

Justice for 1971 War Rapes: *Trial and Beyond*

Tureen Afroz

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Dedication

*This research is dedicated to the
war rape victims of the world.*

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Tureen Afroz

ABSTRACT

The history of the Bangladesh War of Liberation records the mass rape of Bangladeshi women by the Pakistan Army and their local collaborators. There is evidence that along with rape of Bangladeshi women, other forms of sexual violence such as sexual slavery, enforced prostitution, and forced pregnancy were also committed by the perpetrators. After about 40 years of our Liberation War, the matter of rape of the Bangladeshi women was brought under litigation, to a certain extent, in the International Crimes Tribunal of Bangladesh (ICT-BD).

The Constitution of the People's Republic of Bangladesh is the supreme law of Bangladesh. It explicitly declares in its preamble that Bangladesh should establish a society where '... the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens'. The aspect of "equality and justice" is lucidly presented along with the social issue. Thus, our constitution emphasizes the kind of justice which is "complete justice" and provides assurance of both legal and social justice. In this context, one notes that the issue of justice for rape victims of the 1971 Bangladesh War of Liberation still lacks comprehensive social and legal attention.

By now a number of war criminals of the Liberation War of Bangladesh are being punished by the ICT-BD. Through this process, it may assume that even though justice had been delayed, it was ultimately not denied. However, a question remained unexplored as to whether '*legal justice*' essentially ensures '*social justice*' for the war rape victims in our country. It has been observed that war rape victims are still not socially recognized and/or respected; rather, they are considered as outcasts in our society. Unfortunately, nobody knows as to how justice is being perceived by them. Thus, it remains an unspoken narrative in our country in respect of how war rape victims actually perceive 'justice'. Another question that arises in this regard is whether '*complete justice*' is being done in the course of ensuring legal justice to war rape victims. Hence, it can be questioned as to how far 'justice' is being done to the war rape victims of Bangladesh only by conductory trial of war criminals?

This research would endeavor to get an account from the war rape victims and their families about the socio-legal aspects of the long-awaited justice. It may be mentioned that no systematic and/or comprehensive research has been conducted so far on this subject. This research is of significance because even after a remarkable number of convictions of perpetrators by the ICT-BD and the Appellate Division of the Supreme Court of Bangladesh, it is still not clear how much justice is being done to victims in Bangladesh from socio-legal perspectives. We should not forget, '[n]ot only must Justice be done; it must also be seen to be done.' Hence, this research has covered surveying total 385 rape victims of total 53 Districts of the eight Divisions of Bangladesh.

To conclude, it can be stated that sexual violence and rape, committed whether during war or peacetime, was widespread and that the women were often victimized by Pakistani men and their collaborators. The experience of the 1971 Liberation War of Bangladesh, when perpetrators used the rape of women as a war tactic, is hardly discussed in the international arena. However, a growing number of cases recognizing war rape as an illegal act have been taken up partly as a result of the heinous use of rape as a tactic of genocide in both Rwanda and Yugoslavia during 1990s. This study has described various legal mechanisms to hold perpetrators of sexual violence liable under the IHL, the ICHL, decisions in recent war crimes tribunals such as the ICTY, the ICTR, the ICC and so on, the *Geneva Convention IV*, the *Genocide Convention*, the *Hague Conventions on the Laws of War* and so forth.

Besides, this study shows that the intensive observations of the ICT-BD demonstrated again and again that rape of women was used as a weapon by perpetrators of rape. From the perspectives of Bangladesh, ensuring legal justice is indeed the first step to be taken to redress the wrong done to the victims. The demand of rape victims to get social justice is widespread. This study would like to conclude that while legal justice has been examples, social justice is still demanded by victims of the 1971 Liberation War in Bangladesh. This study claims that there is ample scope to provide social justice to rape victims in various ways so that they can enjoy complete justice to some extent in their lifetime.

ABBREVIATIONS

AFRC	Armed Forces Revolutionary Council
BNWLA	Bangladesh National Women Lawyers' Association
DRC	Democratic Republic of the Congo
HCD	The High Court Division of the Supreme Court of Bangladesh
IAC	International Armed Conflict
ICC	<i>International Criminal Court</i>
ICC Statute	Statute of the International Criminal Court, 1998
ICHL	International Customary Humanitarian Law
ICT Act, 1973	International Crimes (Tribunals) Act, 1973
ICT-1	International Crimes Tribunal-1
ICT-2	International Crimes Tribunal-2
ICTA	International Crimes (Tribunals) Act, 1973
ICT-BD	International Crimes Tribunal of Bangladesh
<i>ICTR</i>	International Criminal Tribunal for <i>Rwanda</i>
ICTR Statute	Statute of the International Criminal Tribunal for Rwanda, 1994
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTY Statute	Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993
IHL	International Humanitarian Law
NIAC	Non-International Armed Conflict
RUF	Revolutionary United Front
<i>SCSL</i>	<i>Special Court for Sierra Leone</i>
UN	The United Nations
WWII	World War II

1. INTRODUCTION

1.1 The Constitution of the People’s Republic of Bangladesh is the supreme law of Bangladesh. It explicitly declares in its preamble that Bangladesh should establish a society where ‘... the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens’.¹ The aspect of “equality and justice” is lucidly presented along with the social issue. Thus, our constitution emphasized the kind of justice which is “complete justice” and provides assurance of both legal and social justice. In this context, one notes that the issue of justice for rape victims of the 1971 Bangladesh War of Liberation still lacks comprehensive social and legal attention.

1.2 We all know that during a war, rape is used as a deliberate military weapon.² Military personnel adopt rape as one of the war tactics that includes not only a unique product formed out of a variety of physical factors but also as one of the moral and mental tactics deployed to defeat the enemy in action and battles.³ Often the ‘women bear more than their fair share of the burden’ in almost all wars, being the subjects of rape and other forms of sexual violence.⁴ According to

¹ Please see Preamble and Part II of the *Constitution of the People’s Republic of Bangladesh*.

² Madeline Morris, ‘By Force of Arms: Rape, War, and Military Culture’ [1995-1996] 45 *Duke Law Journal* 651, 654; See also Laura Smith Spark, ‘How Did Rape Become a Weapon of War?’ *BBC News* (8 December 2004), available at <<http://news.bbc.co.uk/2/hi/4078677.stm>> accessed on 2 March 2017.

