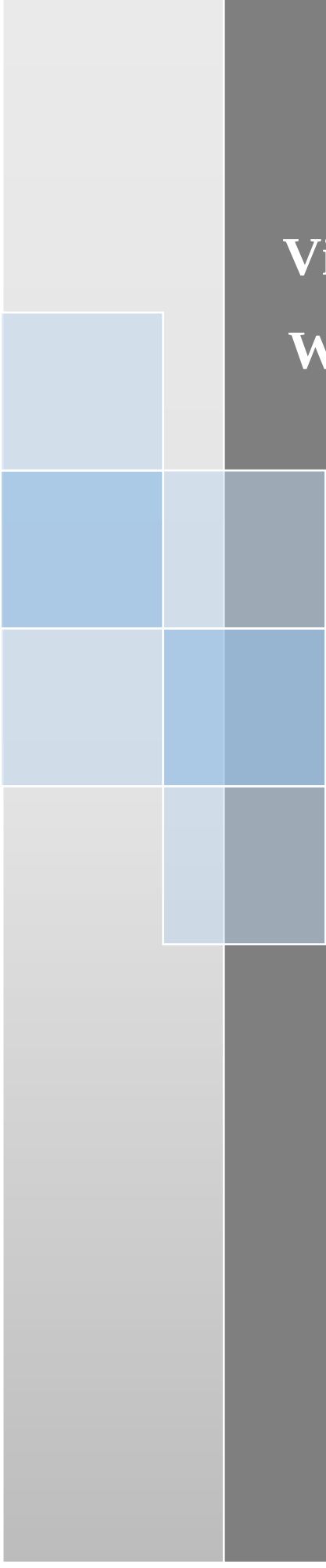




Victimization during the Liberation War 1971 and Transitional Justice: The Case of Bangladesh

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Title of thesis

*“Victimization during the Liberation War 1971 and Transitional
Justice: The Case of Bangladesh”*



*A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of
M.Sc. Master Victimology and Criminal Justice*

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List of Abbreviations

AL	Awami League
ACHPR	African Charter of Human and Peoples' Rights
ACHR	American Convention on Human Rights
BNP	Bangladesh Nationalist Party
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
IACHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTA	International Crimes (tribunal) Act
ICTBD	International Crimes Tribunal Bangladesh
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
JI	Jamaat-e-Islami
MOLWA	Ministry of Liberation War Affairs
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
SATRC	South African Truth and Reconciliation Commission
STL	Special Tribunal for Lebanon
UDHR	Universal Declaration of Human Rights
UN	United Nations

Chapter: One Introduction

Context of the Study

The twentieth century witnessed several atrocities and genocidal events. Amongst others the Armenian genocide (1915); the brutal killing during the Holocaust (1941-1945); the genocide in Cambodia (1975-1979) and the Rwandan genocide (1994). However, another atrocity took place in Bangladesh, a South Asian country and there is not much attention from the international community (Sharlach, 2000; Beachler, 2007). The country got her independence on the 16th December 1971, after nine months of war with Pakistan. The present study analyzes the response of the government of Bangladesh to this war, the ‘Liberation War of Bangladesh’ (also known as Bangladesh war, Liberation war and war of 1971) that occurred in 1971.

Problem Statement

The war between Pakistan (former West Pakistan) and Bangladesh (then East Pakistan) continued from 26th March 1971 to 16th December 1971. Though in terms of duration, it was a short war, yet it resulted in a significant number of victims. Around three million people were killed, and approximately two hundred and fifty thousand to four hundred thousand women were raped (Kabir, 1999; Sharlach, 2000; Akmam, 2002; Sen, 2012). Another ten million people were forced to migrate to the neighboring countries (Beachler, 2007; Pai, 2008; Takai, 2011). Approximately one thousand intellectuals were assassinated intentionally in a planned way with the help of some national collaborators (Pai, 2008). The women and minorities were the most vulnerable groups, and the militaries and their auxiliaries tortured them brutally (Takai, 2011). After the independence, the government of Bangladesh desired to ensure the accountability of the war. Hence, the necessity of introducing transitional justice has emerged in the case of Bangladesh.

Research Questions

The goal of transitional justice is to ensure justice and identify human rights violations in a post-conflict society (De Greiff & Duthie, 2009). Moreover, Pham & Vinck (2007) treated it as a

technique for ensuring peace and security in society. Like, other post-conflict societies, Bangladesh also initiated to establish transitional justice for ensuring accountability in the context of her liberation war (1971). Though there is no single and acknowledged mechanism to deal with a post-conflict society, rather a combination of mechanisms might address the needs of the affected groups adequately (Williams, Nagy & Elster, 2012). The United Nations proposed five pillars to deal with human rights violation of a transitional society. As a student of Victimology and Criminal Justice and also the citizen of the country, Bangladesh; the researcher intends to evaluate these initiatives of the government of Bangladesh through the lens of transitional justice. Though, there are some other measures observed by individual and group level. Still, the researcher will only include the Bangladesh government initiatives because of the time constraints and limitations of resources.

To analyze how the transitional justice measures of Bangladesh address the needs of victims, the researcher has categorized the research questions of this thesis into two groups. The primary research question is the overarching query of the thesis. The secondary questions are significant for analyzing the primary research question. Answering these questions will provide an overview of the scenario of the Liberation War of Bangladesh and the transitional justice measures taken by the government of Bangladesh to address the war.

Primary Research Question:

How do the transitional justice mechanisms address the Liberation War of Bangladesh and in what ways can the government improve those mechanisms?

Secondary Research Questions:

a. What happened during the Liberation War of Bangladesh?

-Which affected groups can be distinguished during the Liberation War of Bangladesh?

-What are the major themes related to victimization experiences during the War of 1971?

b. What are the aims and the mechanisms of transitional justice?

c. Which mechanisms are initiated by the government of Bangladesh to address the Liberation War of 1971?

Organization of the Thesis

The research work is completed in a series of seven chapters.

Chapter one, this chapter has discussed the context of the study, the problem statement and the research questions.

Chapter two highlights a methodological analysis of the thesis, including methodology of the thesis, tools of searching resources, criteria for source selection, review of the literature and this chapter concludes by stating limitations of the study.

Chapter three, start with the initial discussion, and then a detailed description of the Liberation War of Bangladesh will be given. Finally, the researcher will attempt to categorize the diversified affected groups during the war concerning scholarly articles.

Chapter four tries to narrate the idea of transitional justice and starts with defining the term. Subsequently, the research will analyze the aims and measures of transitional justice. This chapter will end by describing the pillars of transitional justice.

Chapter five will elucidate the initiatives taken by the government of Bangladesh to address the Liberation War of 1971. The author will narrate the concept and aims of those mechanisms in descending order from the wartime to present day.

Chapter six implies the summary of the thesis with special attention on evaluating the mechanisms addressed by the government of Bangladesh in the context of the five pillars of transitional justice. After that, the researcher will initiate to find out further possible scopes to develop the mechanisms of Bangladesh government to ensure an adequate transitional justice for the society.

Chapter seven will illustrate concluding remarks of this thesis.

Chapter Two: Methodology

2.1 Introduction

This section will discuss the procedure of conducting this thesis. It will illustrate the way researcher has searched for sources and to which conditions those sources were selected. Subsequently, it will describe the process of literature review shortly and ends with narrating the limitations of this thesis.

2.2 Methodology of the thesis

This thesis attempts to construct a critical analysis of the mechanisms initiated by the government of Bangladesh in the context of five pillars of transitional justice mentioned by the United Nations. Therefore, the author conducted a comprehensive review of the literature on the topic related issues. The navel point of this research was grounded in the secondary qualitative analysis; mainly on books, articles, reports, websites and legal documents. Also, some other texts were used, including historical, policy and archival records.

2.3 Searching for sources and source selection

The researcher has searched transitional justice related issues on the internet and several websites. Besides, he also searched literature through electronic databases like Hein online and Worldcat. Moreover, the researcher scrutinized all the suggested compulsory and recommended readings in different courses in the Master Victimology and Criminal Justice. Initially, he read the abstracts and the introduction chapter of those documents to find out which sources are valuable for this thesis. The researcher also went through discussions of some of the research works to judge whether there is any significance to the current research or not. The author selected the relevant studies and excluded the rest from the reference list.

Furthermore, the researcher followed the ‘snowballing’ technique. The technique mainly used to identify additional resources through an initial source to find out relevant literature (Atkinson & Flint, 2004). As there are only a few works regarding transitional justice process and mechanisms in Bangladesh, the researcher has skimmed abstract and conclusion of a source

(Booth, Colomb & Williams, 2008). Besides, he scrutinized the reference sections of a journal article or research paper to find out relevant other studies.

Since it has been tough to collect materials of high quality, therefore the researcher has contacted the 'Liberation War Museum' of Bangladesh for resources regarding transitional justice resources. They mainly provided scholarly literature based on the practices of commemoration and recalling the Liberation War event through memorialization as they have been working in this area for a long time. They also supported with some reference books and a compilation of eyewitness statements. Regarding the tribunal of Bangladesh, the researcher had a direct opportunity to take suggestions from a lawyer working in this tribunal. She has sent a few documents regarding the 'International Crimes Tribunal of Bangladesh.'

Moreover, the researcher contacted a research fellow of the 'Centre for Genocide Studies' of the University of Dhaka, Bangladesh, and collected resources to conduct this thesis. Besides, the researcher had an opportunity to take expert opinion from the chairperson of the Department of Criminology, University of Dhaka. He provided suggestions with a list of books written on different measures taken by the government of Bangladesh. Besides, he facilitated with some electronic books on transitional justice (e.g. Teitel, 2000; Roht-Arriaza & Mariezcurrena, 2006; Hughes, Schabas & Thakur, 2007, Mcevoy & McGregor, 2008; Futamura, 2008; De Greiff & Duthie, 2009, etc.).

In addition to books and journal articles, he also went through significant numbers of reports, witness statements, website and documents of the 'Ministry of Liberation War Affairs' (MOLWA), Bangladesh. Furthermore, he went to the site of the Genocide Archive (Bangladesh), the internet site of the Liberation War Museum (Bangladesh), the verdicts of the tribunal of Bangladesh, etc. Most of the scholarly articles and books were unavailable on the web. The author downloaded some articles and books from the library of the Tilburg University. He has also gathered transitional justice mechanisms found in diversified resources; explicitly found in the International Crimes Tribunal of Bangladesh, International Criminal Courts and the policy papers of the government of Bangladesh.

After collecting data from books, legal instruments, journal articles, reports, newspapers, archival data, case laws, expert opinions, conference papers, streaming videos, blog posts and web content, the researcher categorized them into four subgroups;

Resources related-

- Affected groups of the Liberation War of Bangladesh.
- Major victimization themes found in the war.
- Aims and mechanisms or pillars of transitional justice.
- Initiatives were taken by the government of Bangladesh to address the Liberation War of 1971.

Then, he went through these resources and constructed the paper based on the thematic diatribe.

2.4 Review of literature

The researcher has chosen a review of the literature to examine different mechanisms initiated by the government to address the Liberation War of Bangladesh. He reviewed more than one hundred documents and used approximately seventy among them for evaluating transitional justice measures in Bangladesh. Review of literature studies previous analysis and reports related to the current one. It is a flexible tool for analyzing textual documents. With the suggestions of some experts working in transitional justice related issues, the researcher conducted literature review rigorously. He made some categories for evaluating the addressing mechanisms of Bangladesh following the five pillars of transitional justice mentioned by the United Nations. He considered the five pillars as pre-coded categories and tried to identify diversified Bangladesh mechanisms best fit with which of the pillars of transitional justice. For this purpose, he went through the collected literature and marked related discussions related to the coded categories. For example, the arguments about the right to judicial review, to be heard and restorative justice in research works was coded under the pillar of 'prosecution initiatives.' Accordingly, the code 'delivering reparations' included all forms of restoring values of the victims (e.g. Memorialization, monetary and symbolic compensation, observing days) stated in previous works which were reviewed by the researcher during this thesis. After collecting information, the

researcher consolidated all the gathered information and evaluated the transitional justice mechanisms of Bangladesh by using the idea of United Nations approach to transitional justice.

2.5 Limitations of the Study

The researcher has faced some obstacles conducting this thesis work. One of the major difficulties was the time constraint. Time for this research work was not sufficient enough for a detailed research on this issue. However, the researcher tried to formulate a well-structured evaluative analysis within the given time.

Consequently, this thesis only focused on a specific area; transitional justice mechanisms to address the Bangladesh War. As this research work aimed to evaluate transitional justice mechanisms initiated by the government, in-depth analysis of the other addressing measures (e.g. individual, institutional level and non-governmental level) are outside of the scope of this thesis and therefore not included.

The researcher had a pre-scheduled appointment with experts working on Bangladesh Liberation War-related issues (i.e. Genocide scholars, professors and experts working in the tribunal). Besides, he also intended to meet and interview the officials working in the Liberation War Museum, Bangladesh. The plan was not successful because of canceling the trip to Bangladesh for resource limitations of the researcher. Thereafter, the experts agreed to interview through Skype, but both parties could not schedule a new meeting to discuss the issue. Unfortunately, the researcher has failed to arrange these practical and interactive sessions.

Furthermore, there were limitations regarding academic discussions and resources. It was difficult to find prosecution related sources because the respected officials denied sharing those materials for the confidential matter. Again, other resources are printed and documented in different libraries in Bangladesh, especially documents on institutional reformation related sources. So, it was not possible to get them in Tilburg, the Netherlands. The researcher tried in every single way to find alternatives to overcoming these drawbacks. Finally, considering the above-mentioned limitations, the researcher was able to ensure reliability and validity of the thesis and attempted to answer the research questions adequately.

Chapter Three: Background of conflict and victimization during the Liberation War of Bangladesh

3.1 Introduction

The author attempts to find out which groups were affected by the Liberation War and to illustrate the nature of victimization during this war. The reader will get a clear concept of the specifically targeted groups and also the sufferings of the victims in this particular event. The latent aim of addressing this section is to perceive essentiality of the emergence of transitional justice in Bangladesh. But first, the researcher discusses the case of the Bangladesh liberation war.

