



CASE STUDY

# Transitional Justice: *Bangladesh*





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### AJAR and Liberation War Museum

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#### ABOUT ASIA JUSTICE AND RIGHTS

Asia Justice and Rights (AJAR) is a regional human rights organisation based in Jakarta, Indonesia. AJAR works to increase the capacity of local and national organisations in the fight against entrenched impunity and to contribute to building cultures based on accountability, justice and willingness to learn from the root causes of mass human rights violations in the Asia-Pacific region.

#### ABOUT LIBERATION WAR MUSEUM

The Liberation War Museum was established to disseminate a non-partisan history of the War of Independence in Bangladesh, and currently holds over 11,000 items in its collection. It is a living museum where history unfolds, leading visitors to realise how the fundamental principles of

the 1972 Bangladesh Constitution of democracy, secularism, and nationalism evolved as the basis for an independent Bangladesh. The Liberation War Museum endeavors to link this history of popular struggle and sacrifices for democracy and national rights to contemporary events of human right abuses and fundamentalist tendencies.

#### PHOTOS

1. Bangladesh youth seen viewing the portraits at the independence museum during the celebration of Victory Day. Bangladesh celebrates the anniversary of its glorious victory over Pakistani occupation forces in 1971. © Getty Images/Sazzad Hossain
2. A book named "BIRANGONA 1971" is published in book fair in Dhaka. The book is on those war-heroines who were raped in the war 1971 by the Pakistani armies. © Shutterstock/Moshiur Anwer

For the last 50 years, since the liberation war, Bangladesh has been working on transitional justice. The path has been rocky, as the country dealt with major issues like economic crises and the impact of natural disasters. Despite these challenges, by 1973, 73 special tribunals had been set up, and 2,884 cases resolved. Later, a tripartite agreement was signed addressing humanitarian issues, including the release of Pakistani POWs and ‘stranded Bangladeshis’. Since that time, Bangladesh has continued working for peace and democracy by ensuring perpetrators are held to account, and recognizing and compensating freedom fighters.

## HISTORICAL BACKGROUND

At different periods of its history, Bangladesh has been dominated by Buddhists, Hindus, the Mughals, and the East India Company, before emerging as an independent state in December 1971. In 1947, when British colonial rule ended, the Indian subcontinent was divided into two separate states, India and Muslim-majority Pakistan, with Pakistan split into two regions – East Pakistan (now Bangladesh) and West Pakistan, separated by over 1,000 miles of land mass.

Although, in the beginning, the populations of the East and West Pakistan were almost equal, between 1947 and 1970, East Pakistan only received 25% of the country’s industrial investments and only 30% of its imports, despite producing 59% of its exports.<sup>1</sup> The relationship between East and West Pakistan became increasingly strained. The Central Government enacted discriminatory policies over East Pakistan, creating inequalities in education, welfare, health, the armed forces, the civil service, and in both economic and social development. Attempts to impose *Urdu* as the state language (despite *Bangla* being spoken by 98% of people in East Pakistan) led

to violent protests, with many lives lost. At the Constituent Assembly in February 1948, it was proposed that members speak either Urdu or English. This was met by a counter-proposal by Dhirendranath Datta, a member of the East Pakistan Congress Party, who moved to include Bangla as one of the languages of the Constituent Assembly. The Assembly rejected the motion causing unrest amongst the Bengalis, who protested in the streets. This fed the movement for greater autonomy and self-determination.

In 1966, Sheikh Mujibur Rahman of the Elected President of the Awami League, announced a Six-Point Demand, introducing the notion of provincial autonomy for East Pakistan. The government responded by arresting Sheikh Mujib, along with 35 other politicians, on charges of planning an armed rebellion. As a result of protests by the masses, the government abandoned the trial. In 1970, despite the Awami League winning 167 of the 169 seats in the National Assembly allotted to East Pakistan, the military dictatorship refused to transfer power. Following this result, President Yahya Khan postponed the opening of the National Assembly, and at a conference, declared to his ‘top brass’: “kill three million of them (Bengalis), and the rest will eat out of our hands.”<sup>2</sup>

