

Trial in Bangladesh for alleged criminals for international crimes

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Crime, although committed against a person, is an offence against a State and that is why state prosecutors (public prosecutors) pursue a criminal case. A person who allegedly commits a crime can always be charged until he is alive. Unlike civil litigation or disputes, length of time does not affect crime. In other words, it does not have statutory limitation.

War crimes, genocide and crimes against humanity are categorized as international crimes. These crimes have their universal application because of their brutality and systematic attack against civilian population.

Any individual suspected to have committed such crimes can be tried by states at any time that are parties to the 1948 Genocide Convention and the 1998 Rome Statute of International Criminal Court.

Definitions of international crimes:

War crimes: any crime that is contrary to the 1949 Geneva Convention of Armed Conflicts. This includes disproportionate use of power and action against civilians.

Crimes against Humanity: This includes murder, extermination, torture, rape and persecution or other inhuman acts as part of a widespread or systematic attack or with knowledge of attack, directed against any civilian population and knowledge of attack.

Genocide: Genocide includes any act of killing with intent to destroy in whole or in part, a national, ethnical, racial or religious group.

Difference between genocide and crimes against humanity:

If the definition of genocide under the 1948 Genocide Convention is examined, it is argued that the definition of genocide requires the "*intent to destroy in whole or in part*" of which intent can be difficult to prove in the court of law and especially those acts stemming from conflict situations.

While the crimes against humanity under the 1998 Rome Statute, do not arguably require an "*intent to destroy a group in whole or in part*" by the perpetrators, but instead require that such atrocities detailed in the definition such as murder, extermination and so on, are committed as part of a "*widespread or systematic attack directed against any civilian population*", and "*knowledge of the attack*" refers to the knowledge of the perpetrators or supporters of the attack, or of those in power situations who have acquiesced to the attack, upon any civilian population.

Past Instances:

The responsibility first lies on the state where crimes had occurred. If the domestic system falters or fails in this respect, international mechanism may come into play. In that sense, international mechanisms operate to provide redress where the domestic system fails or is found wanting.

For example, on a request from Spain, Chilean late President Augusto Pinochet was arrested in London in 1998 for crimes against humanity and only on medical grounds, he was released. Yugoslavia's late dictator Slobodan Milosevic was surrendered by the Serbian government and was put on trial at the Ad-hoc International Criminal Court in 2002 on charges of genocide, war crimes and crimes against humanity in Bosnian conflict until he died in custody.

In recent times, more than 28 years after the killing stopped, Khemer Rouge leaders are being tried before a tribunal in Cambodia. From 1975 to 1979, the Khemer Rouge leaders embarked on a pre-planned economic and social experiment and during the experiment, about 1.7 million died from brutal treatment, starvation and disease, especially those who lived in urban areas. The extermination has been known as the "Killing Fields" in international community.

The hearing on last 20th November came one day after the arrest of the last of the five alleged criminals being pursued by public prosecutors, the former Khemer Rouge President, Khieu Samphan, 76. Taken by the police from a hospital where he was recovering from an apparent stroke, he was charged with war crimes, and crimes against humanity.

The above instances demonstrate that no one, even a head of state, is immune from criminal trial against war crimes, genocide and crimes against humanity.

Bangladesh Case:

In Bangladesh's case, it is strongly argued that alleged perpetrators could be tried for crimes against humanity for their commission of such crimes against civilian population.

However the success of the prosecution case at the court of law under the current legal system in the country depends largely on three factors (a) identification of suspected criminals, (b) collection of evidence including documentary and circumstantial and (c) proof of connection, direct or indirect, between the crimes and the alleged perpetrators.

The alleged perpetrators will have the right to be represented by their defence lawyers. The legal system is adversarial and the alleged perpetrators would be found guilty only when the court finds the prosecution case against the alleged offenders "beyond reasonable doubt". It is quite a high bar for the prosecutors to cross in all criminal cases.

Among others, defence lawyers may argue that the Pakistani alleged criminals totaling 195 who were directly or indirectly involved during the butchery of Bangladeshis in 1971

were allowed to go free by then the Mujib government in 1974 under the Bangladesh-India-Pakistan Agreement of April, 9, 1974 signed in New Delhi by respective Foreign Ministers of three countries (Kamal Hossain, Swaran Singh and Aziz Ahmed). The text of the Agreement is a public document and paragraphs 14 & 15 of the Agreement are relevant in this context.

Defence lawyers may further advance their position in arguing that when the principal accused military persons from Pakistan were set free by “an act of clemency” in terms of the Agreement by Bangladesh, the case against the alleged perpetrators in Bangladesh who had a supportive role may be set aside.

It is therefore imperative preparation of the case needs to be thorough, based on documents and statements of witnesses, with a view to rebutting the arguments of defence lawyers.

Conclusion:

The trial in Cambodia shows that time and inaction in the past does not matter. The trial can be commenced provided the composition and the procedure are fair and the rights of the accused meet the acceptable and recognized international standard of justice.

The proposed trial in Bangladesh will be seen to be consistent with the spirit and aims of the UN and action against inhuman and senseless crimes that are condemned by the civilized world. The effective punishment is an important element in the prevention of such crimes, protection of human rights and the promotion of international peace and security.

The crimes committed in 1971 are heinous and cannot be forgiven or forgotten. Although the subject is an emotive matter, trial at the court of law is not emotive but a cold reality with evidence of facts and figures.