³ Tactics, ‘Department of the Navy Headquarters United States Marine Corps Washington’ (30 July 1997) 3, available at <http://www.globalsecurity.org/military/library/policy/usmc/mcdp/1-3/mcdp1-3_fore.pdf> accessed on 3 March 2017; Robert Greene, *The 33 Strategies of War* (United States of America: Penguin Group and High Bridge Audio, 1st ed., 2006) 35.

⁴ Secretary-General Kofi Annan, ‘United Nations Day for Women’s Rights and International Peace’ (6 March 2000), available at <<http://www.un.org/press/en/2000/20000306.sgsm7325.doc.html>> accessed on 16 March 2017; LaShawn R. Jefferson, ‘In War as In Peace: Sexual Violence and Women’s Status’ *Human Rights Watch*, 1 (para. 3), available at <www.hrw.org/wr2k4/14.htm> accessed on 27 March 2017.

the *Explanatory Note of the Rome Statute of the International Criminal Court*, rape means invasion of the body of a person by conducts of the perpetrator that results in penetration in the sexual organ, or of the anal or genital opening of the victim, with any object or any other part of the body.⁵

1.3 At the time of war, army personnel conventionally attack women's sense of security and assault them in both physical and emotional senses.⁶ By such means, perpetrators intend to humiliate the enemy men through the bodies of the women in order to eventually weaken them mentally.⁷ It should be mentioned here that although instances of the rape of women are mostly reported, rape of men also occur during war; nevertheless, such instances remain under-reported.⁸ However, the scope of this paper is limited only to the context of the rape of women during the 1971 Bangladesh War of Liberation.

1.4 The history of the Bangladesh War of Liberation records the mass rape of Bangladeshi women by the Pakistan Army and their local collaborators (hereinafter referred to as “the

⁵ ‘The Statute of the International Criminal Court Protects against Sexual Crimes’ *Smart Library on Globalization*, available at <https://clg.portalxm.com/library/keytext.cfm?keytext_id=204> accessed on 18 March 2017.

⁶ Nancy Farwell, ‘War rape: New Conceptualizations and Responses’ [2004] 19 (4) *Affilia* 389, 403.

⁷ Pascale R. Bos, ‘Feminists Interpreting the Politics of Wartime Rape: Berlin 1945; Yugoslavia, 1992-1993’ [2006] 31 (4) *The University of Chicago Press* 995, 1025; Reid-Cunningham and Allison Ruby, ‘Rape as a Weapon of Genocide’ [2008] 3 (3) *Genocide Studies and Prevention* 279, 296.

⁸ During the armed conflicts in Rwanda, Uganda, Burundi, Congo, several men were also raped who generally chose not to speak about such incidents; Lara Stemple, ‘Male Rape and Human Rights’ [2009] 60 (3) *Hastings Law Journal* 605, 619; Grace Natabaalo, ‘Male Rape Survivors Fight Stigma in Uganda – Features’ *Al Jazeera English* (30 April 2014), available at <<http://www.aljazeera.com/indepth/features/2013/04/2013411111517944475.html>> accessed on 2 March 2017.

perpetrators”).⁹ There is evidence that along with rape of Bangladeshi women, other forms of sexual violence such as sexual slavery, enforced prostitution, and forced pregnancy were also committed by the perpetrators.¹⁰

1.5 After about 40 years of our Liberation War, the matter of rape of the Bangladeshi women was brought under litigation to an extent in the International Crimes Tribunal of Bangladesh (ICT-BD). Both the *Syed Md. Qaiser*¹¹ and *A. T. M. Azharul Islam*¹² cases addressed the issues of war rape and reparation for the rape victims of Bangladesh. The other landmark cases which dealt with the issue of rape of women include *Delowar Hossain Sayeedi*,¹³ *Abdul Quader Molla*,¹⁴ *Moulana Abdul Kalam Azad*,¹⁵ *Motiur Rahman Nizami*,¹⁶ *Zahid Hossain Khokon*,¹⁷

⁹ Local collaborators of the Pakistan Army included members of the Muslim League, Jamat-e-Islam, Neda-e-Islam and other Islamic groups and factions. They helped the Pakistan Army during the 1971 war of liberation, in identifying and killing millions of Bengalis directly involved in the war as *freedom fighters* or simply supporting them as civilians at the time of the liberation war. Local collaborators provided intelligence against the *freedom fighters*; abducted, arrested, and eventually killed many civilians with the help of Pakistan Army troops and party cadres in various army concentration camps and killings zones; burnt civilian houses and looted properties; kidnapped thousands of Bengali civilian women and trafficked them to various Pakistani military camps; raped and molested Bangladeshi women.

¹⁰ For further details, see, <<http://muktadhara.net/page42.html>> accessed on 23 March 2017.

¹¹ *The Chief Prosecutor v. Syed Md. Qaiser*, ICTBD (II) Case No. 04 of 2013.

¹² *The Chief Prosecutor v. A. T. M. Azharul Islam*, ICTBD (I) Case No. 05 of 2013.

¹³ *The Chief Prosecutor v. Delowar Hossain Sayeedi*, ICTBD (I) Case No. 01 of 2011.

¹⁴ *The Chief Prosecutor v. Abdul Quader Molla*, ICTBD (II) Case No. 02 of 2012.

¹⁵ *The Chief Prosecutor v. Moulana Abdul Kalam Azad*, ICTBD (II) Case No. 05 of 2012.

¹⁶ *The Chief Prosecutor v. Motiur Rahman Nizami*, ICTBD (I) Case No. 03 of 2011.

¹⁷ *The Chief Prosecutor v. Zahid Hossain Khokon @ M. A. Zahid @ Khokon Matubbar @ Khokon*, ICTBD (I) Case No. 04 of 2013.

*Md. Forkan Mallik,*¹⁸ *Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia and Md. Abdur Razzak and others,*¹⁹ *Md. Sakhawat Hossain, Md. Billal Hossain Biswas, Md. Lutfor, Md. Ibrahim Hossain, Sheikh Mohammad Mujibur Rahman, Md. A. Aziz Sardar, Abdul Aziz Sardar, Kazi Ohidul Islam, and Md. Abdul Khaleque Morol,*²⁰ and *Md. Idris Ali Sardar and Md. Solaiman Mollah.*²¹ In these cases, many witnesses²² narrated their real time experiences in the form of their testimony before the ICT-BD. It may be mentioned here that some of the incidents were already reported in the form of oral history along with projection of certain wartime images and films. Along with dealings with the issue of legal justice for war rape victims, this research will endeavor to address various issues of social justice for victims of war rapes.