In March 1971, President Yahya continued conversations with Sheikh Mujib while government troops poured into Dhaka (the capital of East Pakistan), the Awami League launched the East Pakistan movement and Sheikh Mujib declared the war of independence. West Pakistan responded by targeting those they deemed ‘militant’, and Sheikh Mujib was arrested by Pakistani authorities, who attacked the university of Dhaka, executing academics and students. Death squads killed approximately 7,000 people in a single night, and half the city’s population fled.<sup>3</sup> The Awami League formed a government in exile and declared Bangladesh a sovereign People’s Republic. This Proclamation of Independence later reformed the genesis of the Constitution, later the Eighth Amendment Case.<sup>4</sup>

1 Lorraine Boissoneault, “The Genocide the U.S. Can’t Remember, But Bangladesh Can’t Forget,” *Smithsonian.com*, 2016, <[www.smithsonianmag.com/history/genocide-us-cant-remember-bangladesh-cant-forget-180961490/](http://www.smithsonianmag.com/history/genocide-us-cant-remember-bangladesh-cant-forget-180961490/)>.

2 Robert Payne, *Massacre: The Tragedy at Bangla-Desh and the Phenomenon of Mass Slaughter throughout History* (Macmillan Company (1<sup>st</sup> ed, 1973), P. 50.

3 Jones Adam, “Gendercide and Genocide: Case Study: Genocide in Bangladesh” (2000) 2 *Journal of Genocide Research*.

4 Anwar Hossain Chowdhury v. Bangladesh, 41 DLR 1989 (AD) 165.

# THE PATTERN OF ATROCITIES

Atrocities committed against the Bengalis included mass killings, torture, arson, looting and, especially, 'a systematic policy of rape,' designed to humiliate and dominate the population. Both Hindu and Muslim women were repeatedly raped. Religious leaders openly supported the rape of Bengali women, and a Pakistani fatwa declared Bengali 'freedom fighters', Hindus, and their women 'the spoils of war' or '*gonimoter maal*'.<sup>5</sup> 'Hit and run' rape of the female population occurred as Pakistani forces occupied the land.<sup>6</sup> The Pakistan Army and paramilitary forces (*Razakars*, *Al Badr*, and *Al Shams*) kept Bengali women as sex slaves.<sup>7</sup> Many women and girls, aged between 10 and 70, were raped in the presence of their families. Some were killed after gang rape; others were captured and tortured. As a result, a large number became pregnant, and some committed suicide.

In December 1971, with the assistance of the Indian Army, the *Mukti Bahini* (East Pakistan freedom fighters) initiated a guerrilla war, and the resistance liberated vast areas of Bangladesh. The Pakistani army collapsed, demoralised by prolonged months of warfare. On 16 December 1971, Lieutenant General Amir Abdullah Khan Niazi, the Martial Law Administrator of West Pakistan, surrendered unconditionally to Bangladeshi forces. This became Victory Day in Bangladesh, and the leader of the Awami League, Sheikh Mujibur Rahman, was released from detention and formed a government.

The early 1970s saw massive social mobility in Bangladesh, intensified by expulsions, divided families, coerced sales, and inadequate government

assistance. The lack of detailed inquiries into the 1971 atrocities – including the failure to preserve or publish documents – means substantial statistical evidence is hard to establish.<sup>8</sup> However, reasonable estimates are that approximately 200,000 to 400,000 women were raped, 10 were million deported, and one million were internally displaced, with properties across the country destroyed. The unsubstantiated, but respected, figure of three million casualties represents significant sacrifices made by the country's population during the war.<sup>9</sup>

## TRANSITIONAL JUSTICE INITIATIVES

### 1. Prosecutions

After the war, the Bangladeshi government initiated judicial processes against the perpetrators of genocide. Special tribunals were set up to try collaborators and, by September, nearly 41,000 had been arrested, with 37,471 charges brought against them.<sup>10</sup> To expedite the process, 73 special tribunals were set up, and by 31 October 1973, 2,884 cases had been resolved.<sup>11</sup>