3.2 Brief history of the Liberation War of Bangladesh

Bangladesh is a country in South Asia and, it was known as East Pakistan until 1971. The area was a part of the Indian subcontinent and was governed by the British as a colony for two hundred years. In 1947, the whole area was divided into two nations; India and Pakistan. The present Bangladesh was a part of Pakistan. The two sides of the Pakistan have a long spatial distance and several dissimilarities (For instance, culture, language, dress pattern) (Sen, 2012; Ranjan, 2016). Nonetheless, they were together by religion and the majority of the people, on both sides, were Muslim (Ranjan, 2016).

West Pakistan ruled over the East Pakistan and marginalized its citizens (Amongst others, economy, development, political, military, education, and recruitment) (Akmam, 2002). One of the major tensions arose after the West Pakistan leader ignored the demand to consider ‘Bangla’ as a state language and declared ‘Urdu’ as the official language of Pakistan. The language movement of the East Pakistan students in 1952 forced the West Pakistan authorities to accommodate ‘Bengali’ as a national language in 1955 (Ranjan, 2016). The Pakistan government incorporated the Bengali language as a ‘state language’ of the country in 1956 (Thompson, 2012). Since then, the conflict between the two areas has inflated, and the East Pakistan people demonstrated several movements against West Pakistan government (Linton, 2010).

In 1966, the East Pakistan leader Sheikh Mujibur Rahman¹ claimed a 'six point' demand and this step was the first phase to an independent Bangladesh, according to several scholars (Linton, 2010; Ranjan, 2016). The West Pakistani rulers ignored these demands and tried to shutter the East Pakistan leaders with force (Akmal, 2002). The East Pakistan leaders continued their movements and got themselves prepared for the general election of 1970. The people of East Pakistan responded their ignorances with the ballot paper in the national election. The East Pakistan political party named the 'Awami League,' led by Sheikh Mujibur Rahman won the election with one hundred and sixty-seven seats out of three hundred and thirteen seats in the whole Pakistan. According to the regulation, they had the right to form a new government as they were the dominant party in the entire Pakistan. However, the West Pakistan authority was loafing and postponed the pre-scheduled National Assembly (Akmal, 2002). In opposition to this injustice move, the Awami League leader, Sheikh Mujibur Rahman gave a speech in front of a massive assemblage in the 'Racecourse ground' (now the Suhrawardy Udyan). He was quite explicit, and he gave a diaphanous message to his nation as well as to the West Pakistan rulers. He said, *"The struggle this time is the struggle for our liberation. The struggle this time is the struggle for our independence"* (Sen, 2012, p. 35). This speech is considered as a footstep to an independent Bangladesh and treated significance similarly with the historic Gettysburg address of the former American president Abraham Lincoln (Linton, 2010).

Initially, after the 7th March speech of Sheikh Mujibur Rahman, the West Pakistan authorities continued dialogue with the East Pakistan leaders. Meanwhile, they became more desperate not to hand over the power and gathered substantial numbers of armed soldiers in East Pakistan (Kabir, 1999). On the 25th March night, the military attacked the East Pakistan people, which is known as the "Operation Searchlight" (Reiger, 2010). The military invaded the Razarbagh police barracks, and the East Bengal Regiment headquarter at Pilkhana simultaneously. The West Pakistan soldiers also attacked student residences at the University of Dhaka as the West Pakistan authority blamed the students of this particular institution for kindling all the political movements that had happened during that decade. Mascarenhas (1971) wrote that the residence of students named Iqbal Hall (now the Shahid Sergeant Zahurul Haq Hall) and the Jagannath Hall (habitation of Hindu students) was the particular target of the militaries.

¹ He is the first president of Bangladesh and was titled as the 'Father of the Nation' and also 'Bangabandhu' (thereafter president Mujib, Sheikh Mujib, Bangabandhu Sheikh Mujibur Rahman).

Akmam (2002) illustrated that the West Pakistan authorities intended to impose their control on the Awami League leaders, Bengali armed forces, and students through this coercive leap. The authority figure of the East Pakistan, Sheikh Mujibur Rahman was arrested from his home on the same night. However, he was able to announce the declaration of independence. He declared that,

“Today, Bangladesh is a sovereign and independent country. The Bengalis are fighting the enemy with great courage for an independent Bangladesh. May Allah (Synonymous word of God used by the Muslim) aid us in our fight for freedom. Joy Bangla (Victory of Bangladesh)” (Sen, 2012, p.35; Ranjan, 2016, p.135). Later on, the Awami leader M. A. Hannan and second-in-command of the East Bengal Regiment (Chittagong station), Major Ziaur Rahman² transmitted the declaration of independence on behalf of Bangabandhu Sheikh Mujibur Rahman on 26th and 27th of March, 1971 respectively.

Greene (2007) analyzed the causation of hate crimes in society. Based on a statistical analysis of 1996, she identified religious biases as the primary causes of hate crimes. The case is similar in the Liberation War of Bangladesh. In an interview, a member of Pakistan Army openly stated their hatred to the ‘Hindus.’ They considered people of this religious group as the enemies of the ‘United Pakistan’ (Linton, 2010). However, there are several other mainly targeted groups during the 1971 war; Bengali soldiers, the Hindus, the Awami League leaders and their followers, students and intellectuals (Kabir, 1999; Akmam, 2002). During the war, a notable number of people were killed, and a significant number of women were raped (Kabir, 1999; Sharlach, 2000). The sexual intercourses gave births of twenty-five thousand children approximately (Linton, 2010; Sen, 2012). Besides, significant numbers of people migrated to the neighboring countries as refugees and faced immeasurable sufferings.

“In April 1971, I arrived in East Pakistan. We were told to teach the Bengalis a lesson. After a day of fighting, when I looked around, I saw the whole place was strewn with body parts. There were decapitated bodies, heads without bodies, dismembered arms and legs littered all over the place. Dogs were roaming about, dogs without any hair on them. They were feeding on human beings. Scores of vultures were descending too, and the dogs and vultures were fighting over

² Later lieutenant general and president of Bangladesh.

human body parts. There were thirty-six of us in my cell, but only three could swear that they had not committed unnecessary violence in the war” (Saika, 2011, p.488).

A Pakistan soldier asserted the above statement after the independence of Bangladesh. He was a ‘prisoner of war’ and imprisoned in a camp in India. According to different scholars, the West Pakistan invasion and killing of the East Pakistan people was a systemic, planned and well-mechanized action (Linton, 2010; Moses, 2011). Moses (2011) also referred the event as ‘one of the bloodiest’ slaughters of modern times from a report in early May of 1971 published in the New York Times.

There were diversified mechanisms of torture and oppression by the Pakistan soldiers and their local associates. The male and female, both were sexually assaulted and tortured. While discussing the persecution mechanism, a report of the Redress (2004) illustrated that the Bengali people were beaten, hanged from the ceiling, uprooted nails, forced to lie on the ice. Mascarenhas (1971) stated that the villages of the Hindu’s were burned and demolished. He titled this operation as a ‘killing and burning’ mission. Even the children were not safe from their brutal acts. An eyewitness, Tony Clifton stated, *“I have seen babies who have been shot, men who have had their backs whipped raw. I’ve seen people literally struck dumb by the horror of seeing their children murdered in front of them or their daughters dragged off into sexual slavery”* (Clifton in ‘Newsweek,’ 28th June 1971 found in Kabir, 2010, para 9).

One of the reporters of NBC News, named Ron Nessen, published a report based on a video of the 26th of March, 1971, made by a professor of the Bangladesh University of Engineering and Technology. This short video showed that the Pakistan military soldiers gathered the students, workers, and teachers of the University of Dhaka who lived in the hall and the quarters of the Jagganath Hall in a large field. Then they opened fire and killed several people. After that, they dumped the dead bodies in the middle of the field (Crew, 2016). This incident has been just a single picture of the crime against humanity of the Pakistan soldiers.

“In the war, I saw the worst areas of France, the killing grounds in Normandy, but I never saw anything like that. It took all of my strength to keep from breaking down and crying” (Kabir, 2010, para 11).

A Congressman of the New Jersey, Cornelius Gallagher made the above quotation to the writer. He had previous experience of the horror during the Second World War. He visited India during the Liberation War of Bangladesh and made this statement after seeing the cruelty of the Pakistan military.

However, Wood (2006) illustrated the sexual violence occurred during several conflicts in the last century, including the civil war in Srilanka, Sierra Leone, Israel-Palestine, Bosnia-Herzegovina, Vietnam, Peru and El Salvador. Among these lists, the sexual exploitation by the Bosnian Serbs and Hutus of Rwanda are considered as ‘Crime against humanity’ and ‘Genocide’ respectively according to the international law. Similarly, in the case of Bangladesh, Linton (2010) and Sen (2012) claimed that the Pakistan military used ‘rape’ as a ‘weapon of war.’ They compared this act with the sexual violations of Japanese during the Second World War. The Pakistan soldiers and their collaborators tortured and gang raped women. They killed many of these victims by using the bayonet and other mechanisms (Sharlach, 2000). The researcher has already mentioned the ‘Hinduphobia’ of the Pakistan army. However, the cases of ‘rape’ were indiscriminately happening to the women of all religion (Pai, 2008).

Subsequently, the torture and brutal killing of the intellectuals was one of the worst crimes committed by the Pakistan army and their associates. The execution squad named ‘Al-Badr’ has led this mission. This iniquitous act was happening when the defeat of Pakistan was visible during the first and second weeks of December 1971. The daughter of the professor Rashidul Hasan of the Department of English at the University of Dhaka, Ms. Suraiya Amina recalled the day when her father was forced to pick up from their house.

“On December 14, 1971, just two days before our independence, Al-Badar Bahini (the militia wing of local collaborators of the Pakistani Army) took my father away. After twenty-two days of disappearance, his decomposed body was found in the Mirpur Killing ground along with the dead bodies of other intellectuals” (Bangladesh Study Group, 2009, p.9).

To identify important victimological themes, Kiza et al. (2006) interviewed more than one thousand war victims from twelve countries. They described the experiences and sufferings of victims during the war. They found that the victims were bodily injured and their properties were destroyed. The victims suffered from economic and material losses. Also, the victims were

excluded from their living place forcefully. Most of the victims lost their close family members. According to the scholarly descriptions, all the findings of their study are similar in the case of Bangladesh (Akmam, 2002, Kabir, 2008; Ranjan, 2016).

Given the previous research works related to the event of the Liberation War, the conclusion can be made that the Pakistan military and their associates carried out a planned operation and intended to destroy the Bengali people, especially the Hindus and the intellectuals (Akmam, 2002; Kabir, 2008; Sen, 2012). According to several scholars, the event was a ‘genocide’ (Kabir, 1999; Sharlach, 2000; Beachler, 2007; Kabir, 2008; Pai, 2008; Takai, 2011; Lachowski, 2016) whereas, others argued the intention to use ‘rape’ as a weapon of war is a grave violation of human rights (Sharlach, 2000; Takai, 2011; Ranjan, 2016).

The political leaders of the Awami League started to coordinate the war, and they tried to achieve international facilitation. They formed a provisional government on 17th April 1971. Though Sheikh Mujibur Rahman was in jail in West Pakistan he was announced as the president of that transitional government. One of the most senior leaders of Awami League, Mr. Tajuddin Ahmad was named as the first Prime Minister of Bangladesh. In absence of the President Sheikh Mujibur Rahman, the Vice-president Mr. Syed Nazrul Islam was assigned to be the acting president. This wartime government mainly campaigned for international recognition. Besides, they lobbied the Indian government to train Bangladeshi young people. These youths were used to conduct guerrilla operations inside the Bangladesh territory (Akmam, 2002). The people of Bangladesh tried to protect their motherland with the limited resources and training they had. Moreover, the Indian army joined to assist the freedom fighters of Bangladesh on December 3, 1971. The Pakistan army was forced to surrender to the allied forces of India and Bangladesh on 16th December 1971. After nine months of the sanguinary war, a new sovereign country has emerged on the map of the globe named the “People’s Republic of Bangladesh” (Rahman, 2013). This war is known as the “Liberation War of Bangladesh,” and local people titled it as the “Mukti Juddho”³ (Sen, 2012).

³ Also known as Bangladesh Liberation War, War of Bangladesh, War of 1971, 1971 war and the Bangladesh-Pakistan war.

3.3 Affected groups: The case of the Liberation War of Bangladesh

The researcher will elaborate this section in two parts. The first part will illustrate the ideas on categories of victims as addressed by scholars who are studying different events. Based on the outcome of the first part, the researcher will analyze and categorize the affected groups of the Bangladesh Liberation War in the second part.

3.3.1 Categories of victims

The idea of victim and victimization is fragmented, and there are several groups of victims according to different pioneers. Hans Von Hentig identified thirteen categories of victim groups based on social classes (Ferguson & Turvey, 2009). In contrast, Raffaele Garofalo believed that victims could fuel their victimization process by committing different acts (Meier & Miethe, 1993). For example, the people who joined late night parties frequently or live in a high crime risk zone have more chances to be victimized than others. Likewise, Stephen Schafer classified victims into seven subgroups based on their vulnerability in the act. However, the founding father of victimology, Benjamin Mendelsohn made a categorization of six types of victims in the context of the level of guilt of the victim. These are: completely innocent victim (e. g. Children and women), victim with minor guilt (due to ignorance), voluntary victim (e. g. Suicide, statutory rape), the victim is guiltier than the offender (Fuels the act, provocative act), victim alone is guilty (Killed by a person who tried to do self-defence) and simulating victim (False complaint of rape) (Segstock, 1976; Ferguson & Turvey, 2009).

On the other hand, Rader & Rhineberger-Dunn (2010), illustrated four categories of victims based on their relationship with the offender. These are the innocent victim, innocent with character flaws, unlikable but not culpable and manipulative victim. Again, Young-Rifai (1982) discussed the idea victimization from a societal perspective. Her idea of victimization is more related to diversified kinds of injustices and based on the relationship with the society we live in (Strijdom & Schurink, 1992). Furthermore, Bloomfield, Barnes & Huyse (2003) described the typology of victims from three broad perspectives. We can make the following heading for these groups-

- Numbers (Individual or collective victims)

- Effects (Direct or indirect victim)
- Time (First of second generation victim)

The first category has focused on the numbers of the victim of an event. The researchers claimed that victimization might happen both individually and collectively. Even the personal victimization occurred because of the inclination of a particular targeted collective group. Second, they discussed victims based on the effects on their lives. The specifically targeted people are the direct victims (e.g. Killed, assaulted, abused, etc.). Also, victimization of the indirect victims occurred for their inclination with a direct casualty. Third, the victims can be different in the context of time and victimization is transferable through generations. Besides, the researchers also gave importance on the vulnerability of women and children by considering them as a unique category. Similarly, Minoiu & Shemyakina (2012) pointed out the negative impact on the health of a child.

