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ARTICLE TYPE

RESEARCH PROPOSAL

Bangladesh International Crime Tribunal for 1971 War: Justice or Vendetta? A Critical Study on Contemporary Issues under International Law.

Mohammed Shahjalal

Glasgow Caledonian University, UK
shakill2@hotmail.com

1. Background

Bangladesh is a sovereign country in South Asia and became independent in 16th December, 1971, by the momentous giving up of 93,000 Pakistani soldiers to the Indian Army after a blooded conflict . The main issue is the International war related crimes committed by the Pakistan military forces to demolish the uprising by the ‘Bengalis’; the people of East Pakistan . Many people were killed, significant sexual crime occurred and a massive amount of people escaped to India and were forced constructively to become refugees like the Jewish people in WWII. Recently a very superficial initiative has been made to do justice for the victims, which created a lot of legal and political controversies, This has already attracted lots of criticisms. It is very important for a country to make justice to revamp the past atrocity.

The international crime Tribunal Act 1973, which was drafted with international assistance to punish the Collaborators, It was marginally amended in 2009, and the International Crimes (Tribunals) Act 1973 as amended formed the basis of the plans for prosecution in Bangladesh today. This is to be a 100% domestic proceeding in a common law jurisdiction, and to provide observations on how to craft a modern process of accountability at the International Crimes Tribunal that is both gender and culturally sensitive, while meeting the objective of bringing those responsible to account in a manner that meets basic contemporary international standards.

Justification for the study is to discourse on international justice that has taken place since the establishment of the International Criminal Tribunal for the former Yugoslavia in 1993; and others. Unfortunately one situation has been notably absent: the liberation war of Bangladesh from Pakistan in 1971. Aged Nazis are still pursued around the world, in an ongoing quest for justice for the Holocaust and World War II. Korean ‘comfort women’ and Chinese forced labourers who survived World War II continue to demand an adequate remedy from Japan. East Timor and its unresolved quest for accountability for the crimes of the 24 year long Indonesian occupation is a well-known tragedy that is going nowhere. Cambodia's horror under the Khmer Rouge was a situation that few really bothered about until recently through the work of the Extraordinary Chambers.

So the purpose in this research-proposal is not a question of vengeance but Justice. This research intends to focus on the key legal issues arising out of the current government's avowed determination to investigate, prosecute and punish alleged criminals under the relevant statute and its amendment. However, it is expected from this research that this can contribute to assisting and improving the controversial trial process that appears to be moving forward in Bangladesh.

2. Aims and Objectives:

- Critically analysis the legal aspects emanating from the 1971 massacre and highlight prospects that can assist Bangladesh to ensure Justice with fairness for the accused.
- Conduct a comparative reassessment of contemporary International Criminal Law rules and principles to help the current trial.

This research expects the following questions to be answered primarily

- a) Will the trial be satisfactorily “fair” under ICC standards?
- b) Is it possible to arrest and prosecute those alleged Pakistani Army Officers? If affirmative, then what would be the possible legal difficulties? And if negative why that is?
- c) Is it possible to impose individual criminal responsibility to the Bengali persons, members of Indian army, Mukti Bahini and political leaders both from eastern and western wings who were intentionally or recklessly responsible for the crimes committed during this massacre?
- d) Can ICC issue an arrest warrant to prosecute those alleged persons indicated above?
- e) What are the possible conflicting jurisdictional issues that might arise?
- f) Can Bangladesh prosecute Pakistani Military leaders for the crime of Genocide (As former President Yaha khan said “We want Bengali’s land not them”, as this comment is similar to SS officer’s intention WWII by killing the JEWS as ethnic cleansing)?
- g) Assuming the war criminals have sufficient defences against their culpable act, what are they?
- h) Is it possible to compare and contrast the Indo-Pak situation by the referring the example of “Nicaragua v USA case”?
- i) What should be the legal status of “Mukti Bahini”? Are they freedom fighters or guerrillas? They were not considered as POWs; did Pakistan militant disrespected Geneva Convention IV? Assuming yes, then what should be the legal status of recent “Libyan Rebels” and Current “Syrian Rebels”?
- j) Is it possible to challenge legality of the “Simla Pact 1973”?

k) In the context of legality of statehood, Did Bangladesh fulfil the four requirements laid by Montevideo Convention 1933? (and with special reference to Art. 38(1)(c) of the ICJ Statute).

l) Should the Al-Rajakar and Al-Badar Bahini (Local Assistant of Pakistani Force and alleged war criminals “The Collaborators”) be considered as POWs? If affirmative does this mean that the special tribunal act conflicts with Geneva Convention IV?

3. Research Methodology

This research will be conducted mostly as Library based Research. The research mainly focuses on Bangladesh and International Criminal Law along with other key conflicting issues under international law, such as Self Determination, Extradition, International Humanitarian Law, Refugee Convention 1951 and Humanitarian Intervention and fairness of a special tribunal based on the Rome Statute of ICC against the collaborators during the conflict over occurred in Bangladesh during 1971. As primary source, the examination of the Rome Statute of ICC will make an important impact on the research in order to understand the ICC provisions, its structure, tribunals and ad-hoc tribunals, strength and weakness. There will also be a wider use of 1971-74 ICJ reports, controversial National Finance Policy of East Pakistan 1971, Election Result of 1969, some classified documents from famous politicians and Diplomats. An in-depth analytical and critical approach will be taken to build up a critical analysis of current international law. Furthermore, the report of UN Security Council on East Pakistan will also be examined. For the current conflicting issue in International Criminal Law, Bangladeshi legislations like collaborators act 1972, the Constitution of Bangladesh and the International Crime act 1973 and its amendment will be reviewed and critically examined. This research also intends to refer to the International Humanitarian Law provisions such as Geneva Convention protocol and Genocide Convention. There will be an effort to develop the work by employing comparative study on some other previous ICC standards and ad-hoc tribunals like ICTY, ICTR, Nuremberg Trial and Tokyo tribunal. Other commentaries from international organizations reports like UNHRC, IBA Amnesty International, UK and ASIL and Amicus USA will also be considered. Important notes from Bangladesh High Commission in UK, Ministry of Justice (War Crime Tribunal Section) and any relevant documentary videos and audios will also be addressed if required.

As far as the secondary sources are concerned, various and different modes of resources will be studied including articles of experts and international scholars. Various newspapers and reports in 1971 of South Asian media and worldwide will be examined for the best interest of research. Other resources like Biographies and Magazine articles will be also examined.

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