In 1973, India was holding 93,000 Pakistani troops as POWs, and Pakistan had interned at least 25,000 East Pakistanis, known as 'stranded Bangladeshis'. Bangladesh asked India to transfer over 195 Pakistani officials for prosecution. In response, Pakistan filed a claim against India in the International Court of Justice, asserting that only Pakistan could try its citizens for breach of the Geneva Convention.<sup>12</sup> There was strong international pressure to release prisoners

5 L. Bodman Herbert, Nayereh Esfahlani Tohidi 1998, at P. 208

6 Susan Brown miller, *Against Our Will: Men, Women and Rape* (New York: Simon & Schuster, 1975)

7 "East Pakistan: Even the skies weep". *Time*. 25 October 1971.

8 Christian Gerlach, *Extremely Violent Societies* (1st edn, Cambridge University Press 2010)

9 op. cit. no. 7; Mr. Williams A. Boe, New Delhi, Bangladesh Documents Vol. II at P. 200; Archer K. Blood, *The Cruel Birth of Bangladesh: Memories of an American Diplomat* (Dhaka: University Press Limited, 2002)

10 Rahman Wali-ur," Background Notes on Adoption of 1973 International Crimes (Tribunal) Act, 1973," (2014) *Journal of the 1<sup>st</sup> winter school (CSG)* LWM at P. 106; <http://www.ebangladesh.com/2010/07/24/bangabandhus-general-amnesty-declaration/>.

11 Ibid; Reza Humayun, "War Crimes and Genocide in 1971: The Reality of the Trial"-2008; Reiger Caitlin, "Fighting Past Impunity in Bangladesh: A National Tribunal for the Fighting Past Impunity in Bangladesh: A National Tribunal for the Crimes of 1971"-2010 at P. 2-3; Nazrul Islam, "Pro-liberation Forces" Unity can Defeat war Criminals, "The Daily Star (12 November 2007)

12 <https://www.icj-cij.org/en/case/60>; Clause 13 of the 'Tripartite Agreement among India, Pakistan and Bangladesh' signed in New Delhi on 9 April 1974; Mofidul Hoque, "Bangladesh Genocide: The Long Journey to Justice," (2014) *Journal of the 1st Winter School (CSG)*, LWM at P. 135-136.



A beerangana woman photographed during the Bangladesh Liberation War in 1971 © ABP/Naib Uddin Ahmed

of war. On 30 November 1973, the Bangladeshi government announced an amnesty for collaborators, excluding those accused of murder, rape, arson, or genocide.<sup>13</sup> As a result, 26,000 people were released.

In early 1974, India, Pakistan, and Bangladesh signed a tripartite agreement to address post-war humanitarian issues. These included the release of Pakistani POWs and 'stranded

Bangladeshis'. Pakistan withdrew their claim to the International Court of Justice and promised to advance trials in its own country. This agreement paved the way for Pakistan's recognition of Bangladesh's independence.<sup>14</sup>

On 15 August 1975, Mujib was assassinated. Following the assassination, the new government disbanded tribunals, and pardoned all those detained. Major Ziaur Rahman, the new leader, took an anti-India stance and favored Pakistan. The government passed an Indemnity Act providing immunity to those involved in the assassination of Sheikh Mujibur Rahman. The Collaborators Act was repealed and some collaborators emerged as ministers in the Peoples' Republic of Bangladesh.

Despite gross human rights violations, there has been little progress bringing perpetrators to justice. Although the Prime Minister signed the Rome Statute,

it was not ratified until 23 March 2010<sup>15</sup>, when the Awami League regained power. On 25 March 2010, the International Crimes Tribunal was established<sup>16</sup> to deal with the prosecution, detention, and punishment of those responsible for crimes against humanity, resulting in the prosecution of 42 individuals.