Though the researcher has identified diversified categorization of victims, still, three categories are most common in scholarly research works. These are-

1. Primary victim (Direct victim)

Those who have suffered from physical, mental, emotional and economic loss are treated as direct victims (Wolfgang & Singer, 1978; UN Declarations, 1985, para. 18; Sutton, 1988; Letschert, Staiger & Pemberton, 2009). The people who were killed, injured, survived and lost their business in these incidents can be considered as direct victims (Wolfgang & Singer, 1978; European Forum for Restorative Justice, 2008; Romani, 2010).

2. Secondary victim (Indirect victim)

The family members, dependents of a direct victim and those who were victimized while trying to assist a person to get rid of victimization are indirect victims (First responder, rescue workers, firefighters) (Letschert, Staiger & Pemberton, 2009). Besides, the family members and co-workers of a direct victim are considered as the indirect victim (Sutton, 1988; Romani, 2010; US Department of Justice, 2015).

3. Tertiary victim (Community victim)

Tertiary victims are people whose lifestyle have become stressful and arduous because of a particular event (Letschert, Staiger & Pemberton, 2009). The people who watched the incidents on televisions, newspapers and other media might be victims of a particular event. The War was threatening to the whole community and also an alarm for other communities as well as to the state. Besides, this single event can create terrifying the people living in other countries.

3.3.2 Affected groups during the Liberation War of Bangladesh

The researcher has identified several affected groups in the Liberation War of Bangladesh. For a systematic analysis, he incorporated all those groups under the major headings discussed in the previous section.

3.3.2.1 Primary victim of the Liberation War of Bangladesh

Those who are killed and severely injured during the war belong to this group. Approximately, three million people were killed during nine months of the war, including a large number of the Hindus, the Awami League leaders, the freedom fighters, students, intellectuals and professionals (Sharlach, 2000; Akmam, 2002; Sen, 2012). Also, people, those who were in jail and hosted during this war and survived are primary victim. There are no specific statistics of survivors of the war. In addition to other survivors groups, the two hundred and fifty thousand to four hundred thousand rape victims are survivors (Sharlach, 2000; Akmam, 2002 & Sen, 2012). Moreover, a significant number of people were financially victimized. The war affected the economy of the country and people have lost their houses, business, jobs, lands and valuable properties. Also, more than ten million people were forced to migrate to neighboring countries for food and shelter (Kabir, 1999; Beachler, 2007; Takai, 2011). There might be some other groups who are also primary victims of the Liberation War of Bangladesh (e. g. Those who became mentally sick after the event).

3.3.2.2 Secondary Victims of the Liberation War of Bangladesh

The family members, dependents, friends and colleagues are the secondary victims of the war. For example, the child, spouse, parents of a victimized person are secondary victims. Besides, health professionals might be victims while handling excess traumatized patients. There is no

authentic source of how many professionals were there to deal with this massive number of injured people during the war. There were several temporary camps established on the border of India to ensure medical facilities for the wounded people. The health experts were puzzled to deal with the large numbers of injured persons (Moses, 2011). A few newspapers, television correspondences covered the war and gave updates to the whole world. The professional media groups were in lots of stress, and they are also the secondary victim of the war. For example, the researcher has studied the writings of the assistant editor of the Morning News during the war, Mr. Anthony Mascarenhas (Dummett, 2011). He used to publish the atrocities in the 'Sunday Times' because he was refused to publish this news in his newspaper. Finally, the people who witnessed torture, rape of women, killing, etc. can bring under this category and they are also secondary victims. There are some writings regarding these sufferings. For example, Professor Neelima Ibrahim wrote the experiences of the rape victims in her book named 'Ami Berangana Bolchhi,' (Kabir, 2008).

3.3.2.3 Tertiary victims of the Liberation War of Bangladesh

War is always a threat to the peaceful situation of society. During the war of 1971, there were serious tensions in neighboring countries and as well as around the whole world. The powerful countries like the USA and China supported the West Pakistan. In opposite, India and the USSR assisted the current Bangladesh (Then East-Pakistan) (Moses, 2011). So, the war is a dangerous and threatening event to the security of the whole international community. However, keeping the global community aside, we can identify at least one active group in tertiary level victims of this war; they were the Bengali people living in the world at that time.

From the above discussions. It is clear that the victims in this thesis are from diversified groups and their victimization has occurred during the Liberation War of Bangladesh. The researcher found some classifications made by Kabir (1999) and Akmam (2002) in their research. Both of them constructed five subcategories of victims, including the following,

- The Hindus
- The Awami League leaders and their supporters
- Communists and socialists
- The freedom fighters and their families

- Students of universities, intellectuals or professionals

Furthermore, the word victim in this thesis includes the people who were killed, tortured, oppressed by the Pakistan military and their associates, lost their houses, resources, freedom fighters and women who were raped and sexually assaulted in the war of 1971.

Chapter Four: The Idea of Transitional Justice

4.1 Introduction

To evaluate the addressing measures taken by the government of Bangladesh, we need to understand the notion of transitional justice. The author initiates to provide an idea of transitional justice based on scholarly discussions. Primarily, the researcher concentrates on the emergence of the concept and definitions of transitional justice. After that, the researcher discusses the primary aims to be achieved through this particular form of justice in a post-conflict society. Besides, various mechanisms of transitional justice have also been illustrated. Finally, the researcher represents the pillars of transitional justice measures and brings all the measures under five headings as approached by the United Nations.

4.2 Concept of transitional justice

The term transitional justice introduced during the 1980s and 1990s was indicating the transformation of Eastern Europe and Latin American societies from dictatorship to more people's right based and democratic societies (Haider, 2016). Therefore, transitional justice was used to indicate the measures taken by a country to address the voluminous human rights violations of her antecedents. The concept became popular in the late 1990s as a tool for constructing accountability for post-conflict societies. The researcher discussed the idea of transitional justice considering similar thoughts of the scholars rather following a descending or ascending order based on years.

In 2004, the importance of transitional justice took the attention of the United Nations and the Secretary General of that time, Mr. Kofi Annan. He described transitional justice as *“the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation”* (UN Security Council, 2004).

Instead of large-scale past abuses, De Greiff & Duthie (2009) stated transitional justice addresses large-scale human rights violation (for instance war situations). In contrast, DeTommaso, Schulz & Lem (2017) titled transitional justice as 'Post-conflict justice mechanisms.' They added if the

country failed to address the previous violations adequately, there is a high risk of emerging conflict situation within a few years. It is necessary to address the past events and needs of the victims for establishing further security of the citizens (De Greiff, 2009). Again, Roht-Arriaza & Mariezcurrena (2006) disagreed with using the word ‘post-conflict’ justice because there might be large-scale oppression by the state herself in spite of conflict between two or more groups.

Nevertheless, several scholars were quite distinct and gave importance on ensuring accountability. Bell (2009) treated transitional justice as a process of establishing accountability during the period of transition. Similarly, Waldorf (2009) viewed transitional justice as a tool to identify the truth of a post-conflict society (Amongst others war and state violence). He defined, *“Transitional Justice consists of all the mechanisms that states, societies, and communities use to provide accountability and redress for genocide, crimes against humanity, and war crimes”* (p.22). Alike, Roht-Arriaza & Mariezcurrena (2006) also focused on accountability. They quoted the concept of from the idea of Lutz and Sikkink (2001) and stated: *“Conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes”* (p.1).

Regarding justice, Teitel (2000) viewed transitional justice as a symbolic form of justice and claimed that it is mostly dependent on political flows. She pointed out three key features of transitional justice, including trials, sanctions and cooperative measures between states. Transitional justice also gave emphasize on civil and political rights. Furthermore, it as a tool for political consensus between different groups and an essential tool for introducing democracy in the society. It also brings harmony to the political bodies and assists to move towards a peaceful society (Mcgrego, 2008).

Considering reconciliation, transitional justice as an institution which provides retribution for the perpetrators for human rights violation, acknowledge the victimization of a victim and provides reparation for their losses, publicizes what happened in the period of transition and takes initiatives for restoring a peaceful society (Williams et al., 2012). Moreover, it is also a method of dealing with the past legacies and moving forward towards promoting justice, the rule of law and peace (Pham & Vinck, 2007).

4.3 Aims of Transitional Justice

The world experienced several conflicting incidents during the second phase of the last century caused large numbers of direct and indirect victims of rape, murder, torture, genocide, ethnic cleansing, dehumanization, and cruelty, etc. The primary aim of transitional justice mechanisms is to close the human rights violation era and establish a peaceful society. Besides, it addresses the past violence incidents in such a way to restrain the probability of recurrence.

Gross (2004) identified two primary goals of transitional justice. Firstly, it addresses the human rights violation of the past adequately. With this move, it conveys respect to those who were victimized during the period of transition. Again, including all the parties, it aims to establish a democratic society.

There are several goals of transitional justice illustrated by scholars, but they all gave priority on ensuring accountability of what happened during the period of transition as the primary aim. The goals of transitional justice can be achieved through an international tribunal, truth commission in national level and also by local level justice initiatives. Though these elements have different methods to ensure fairness, there is a general resemblance between these instruments at least at one point; the wellbeing and value restoration of the victim (De Greiff & Waldorf, 2009; Waldorf, 2009).

The International Criminal Tribunal for the former Yugoslavia and International Criminal Tribunal for Rwanda were established during the 1990s to restore and maintain the international security and peace. In her book *“War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy”*, Futamura (2008) illustrated how the International Criminal Tribunal for former Yugoslavia initiated to ensure and preserving peace in the community by acquiring following accomplishments,

- Establish truth regarding the human rights violations during transition time
- Assure accountability
- Hear the words of the victims
- Peace restoration and ensures justice

Furthermore, she discussed some strategic aims of the transitional justice in reference with the two tribunals mentioned above, including diversified scale of punishment, close the notion of redemption after committing a criminal act, enacting the rule of law in society, implementation of international law and finally incorporating victim empowering actions. According to her point of view, transitional justice measures are a form of an alternative justice, and the tribunals are considered as significant contributors for ensuring this substitute justice in the post-conflict societies. About the annual report of both of these courts, the researcher discovered that aims of these tribunals echoed the motto of transitional justice. Also, with these tribunals, the South African Truth and Reconciliation Commission is also treated as a landmark for establishing transitional justice in the transitional society. Teitel (2000) also agreed with the notion that transitional justice aims to repair the harm suffered during the period of a conflict situation. Moreover, it concentrates on restoring the value of the members of the society.

Additionally, transitional justice wiped out stigmatization and the feeling of dehumanized of the victims by establishing relationships with the perpetrators. They also might be economically empowered by the reparations (both individual and collective) provided by this justice process. It aims to ensure reparations for victims to recover or reduces the losses and retributions of the perpetrators who committed international crimes (punishment or public apology) (De Greiff & Waldorf, 2009). It is a method of establishing a reasonable relationship between the past and the future of society (Mani, 2007).

Nonetheless, the aims of transitional justice should be both backward and forward looking (Waldorf, 2009). The coordination is necessary for a secured and peaceful society. There are some mechanisms those are both backward and forward looking measures at the same time (Amongst others apologies, memorials, and reparations) (William et al, 2012). According to the Trial international (2017), the truth searching, reduction of the likelihood of recurrence and the measures initiates for establishing security in society as backward looking aims of transitional justice. In opposite, the victim oriented approaches and ensuring the rule of law in society are forward-looking goals of transitional justice.

To summarize, transitional justice addresses mass human rights violations, ensure justice, shows respect to the victims and empathy towards their victimization. It also initiates adequate measures for value restoration and creation a feeling of an active member of society.

Furthermore, it brings economic stability as well as a secured and safe environment in society (De Greiff & Duthie, 2009).

4.4 Pillars of transitional justice

The expedition to ensure accountability for committing human rights violation has started during the late 1940s. The International Military Tribunal at Nuremberg as an initial step for searching the truth and legacies of the past (Williams et al., 2012). Futamura (2008) also considered the Nuremberg trial as a basement for further peace and justice seeking attitudes. Subsequently, there was a broad range of mechanisms used to ensure accountability in a post-conflict society. One can think of truth commissions, international criminal tribunals, reparations, memorials, and value restoration processes. There are no fixed combinations of mechanisms and different states have included diversified combinations of tools (Waldorf, 2009). Besides, there is no universal consensus when addressing the instruments of transitional justice among scholars. Often, the mechanisms are divided into pillars when discussing this justice process. However, different terms and components are also used. Nevertheless, the researcher addresses the transitional justice pillars following the categorization of the United Nations (2010). Though there are differences in naming the elements, the essence of most of the instruments is similar in the writings of different scholars.

In the initial phase, the mechanisms of transitional justice were only two centered; identifying truth and criminal prosecutions (Mani, 2007). Later, the researcher traced four common mechanisms addressed in almost all scholarly research works include, criminal justice, reparative mechanism, truth seeking and reform of the institutions (Pham & Vinck, 2007; De Greiff & Duthie, 2009; Williams et al., 2012; Haider, 2016; DeTommaso et al., 2017). Consequently, Gross (2004) advocated for amnesties whereas, De Greiff (2009) asked for particular attention on reforming the security division. Furthermore, De Greiff & Duthie (2009) incorporated some other mechanisms like rehabilitation program for the victims and restored the relationship between victims and perpetrators. Kritz (1995) also emphasized on rehabilitating the affected groups.

Interestingly, Boesten (2010) gave importance on a different mechanism to address the post-conflict societies and proposed to include an independent ‘gender commission’ in association

with other measures of transitional justice. He advocated for more concentration on gendered based violence during a conflict situation. Besides, he also emphasized on incorporating human rights violations in the education and textbooks for creating awareness among the next generation. No single mechanism can address the transitional period properly rather a combination of measures can play a crucial role. It is necessary to construct a combined and structured initiative for an effective transitional justice process (Williams et al., 2012). The community can make any combinations best fit their society from the above-discussed mechanisms. Regarding the question of combination, we can bring the example of the East Timor's transitional justice initiatives. They incorporated both the truth commissions and hybrid international criminal tribunal simultaneously (Waldorf, 2009).