2. RESEARCH QUESTION

2.1 Some of the war criminals of the Liberation War of Bangladesh are being punished by the ICT-BD. It has been proved before the ICT-BD that the perpetrators were liable for committing or aiding/ abetting/ contributing/ facilitating/ conspiring to commit the offence of rape during the War of Liberation. Many war rape-victims and witnesses of such grave offences provided their testimonies before the Tribunals based on which the perpetrators were convicted and accordingly sentenced. Through this process, it is now popularly said by many that even though justice had been delayed, it was ultimately not denied.

¹⁸ *The Chief Prosecutor v. Md. Forkan Mallik @ Forkan*, ICTBD (II) Case No. 03 of 2014.

¹⁹ *The Chief Prosecutor v. Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia and Md. Abdur Razzak*, ICTBD (I) Case No. 03 of 2015.

²⁰ *The Chief Prosecutor v. Md. Sakhawat Hossain, Md. Billal Hossain Biswas, Md. Lutfor, Md. Ibrahim Hossain, Sheikh Mohammad Mujibur Rahman, Md. A. Aziz Sardar, Abdul Aziz Sardar, Kazi Ohidul Islam, and Md. Abdul Khaleque Morol*, ICTBD (I) Case No. 04 of 2015.

²¹ *The Chief Prosecutor v. Md. Idris Ali Sardar, and Md. Solaiman Mollah*, ICTBD (I) Case No. 06 of 2015.

²² Both eye witnesses and part-eye witnesses.

2.2 However, a question remained unexplored as to whether '*legal justice*' essentially ensures '*social justice*' for the war rape victims in our country. It has been observed that war rape victims are still not socially recognized and/or respected; rather, they are considered as outcasts in our society. It has been mentioned earlier that about 0.5 million women were raped during the 1971 Liberation War of Bangladesh. It is a reality that many of these war rape victims died without even knowing that an attempt had been made to provide them with legal justice. Nevertheless, it is to be pointed out here that throughout the trial process, comparatively very few war rape victims were produced before the Court to give testimonies in particular cases. Other than these war rape victims-witnesses, there are many women in Bangladesh who are still unidentified. Unfortunately, nobody knows as to how justice is being perceived by them. Thus, it remains an unspoken narrative in our country in respect of how war rape victims actually perceive 'justice'.

2.3 Another question that arises in this regard is whether '*complete justice*' is being done in the course of ensuring legal justice to war rape victims. Apart from the question of social justice to them, it is to be mentioned here that the provision of *reparation* is not recognized under the *ICT Act, 1973*. Surprisingly, there is not a single monument in Bangladesh to commemorate the sacrifices of war rape victims. Even though in the case concerning ATM Azharul Islam,²³ it has been specified that the recognition of the war rape victims should be included in the school Text Books, this has not been done. Hence, it can be questioned as to how far 'justice' is being done to the war rape victims of Bangladesh only by the trial of war criminals?

2.4 This research work endeavor to get an account from the war rape victims and their families about the socio-legal aspects of the long-awaited justice. It may be mentioned that no systematic and/or comprehensive research has been conducted so far on this subject.

2.5 This research project also explores whether patriarchy is also an instrument used to commit sexual violence crimes. Patriarchy is the basic foundation of gender-based structural inequalities and unequal power relations between men and women. Patriarchy operates through ideologies and practices to create an unjust social structure, where women's subordination/inferior position and male domination and superiority are embedded. Patriarchal social structures give birth to certain social norms and practices, religious doctrines, rituals, customs etc. which appear as

²³ A. T. M. Azharul Islam (n 12).

‘normal’, ‘traditional’ and therefore ‘unquestionable’ in the eyes of larger section of the population. Thus, division along gender lines creates a public-private dichotomy. From patriarchy directly derives patrilineal and patrilocal culture. Rigid patriarchal practices and women’s subordination arguably give rise to gender discrimination and subject women to varied forms of violence, including rape, sexual torture etc. During war or armed conflicts, rape, sexual slavery and forced pregnancy are committed against women as a strategy of war for (a) destroying a nation/group/community, partially or wholly; and/or (b) planting the seeds of the male occupation-army personnel to the females of the subjugated nation/group/community; and/or (c) establishing control/domination of the male occupation-army personnel on the females of the subjugated nation/group/community.

2.6 This research work is of significance because even after a remarkable number of convictions of perpetrators by the ICT-BD and the Appellate Division of the Supreme Court of Bangladesh, it is still not clear how much justice is being done to victims in Bangladesh from socio-legal perspectives. We should not forget, ‘[n]ot only must Justice be done; it must also be seen to be done.’²⁴

3. RESEARCH METHODOLOGY

3.1 This research project mainly deployed a “legal research methodology” that included both “theoretical” and “empirical” approaches. “Legal research methodology” can be applied for various purposes such as interpretation or analysis of laws of a particular country, or to compare laws of different countries, or to know the consequences or effects of implementation of a law to ensure justice in society. It should be reiterated that this research work focuses on the issue of the impact of legal justice provided to war rape victims under the *International Crimes (Tribunals) Act 1973*. Hence, “legal research methodology” is the most relevant methodology needed to find out the effects of implementation of the said law to ensure “complete justice” to war rape victims in our society.

3.2 “Legal research methodology” involve two sources, namely, (a) legal sources, and (b) non-legal sources. “Legal sources” are used for the purpose of conducting mainly “theoretical research”, whereas, “non-legal sources” are employed to conduct “empirical research”.

²⁴ R v Sussex Justices, Ex parte McCarthy [1924] 1 KB 256, [1923] All ER Rep 233

Firstly, “legal sources” entail both (i) the primary authority of law, and (ii) the secondary authority of law. “Primary authority of law” constitutes the law itself, and cases, statutes, regulations, codes etc. On the other hand, “secondary authority of law” includes commentary of non-Governmental bodies, reports, journals, legal treaties, encyclopedias, dictionaries etc. This research work is based on an analytical approach and critical appraisal of many statutes and judicial decisions of the following courts: International Crimes Tribunal – Bangladesh (ICT-BD), International Criminal Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), International Criminal Court (ICC), Special Court for Sierra Leone (SCSL), and Nuremberg Trials etc. Again, relevant reports, journal articles and internet material were collected from various sources and considered in discussing the main issues here. It should be mentioned that “theoretical research” provides an understanding of how rape is used as a tactic and/or tool during war from national and international perspectives.