## 2. Reparations

Women freedom fighters are not given the same recognition as men, although the effects of war on women victims were significant. Doctors at rehabilitation centers reported 170,000 abortions, and approximately 45,000 'war babies' born of rape. The International Commission of Jurists stated, 'whatever the precise numbers, the team of British and American surgeons carrying out abortions, and widespread government efforts to persuade people to accept the unfortunate rape victims in the community, testify to the large scale on which rape occurred.'<sup>17</sup> To retrieve the honor and dignity of victims of sexual violence, Sheikh Mujibur Rahman encouraged society to see them as *beerangana* (Bangla for 'war heroines'), a symbol of honour and courage, rather than disgrace and humiliation.<sup>18</sup> Marriage was promoted as a strategy for community acceptance, and overcoming stigma. This strategy was designed as a positive message to those who had been raped, confirming that they had a right to a normal life.

At the end of hostilities, the government, along with the feminist activist, Begum Sufia Kamal, set up shelters for victims. Sheikh Mujibur Rahman's government established a 'Women's Rehabilitation Board', focusing on women's treatment, livelihood, and shelter. The government adopted two acts to support abused women return to 'normal life'. However, within six weeks of the assassination, all rehabilitation initiatives were halted. It was left to civil society to lobby for action, which led to the filing

13 Md. Sayedur Rahman, Md. Tanzilul Islam, and Abu Reza MD. Towfiqul Islam, "Evolution of Charismatic Leader of Bangabandhu Sheikh Mujibur Rahman," 2014 (4) International Journal of Scientific and Research publication; Mofidul Hoque, op. cit. no. 25

14 See clause 13 and 14 of the "Tripartite Agreement between India, Pakistan and Bangladesh" signed in New Delhi on 9 April 1974. Please add the URL link here.

15 See "The Rome Statute" at United Nations Treaty Database entry regarding the Rome Statute of the International Criminal Court, Michael P. Scharf (August 1998); <http://thedailystar.net/story.php?nid=131566>.

16 (ACT NO. XIX OF 1973). [20th July, 1973].

17 1971 Rapes: Bangladesh Cannot Hide History; <https://www.forbes.com/sites/worldviews/2012/05/21/1971-rapes-bangladesh-cannot-hide-history/#6fb24f7716df>

18 <https://www.dw.com/en/rape-victims-or-war-heroes-war-women-in-bangladesh/a-6556207>, mention the name of the article, author and year. The citation style is not correct.

of “Writ Petition No.445 of 2014”, demanding recognition for *beerangana*, similar to that accorded to male freedom fighters.

The tribunal felt that all the victims of sexual violence committed during the Liberation War should be compensated and rehabilitated by the State as they are ‘*beerangana*’ or war heroines. It is the moral obligation of the nation to accept, recognise, and honour them as the pride of the nation like ‘Freedom Fighters’ and ‘Martyrs’.<sup>19</sup> Further, the tribunal recommended that their sacrifices be included in school curricula. The current Government extends this recognition to include rape victims of 1971, identifying them as Freedom Fighters eligible for benefits accorded to veterans.<sup>20</sup> The 147,537 male war heroes are recognised by a government gazette which provides them with financial security, and after their death, veterans are shown respect and given a guard of honour.



Jubilation at a meeting in western Bangladesh which was already liberated. Further east fighting was still going on between the defending Pakistani army and the advancing Indian troops, cooperating with the Bengali freedom fighters. © Liberation War Museum Bangladesh/Bo Kage Carlson

During the liberation war, women raped by Pakistani forces gave birth to ‘war babies’. Many were adopted and emigrated, but many stayed in Bangladesh, often rejected by society<sup>21</sup>. To change perceptions, war babies should be known as ‘victory

babies.’ A court verdict stated that ‘the state cannot ignore designing programs removing the stigma of rape by honouring and compensating the victims for the supreme sacrifice they went through and also to provide long-term support to them, aiming at ensuring that the ripple effects do not continue to haunt our society and community in the days to come’.<sup>22</sup>

### 3. Memorialisation

The National Martyrs’ Memorial was built to commemorate those who died in the war of liberation, and several museums were built to commemorate the war. Other forms of memorialisation include naming streets, bridges, and schools, building monuments, making films, dramas, and documentaries, publishing memoirs, histories, poetry, research reports, academic books and so on. In addition, commemorative days celebrate liberation, involving a variety of activities for children.