However, the author already discussed that there are standard mechanisms in almost all the scholarly research works. All those measures can be included under the broader concept of transitional justice pillars. Parmentier (2003) proposed a method of addressing transitional justice named as 'TARR' model and discussed the mechanisms as pillars. The pillars include truth, accountability, reconciliation, and reparation. Again, Boraine (2006) made a category of five pillars and included institutional reform as the fifth one with the rest pillars in TARR model. Lambourne (2014) also tried to construct a comprehensive model by inserting local ownership with the five pillars as discussed by Boraine.

Before 2010, the United Nations had four pillars to enact and evaluate transitional justice initiatives for a post-conflict society (Lambourne, 2014). After the "*Guideline Note of the Secretary-General: United Nations Approach to Transitional Justice*" in (2010), the United Nations incorporated 'National consultations' as the fifth pillar of transitional justice. In this paper, the researcher will include all the addressing measures discussed above under the heading of the following five pillars of transitional justice mentioned by the United Nations,

- Prosecution Initiatives
- Facilitating initiatives in respect of the right to truth
- Delivering reparations
- Institutional reform
- National consultations

The researcher will describe the concept of these pillars, their specific aims, and mechanisms in further discussions.

4.4.1 Prosecution Initiatives

The prosecution initiatives are the official bodies which bring the perpetrators to justice and announce punishment for their engagement with human rights violations in the past.

One of the primary aims of the prosecution initiatives is to restrict future probabilities of conflict relations in society. Following the United Nations (2010) approach to the transitional justice, the researcher summarized the minimum standards of prosecution initiatives like following,

- Autonomous and efficient judiciary.
- Efficiency in national prosecuting and investigating.
- Compact legal provisions.
- Ensure adequate advocacies for victims' and witness.
- Correctional facilities.

The prosecution initiatives include international, domestic and hybrid criminal courts; who are questing for accountability in a post-conflict society. They gave importance to both deterrence and reparative measures. With a goal of maintaining international standards, these courts have to be objective and non-discriminatory. The criminal tribunals also concentrate on capacity building of the national judiciary. However, the International Criminal Court is the only permanent international court, working for ensuring accountability where a state denies or fails to prosecute the perpetrators (art. 17 of the Rome Statute).

4.4.2 Facilitating initiatives in respect of the right to truth

Truth seeking efforts give the society a real picture of the past conflict, including the causes and consequences of that incident. It is crucial to identify what happened during a period of transition for ensuring sufficient rights of the affected groups. Truth can be acquired through a body or a group of institutions which are approved by certain authorities to investigate for a particular period (DeTommaso et al., 2017).

After analyzing the United Nations (2010) guidance note of the Secretary-General to address transitional justice, the researcher has summarized six common pivotal activities of diversified truth-seeking mechanisms as below,

- Assemble information from victims, witnesses, and perpetrators
- Research on victimological themes (e. g. Violence against women and children)
- Causes and consequences of the violent activities in the society
- Arrange open discussions and awareness campaigns
- Publicizing the final documents based on the investigations
- Recommendations for ensuring security and preventing further conflict

Truth seeking is a non-judicial mechanism, and the authorities can be varied from regional and international courts, treaty bodies. In some societies, it is known as a truth commission, inquiry commission or fact-finding commission but the goals are unique, revealing the truth of the transitional society. The truth commission or truth and reconciliation commission is widely used in different post-conflict societies (e.g. South Africa, Chile, etc.). According to Haider (2016), *“Truth Commissions are official, non-judicial commissions, of limited duration established to investigate human rights abuses, usually those perpetrated by military, government or other state institutions”* (p.4). Truth commissions accumulate narratives and counter-narratives of the victims and perpetrators respectively, and submit a formal document of facts.

4.4.3 Delivering reparations

The term 'reparation' indicates those mechanisms initiated to redress the feeling of victimization of the affected groups and individuals. These reparations can be both 'collective' and 'individual' remedies. Besides, they can be further divided into symbolic and material reparations. According to the United Nations (2010), monetary compensation, medical assistance, psychological support, education and the return of property are considered material support. While, public apology, construction of museums and memorials and observing days of commemoration are treated as symbolic reparations.

The United Nations has taken a comprehensive approach to delivering reparations for the victims and introduced the *“United Nations Basic Principles and Guidelines on the Right to a Remedy*

and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law” in (2005) also known as Van Boven/ Bassiouni Principles. This instrument attempted to establish reparations as a right of victims (art. 11). Moreover, it proposed five specific reparative measures like below,

- **Restitution (art. 19)**

Restitution is the process of value restoration and brings back the victim to the previous condition (Letschert & Boven, 2011). Ex: enjoyment of human rights, the return of property, etc.

- **Compensation (art. 20)**

Provide monetary assistance for mental and physical losses. Amongst others lost education, social benefit, etc.

- **Rehabilitation (art. 21)**

The medical, social, legal and psychological support are various forms of rehabilitation.

- **Satisfaction (art. 22)**

It is mainly symbolic reparations, including public apologies, building monuments, etc.

- **Guarantees of non-repetition (art. 23)**

Taking necessary measures to assure people of the society that the occurrence of such event will not happen again. For instance, ensuring autonomous judicial body, adequate law enforcement in society (Groenhuijsen & Letsehert, 2012)

The United Nations (2010) also suggested arranging a dialogue with the affected groups before constructing reparative mechanisms. The victims will get an opportunity to address their needs, and thus an effective combination of reparative measures can be formed. Furthermore, the incorporation of history in the education, official programs in memory of the victims and preserving the documents of the history are also reparation measures. The delivering reparations can be viewed as a process of connecting with the future by making victims empowered in the new society (Haider, 2016).

4.4.4 Institutional reform

Institutional reform means excluding the past offenders who had significant responsibilities in diversified institutions and fueled the pace of the conflict. The primary aim of reforming institutions is to reduce the probability of a further conflict. Furthermore, the secondary

objectives are enabling the rule of law, protecting human rights, establishing peace and security in society. DeTommaso et al. (2017) proposed for a serious reformation in different institutions, especially in the security forces, judiciary and political bodies who were responsible for past violent activities. Besides, the formation of military and public services during the transitional period should be dispersed by following the rule of law. Again, to increase the knowledge and understanding of the officials on human rights issues, there is no alternative to effective training and awareness programs. These will assist them in capacity building in addressing human rights issues adequately (United Nations, 2010).

4.4.5 National Consultations

The concept of national consultations is comparatively a new phenomenon in the notion of transitional justice. In 2010, the United Nations incorporated it as the fifth pillar to address a post-conflict society adequately. The involvement of national consultations (for instance, the representative of the victim groups, experts working on victim rights, combined policies with non-governmental agencies) in this alternative form of justice process allows the direct voice of the affected groups. It brings an opportunity to have a real scenario of the violent incidents and help to find out the specific needs of the victims. Furthermore, introducing national consultations also creates a sense of belongingness and enthusiasm.

The Office of The United Nations High Commissioner for Human Rights (OHCHR) advocated for including this mechanism as a pillar. In 2009, they stated, “*National consultations are a form of vigorous and respectful dialogue whereby the consulted parties are given the space to express themselves freely, in a secure environment, with a view to shaping or enhancing the design of transitional justice programs*” (OHCHR, 2009, P.3).

The United Nations (2010) advised ensuring participation of representatives from diversified groups (e.g. Minorities, women, etc.) for the effective national consultation program. This inclusion will be able to address the specific requirements of that past conflict society. Lambourne (2014) suggested to include members of civil society as a national consultant for peacebuilding and trauma reduction of the most affected groups.

Chapter Five: Transitional Justice Mechanisms in Bangladesh

5.1 Introduction

Before evaluating the addressing mechanisms of the Liberation War of Bangladesh in the light of transitional justice, we need to identify which initiatives have been taken by the government of Bangladesh. The researcher will illustrate the concept, aim and short description of those mechanisms. After a conflict, diversified affected groups respond differently, and their needs are not always the same. It varies from class, age, gender, race, and ethnicity, etc. Besides, it may depend on the social environment (Strijdom & Schurink, 1992). Keeping this idea in mind, the researcher investigates to find out the specifically targeted groups aimed by the government of Bangladesh to launch a particular measure.

5.2 Mechanisms to address the Liberation War of Bangladesh

Today, passing forty-six years of independence, Bangladesh has initiated diversified mechanisms to address the war and to ensure accountability. The country commemorates the victimization of her people by observing several commemoration days, building monuments, establishing the international crimes tribunal, war memorials, providing allowances. The author initiates to accumulate all the measures under three phases constructed by the researcher considering the political formation of Bangladesh. After her independence on 16th December 1971, Sheikh Mujibur Rahman has led a democratic government till his assassination on the 15th of August 1975. After that, the country was under military rule till 1990. Then, it returned to her previous form and turned into a parliamentary democratic state in 1991 (Lachowski, 2016). Following the phases mentioned above, the researcher will elaborate in which ways the Bangladesh government addresses the Liberation War in details.

5.2.1 1st phase: 1971-1975

The researcher has identified five measures allocated by the government of Bangladesh. These are described below.

a. Rape victims: The ‘Birangona.’

The government of Bangladesh officially declared the raped victims of the war as ‘Birangona’ (also called as heroines of the war, war heroine, brave women or courageous women). After six days of victory over Pakistan, on 22nd December 1971, the new Bangladeshi government has been made this announcement (Islam, 2012). The aim was to acknowledge the sufferings of rape victims and recognize their victimization as a sacrifice for the country (Harrington, 2013). Besides, it was an attempt to prevent rape victims from being excluded and neglected by their family and society (Mookherjee, 2015). Initially, the term has aimed to show respect to all the women, including political activists, rape survivors and also the freedom fighters (who have actively taken part in the war). However, later it only used to signify the victims of rape during the war (D’costa, 2016).

In 1972, the government initiated some remarkable rehabilitation programs for the ‘Birangona.’ These were namely medical support (including abortion of pregnancies caused by the rape), training programs, a ‘marry off campaign’,⁴ managing the international adoption of the ‘war babies’ (Raped women’s children born in 1972) and arrangement of government jobs (Mookherjee, 2015; D’costa, 2016).

b. Collaborators Act, 1972

After the Liberation War of Bangladesh, the jurisdiction of the people who were engaged in the crime against humanity, genocide and war crimes were claimed from the people of Bangladesh. By this demand, president Mujib emanated a particular act to endeavor local collaborators and associates of the Pakistani soldiers. This bill was titled as the “Bangladesh Collaborators Order 1972” (Haque, 2016). Moreover, the government has also endeavored to find out the association of public employees in the Pakistan army. After three following amendments, the act was settled in 29th of August 1972 (Kabir, 2008). Chikon Ali was the first collaborator who tried under this law. He was charged for several criminal activities and sentenced to death. This act accepted written complaint from any person, and it was a tool for victim’s empowerment. Besides, it also allows a convicted to appeal to the high court. Again, the act ensured correctional facilities

⁴ Encourage people to marry the rape victims (Marriage is treated as an essential part of human life in Bangladesh society).

which is one of the goals of prosecution measures. The government of Bangladesh granted an official pardon to the minor criminals except for the crimes of murder, rape, and arson on the 29th November 1973 (Haque, 2016). Around 37,341 people were arrested initially, and around twenty-six thousand got redemption with the announcement of general amnesty for the collaborators, those have no particular association with war crimes (Kabir, 2008). The Pakistani war criminals were excluded from the justice process as it was not possible to file a case against them under the collaborators' act. Later, the initiative of prosecuting war criminals has faced serious criticisms because of its limited capabilities (as the law was aimed to prosecute only the collaborators who assisted the Pakistan army) (Sellars, 2017).

Later, this act was revoked on 31st December 1975 by the martial ordinance (Haque, 2016). However, the Collaborators Act (1972) can be considered as the seed of the present International Crimes Tribunal of Bangladesh.

c. Bangladesh Freedom Fighter Welfare Trust (1972)

The government of Bangladesh issued a Presidential Ordinance in 1972 to establish this trust for the well-being of freedom fighters⁵ and their family. However, the freedom fighters who are receiving allowances from other sources (e.g. those who were in the military, civil, police services, etc.) are excluded from the responsibility of the trust. This trust is regulated and monitored by the 'Ministry of Defense,' government of Bangladesh. The trust provides financial support to the poor freedom fighters (including wounded and martyrs) and their families. Besides, they also bear medical, educational and marriage costs of the freedom fighters and their families (Saifullah, 2014). Also, they introduce different rehabilitation programs and celebrate all national days of Bangladesh (For instance Martyr's Day, Independence Day, New Year's Day and Victory Day). In 2010, the trust got approval from the government of Bangladesh to proceed on a proposed welfare plan named "Bangladesh Freedom Fighters Welfare Trust Rescue Plan-2010". The implementation of this scheme is ongoing, and it initiates to establish a multistoried, commercial and residential building for freedom fighters (MOLWA, 2017). This trust has a close association with the 'Ministry of Liberation War Affairs,' government of Bangladesh.

⁵ At that time, it was only the people who have actively taken part in the Liberation War.

d. International Crimes Tribunal Act, 1973

The government of Bangladesh has been taken further initiative to try the war criminals of Pakistan and their auxiliaries with the formation of a crimes tribunal under the 'International Crimes (Tribunal) Act, 1973' considering the limitations of the jurisdiction of the Collaborators Act. Two professors of international criminal law, Hans-Heinrich, and Otto Triffterer have written the draft of this Act (Lachowski, 2016). On the 20th July 1973, the parliament of Bangladesh passed the International Crimes (Tribunals) Act to launch prosecution against the perpetrators (regardless of their citizenship) who were engaged in internationally recognized crimes during the Liberation War of Bangladesh. The article no. 3 of the International Crime Tribunal Act, 1973 mentioned the formation of a tribunal with authority to prosecute Crimes against Humanity, Crimes against Peace, Genocide, and War Crimes. Besides, it includes any other crimes acknowledged by the international law (ICT-BD, 1973)

Hossain & Wara (2014) stated the act as the first statute on international crimes. Primarily, the Act has a point of conflict with the highest law of the country, the 'Constitution of Bangladesh.' The parliament has amended the constitution on 25th July 1973 to solve this issue. This step was an attempt to establish a sound and effective prosecution measures (Kabir, 2008).