3.3 Secondly, “non-legal sources” are applied to gather supporting information for legal research on life styles, memories, experiences *etc.* of targeted respondents. For this purpose, “empirical approach” is used, which is, however, relatively a recent approach used in legal research. “Empirical research” is carried out by collecting and gathering data or information in relation to a particular research question. In short, “field survey research” is an essential element of this type of research in finding out the effect of legal decision on people and society as a whole.

3.4 The “field survey research” undertaken here was conducted using “qualitative data analysis” techniques. Such research involved using both standardized questionnaires and interviews to collect relevant data. The questions asked included both unstructured and structured questions. Unstructured questions were formed in such a way that respondents had the opportunity to provide responses in their own words. However, the structured questions gave respondents options to select an answer from a given set of choices.

3.5 For the purpose of the “field survey research” approach, the rape victims of the 1971 Liberation War of Bangladesh were interviewed. More specifically, “personal/face-to-face interviews” of war rape victims were conducted as a more personalized form of data collection. method using the same research protocol as questionnaire surveys. The personal interviews were conducted in respondents’ residence or other places convenient for interviewees.

3.6 To select respondents, the method of ‘purposive selection’ of war rape victims was invoked. To begin, the research team contacted the ICT-BD Investigation Agency and various District

Command Councils of Freedom Fighters in each district of Bangladesh to gather information about the 1971 war rape victims as well as their contact addresses. From the information provided we prepared a long list of almost 1392 war rape victims of 1971 from 53 districts of the 8 Divisions of Bangladesh. Then field researcher travelled to various districts to find out whether the listed 1392 war rape victims were interested in participating in our survey disclosing their identities. The field researcher then prepared a list of the 385 war rape victims who had consented to be interviewed disclosing their identity. Finally, the three-member team visited the listed 385 war rape victims to conduct survey. The research work has interviewed a total of 385 rape victims of 53 Districts of 8 Divisions of Bangladesh.

3.7 As far as research ethics is concerned, this research work ensured that the subjects of the field survey were aware that their participation in the study was voluntary. It was ensured that they felt they had the freedom to withdraw from the interview at any time without any unfavorable consequences, and they would not be harmed as a result of their participation or non-participation in this research project. The survey team also provided some information about this study to potential respondents before data collection to help them decide whether or not they wished to participate in the survey. The information included, *inter alia*, the identity of the survey researchers, the purpose and expected outcomes of the survey etc.

3.8 The overall analysis of the study was qualitative in nature and was contextualized based on a critical appraisal of many Statutes and judicial decisions of the Courts. The judicial decisions of the International Crimes Tribunal – Bangladesh (ICT-BD) was mainly focused on in the analysis. However, this research project also relied upon the judicial decisions of the International Tribunal for the Former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR), International Criminal Court (ICC), Special Court for Sierra Leone (SCSL), and Nuremberg Trials etc.

4. HISTORICAL BACKGROUND

4.1 From rape and displacement to the denial of the right to food and medicines, women bear more than their fair share of the burden in any armed conflict situation.²⁵ In this context, over the years there has been growing international attention to the sexual violence committed during armed conflicts. Nevertheless, such crimes are routinely committed on a large scale against women in almost all wars.²⁶

²⁵ Kofi Annan (n 4).

²⁶ Jefferson (n 4).

4.2 Bangladesh was born out of a 9-month long War of Liberation against the State of Pakistan in 1971. History records that there were mass killings of Bengali civilians and mass rape of Bangladeshi women by the Pakistan army and its local collaborators during the 1971 war. Very often the act of rape was followed by the act of killing of the rape victims. Besides there is evidence that other forms of sexual violence crimes were also committed by the Pakistan Army and its local collaborators against Bangladeshi women during 1971 war. These included sexual slavery, enforced prostitution, and forced pregnancy of Bangladeshi women.

4.3 Sexual Violence Crimes Committed against Bangladeshi Women during 1971 War

4.3.1 A number of sexual violence crimes were committed by the Pakistan Army and its local collaborators against Bangladeshi women during the 1971 War of Liberation. These included rape, sexual slavery, and forced pregnancy. A brief account of these three categories of sexual violence crimes committed against Bangladeshi women is given below:

4.3.2 Rape

4.3.2.1 During Bangladesh's War of Liberation against Pakistan in 1971, between 0.2 million and 0.4 million women were raped by soldiers and officers of the Pakistan Army and its local collaborators.²⁷ It may be stated that while the target was said to be largely Hindu women, Bangladeshi women, irrespective of religion, caste or class, came under the attack of the Pakistan Army and its local collaborators.²⁸ Indeed roughly 80% of rape victims were Bengali Muslims, while the rest were Hindus and Christians.²⁹ Also, the age of Bengali rape victims during 1971 war of liberation ranged between seven and seventy-five.³⁰

²⁷ Shana Swiss and Joan E. Giller, 'Rape as a Crime of War: A Medical Perspective' [1993] 270 *Journal of the American Medical Association* 612, 612; Angela Debnath, 'The Bangladesh Genocide: The Plight of Women' in S Totten (ed), *Plight and Fate of Women During and Following Genocide* (New Brunswick: Transaction Publishers, 2009) 52.

²⁸ Kajalie Shehreen Islam, 'Healing the Hidden Wounds of War' 4 (12) *The Daily Star (Forum)*, Dhaka, December 2010.

²⁹ Kevin Gerard Neill, 'Duty, Honour, Rape: Sexual Assault against Women during War' [2000] 2 (1) *Journal of International Women's Studies*, 1, 2, available at <<http://www.bridgew.edu/SoAS/jiws/nov00/duty.htm>> accessed on 26 April 2017.

³⁰ *Ibid.*

4.3.2.2 The number of rape victims, released by the Government of Bangladesh after the war, amounted to only 0.2 million.³¹ However, the War Inquiry Commission (popularly called the *Hamoodur Rahman Commission*), set up in 1971 by the President of Pakistan, claimed this number to be even much less.³² The number dispute regarding the rape victims of 1971 should not be an issue in prosecuting such crimes. Generally, it is not at all possible to provide an exact number of rape victims in any society, be it during war or peace. The Bangladesh Government official data of rape victims was only a part of the total, since many rape victims of 1971 did not come forward to report or to receive government medical assistance fearing social ostracism.