## THE ROLE OF CIVIL SOCIETY

From 1975 until the early 1990s, there were few transitional justice initiatives. For the most part, transitional justice was confined to efforts of organisations like the Liberation War Museum, with private memorialisation initiatives to honour victims. The museum organised the first annual conference on genocide in 2008, and it subsequently became a regular international event to raise awareness. The museum collected artefacts, including personal belongings, weapons, and human remains. It has an archive of documents and personal histories relating to the war. Over the years, the museum has collected more than 21,000 artefacts, with some on permanent display in the museum. The museum describes itself as “the outcome of citizens’ efforts”, as it was established through crowdfunding.

19 The Chief Prosecutor Vs A.T.M Azharul Islam, [ICT-BD 1, Case No.05 OF 2013], pp. 153-154, para 331

20 Documentary: Muktir Nary, A Documentary About Birangana: Women of War Bangladesh Liberation War 1971 via You-tube - “WRIT PETITION NO.445 OF 2014”.

21 ‘The War Babies Should Be Called Victory Babies: Tureen Afroz’, banglamail24.com, 28 April 2016

22 The Chief Prosecutor vs. Syed Md. Qaiser [ICT BD 2, Case No. 04 of 2013], pp. 294 at para.982

## CHALLENGES, LESSON LEARNED, AND CONCLUSION

Although 50 years have passed since liberation, justice initiatives have only been implemented over the last 11 years. Many perpetrators have died, while others accused of war crimes live outside the country. Evidence has been lost or destroyed over time. Social taboos in relation to rape victims remain, and some women are not welcome in their families. Far more needs to be done for war heroines, providing them with a similar status to their male counterparts.

Lessons learned include: (i) the Truth and Reconciliation Commission (the War Crimes Fact

Finding Committee) must implement strong and inclusive processes – victims have the right to truth and healing; (ii) although a tribunal has been established, the justice system should be independent of political influence; (iii) society played a key role addressing discrimination experienced by women victims of sexual violence; (iv) the government is finally implementing policies promised to war heroines; and (v) youth are engaging to remove social taboos and create positive attitudes to victims of violence in society.

Although initiatives for justice have taken a long time, it is a testament to the demand of Bengalis that progress has been made. Violations committed by Pakistani forces and local collaborators did not prevent the creation of Bangladesh, and the nation is forever indebted to those who fought for its independence.

## HISTORICAL TIMELINE – KEY DATES

<b>1947</b>	British colonial rule over India ends, creating two independent states: India and Pakistan, with Pakistan a majority Muslim state comprising East and West Pakistan.
<b>1948-1952</b>	Bengali students in East Pakistan rise up and protest against the Pakistani government for declaring Urdu the national language. The majority of the Pakistani citizens, 54%, are Bengali. On 21 February 1952, several students die protesting language restrictions. This is now a national holiday – Language Martyrs Day.
<b>May 1954</b>	On 7 May 1954, the Constituent Assembly resolved, with Muslim League support, to grant official status to Bengali language. In 1956, Bengali was recognised as the second official language of Pakistan after Urdu.
<b>1966</b>	7 June 1966, the people of East Pakistan held a general strike in the provinces in support of the Awami League's Six Points for autonomy. The six-point movement, led by Sheikh Mujibur Rahman, was established, calling for greater autonomy for East Pakistan, and an end to the exploitation of East Pakistan by West Pakistan.
<b>January-March 1969</b>	A series of mass demonstrations in East Pakistan, culminated in the resignation of Field Marshal Ayub Khan, the first military ruler of Pakistan. The uprising led to the withdrawal of the Agartala Conspiracy Case, and the acquittal of Sheikh Mujibur Rahman and his colleagues.
<b>1970</b>	A Bhola Cyclone struck <u>East Pakistan</u> and <u>India's West Bengal</u> on 11 November 1970. It remains the deadliest cyclone ever recorded and is considered one of the world's <u>deadliest natural disasters</u> . At least 500,000 people lost their lives <sup>23</sup> . The Pakistani government, led by General Yahya Khan, was criticised for its delayed handling of relief operations. During the <u>election a month later</u> , the Awami League, led by Sheikh Mujibur Rahman, won, but was prevented from forming a government.