Furthermore, this act opened the scope to prosecute the war criminals of Pakistan and their associates under an independent and active tribunal keeping the Nuremberg laws ahead (Moses, 2011). Initially, the number of Pakistani accused 'prisoners of war' were around fifteen hundred, and later the Bangladesh government has initiated to hold the prosecution against one hundred and ninety-five of them (Pai, 2008, Hossain & Wara, 2014). While discussing the jurisdiction of the International Crimes Tribunal Act, 1973, Takai (2011) argued, *"It provides for the prosecution of anyone who has violated a crime enumerated in the statute, regardless of whether that person was in a position of power to during the War"* (p. 406).

After that, the proceedings of the Act were delayed because of some political issues in the local and global arena. The newly born country, Bangladesh was seeking worldwide recognition and also the appreciation of the United Nations. The Pakistan continuously submitted complain to the Security Council against the prosecution initiative of Bangladesh. Though the United States recognized Bangladesh in 1972 and they also asked to return the war prisoners following the

Geneva Convention. Bangladesh has failed to get UN recognition in 1972 because one of the members of the Security Council, China vetoed against them supporting Pakistan on the issue of returning prisoners of war. Bangladesh has to wait for UN recognition until 1974 (Moses, 2011). At the same time, there were serious negotiations and dialogues between the authorities of Pakistan, India, and Bangladesh. The President of Pakistan has asked to return the accused 'prisoners of war.' He also threatened to prosecute Bengali officials and people who were living in Pakistan. Later, he proposed for a tradeoff; the return of one hundred ninety officers and Pakistan will recognize Bangladesh as a 'state.' Besides, the president of Pakistan promised to prosecute these accused officers in their land. Bangladesh agreed to this proposal, and there was a tripartite agreement between Bangladesh, India, and Pakistan named the 'Tripartite Agreement, 1974' (Moses, 2011, Sellers, 2017). However, the scope of prosecuting the associates of Pakistan army (Bangladeshi war criminals) who has committed international crimes remained plausible (Kabir, 2008, Lachowski, 2016).

e. The Gallantry Awards (1973)

On the 15th of December 1973, the government of Bangladesh issued an official gazette and announced 'Gallantry Awards' for people who have taken part in the Liberation War of Bangladesh and had extraordinary contributions. In total, six hundred and seventy-seven people were awarded in four categories based on their courage and heroism. The four categories and number of awards are-

- Title of the highest honor (Bir Sreshtha): 7 persons
- Title of top honor (Bir Uttam): 68 persons
- Title of praiseworthy category (Bir Bikram): 175 persons
- Title of certificate of commendation (Bir Pratik): 426 persons

Among them, the title of the highest honor awards was martyrs of the war. Two female freedom fighters were also included in the list, namely Bir Pratik Ms. Taramon Bibi and Dr. Captain (Rtd.) Sitara Begum (Amin, Ambreen & Ahsan, 2016). William A. S. Ouderland is the only foreigner who received the title of the certificate of commendation (Bir Pratik) for his role to assist the freedom fighters directly during the war.

They received ribbons and medals in the year 1992. Until the year 2001, these awards were only a symbolic form of respect. On the 7th March 2001, these awardees got monetary allowances and also an appreciation letter. In 2016, the government has announced a massive increase (i.e. 150%) in the financial benefit for the awardees (Mamun, 2016).

5.2.2 2nd phase: 1975-1991

The researcher has found two significant measures taken by the government of Bangladesh to recall the Liberation War of Bangladesh in this category. These are described as follows.

a. National Martyrs Memorial (1976)

The National Martyrs Memorial was initiated to build in 1976 to recall the Liberation War of Bangladesh. It has seven pillars, which resemble the history of the struggles of the Bengali people against Pakistan, from the Language movement (1952) to the Liberation War (1971). Besides, it is considered as the spirit of Bengali nationalism and symbolic cognition of the Bengali independence (Choudhury & Armstrong, 2013). In every national affair, people come here with flowers and pay homage to their predecessors who were killed during the Liberation War of Bangladesh.

b. Independence Day Award (1977)

The 'Independence Day Award'⁶ was introduced in 1977 as an honor to the martyrs of the Liberation War. It is the most prestigious award regarding respect in Bangladesh. Moreover, it is also considered as the highest recognition of all the national awards introduced by the government of Bangladesh. The government of Bangladesh delivered this award to Bangladeshi people or organizations, who have a significant contribution to the country in some selected fields. Amongst others- role in the Liberation War, the 'Language movement,' literature, journalism, medical science) in every year on the 'Independence Day' (26th March (Khan, 2014). The award introduced to recall the martyrs of the Liberation War of Bangladesh.

⁶ Worth a gold medal, a certificate of appreciation and 0.10 million taka (Currency of Bangladesh).

5.2.3 3rd Phase: 1991-Present

In this Phase, the researcher has found significant numbers of mechanisms initiated by the government of Bangladesh to address the Liberation War of 1971. These instruments are illustrated below.

a. Martyred Intellectuals Memorials (1993)

Just before two days of the end of the Liberation War, the associates of the Pakistan army have been picked up massive numbers of intellectuals (including teachers, doctors, and advocates) from their houses (Sen, 2012; Ranjan, 2016). Their bodies were found in several mass graveyards, and one of the largest killing fields was in Rayer Bazar, Dhaka, Bangladesh (Zaman, 2003). To preserve the memory of the intellectuals who were killed, the government has initiated to build a memorial at this place in 1993. The memorial aims to remind the sufferings of intellectuals and resemblance the sorrow of the nation. Bangladesh officially declared 14th December as ‘Martyred Intellectuals Day’ and officially commemorates her intellectuals who were killed during the Liberation War.

b. The Column of Independence (1996)

The government of Bangladesh established the Column of Independence at the historical ‘Suhrawardy Udyan’ (Previously known as the Race Course ground). This place has lots of significances including the 7th March 1971 speech of Bangabandhu Sheikh Mujib and also the most desired surrender of the Pakistan army in the 16th December 1971. The government has established a monument at this place with an intention to restore the memoir and preserve historical site related to the Liberation War of Bangladesh (MOLWA, 2017).

c. Ministry of Liberation War Affairs (2001)

The establishment of a separate ministry covering the Liberation War under the government of Bangladesh is one of the most significant decisions that reflect the importance of the Liberation war to the citizens of Bangladesh. In 2001, it was established with an aim to assure the diversified rights of the freedom fighters and their families. They also arrange seminars and take experts opinion for constructing victim oriented policies.

The ministry targeted several groups of victims specifically the freedom fighters, families of the martyrs and wounded freedom fighters and their families. The principal aims of the department are the following,

- Support the freedom fighters (rehabilitation, medical care, etc.)
- Attempt to preserve histories and memories of the war.
- Establishment of monuments and memorials for commemorating the Liberation War.
- Expansion the spirit of the Liberation War among the future generation
- Provide allowances for the freedom fighters and their families.
- Arrange exceptional opportunities for the children and grandchildren of the freedom fighter in government jobs.
- Encourage making of documentary films regarding the Liberation War.
- Prescribe vocational training for freedom fighters and their dependents.
- Poverty reduction program for the female members of the freedom fighters (MOLWA, 2017).

Furthermore, they rename roads and other forms of infrastructure after the name of the heroes of the Liberation War to respect their contribution. Besides, they officially observed the Liberation War-related national days as a part of recalling the event (For instance Martyr's Day, Independence Day and Victory Day).

d. National Freedom Fighter Council (2002)

In 2002, the 'National Freedom Fighter Council Act, 2002' was established (MOLWA, 2017). The National Freedom Fighter Council is an authorized body to monitor organizations that are working on the issue of the Liberation War. Besides, this council is assigned to update the list of the freedom fighters. Also, they take necessary steps to include the name of the freedom fighters in the databases and also in the official national gazette. It works closely together with the Ministry of Liberation War Affairs.

e. International Crimes Tribunal (Bangladesh) (2009)

After the killing of President Mujib in 1975, the issue of actual prosecution of war criminals was latent till 1992. In that time, one of the major political parties of Bangladesh named the

‘Bangladesh Nationalist Party’ (After that BNP) has formed a political alliance with another political party known as ‘Bangladesh Jamaat-e-Islami’ (After that JI). The major leaders of JI were accused committing war crimes and assisting the Pakistan army during the Liberation War of Bangladesh, and several newspapers at that time have published their association (Kabir, 1999, Bangladesh Genocide Archive, 2017). The social and civil society, including the family of the victims of the 1971 war criticized the newly combined political alliance. They started protesting and demanded the prosecution of the war criminals. They also organized a symbolic ‘people’s court’ to increase awareness among people. The government tackled this movement, and the issue went indiscernible again (Kabir, 1999, Kabir, 2008). Later, the eighth national election in Bangladesh was in 2001, and the BNP came into power. They appointed two ministers from the Bangladesh JI. According to the victims, witnesses and freedom fighters, these two leaders were claimed to have a feral role in the Liberation War of Bangladesh (Kabir, 1999, Kabir, 2008). This incident led to protest in the whole country. There was a public demand from the educated urban youth to bring the perpetrators under the jurisdiction (Ranjan, 2016). The opposite major party, the Awami League (after that AL) leader, Ms. Sheikh Hasina (Daughter of late President Sheikh Mujib) has incorporated this agenda in their national election manifesto in 2008 and promised to prosecute war criminals for ensuring justice and value restoration in society. They won the election by a large margin and declared to establish an International Crimes Tribunal (Bergsmo & Novic, 2011).

The National Parliament of Bangladesh has decided to enact the ‘International Crimes (Tribunal) Act, 1973’ in 2009 and established a special tribunal in 2010. This court was established under the same act which was previously initiated in 1973, the ‘International Crimes (Tribunal) Act, 1973’ (hereinafter ICTA) to bring the perpetrators who have committed international crimes during the Bangladesh Liberation War (Islam, 2012; Jalil, 2012; Haque, 2016; Sellars, 2017). The government amended the Act in 2009 and 2013, and the tribunal has started functioning on 25th March 2010. Initially, eleven persons were taken under the jurisdiction of this tribunal and majority of them were the leaders of JI⁷ (Afrin, 2010; Jalil, 2012; Samad, 2016). The fact-finding committee of the tribunal has already identified around fifteen hundred and ninety-seven war

⁷ According to victims and witnesses, this political party was against a sovereign Bangladesh and the party’s active role was published in several newspapers of 1971.

criminals and their associations with diversified criminal acts in the Liberation War of Bangladesh (Afrin, 2010).

This tribunal is widely known as the International Crimes Tribunal of Bangladesh. It is an entirely ‘Domestic Tribunal’ to prosecute internationally recognized crimes (*The Chief Prosecutor Vs Delowar Hossain Sayeedi*, 28th February 2013, Para V, Section 16). The court is an autonomous body and can try any person, regardless of his/her nationality. Rahman & Billah (2010) appreciated this step and compared this as a symbol of state sovereignty. In spite of being a domestic law, this act has a strong base from the international law (Bergsmo & Novic, 2011). At present, there are two tribunals (Tribunal-1 and Tribunal-2) superintend the cases against individuals who are accused of genocide, war crimes, crimes against humanity, and any other crimes under international law (Samad, 2016). As this research work aimed to evaluate transitional justice mechanisms, in-depth analysis of the working procedure of the tribunal is outside of the scope of this thesis and therefore not included.

f. Bangladesh Freedom Honor (2011), Bangladesh Liberation War Honor and Friends of Liberation War Honor (2013)

The government of Bangladesh has taken the decision to show gratefulness to foreigners, foreign organizations, and agencies who played a crucial role in Bangladesh during its Liberation War. These awards were categorized into three chronological types (Regarding honor and value) as follows.

- Bangladesh Freedom Honor.
- Bangladesh Liberation War Honor.
- Friends of Liberation War Honor.

Bangladesh awarded the highest recognition, ‘Bangladesh Freedom Honor’ to the Late Ms. Indira Gandhi⁸ for her innumerable assistance and support to the people of Bangladesh in every sector (For instance Refugee crisis, political, military and finally, recognition of Bangladesh as an Independent country) in 2011. The government of Bangladesh paid respect to her for tolerating and giving shelters of large numbers (i.e. Ten million) of Bengali refugees in India during the Liberation War (Habib, 2011). The government of Bangladesh has honored around

⁸ Honorable Prime Minister of India during the Liberation War of Bangladesh.

three hundred and thirty-eight foreigners, organizations and agencies for their role (both direct and indirect) in the victory of the Liberation War with Pakistan in 1971(The Daily Star, 2013). All the awardees received a gold medal and a certificate of appreciation from the government of Bangladesh.

g. The ‘Birangona’ get the status of ‘Freedom Fighter’ and the redefinition of the ‘Freedom Fighter’ (2014)

Before 2014, there was no precise definition of the ‘freedom fighters’ (also known as Muktiyoddha or Mukti Bahini). The people who have participated actively during the Liberation War of Bangladesh were known as freedom fighters. Louise (2013) defined the term freedom fighter refers to male soldiers whereas the ‘Birangona’ indicates victims who were raped during the war period. However, the Ministry of Liberation War Affairs, the government of Bangladesh has provided a definition in 2014. According to their definition, *“A person who have participated/ assisted in the Liberation War of Bangladesh acting to the country’s independence called upon by the Father of the Nation Bangabandhu Sheikh Mujibur Rahman from time nine month time between March 26, 1971, to December 16, 1971.”* (Kallol, 2016, Para 2).

So, the title is also applicable for those who assisted Bangladesh to achieve victory against Pakistan. The members of different security forces, doctors, and nurses who were in various medical camps to treat the Bengali soldiers, journalists, artists, and singers on the radio at that time are also considered freedom fighters. The government announced, a person had to be older than fifteen years old during the date of war for being registered as a ‘freedom fighter.’ Those who are already enlisted in the ministry will remain so and will get allowances as per the government rule. The aim of redefining the term was to provide services and ensure the rights of the genuine freedom fighters (as the government found several manipulated certificates of ‘freedom fighters’ to get special facilities) (Kallol, 2016). There might be a confusion whether the freedom fighters are also victims or not. The researcher did not find any clear distinction or guidance regarding the issue. Some of the freedom fighters were directly victimized, and others were not. However, considering the sub-groups stated by Kabir (1999) and Akmam (2002), the researcher has considered the freedom fighters as victims in this thesis.