4.3.2.3 Horrifying eye witness accounts of the plight of Bengali rape victims can be found in a number of international documents prepared by foreign correspondents and human rights workers who were in Bangladesh during 1971.³³ Also, there is literature from the 1970s,³⁴

³¹ Anis Ahmed, 'Bangladesh 1971: War Crimes, Genocide and Crimes against Humanity- Operation Search Light: The Targets', conference paper presented at the Bangladesh Study Group programme at Kean University entitled *Bangladesh 1971: Addressing Claims of War Crimes, Genocide and Crimes against Humanity*, 18 October, 2009, 1, 9; See also, Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Ballantine Books, 1993) 133; Special Rapporteur on Violence Against Women in the November 1994 ECOSOC Report numbered E/CN.4/1995/42 presented at the fiftieth session of the Commission on Human Rights, at paragraph 271 (a); Ruth Seifert, 'War and Rape: Analytical Approaches', paper presented at the Women's International League for Peace and Freedom, Switzerland in April 1993, 1, 12.

³² *Hamoodur Rahman Commission Report*, Cabinet Secretariat, Government of Pakistan, Rawalpindi, 25 May 1974, para. 32.

³³ Aubrey Menen, 'The Rape of Bangladesh', *The New York Times*, 23 July 1972, Column 2, paragraphs 8 and 9.

³⁴ Germaine Greer, 'The Rape of the Bengali Women', *The Sunday Times*, April 9, 1972; S Brownmiller, *Against Our Will: Men, Women and Rape* (London: Secker & Warburg, 1975) 78-86.

recent scholarship³⁵ and documentary films³⁶ based on eye witness accounts from within Bangladesh which shows that the Pakistan Army and its local collaborators committed rapes against Bangladeshi women and highlights the complexities of these violent encounters.³⁷ There is evidence too that some victims even lost their limbs, and organs like breast, thigh, hip, were cut after the rape.³⁸ There is evidence that the Pakistan Army and its local collaborators killed young girls tearing their thighs apart after raping them; they even publicly played football after cutting the breasts of the rape victims.³⁹

4.3.3 Sexual Slavery

4.3.3.1 Many Bangladeshi women were not only raped during the 1971 War of Liberation, many were taken away by the Pakistan Army and its local collaborators and made to sex slaves of officers and soldiers for the duration of the war. These women, whether Hindu, Muslim or Christian, were captured either from private residences or educational institute premises (campus and girls' hostels).

³⁵ H H Rahman, *Bangladesher Shadhinota Juddho: Dolilpotro, Oshtom Khondo* (History of Bangladesh War of Independence: Documents, Vol-8) (Dhaka: Ministry of Information, 1984); Nilima Ibrahim, *Ami Birangona Bolchi* (This is the 'War-Heroine' Speaking), 2 Volumes (Dhaka: Jagriti, 1994-5); Meghna Guhathakurta, *Dhorshon Ekti Juddhaporadh* (Rape is a War Crime) (Dhaka: Bulletin of Ain-O-Shalish Kendra, 1996); Shaheen Akhtar, Suraiya Begum, Hameeda Hossain, Sultana Kamal, and Meghna Guhathakurta, (eds), *Narir Ekattor O Juddhoporoborti Koththo Kahini* (Oral History Accounts of Women's Experiences During 1971 and After the War) (Dhaka: Ain-O-Shalish-Kendro, 2001); Shahriar Kabir, *Tormenting Seventy One: An account of Pakistan Army's Atrocities during Bangladesh Liberation War of 1971* (Dhaka: Nirmul Committee, 2006).

³⁶ *Women and War*, directed by Tareque Masud and Catherine Masud, produced by Ain-O-Shalish-Kendra and Audiovision (2000); *Tahader Juddho* (Their War) directed by A Choudhury (2001).

³⁷ Nayanika Mookherjee, 'Bangladesh War of 1971: A Prescription for Reconciliation?' (2006) 41 (36) *Economic and Political Weekly* 3901; Nayanika Mookherjee, 'Skewing the History of Rape in 1971', 1 (2) *Daily Star Forum* (December 2006).

³⁸ Mofidul Hoque and Laurel Emilie Fletcher, *Colloquium on Accountability of Sexual Violence Crimes and Experiences of the International Tribunals* (Dhaka: Liberation War Museum, 2012) at p. 83.

³⁹ Information gathered from a personal interview with Monwara Begum, Investigation Officer, International Crimes Tribunal, Dhaka.

4.3.3.2 Bangladeshi women, confined as sex slaves in military camps during the 1971 War of Liberation often received cruel, inhumane and degrading treatment. They were routinely tortured in horrifying ways. After these women tried to hang themselves with their clothing, their garments were taken away from them.⁴⁰ After they tried to strangle themselves with their long hair, they were shaved bald.⁴¹

4.3.4 Forced Pregnancy

4.3.4.1 Rape and sexual slavery committed by the Pakistan Army and its local collaborators during 1971 led to an estimated 0.025 million pregnancies among Bangladeshi women.⁴² Since this data is an official one, the actual number of pregnancies could have been much more than just 0.025 million. Many pregnancies were dealt or terminated without any kind of official medical support units, while many have remained unreported.⁴³

4.3.4.2 In the aftermath of the war, the search for a solution by desperate Bangladeshi women who were victims of forced pregnancy led to incidents of infanticide⁴⁴ and suicide. Authorities in Bangladesh have reported 300 suicides a week among pregnant women; however, many of these cases were not really suicides but unsuccessful attempts at self-induced abortion.⁴⁵

4.3.4.3 Impregnating Bangladeshi women was one of the war strategies adopted by the Pakistan Army and its local collaborators. Bangladeshi women, who were captivated as sex slaves, were found to have been released by the Pakistan Army and its local collaborators only when they

⁴⁰ Viggo Olsen and Jeanette Lockerbie, *Daktar: Diplomat in Bangladesh* (Chicago, USA, Moody Publishers, 1973).

⁴¹ *Ibid.*

⁴² Swiss & Giller (n 27).

⁴³ Personal interview with Maleka Begum, activist who worked directly with rape victims of 1971.