23 Remembering the great Bhola cyclone, Dhaka Tribune

<b>March-December 1971</b>	<p>Bangladesh proclaimed independence. During the nine-month war that followed, a million women were raped, and thousands of babies were born. A million people fled to India, a further million were internally displaced, and a large number of properties were destroyed. Three million people died. Minorities, especially Hindus, were targeted by the Pakistani Army. The most extreme case of targeted killing took place in the last days of war. On 14 December 1971, now celebrated as Intellectuals' Memorial Day, the Pakistani Army systematically executed teachers, journalists, physicians, lawyers, writers, artists, and engineers.</p> <p>On 16 December 1971, Lieutenant General Amir Abdullah Khan Niazi, the Commanding Officer of the Pakistan Armed Forces, signed an Instrument of Surrender ending the Liberation War.</p>
<b>1972-1975</b>	<p>Awami League leader, Sheikh Mujibur Rahman, became Bangladesh's first prime minister. The Bangladesh Collaborators Order (special tribunals) was promulgated by Presidential Decree in 1972, providing for the prosecution of "collaborators". The Abortion Ordinance of 1972 aimed to help women to return to 'normal life'. The government created the Bangladesh Women's Rehabilitation Board on 18 February, which sought ways to enhance the self-esteem of victims, and raise their national status, partnering with the Directorate of Training, Research, Evaluation and Communication of the Bangladesh Family Planning Association, the Central Organization for Women's Rehabilitation, the Directorate of Social Welfare of the Ministry of Social Welfare and Labor. The government sought advice to formulate its policy on the abandoned war-babies. The US Branch of the Geneva-based International Social Service worked with two voluntary agencies, the Dhaka-based Bangladesh Central Organization for Women Rehabilitation and the Family Planning Association throughout the consultation and implementation phases. From 1972 to 1974 many war babies were placed for adoption in other countries, notably Canada, followed by the US, the UK, France, Belgium, the Netherlands, Sweden, and Australia. This was facilitated by the government's Ministry of Social Welfare, and a Presidential Order (the Bangladesh Abandoned Children (Special Provisions) Order, 1972), as well as international NGOs and organisations like Mother Theresa's Missionaries of Charity. The war baby program came to a close in 1974.</p>
<b>1975</b>	<p>Sheikh Mujibur Rahman was assassinated in August 1975. Martial law was imposed. The new government, a military dictatorship, repealed the collaborators' order and disbanded tribunals. All 1,100 alleged collaborators and war criminals were released and pardoned. There was strong international pressure on both Bangladesh and India to release Prisoners of War after cessation of hostilities as per the Geneva Convention. Moreover, Pakistan had confined thousands of Bengalis working in West Pakistan, both military and civilians, their fate being similar to the Japanese-American interns during World War II. The Shimla Agreement between Prime Minister of India Indira Gandhi and Zulfikar Ali Bhutto of Pakistan in 1973 returned all POWs to Pakistan. There was a tacit understanding that Pakistan would organise its own trial for those accused of serious war crimes.</p>
<b>2010</b>	<p>The Bangladesh parliament ratified the Rome Statute in March 2010.</p>
<b>2010-2012</b>	<p>The government established judicial tribunals (ICT-1 and ICT-2) for the punishment of perpetrators, and trials began.</p>
<b>2013-Present</b>	<p>The <i>Beeranganas</i> were recognised as 'freedom fighters', and eligible for provisions made available to other freedom fighters by the "WRIT PETITION" (2014).</p> <p>To date, 42 judgments have been passed by the tribunals, 23 judgments are pending before the Appellate Division of the Supreme Court of Bangladesh, and six judgments have been executed. 37 cases are still pending before Tribunal No. 1 in different stages, and nearly 500 cases are under investigation.</p>