The high court ruled against the government of Bangladesh regarding why the ‘Birangona’ has not given the status of freedom fighters. In answering the rule, the government admitted their failure and issued a gazette announced them equivalent to ‘Freedom Fighter’(Kallol, 2016). Besides, they will be eligible to apply all the services and financial allowances similar to the freedom fighters. The ‘National Freedom Fighter Council’ has announced these facilities for the ‘Birangona.’ Initially, forty-one rape victims of the 1971 war were awarded this status. The government also issued a public apology for their inefficiency to ensure adequate respect and services for the ‘Birangona’(Kallol, 2016). From 2014, the ‘Birangonas’ are having the similar status of the freedom fighters. Also, they are getting allowances and all types of facilities the freedom fighters do.

h. Observing ‘Genocide Day’ (2017)

The most recent measure to address the war was following the 25th March as the ‘Genocide Day’ of Bangladesh. The government has taken the initiative to commemorate the victims and also point out the planned atrocities occurred by the Pakistan army during the Liberation War of Bangladesh. The government of Bangladesh has already asked the ‘United Nations’ and the ‘United Nations Human Rights Council’ to recognize the day internationally (Mamun, 2017; Sidique, 2017; The Times of India, 2017).

5.2.4 Other Initiative

- **The Liberation War Museum, Bangladesh (1996)**

The Liberation War Museum is not a full phased government organization; rather it is run by the board of trustees. However, in spite of not being a government agency, they are working with them closely for streaming the spirit of the Liberation War to the next generation through various initiatives like school programs, a film festival, a photo exhibition, research and academic conferences (Liberation War Museum, 2017). They also collect and preserve memories of the war, including maintenance the discovered burial sites and graveyards of the war. Apart from this, they arrange a ‘Mobile Museum’ program to train and make students aware of human rights issues and the history of the Liberation War of Bangladesh (MOLWA, 2017).

Chapter Six: Discussions

6.1 Introduction

After the peace of 1971, the newly established state of Bangladesh has intended to identify the actual picture of her period of transition. The aim of this chapter is to evaluate these mechanisms from the perspective of United Nations (2010) approach to transitional justice. Subsequently, the ways to improve the operational efficiency of these pillars will be discussed in brief.

6.2 Transitional Justice measures in Bangladesh: Evaluation

The researcher has already discussed the United Nations (2010) five pillars of transitional justice and steps taken by the government of Bangladesh to address her Liberation War. In this part, he will examine the transitional justice mechanisms of Bangladesh under those pillars, starting with the prosecution initiatives.

6.2.1 Prosecution Initiatives in Bangladesh

The researcher has discovered three ‘Prosecution Initiatives’ taken by the government of Bangladesh. These are,

- Collaborators Act, 1972
- International Crimes Tribunal Act, 1973
- International Crimes Tribunal (Bangladesh) (2009)

After the independence of Bangladesh, the first prosecution initiative, known as the ‘Collaborators (Special Tribunals) Order 1972’ (Collaborators Act), was to hold the local associates of the Pakistan army accountable. The aim was to try local partners who committed crimes during the Liberation War, including crimes against humanity, genocides and war crimes. The author has already mentioned that the ‘Collaborators Act (1972)’ issued an amnesty for all crimes, except the murder, rape, and arson. After the general amnesty by the government of Bangladesh, a large number of people accused of these grievous crimes were confined in jail. The government had intended to prosecute these suspects under this Act. The bill lacked

capacities to prosecute Pakistani war criminals. It failed to assure the minimum standard of prosecution initiatives mentioned by the United Nations. Subsequently, the government has issued the International Crimes (Tribunal) Act, 1973 to broaden the scope of the accusation. After the killing of President Mujib, the new military government led by General Ziaur Rahman has expunged the Collaborators Act and did not take any step to prosecute the war criminals of Bangladesh. Besides, the ‘International Crimes (Tribunal) Act’ was set aside (Hossain & Wara, 2014; Haque, 2016). The issue of accountability of the Bangladesh Liberation War through actual prosecution initiative was nowhere for a long time.

After thirty-eight years of independence, the government of Bangladesh was able to form a special tribunal named ‘International Crimes Tribunal of Bangladesh’ to operate legal proceedings against any person who were accountable for the massacres during the liberation war of Bangladesh (Asadullah, 2016). The researcher has already illustrated the minimum standard of prosecution as described by the UN approach to transitional justice in chapter four. Now, he will evaluate the prosecution initiative of ICT-BD keeping that standard in mind.

- Regarding the issue of the independent and efficient judiciary, the government guaranteed that the jurisdiction process of the tribunal would be vigorously conducted following international human rights (Samad, 2016). Besides, the tribunal assures a fair trial and the freedom of the court has secured by its article 6 (2) (A)⁹ (Islam, 2012). The chairman and the members of the tribunal must be a judge of the Supreme Court of Bangladesh, and the government appoints them (Article 6 (1)¹⁰ and Article 6 (2)¹¹ of ICTA). Unfortunately, there is no independent research on the autonomy and efficiency of the judiciary and whether they live up to their promises.
- Before establishing the ICT-BD, the existing laws of Bangladesh had limitations to ensure justice in the case of the Liberation War. The establishment of the tribunal has opened a stable opportunity to try international crimes in national level. The government

⁹ Article 6(2A) states, the Tribunal shall be independent in the exercise of its judicial functions and shall ensure fair trial.

¹⁰ According to article 6(1), For the purpose of section 3, the Government may, by notification in the official Gazette, set up one or more Tribunals, each consisting of a Chairman and not less than two and not more than four other members.

¹¹ Article 6(2) illustrates, any person who is a Judge, or is qualified to be a Judge, or has been a Judge, of the Supreme Court of Bangladesh, may be appointed as a Chairman or member of a Tribunal.

has amended her Constitution to enact an efficient national proceedings and investigation (Haque, 2016). The aim was to empower the tribunal and assure an independent federal prosecution (Islam, 2012). Though, Cammegh (2011) and Samad (2016) criticized the attempt for the probability of politically influenced trials. The tribunal has a 'Fact Finding Committee' who investigated and reported the inclination of an accused by submitting a formal charge. It is not so easy to find out evidence after thirty years. The tribunal accepts all forms of evidence, including films, photographs, reports, newspapers, etc. considering this fact (Section 19 of ICTA).¹² The tribunal's proceeding is public. Also, there is an option for 'camera' trails (Islam, 2012). Thus, the tribunal of Bangladesh is trying to increase the efficiency of investigation and prosecution in national level.

- The tribunal has assured proper rights of the accused and a fair proceeding. The accused has the right to discuss his lawyers during the break of an interrogation session. The tribunal stated no one would be convicted before his/her guilt has reasonably proven to the court. Moreover, he/she will be treated innocent until the final decision (Islam, 2012). Subsequently, the tribunal has ensured the rights of an accused similarly to other international crimes tribunals like the right to have an interpreter, government assistance for the defense and examine the witnesses (Articles 10 (3)¹³, 12¹⁴ and 17 (3)¹⁵ of the ICTA). The tribunal allowed the presence of a foreign counsel with proper permissions (Section 42 of the rules of procedure 2010) and kept open the option to take suggestions from an expert for assuring a fair trial as like as the ECHR, IACHR, Special Tribunal for Lebanon and the Court of Justice of the European Union. In this way, the ICT-BD is trying to ensure a compact legal provision following international legal framework.

¹² Article 19. (1) mentions, A Tribunal shall not be bound by technical rules of evidence; and it shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and may admit any evidence, including reports and photographs published in newspapers, periodicals and magazines, films and tape-recordings and other materials as may be tendered before it, which it deems to have probative value.

¹³ According to article 10 (3), any accused person or witness who is unable to express himself in, or does not understand, English may be provided the assistance of an interpreter.

¹⁴ Article 12 elucidates, Where an accused person is not represented by counsel, the Tribunal may, at any stage of the case, direct that a counsel shall be engaged at the expense of the Government to defend the accused person and may also determine the fees to be paid to such counsel.

¹⁵ Article 17 (3) states, An accused person shall have the right to present evidence at the trial in support of his defense, and to cross-examine any witness called by the prosecution.

- The ICT-BD has limited opportunities for the victims and the witnesses. The tribunal is similar to the ICTY and ICTR and has a limited definition of victims. According to the International Crimes Tribunal, “Victim refers to a person who has suffered harm as a result of the commission of the crimes under section 3 (2) of the International Crimes (Tribunal) Act, 1973” (Section 2 (26) of the Rules of Procedure, 2010). Similar to the courts as mentioned above, the victims can only participate as a witness in the proceedings, and the scope is limited. The witness must be a representative of any of the parties. However, there is no option to remain silent on any question asked by the investigation officers. The provision is equal for both sides (victims and witnesses for the accused) (Sellars, 2017). If they do so, they will be arrested and prosecuted for providing false evidence (Article 18 of ICTA).¹⁶ In addition to protection, the tribunal ensures accommodation and necessary measures only upon request of the witnesses and victims who were asked to present in the proceedings (Rules of procedure of 2010, section 58 (A)). Moreover, the witness testifies both in person and in-camera trial. The camera operation ensured the confidentiality (Section 58 (A) (3) of the Rule of procedure of ICTA) of the witness. However, the tribunal has nothing to do with the reparations measures.
- The prosecution initiative of the United Nations (2010) approach also aims to assure a correctional facility for the perpetrators. The tribunal of Bangladesh verdicts resembles merely the opposite scenario at this point. Till now, the two courts already gave seventeen judgments, and among them, fifteen resulted in the death sentence. The tribunal is facing severe criticisms from human rights organizations because of this clause of capital punishment (Moses, 2011; Sen, 2012). All the United Nations court discourages the capital punishment, and around one hundred and thirty-nine countries have put an end to the death sentence (Afrin, 2010). Furthermore, the War Crimes Committee (WCC) also suggests deterring this act considering inhuman (Jalil, 2012). However, Bangladesh is not a signatory to the Second Optional Protocol to the

¹⁶ According to article 18, A witness shall not be excused from answering any question put to him on the ground that the answer to such question will criminate or may tend directly or indirectly to criminate such witness, or that it will expose or tend directly or indirectly to expose such witness to a penalty or forfeiture of any kind: Provided that no such answer which a witness shall be compelled to give shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding, except a prosecution for giving false evidence.

International Covenant on Civil and Political Rights which advocates for the abolishment of the 'Death sentence' (Lachowski, 2016).

To conclude, the prosecution initiatives to address the Liberation War of Bangladesh has both limitations and prospects. The significant limitations of ICT-BD are regarding the rights of the victims of the Liberation War and correctional facilities. The court is mostly retributive in nature and has less concentration on victim services. However, the tribunal of Bangladesh has received appreciation from the United Nations and the United States for its efficiency and proceedings (Samad, 2016). Also, the European Union has provided strong backup to the tribunal, and they already passed three resolutions appreciating the competencies of the trial (Ullah, 2012). Besides, the initiative has given the opportunity to develop national prosecution capacities with the establishment of a domestic tribunal following international rules and regulations. Likewise, Dickinson (2003) emphasized on considering political, cultural and social context before approaching a transitional justice mechanism. He also raised an issue of controlling the process in a hybrid court for the national level. In this perspective, the domestic pattern of the tribunal of Bangladesh is value neutral and working with its limited resources. Moreover, there is no jurisdiction of the 'International Criminal Court' in the case of Bangladesh Liberation War. The country ratified the statute in 2010. Though there are a few criticisms against the tribunal, however, there is no significant proof of state failure or disinterest to prosecute the war criminals. So, according to the 'principle of complementarity,' the ICC has less probability of active interfering on the trail of Bangladesh (Lachowski, 2016). Furthermore, King (2015) has also similar opinion and advocates for a domestic court. He considered the place of crime occurrences has the best opportunity to collect evidence and witness. It is cost efficient, and there are fewer enforcement issues. Moreover, the tribunal is geographically close to the victim groups and capable of understanding victim needs. He also mentioned that the local court has a liability to be accountable to the local people. The media coverages also remain them aware about the justice (King, 2015). Though all these characteristics do not fully fit to address the ICT-BD, still it is considered as a milestone for ensuring accountability of the Liberation War of Bangladesh (Islam, 2012, Haque, 2016). Besides, it creates an example of the rule of law in society to the future generations (Afrin, 2010).

6.2.2 Facilitating initiatives in respect of the right to truth in Bangladesh

In the initial phase, the truth of the Liberation War was compiled in different formats (e.g. Books, articles, documentaries, the narration of personal experiences regarding the war, etc.) by several writers, activists, and freedom fighters. Among the documentaries, the ‘Stop Genocide’ (1971), ‘Let there be light’ (1971) filmed by Zahir Raihan were remarkable. Besides, there were some movies, dramas and plays (e.g. Ora 11 Jon (1972), Aguner Porosmoni (1994), Hangar Nodi Grenade (1997), etc.) were made based on the War. Lately, the government of Bangladesh has taken several initiatives to disclose the truth of the Liberation War. The major attempt was establishing the ‘Ministry of the Liberation War Affairs’ in 2001. The ministry is working with the ‘National Freedom Fighter Council’ and the ‘Liberation War Museum’ to preserve the truth. The United Nations (2010) approach to transitional justice discussed some core activities for searching the truth. The researcher will evaluate the truth-seeking initiative of the government of Bangladesh in the context of those mechanisms.

Firstly, the ministry has initiated to preserve the graveyards, martyrs mass graves and maintaining the site of confrontational war to protect the history of the liberation war.

Secondly, with the association of the National Freedom Fighter Council, they constructed a list of freedom fighters to let the people know who the heroes of the country.

Thirdly, the ministry has diversified, completed and ongoing projects to spread the actual history of the war among present and future generations. They already financed projects under the Liberation War Museum to make documentary films to spread the spirit of the Liberation war and patriotism.

Fourthly, they are aiming to preserve and accumulate the documents of the war. They prepared a guideline to collect these materials. After obtaining the documents, they will exhibit those in public in the ‘documentation center’ aiming to illustrate the causes and consequences of the war.