⁴⁴ Associated Press, 'Killing of Babies Feared in Bengal', *The New York Times*, 5 March 1972.

⁴⁵ Anthony Astrachan, 'U.N. Asked to Aid Bengali Abortions', *The Washington Post*, 22 March 1972 at column 2, paragraph 9.

became sure that those women were carrying the babies of Pakistani soldiers and were beyond the time limit set for abortion.⁴⁶ Even as many Pakistan forces surrendered in December 1971, some of the soldiers reportedly claimed that they were leaving their ‘seed’ behind in the women they had impregnated through mass rape.⁴⁷

5. LEGAL IMPLICATIONS OF COMMITTING RAPE DURING WAR

5.1 During medieval siege warfare, “rape” was used as a war tactic as a part of legal military techniques.⁴⁸ Later, through the development of the *Ordinances of War*, “death penalty” was imposed as a punishment to those responsible for adopting the rape of women during war.⁴⁹ Nevertheless, military men believed that all sorts of sexual violence including rape would be sources of inspiration to fight during war because they considered the same as rewards and means of relaxing(!).⁵⁰ With the passage of time, however, various legal instruments *i.e.* the Hague Conventions 1899 and 1907; the Four Geneva Conventions 1949; the Statute of the International Criminal Court (ICC Statute) 1998; the Statute of the International Criminal Tribunal for Rwanda (ICTR Statute) 1994; the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY Statute) 1993; and even the International Crimes (Tribunals) Act (ICTA) 1973 etc. have been created prohibiting the use of rape as a tool of war.

⁴⁶‘The World: East Pakistan: East Pakistan: Even the Skies Weep’, *Time Magazine*, 25 October 1971.

⁴⁷ Lisa Sharlach, ‘Rape as Genocide: Bangladesh, the Former Yugoslavia, and Rwanda’ [2000] 22 (1) *New Political Science* 14.

⁴⁸ Patricia Viseur Sellers, ‘Sexual Violence and Peremptory Norms: The Legal Value of Rape’ [2002] 34 *Case Western Reserve Journal of International Law* 287, 288.

⁴⁹ *Ibid.*

⁵⁰ Kelly D. Askin, ‘Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law: Extraordinary Advances, Enduring Obstacles’ [2003] 21 *Berkeley Journal of International Law* 288, 296.

5.2 Understanding the Concept of War Rape

5.2.1 World history is itself witness that the crime of rape has been in existence since ancient times. From then on, “war rape” has been labeled variously, *e.g.* collective rape, militarized rape, wartime rape, state-sponsored rape, martial rape *etc.*⁵¹ This is sometimes termed as “genocidal rape”;⁵² however, there are differences in *mens rea* of the perpetrators to commit the same. Initially, rape had been theorized as a private concern of “disobedient” or “penurious” soldiers instead of considered as a matter of public concern.⁵³ However, due to its conventional consideration as a by-product of almost all armed conflicts, either “International Armed Conflict (IAC)” or “Non-International Armed Conflict (NIAC)” it is regarded as both an inexorable part of armed conflict and the effect of defeat in war.

5.2.2 Many States consider war rape from the perspective of morality through recognizing relevant customs and creating domestic laws.⁵⁴ However, the view that, the actual physical battery of soldiers would disrupt women’s mental and physical integrity was historically ignored.⁵⁵ Some argued that male soldiers used rape during war to show their dominance to the men of opposite combatant community or group.⁵⁶

5.2.3 In most cases, sexual violence crimes, including rape of women committed during armed conflicts remain unspoken. A written form of war rape was first found in ancient Greece.⁵⁷ Afterwards, during the 1938 Kristallnacht riots of Nazi Germany, certain written forms of

⁵¹ Elvan Isikozlu and Ananda S. Millard, ‘Towards a Typology of Wartime Rape’ Bonn International Center for Conversion 1, 21, available at <https://www.bicc.de/uploads/tx_bicctools/brief43.pdf> accessed on 18 February 2017.

⁵² Ibid.

⁵³ Heaven Crawley, ‘Engendering the State in Refugee Women’s Claims for Asylum’ in Susie Jacobs et al. eds., *States of Conflict: Gender, Violence and Resistance* (London: Zed Books, 2000) 87, 95.

⁵⁴ William A. Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000) 162.

⁵⁵ Ibid.

⁵⁶ Robert M. Hayden, ‘Rape and Rape Avoidance in Ethno-National Conflicts: Sexual Violence in Liminalized States’ [2000] 102 (1) *American Anthropologist* 27, 41.

⁵⁷ H. Patricia Hynes, ‘On the Battlefield of Women’s Bodies: An Overview of the Harm of War to Women’ [2004] 27 *Women’s Studies International Forum* 431, 445.

“mass” war rape came into notice.⁵⁸ Subsequently, it was reported that Soviet soldiers raped more than 2 million German women at the end of the World War II (WWII).⁵⁹ Around the same period, the Japanese army also committed mass rape and abused thousands of Asian comfort women, mainly during the Nanking massacre.⁶⁰ In the 1971 War of Liberation of Bangladesh, the members of Pakistan Army, its auxiliary forces, and local collaborators raped approximately 0.2 million to 0.4 million women.⁶¹ In recent times, the Report of the Secretary General of the United Nations (UN) identified mass rape as having taken place during armed conflict in the Democratic Republic of the Congo (DRC), the Central African Republic, Iraq, Colombia, Somalia, South Sudan, the Sudan and the Syrian Arab Republic.⁶²

5.2.4 In the 1971 Liberation War of Bangladesh, perpetrators of sexual violence against women regarded occupation of the Bangladeshi women’s womb as one and the same as the occupation of the physical territory of Bangladesh. They intended to create fear among the people of Bangladesh and demoralize the spirit of the freedom fighters. Nonetheless, in the early 1990s, the international community was forced to rethink its policy regarding the use of rape as a tactic of war as well as a genocidal weapon, in the Hutu and Serbian regimes, in Rwanda and the former Yugoslavia.⁶³

⁵⁸ D. Milillo, ‘Rape as a Tactic of War: Social and Psychological Perspectives’ [2006] 21 (2) *Journal of Women and Social Work* 196, 205.

⁵⁹ Charles S. Maier, *The Unmiserable Past: History, Holocaust, and German National Identity* (Cambridge, MA: Harvard University Press, 1988) 321.

