bangladesh is fighting for retribution against the perpetrators of the 1971 genocide at The International Crime Tribunal (ICT). The tribunal has already acknowledged the victims' compensation. A civilized society "must acknowledge the value and dignity of persons who have been victim of wronged in the past," according to the Supreme Court of Bangladesh. The state is expected to resolve serious human rights violations in accordance with Article 2(3) of the ICCPR, which ensures the right to an effective remedy for violations of human rights and to which Bangladesh has acceded (*Bangladesh Vs. Abdul Quader Molla*, 2013). This insight serves as a beacon to prove Bangladesh's right to compensation. Since the outset, Pakistan's response to the war crimes tribunal issue has been unfavorable, even though they are accused of ruthlessly murdering a millions of innocent Bangladeshis while conducting raids on the homes, stores, and temples of Hindu minority populations. Islamabad's concern over the most recent killings of war crimes suspects was never well received in Dhaka. For the terrible massacre that took millions of lives in 1971, Pakistan has never shown regret. 2,50,000 stranded Biharis from Bangladesh who identify as Pakistanis must be compensated as part of Pakistan's apologies to Bangladesh (Khasru, 2016). While acknowledging the crimes done by Pakistan, several western nations have questioned the legality of the trial process, which has made it very difficult for Bangladesh to receive compensation from Pakistan. The war offenders' trial in Bangladesh was denounced by the Pakistani parliament. Pakistan's failure to address the atrocities committed there in 1971 may be motivated in part by a wish to protect the 195 military personnel accused of war crime (Khasru, 2016). Even though Pakistan had vowed to put them on trial, nothing of the sort ever happened. When it comes to what happened to them and their loved ones during the war, Bangladesh never forgets or forgives. In order to end long-standing animosity and enmity between two nations and usher in a new age of regional cooperation, Pakistan should ask for an official apology. Many Pakistanis continue to believe that they owe Bengalis an apology because Pakistan compelled Bengalis to fight for them. It is now appropriate for them to formally apologize to the people of Bangladesh and It is now time for the people of Bangladesh to launch an international and ICJ-level compensation campaign. Two pieces of legislation were passed after the victory on December 16th, 1971. Those are,

- 1) Bangladesh Collaborators (Special Tribunals) Order, 1972 and

- 2) International Crimes (Tribunals) Act, 1973

Involvement of the International Community

The international community's involvement in pressuring Pakistan is crucial, in addition to that of the national community. Most people abhor the most serious crimes, such as genocide, crimes against humanity, and war crimes, and they view those who commit them as the enemies of all the humanity. According to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, genocidal crimes must be punished (Convention on the Prevention and Punishment of the Crime of Genocide 1948).

The International Crimes Tribunal was established in 1973, and for Bangladesh, this was one of the first steps toward pursuing justice for genocide. The form of justice being sought after and delivered, both in Bangladesh and elsewhere, has been the subject of numerous discussions. International Criminal Law promotes the holding of international crime trials by national criminal justice systems (Jones, Academia, 2014). The complementarity between the International Criminal Court (ICC) and the criminal jurisdictions of ICC members is specifically stated in International Court of Justice, Art. 17. "For the detention, prosecution and punishment for genocide, crimes against genocide, war crimes and other crimes under international law," according to the Preamble of the 1973 Act of Bangladesh. Bangladesh has integrated international crimes through this Act, which is a process of nationalizing international law (Islam, 2019). According to the International Crimes Tribunal, the world should acknowledge the genocide that occurred in Bangladesh in 1971 in order to ensure that such a horrible act never occurs again. Within months of Bangladesh's independence, the majority of the UN members recognized it (Forum). In 2017, the Bangladeshi government said it would take the initiative to have the United Nations declare the events of 1971 to have been acts of genocide. It was accomplishing this by drawing inspiration from the American Genocide despite considerable opposition from Turkey, a regional power and member of the North Atlantic Treaty Organization (NATO). As was previously stated, Bangladesh's 1973 constitution adheres to the standards of the 1948 Genocide Convention. It is apparent that the purposeful goal of the atrocities committed in 1971 on the Bangladeshi land was to eliminate a whole ethnic group. The international community actually takes very little action to compel Pakistan because neither the recently founded International Criminal Court nor any international tribunals permit the death penalty. In the case of Bangladesh, if the war criminals found responsible for the genocide are not put to death, they will be pardoned after another change in the political climate. The International Criminal Tribunal was founded in 1973 as a result, international law can be applied to the construction and operation of the International Criminal Tribunal in Bangladesh. The common law tradition has a lengthy history in Bangladesh. Its national trial in the

international community may help advance the field of international criminal law. Like,

- 1) Serving as a warning to nations that might resort to force to violate the rights of any community.
- 2) Giving victims a powerful venue to seek justice in cases where the international community is mute.
- 3) promoting adherence to the law discouraging the use of the criminal justice system.
- 4) Clarifying the rule of command and adding some effective clauses where national and international law conflict.
- 5) generating judicial answers with precedent.

Even though ICT trials are overdue, through this procedure the community can obtain the right justice they need. The International Crimes Tribunals Bangladesh (ICTBD) was formed in 2009 by the Awami League government, which had been given an unqualified mandate by the Bangladeshi people, in accordance with the ICT Act of 1973. This tribunal's objective was to hold local offenders responsible for the atrocities of 1971 accountable for their international crimes (Baul, 2019).

CONCLUSION:

The Genocide of 1971 has been recognized as a crucial turning point in the development of the Bangladeshi nation. The victims are referred to as the martyrs and heroes of the country. Despite the fact that their pain has never lessened, the Bengali people can find some emotional comfort via reparation. This makes it clear that not everything is eligible for compensation. Pakistan is bound to provide restitution to Bangladesh if it is found that Pakistan was directly to blame for the atrocities inflicted in Bangladesh. The appropriate response for Bangladesh in the situation is reparatory justice. As previously stated, the practice of reparatory justice allows victims to regain their social standing or receive compensation. Both procedural rights and substantive rights are necessary for the effective execution of reparatory justice. Currently, Pakistan has only offered a formal apology as compensation to Bangladesh. Minister Alam "reiterated the importance of resolving bilateral issues with Pakistan, including offering of an official apology from Pakistan for the genocide committed in the Bangladesh liberation War of 1971," according to a release from the Bangladeshi government (Alam, 2021). We need to focus on strengthening our attitude of self-monitoring and self-criticism in order to commemorate genocides and pursue justice and restitution for the victims and survivors. The catastrophe of 1971 and the crimes against humanity it entailed were recognized as genocide by the international community. Pakistan should apologise to Bangladesh and work out a peaceful way to mend their relationship. The international community should take stronger action to prevent future instances of this heinous massacre, because there are still mass massacres occurring in many countries and no effective justice is being served. Bangladesh took various actions to punish the native perpetrators of the genocide in 1971, even though it still cannot receive

proper justice for it. Bangladesh must never forget both triumphant and the tragic aspects of its founding.

ACKNOWLEDGEMENT:

I am very grateful to my parents and my beloved wife for their immense support. Without their courage, I am nothing. My father always said that I should concentrate more on my academic career. My mother always encourages me in writing and ensures a suitable environment so that I can write with absolute concentration.

CONFLICTS OF INTEREST:

The author declares no conflict of interest in the paper.

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