Lastly, the ‘Ministry of Liberation War Affairs’ is working with the Liberation War Museum to preserve and publicize the truth. They exhibit the personal belongings of the martyrs, freedom fighters and victims to remember them. Besides, they allow students to visit the museum free of

cost. Also, they organize international academic seminar and conference to publicize the history to the international arena.

Furthermore, the high court of Bangladesh has announced to take a unique program to address the war and create awareness among young generation about the sacrifices about their predecessors. To disclose the truth, the government of Bangladesh has taken the decision to incorporate mandatory chapters in secondary level textbooks.

Here, the prosecution initiative of the government of Bangladesh; the ICT-BD is also playing a crucial role in establishing the truth. In fact, it is the most significant measure to legitimize the reality through legal procedure. Though, the initial approach of reforming institutions by trying the government officials (under Collaborators Act, 1972) has failed. However, the present tribunal is facilitating to disclose the truth of the Liberation War. In every verdict, it provided an initial description of the fact regarding the war, the association of the accused. Under this tribunal, the accused is punished in accordance with the authentic evidence, and they are illustrated in details in the verdicts. The truth is established here through a process of debates on different narratives and counter-narratives under the legal framework. Moreover, the established truth also provides a reference to further trials and court proceedings.

6.2.3 Delivering reparations in Bangladesh

The prosecution initiative in Bangladesh is only dealing with the right of access to justice and assistance for the victims (only those who are a witness). Unfortunately, reparations have been ignored in the prosecution measures of Bangladesh. However, the government has taken some alternative initiatives for delivering reparations to freedom fighter, victims, and their families. The United Nations (2010) Approach to transitional justice emphasized the ensuring reparations to victims strongly by the Van Boven/Bassiouni Principles (2005). These Principles discuss five specific reparative measures. The reparative measures of Bangladesh will be reviewed following these five categories.

- ***Restitution***

The aim of the restitution is to restore the values of the victims and ensure the condition as it was before the conflict (Letschert & Boven, 2011). The researcher did not find any restitution measure initiated by the government of Bangladesh after the peace of 1971.

- ***Compensation***

The 'Bangladesh Freedom Fighter Welfare Trust' provides different monetary benefits to the wounded freedom fighters and families of the martyrs considering their physical harm. Also, the children and grandchildren of a freedom fighter get special 'quota' facilities in government service (MOLWA, 2017). The freedom fighters also get a monthly allowance from the government and recently the amount has increased (Mamun, 2016). At the initial stage in 1973, the 'Gallantry Awards' did not facilitate with any monetary reparation. Only in 2001, almost after 28 years of freedom, Bangladesh government initiated financial allowance along with appreciation letters for every awardee. Recognizing the struggle of the Freedom Fighters and their families in the post-conflict society, the government has massively increased the allowance in 2016 which is an effort to repartee their damage (Mamun, 2016).

- ***Rehabilitation***

The healing project for the 'Birangona,' initially taken by Bangladesh government provided reparation in the form of medical treatment, psychological assistance and others (Mookherjee, 2015). Besides, the government of Bangladesh has already taken different rehabilitation project for the wounded and martyrs family. Under the 'Bangladesh Freedom Fighters Welfare Trust Rescue Plan-2010', there are running projects of four commercial and residential buildings for the freedom fighters and the martyr's family members. There are also various structural development projects for them as a part of the reparative initiative from the government. Furthermore, the government has also arranged training for the family of the freedom fighters to make them capable for self-employment. At present, they are formulating a guideline with an aim to develop the economic condition of the freedom fighters (MOLWA, 2017). Moreover, the children and grandchildren of the freedom fighters will get facilities in all the autonomous, semi-autonomous and government jobs.

- ***Satisfaction***

Addressing the rape victims of the Liberation War as ‘Birangona’ can be treated as a satisfaction measure by the government of Bangladesh. The word ‘Birangona’ gives them a particular position of dignity in the society. The aim of this address was to reconstruct their social position and heal their trauma so that they can come back to a normal life. The declaration of President Mujib to consider ‘Birangona’ as his daughter was an attempt to ensure the identity and family life of rape victims.

However, the aim of the government was not entirely satisfactory. The status of rape victims as ‘Birangona’ creates contestation in the civil society. Even though this term was used with the view to give them respect in the community and acknowledge their contribution, the title ‘Birangona’ gave them nothing but an isolated status in their society in the course of time (Harrington, 2013; Mookherjee, 2015). Although they were one of the major identified group of victims, they did not receive proper treatment in the later phases, and the process gradually became mute after the assassination of President Mujib. After a long time, the ‘Birangona(s)’ got the status of ‘Freedom Fighters’ which acknowledged their contribution in the Liberation war within the same platform of other freedom fighters. After the Gazette of 2014, the Birangonas are getting monthly allowances, quota and special opportunities for their children and grandchildren in the civil service (Kallol, 2016).

Subsequently, the government of Bangladesh honored the ‘heroes’ of the war as a recognition of their excellent efforts during the Liberation War. The award giving process follows a hierarchical form consisting of four categories. Initially, the gallantry awards were only a symbolic honor and recognition regarding their contribution during the Liberation War. They only received medals and ribbons which gave them special acknowledgment and recognition widely as a part of the official declaration.

Furthermore, the government has built ‘Martyred Intellectual Memorials’ and also preserved other mass killing fields, burial places, and martyrs graveyards. It has opened the scope for the family of the victims as well as the citizen of the country to show respect and observe ritual and religious occasions.

The government has established memorials like 'The National Martyrs Memorial,' 'The Column of Independence' to recall the victims of the Liberation War and shows a tribute to them as a method of satisfaction. Besides, they have announced the important days related to the Liberation War as 'National Day.' They observe those days officially to show honor the victims and also to recall their sufferings during the war.

Subsequently, the government has initiated to give different 'awards of honor' regarding the sacrifice, bravery and other credentials during the Liberation War symbolize the initiation of satisfying the victims and martyrs family. For example, Bangladesh Freedom Honor (2011), Bangladesh Liberation War Honor and Friends of Liberation War honor (2013) are the ways to satisfy victims.

- ***Guarantees of non-repetition***

The government of Bangladesh was able to establish a crimes tribunal to prosecute the perpetrators. This initiative is a message to the citizen of the country that they are all under the rule of law. The court is an example of independent prosecuting body and functional to ensure accountability. It assures the non-repetition of such an event for the victims. The government of Bangladesh has also preserved the graveyards and killing fields to keep the past alive (Baehr, 2007). The aim of these commemorating activities is to remind the people of Bangladesh about their past with a hope that this atrocity may not repeat.

Furthermore, the government of Bangladesh has sent a proposal to the United Nations to recognize the 25th March as the 'Genocide Day.' The aim of this attempt to let the world community know about the victimization occurred during the attack named 'Operation Searchlight' in 25th March 1971. By achieving global recognition, the government tried to prevent recurrence of the same event. Regarding the attempt by the government by Bangladesh, Zakaria (2017) has written a column *"By marking Genocide Day, Bangladesh Seeks to remember what Pakistan wants to forget"* (Para 1).

6.2.4 Institutional Reform in Bangladesh

The researcher has found very limited initiatives by the government to reform her different security institutions. The internal reformation was not so significant because the safety forces at

that time (then East Pakistan) actively took part in the Liberation War of Bangladesh. After the independence in 1971, the name of different forces has changed. The East Bengal Regiment became the 'Bangladesh Army.' Similarly, the East Pakistan Police renamed as the 'Bangladesh Police,' and East Pakistan Rifles transferred into 'Bangladesh Rifles.' The government has established 'Bangladesh Public Service Commission' in 1972 to recruit government officers.

Initially, after the independence, the government gave the freedom fighters special facilities in getting administrative jobs. Based on their request, the government has increased the retirement age of freedom fighters from sixty to sixty-two years (whereas it is sixty-one for others) (Acharjee, 2015). The Ministry has taken several initiatives to protect and circulate human rights based knowledge. In association with the Liberation War Museum, they have already some programs, especially for the young generations. They have arranged 'Mobile Museum' initiative to enrich knowledge of the students about human rights and humanitarian law. Besides, they give stipends to the students who are doing research on the Liberation War-related issues. The aim of this measure is to circulate knowledge and develop skilled professionals. There are few training programs for the government staff (e.g. Bangladesh Police, Administration Cadre, etc.). The human rights issues are discussed shortly in these training programs.

6.2.5 National Consultations in Bangladesh

It is necessary to identify the requirement of the victims before formulating policy. The national people know and understand better what the needs of the people of their community are. The Bangladesh government has formed a domestic tribunal rather than going for a hybrid or international court keeping the idea in mind. In addition to the prosecution, the government also worked with several non-government organizations and civil society groups. The government is working in collaboration with the 'Liberation War Museum' in many senses including the arrangement of different seminars and conferences for creating awareness. Besides, they formulate policies with the assistance of the experts and advocacy groups working on the Liberation War issues (for instance, 'Nirmul Committee') (Kabir, 2008). The Ministry of Liberation War Affairs is the governing body to implement these policies (MOLWA, 2017).

6.3 Transitional Justice measures in Bangladesh: Ways of improvement

In this part, the researcher will try to point out the scope of development of the transitional justice mechanisms of Bangladesh.

The researcher has already discussed the goal of **prosecution initiatives**; it is to ensure justice in society through a fair trial following the international law (United Nations, 2010). In the case of ICT-BD, the researcher has found the term ‘fair trial’ to be a relative concept. The problem has raised because most of the accused are the members of a political party. Also, this party is an ‘alliance partner’ of one of the two largest political parties of Bangladesh (Jalil, 2012). However, the researcher has tried to find out some possible ways of improving the tribunal from an academic perspective.

Dickinson (2003) identified three major problems with a domestic trial; legitimacy, capacity building and non-penetration problems. The initial prosecution attempt of the government of Bangladesh has faced these problems. After the formation and announcement of the ICTA in 1973, the Government of Pakistan raised the question of the legitimacy of Bangladesh government to try Pakistani citizens. Subsequently, the members of the Security Council have also questioned the capacity of forming a tribunal (Moses, 2011). Though many years have passed, however, Bangladesh successfully overcame those restrictions and established the ICT-BD. It is the only prosecution mechanism in Bangladesh ongoing at this moment. The following measures should be taken by the government to improve the legitimacy of the tribunal,

- The definition of the crimes should be updated under the modern concept of the ICC statute. Also, the crime ‘Genocide’ should be first in the list similar to other international legal frameworks.
- The restriction on questioning the judgment of the tribunal (article 24 of the ICTA) in any Bangladeshi legal forum should reconsider. It should allow all types of constructive criticisms from the statutory bodies.
- The tribunal mentioned about the innocence of an accused before proven guilty for the crimes described in section 3 (2) of the ICTA. The reality is not the same as it is in the papers. The amendment in the constitution for the ICT-BD excluded the constitutional protection rights of an accused before proven guilty (Samad, 2016).

- The tribunal of Bangladesh should welcome participation and debate on its proceedings from every sector (Chopra, 2015).
- The tribunal's rule about not allowing an attorney during the investigation faces criticisms from the international experts (Afrin, 2010). The ICT-BD should follow the procedure of other courts like the ICTY, ICTR and the ICC regarding investigation matter. They all allow an accused to remain silent during the period of inquiry. The ICT-BD is opposite in this context and has provisions to give punishment. The tribunal allows discussing with the accused attorney during the break time of the investigation. However, the ICC suggests continuing the investigation in the presence of the prosecutor of the defendant. To ensure a fair trial, the ICT-BD should allow the accused to remain silent in front of the court.
- The tribunal lacks the needs of victims and witnesses. By dealing with only the witnesses, the tribunal has ignored the needs of a large number of victims. According to the UN Declaration of 1985, the victims have the right of getting fair justice (Articles 4-7). Similarly, the Van Boven /Bassiouni Principles and Impunity Principles emphasize on the victim right to access to justice (art. 12) and the right to justice (principles 19-30) respectively. Transitional justice mechanisms encourage both backward and forward looking approach. The prosecution measure of Bangladesh only looked at the past and nothing special for the future. The victim rights are not seriously addressed, and victims can only appear in the court as a witness. They only serve the purposes of the courts and other parties to prove or disprove the association of the accused with crimes. However, they can testify both in person and in-camera trial.
- There is no option for victims to participate voluntarily in the court to give an opinion. The ICC has assured eight forms of participation in the proceedings, including attending hearings, oral and written submissions, ask questions, access and submit evidence, call witnesses and prior notification of any issues that may affect the person (art. 68 (3) of the Rome Statute). The ICT-BD should follow this legal guideline of the ICC and assure victims right to participate in court proceedings.
- Though the ICC did not mention about the symbolic reparation (e.g. Satisfaction), the ICT-BD should concentrate on this issue and take some significant steps to remember the victims (Wemmers, 2009).

- Finally, the ICT-BD should take some important decisions for assuring the right to reparation of the victims from individual perpetrators as initiated by the ICC (art. 75 of the Rome Statute).

Regarding the **truth**, the question of ‘genocide’ during the war has created disagreement and debates among scholars working in this area. Akmam (2002), Kabir (2008), Pai (2011), Lachowski (2016) explained in details why the acts of the Pakistan army and their associates should be considered a genocide. Moreover, the ‘International Commission of Jurists’ also stated there was a genocidal act after an investigation in 1972 (Beachler, 2007, Pai, 2011). Subsequently, the researcher also found several criticisms among academics about the actual number of people died during the Liberation War of Bangladesh. Bose (2011) questioned the number of victims and stated Bangladesh authority exaggerated the event for global sympathy. Surprisingly, the BNP chairperson also raised the question regarding numbers in 2015 (The Independent, 2015). In contrast, Sharlach (2000), Beachler (2007), Takai (2011), Ranjan (2016) stated the number was three million. Moreover, the editorial of the ‘Sydney Morning Herald’ claimed the death of ten thousand to one hundred thousand on the 29th March of 1971 (Moses, 2011). It was only three days the war has started, and from this report, it can easily assume the situation of the victims during the war. The narratives and counter-narratives of these diversified interest groups made the future generation confused about what happened during the war. The government of Bangladesh still cannot reach a unanimous decision about who has announced the ‘independence’ of Bangladesh. It is still an ongoing debate between the followers of two major political parties of Bangladesh; namely the Bangladesh Awami League (AL) and the Bangladesh Nationalist Party (BNP). The political party who came to power rewrites the truth according to their way. The idea about reality in current Bangladesh mainly divided into the perception of political identities and the trend is continuing for the last twenty-five years.