⁶⁰ Shellie K. Park, ‘Broken Silence: Redressing the Mass Rape and Sexual Enslavement of Asian Women by the Japanese Government in an Appropriate Forum’ [2003] 3 *Asian Pacific Law and Policy Journal* 23, 24-5.

⁶¹ For further details, see, <<http://muktadhara.net/page42.html>> accessed on 23 March 2017.

⁶² Report of the UN Secretary General on Conflict-Related Sexual Violence (23 March 2005) 1, 2, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3F6E4FF96FF9%7D/s_2015_203.pdf> accessed on 7 March 2017.

⁶³ These two countries are situated over five thousand miles apart; Jessica Kruger, ‘A Comparative Analysis of Genocidal Rape in Rwanda and the Former Yugoslavia: Implications for the Future’ [2011] *Master’s Theses and Doctoral Dissertations Paper* 1, 3.

5.2.5 The experience of such warfare brought the “power element of the attack” into attention as the fundamental stimulus behind the adoption of such policy.⁶⁴ It was also realized that the purpose of using rape as a tactic of war is to “pollute and water down the bloodline” because the Serbs intended to destroy both the soil and bloodlines.⁶⁵ It was probably thought that since women are well-regarded as mothers as well as defenders of their respective homes in many societies, the fact of their being raped would symbolize the ultimate victory of the military. From a broader perspective, it was seen that rape of a women caused embarrassment in an entire society where cultural and religious traditions and people’s approach are used to disgrace victims of all sorts of sexual violence as was the case in Bangladesh, Sudan, Yugoslavia, and Rwanda.⁶⁶ Hence, it can be said that the inherent honour of the women in societies is the reason for using war rape of women as a war tactic which ultimately represents the criminality of such policy makers and executors.

5.3 Legal Inferences of Using Rape as a War Tactic

5.3.1 Under International Humanitarian Law (IHL), sexual violence crimes can take different forms. It does not only include rape but also, indecent assault, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and/or any other form of sexual violence. Entering into a woman’s body by force can be compared to an act of torture which ultimately causes physical pain, the loss of personal dignity and self-determination, and it is an attack on women’s identity.⁶⁷ Many studies under the IHL have established that rape is an extreme act of violence perpetrated by the sexual means; it is an act or sexual expression of aggression itself. Kelly Askin, the Director of the International Criminal Justice Institute (ICJI), opines that “there is increasing evidence that sexual violence has now reached the level of a jus cogens norm.”⁶⁸

⁶⁴ Laurel Fletcher, Allyn Taylor, and Joan Fitzpatrick, ‘Human Rights Violations against Women’ [1994] 15 *Whittier Law Review* 319, 319; Kathleen Mahoney, *Rape as a War Crime and Crime against Humanity: Its Questionable Status, in Universal Human Rights?* (New York: Macmillan Press, 2000) 156 - 59.

⁶⁵ Amy E. Ray, ‘The Shame of It: Gender-Based Terrorism in the Former Yugoslavia and the Failure of International Human Rights Law to Comprehend the Injuries’ 46 [1997] 7 *American University Law Review* 93, 805-06.

⁶⁶ Kelly D. Askin, ‘Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles’ [2003] 21 *Berkeley Journal of International Law* 288, 289-93.

⁶⁷ *Ibid.*

⁶⁸ *Id.*

5.3.2 In order to be focused on only war rape, Rule 93 of the International Customary Humanitarian Law (ICHL) can be referred.⁶⁹ This particular Rule depicts that ‘[r]ape and other forms of sexual violence are prohibited’.⁷⁰ The 1907 Hague Convention Respecting the Laws and Customs of War on Land indicates what type of behavior is acceptable in the course of a war. This Convention did not explicitly specify any prohibition of war rape; however, it has been progressively interpreted to bar rape in the framework of war. From the perspective of broader interpretation, Article 46 of the Hague Convention obliges combatants to respect the “family honour and rights, [and] the lives of persons” during war.⁷¹ Therefore, it can be inferred that this Convention also prohibits rape.

5.3.3 Under the purview of common Article 3 of the 1949 Four Geneva Conventions, brutality to life and person by the way of torture, inter alia, which causes outrage upon personal dignity is absolutely prohibited against the hors de combat who do not take part in hostilities during armed conflict. Similarly, Article 27 of the 1949 Fourth Geneva Convention, related to the protection of civilian persons in times of war, explicitly prohibits wartime rape and enforced prostitution. The second paragraph of Article 27 reads: ‘[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.’⁷² These prohibitions were reinforced by the 1977 Additional Protocols to the Geneva Conventions.⁷³

⁶⁹ International Customary Humanitarian Law (ICHL) as codified by the International Committee of the Red Cross (ICRC), available at <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93> accessed on 8 March 2017.

⁷⁰ Ibid, Rule 93.

⁷¹ C. P. M. Cleiren and M. E. M. Tijssen, ‘Rape and Other Forms of Sexual Assault in the Armed Conflict in the Former Yugoslavia: Legal Procedural, and Evidentiary Issues, in the Prosecution of International Crimes’ [1994] *Criminal Law Forum* 280, 287.

⁷² Article 27 of the Fourth Geneva Convention, 1949; For a discussion of the four Geneva Conventions, along with the State parties, see the website of the International Committee of the Red Cross (ICRC), available at <<http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions>> accessed on 1 March 2017.

⁷³ In the Nicaragua case, the International Court of Justice (ICJ) concluded that the Conventions’ principles amount to “elementary considerations of humanity” that cannot be breached in war, regardless of whether the conflict is international or national in nature; Cleiren and Tijssen (n 67)

5.3.4 In 1974, the UN General Assembly adopted the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.⁷⁴ This Declaration urges states to ensure protection for women in compliance with international laws, including the *Geneva Conventions*.⁷⁵ Surprisingly, this declaration does not refer explicitly to women’s vulnerability to sexual violence during armed conflict, even though this was evident from the report of the Special Rapporteur on violence against women that rape was committed against Bangladeshi women on a large scale during the 1971 war.⁷⁶ However, from the *travaux préparatoires* of this Declaration it has been easy to perceive that the role of women as “mothers and care-givers” were taken into consideration as regards the situation of women during armed conflict.⁷⁷

5.3.5 After a certain period of time, the ICC Statute was adopted which gives the International Criminal Court (ICC) jurisdiction over genocide, crimes against humanity, and war crimes. Although both men and women can be victims of most of these crimes, some of them, such as forced pregnancy, can be committed only against women. Articles 7 and 8 of the *ICC Statute* included rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, and other forms of sexual violence, both as explicit crimes against humanity⁷⁸ and implicitly, war crimes.⁷⁹

5.3.6 In 1998, the ICTR made a landmark decision in the *Jean-Paul Akayesu* case that considered “rape as genocide” under the international law even though the concerned accused was convicted for committing rape as a “crime against humanity”.⁸⁰ Specifically, this case recognized rape as a “crime of genocide” for the first time on the ground that rape causes “serious bodily or mental harm” to victims belonging to any of the four indentifiable groups.