The researcher has raised the above issues to make it understand how important it is for the country to establish an independent ‘Truth and Reconciliation Committee.’ This committee will collect information regarding the cause and consequences of the war. Also, they will accumulate the narratives of the victims, witnesses, and their family. The government can put an end to these controversies by taking this attempt (Pai, 2008; Bose, 2011). Formation of the TRC in Bangladesh is now a demand of time.

Furthermore, the ICT-BD should take initiatives to publicize their verdicts not only in their websites but also in academic and national level to preserve the truth in society for future generations (Afrin, 2010).

About **delivering reparations** to victims, the government has initiated several individual and collective reparations. Individual reparations only redressed the martyrs, direct Freedom Fighters (both wounded or not) and the rape victims in particular. Nevertheless, there is a significant number of the population who was deported or forcefully migrated, mentally and physically injured, brutally tortured, even almost everyone was financially affected as the consequence of the Liberation War.

The government failed to address those various affected groups to all extent after passing nearly half a century of the independence. There might be a debate whether it is possible to deal with those groups over such a long time. However, the government can at least make an apology for failing to ensure the rights of victims mentioned in the art. 20 (b) of Van Boven/Bassiouni Principles.

The researcher has identified that there was no measure taken initially after the war for post-traumatic recovery of the mass affected group, except the rape victims. Even, the victim supporting project, particularly for the rape victims also failed to re-establish their ‘lost’ dignity in the post-conflict society. Recently a concerning group raised the issue of changing the title to relieve them from social stigmatization and preferred to address their words as ‘Survivors Speak’ (Harrington, 2013).

After the forty-six years, it is tough to comment on the ways to improve the **institutional reformation** of Bangladesh. The research and academic works should be explored more to the community level. The training and awareness program only aimed the students in city areas. The scope should be more open in the countryside. The human rights law based training should be more frequent and mandatory for not only some selected cadre services but for all the government and non-government officials working different sectors. In this case, the researcher would like to suggest introducing various training programs for the law enforcement agency of Bangladesh. These training programs will focus on human rights and victim-oriented approach.

As all the measures addressed by the government of Bangladesh are run by the citizen of her own, the particular scope for formulating new **national consultant** body is limited. However, the government can formulate a separate body to hear the words of the victims. It will assist them to construct further victim oriented policy. Besides, the state can introduce sharing views and resources exchange programs with the non-government organization and civil society organizations (King, 2015). It will enrich the capabilities of different government bodies. Regarding the documents and witnesses, the fact-finding committee can work together with the activists and experts working in this sector for the independence of Bangladesh. It will assist them to overcome controversies regarding the truth.

Chapter Seven: Conclusion

After the return of democracy in Bangladesh in 1991, the researcher has identified several narratives, counter-narratives, and multiple narratives regarding the truth of her transitional phase. The inter-conflict among these narratives threatened the actual truth of the Liberation War. This condition has occurred because of the conflict between political parties of Bangladesh. Baehr (2007) raised an interesting point which is significantly correlated with the pattern of transitional justice in Bangladesh, keeping the past alive for political advantages. There are several political parties in Bangladesh, and all have their notion of truth regarding the war for legitimizing their hegemony. However, Most of them have alliances with the two major political parties; namely the AL and the BNP. The current government (AL) has taken the initiative to try the war criminals, whereas the opposite political parties (BNP and allies) continuously criticize the government's attempt as a tool for political benefit. The researcher has already stated that the primary accused war criminals are members of a political party named 'Bangladesh Jamaat-e-Islami' (JI). The party is charged to play a serious role in the liberation of the country in 1971 (Kabir, 1999; Sen, 2012) and they are an ally of the BNP. The AL claimed themselves as the protector of the truth and trying to legitimate their political goal by capitalizing the truth. Accordingly, pro-AL, victims and survivors of the Liberation War are criticizing the BNP for making alliances with the war criminals. However, the JI leaders claimed they supported Pakistan during the 1971 War but did not commit war crimes (Al Jazeera and agencies, 2016). The opposite parties also questioned the naming of different commemoration structures and blamed the inclusion of the history of the Liberation War in textbooks as biased. Though the transitional justice process aims to formulate liberal democratic society and addresses affected groups by providing reparations, it has some serious criticisms in the academia. There is no comprehensive transitional justice mechanism to address all the post-conflict societies. Besides, this justice is less structured and more open-ended. In the case of Bangladesh, the researcher has also identified the scattered initiatives of the different government to legitimize their power. Both the political parties tried to establish the truth according to their way and delegitimizing the opposite one.

Transitional justice process in Bangladesh does not fulfill all its mechanisms regarding the Liberation War of Bangladesh. Following the five major pillars of transitional justice mentioned previously, Bangladesh mainly deals with the prosecution initiatives and delivering reparations. Regarding the prosecution efforts, Teitel (2000) raised the question of the contradiction of transitional justice with the constitutional law. The researcher has already discussed the legal problems of the ICTA with the 'Constitution' in the case of Bangladesh. Though few academics criticized this step, the researcher appreciates the government to give priority to the tribunal. Again, Teitel found the base of this alternative justice in compromising and claimed this approach as a limited and partial justice (Teitel, 2000). However, the researcher found no specific proof of compromising tendencies in the prosecution measure of Bangladesh. Furthermore, Baehr (2007) considered 'vengeance' as a method of dealing with the past and the current prosecution standard of Bangladesh is similar to this notion. There are tremendous pressures from the victims, martyr's family, civil society members and also from the youth supporting 'death penalty' for the war criminals. The massive movement of 'Shahbag' was a message to the government about what they want. After the protest, the ICT-BD investigated the case of Abdul Qader Mollah again, and he was sentenced to death (earlier it was life imprisonment) (Lewis, 2013).

However, few researchers disparaged the prosecution against associates of the Pakistan army, and they questioned the war criminals of Pakistan. In contrast, regarding the criticism, Rahman & Billah (2010) considered 'auxiliary forces' as responsible for 'modern' genocides. They treated them equally culprit similar their commanders. About the case of Rwanda's Akaeshu (1998), they consider 'associates' equally liable for committing the international crimes (i.e. Genocide, Crime against humanity, etc.) by themselves and also for fueling others for commission (Rahman & Billah, 2010). In their study, Kiza et al. (2006) identified that one-half of all the interviewed victims knew their perpetrators. In the case of Bangladesh, the accused war criminals were active in political activities during the war and known to the people in their community. It became an easy task for the victims and the witness to identify them.

Consequently, a crucial point has raised from the civil society members, victims, and their families to cancel the registration of the JI as a political party of Bangladesh. Most of the senior leaders of these parties were already hanging to death for war crimes during the Liberation War

of Bangladesh. Considering the side as opponents of the independence of Bangladesh, they argued to ban the party from all types of political activities. The government can formulate committee combining members from several experts. They can also take suggestions from civil society members to provide the scholarly opinion in this regard evaluating past examples and history. The significant contribution of the national consultant might bring an important advice in this perspective. Though the tribunal did not give any decision on this point, the point is continuously flourishing from the victims and martyrs' families (Bhattacharjee, 2016).

Concerning the second pillar of transitional justice, which is 'facilitating initiatives in respect of the right to truth,' Bangladesh failed to address this component properly. The researcher has already discussed above that the notion of 'truth' has become contested and representation as a different issue in Bangladesh. Although it is quite a tough job to reconstruct the truth after passing almost a half century, yet it is not too late to take the initiative. The government can make some policy-making efforts to find out the actual reality behind the liberation war 1971. Truth and reconciliation commission (TRC) can be formed following other international structure (e.g. TRC of South Africa).

Again, delivering reparations, another pillar of transitional justice, Bangladesh fails to imply all the measures adequately. The mechanisms only highlight the mainstream freedom fighters and collective symbolic reparations. The freedom fighters who fought with arms in the battle and supports actively have only been offered the financial compensation (From 2014, the 'Birangonas' are also getting financial assistance). However, a large number of the population who contributed in the Liberation War from their position has been ignored in the individual reparation initiatives of Bangladesh government till to date. In this context, the researcher agrees with the analysis of Roht-Arriaza & Mariezcurrena (2006). They criticized transitional justice for less concentration on economic and cultural rights. Thus, it also ignores the needs of the most unprivileged and victimized groups of a post-conflict society (e.g. Women). Unfortunately, the government of Bangladesh gave a limited attention on the women in her most of the addressing mechanisms. Only two women were awarded the 'Gallantry Awards' whereas lots of women actively taken part in the war. The most regretting part was the case of recognition of the rape victims. Though initially they were titled as the 'Birangonas' they were not considered for any monetary compensations similar to the freedom fighters and their family. Even so, it was late,

but after forty-four years later, they got the respect and status as freedom fighters do. There is no answer from the government except an apology on the question of compensation regarding this extended period (Kallol, 2016).

Mani (2007) blamed transitional justice for belittled the needs indirect victims and it is also true in the case of Bangladesh. The government has ignored not only the rights of the secondary victims but also the right of the primary victims. Though, they tried to ensure collective reparations through commemorating the event. However, there is serious lacking found in monetary reparations as well as acknowledging victimization of a vast number of people. Furthermore, other victims of the war, such as the minorities, financially affected victims, etc. did not get any reparation after the war. Except for the national documents and glorified oral narratives of the freedom fighters courage in the battle field, there is not enough documentation of the contribution or the sufferings of the rest of the population. Hence, there is a considerable scope for further research so that this large gap can be fulfilled through the process of reparative initiatives.

The researcher has already discussed there was no significant institutional reform in the post-conflict stage of Bangladesh. Except naming and recruiting all Bangladeshi officers, no internal or structural reformation has been done after the war. It is high time to introduce training on understanding victims, perceptions and addressing the victim's mental status. Initiating these pieces of training in the law enforcement agencies may help to deal with future disasters and response following the needs of victims.

Incorporating national consultant in formulating policy is the last pillar of transitional justice, and unfortunately, it is also less frequent in the case of Bangladesh. As there was always a conflicting political situation in the Bangladesh society, the government should engage members of civil society to address the needs of the local people and ensuring their justice. They can contribute to trauma healing, reaffirming peace and reconciliation (Lambourne, 2014). There is always room for development, and the local experts can play a crucial role in this regard. They can initiate to build an actual truth for the future generations beyond all the contested narratives.

However, considering all the limitations, the researcher believes the transitional justice process have played a crucial role in peace building and establishing security in the society of

Bangladesh. The author has already stated that any single mechanism or pillar of transitional justice is not enough to address any post-conflict situation. There should always be a combination of all the components, although it may vary society to society. Besides, every community, who passed through a transitional phase should incorporate all the pillars of transitional justice by their social structure. Concerning the context of Bangladesh, ignoring all its past failure to address the Liberation War and the current major political contradictions, the government should initiate a policy to incorporate all the pillars of transitional justice. In this case, the government is already one step ahead as there is a particular ministry to deal with the issue of the Liberation War. Hence, the ministry can supervise the policy for the accomplishment of the transitional justice process regarding the Liberation War. Under the supervision of the government, an expert body can be formed who will make an annual report and evaluate the accountability of the policy. According to the annual report of the expert body, the government will take necessary steps to reconstruct and re-establish the truth. Besides, it should aim to ensure proper reparations and reconciliation program for all the victims of the war and include them in the mainstream programs.

For now, the researcher emphasizes on forming an anonymous and independent ‘Truth and Reconciliation Commission’ for further safety and security in Bangladesh. This TRC should incorporate the victims and witnesses still alive along with the national and international experts. The commission can help to rebuild the past sufficiently by minimizing the adverse situation and political diversity regarding the proper narratives of the Liberation War.

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Appendices

Geographical distance between Pakistan (West Pakistan) and Bangladesh (East Paksitan)



Source: <http://www.newworldencyclopedia.org/entry/File:PAK1971.JPG>

Atrocities by the Pakistan army in 1971



Source:

https://www.google.nl/search?q=bangladesh+genocide+1971+pictures&source=lnms&tbn=isch&sa=X&ved=0ahUKEwjAgMWoq5XUAhVMvRoKHXRDAAoQ_AUIBigB&biw=1920&bih=925#imgsrc=4VKMClRg7w3XNM:

Rape Victim, 1971



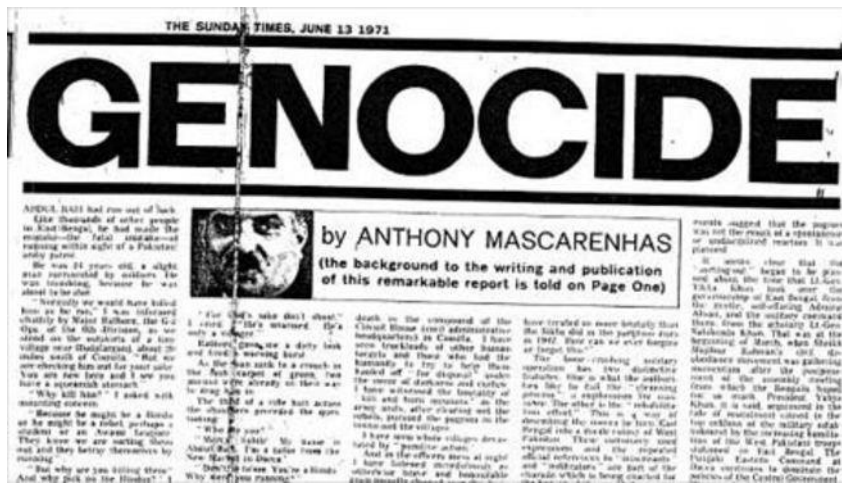
Source: Bangladesh genocide archive: women in 1971

Deportation during the Liberation War of Bangladesh



Source: <http://www.virtualbangladesh.com/the-basics/history-of-bangladesh/independence/bangladesh-genocide/>

Report Published in a newspaper of 1971



Source: <http://www.bbc.com/news/world-asia-16207201>

Mass appraise in ‘Shahbag’ demanding ‘Capital Punishment’ of the war criminals of the Liberation War of Bangladesh



Source: <https://everythingaroundmyworld.wordpress.com/2013/02/09/a-step-towards-revolution-bangladesh/>