⁷⁴ *The United Nations Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, General Assembly Resolution 3318 (XXIX) (14 December 1974) preamble, paras. 9 and 3.

⁷⁵ *Ibid.*

⁷⁶ *Id.*, para. 271 (a).

⁷⁷ *Id.*, para. 4.

⁷⁸ The ICC Statute 1998, Article 7 (1) (g) and Article 7(2) (c), (e) and (f).

⁷⁹ *Ibid.*; Article 8 (b) (xxi) and (b) (xxii).

⁸⁰ *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T (Trial Chamber), 2 September 1998. (*i.e.* national, racial, ethnical, and religious) as long as the same is committed with the “specific intent to destroy such group in whole or in part”.⁸¹

5.3.7 In the same year, sexual violence involving rape was recognized for the first time as a “war crime” in the *Furundzija* case by ICTY pointing out that a single rape may constitute a war crime.⁸² Likewise, in 2001, in the *Dragoljub Kunarak, Radomir Kovak and Zoran Vukovic* case, ICTY concluded that even a single rape may constitute a “crime against humanity”⁸³. Sexual violence was held to fall under “crimes against humanity” through various means; for example, as enslavement,⁸⁴ as sexual slavery,⁸⁵ as persecution,⁸⁶ as forced marriage⁸⁷ or even, as torture⁸⁸.

5.3.8 On 19 June 2008, a 15-Member UN Security Council unanimously adopted *Resolution 1820 (2008)* on ‘Sexual Violence against Civilians in Conflict’. The *Resolution* condemns the use of rape and other forms of sexual violence in conflict situations, stating that rape can constitute a “war crime”, a “crime against humanity”, or a constitutive act with respect to “genocide”.⁸⁹

⁸¹ *Ibid.*, at paras. 688 and 731; *The Prosecutor v. Sylvestre Gacumbitsi*, ICTR-2001-64 (Trial Chamber), 17 June 2004, para. 292; *The Prosecutor v. Blagojevic and Jokic*, IT-02-60-T (Trial Chamber), 17 January 2005, para. 646; *The Prosecutor v. Radislav Krstic*, IT-98-33-T (Trial Chamber), 2 August 2001, para. 513; *The Prosecutor v. Milomir Stakic*, IT-97-24-T (Trial Chamber), 31 July 2003, para. 516; *The Prosecutor v. Radoslav Brdjanin*, IT-99-36-T (Trial Chamber), 1 September 2004, para. 690.

⁸² *The Prosecutor v. Furundzija*, IT-95-17/1-T (Trial Chamber), 10 December 1998.

⁸³ *The Prosecutor v. Dragoljub Kunarak, Radomir Kovak and Zoran Vukovic*, IT-96-23-T and 23/1-T (Trial Chamber), 22 February 2001; Christopher Scott Maravilla, ‘Rape as a War Crime: The Implication of the International Criminal Tribunal for the Former Yugoslavia’s Decision in *Prosecutor v. Kunarac Kovac and Vukovic* on International Humanitarian Law’ [2001] 13 *Florida Journal of International Law* 321, 322-23; *A. T. M. Azharul Islam Case* (n 11), at page 140 at para. 264.

⁸⁴ *Ibid.*

⁸⁵ *The Prosecutor v. Sesay et. al.*, SCSL-04-15-T (Trial Chamber), 2 March 2009.

⁸⁶ *The Prosecutor v. Kvočka*, IT-98-30/I-T (Trial Chamber), 2 November 2001.

⁸⁷ *The Prosecutor v. Brima et. al.*, SCSL-04-16-T (Trial Chamber), 20 June 2007 and SCSL-2004-16-A (Appeals Chamber), 22 February 2008 (‘AFRC’ Case).

⁸⁸ *The Prosecutor v. Semanza*, ICTR-97-20 (Trial Chamber), 15 May 2003.

⁸⁹ Paragraph 5 of the Preamble of the Resolution 1820 (2008) adopted by the Security Council at its 5916th Meeting on 19 June 2008.

6. PATRIARCHY AND WAR AS INSTRUMENTS OF SEXUAL VIOLENCE CRIME

6.1 Patriarchy is an anthropological term and has been defined by Sarah Blaffer Hrdy as ‘an ideology that focused on both the chastity of women and the perpetuation and augmentation of male lineages undercut the long-standing priority of putting children’s well-being first’.⁹⁰ For Hrdy, when people started to become agrarian and urban, patriarchy entered into the human society of the world.⁹¹ Likewise, Wendy Wood and Alice Eagly contend that when human beings were hunter-gatherers, patriarchy was not in existence for a long period of human history.⁹² Wood and Eagly, however, pointed at the relatively late development of the concept of patriarchy and introduced a bio-social model of ‘the interactive relations between the physical attributes of men and women and the social contexts in which they live’.⁹³

6.2 Again, considering the development of patriarchy, Hrdy argues that ‘[m]en are now pulled into closer patriarchal relationships with other men for purposes of politics and war, with the associated consequences for the role of women.’⁹⁴ Sarah Lemer puts it forward as to ‘how myth, religion, science and politics - all features of high patriarchal cultures - unite in an ideological attack on what must have been obvious even then, the facts of human relationality.’⁹⁵ She notes that the ‘patriarchal demand is control of women’s sexuality which included an aggressive war on women’s free sexuality as an expression of their own convictions ...’⁹⁶

⁹⁰ Carol Gilligan, *The Birth of Pleasure* (New York: Alfred A. Knopf, 2002) 4 – 5; *See also*, Arundhati Roy, *The God of Small Things* (New York: Harper Perennial, 1998) 6; Frans de Wall, *The Age of Empathy: Nature’s Lessons for a Kinder Society* (New York: Harmony Books, 2009) 7.

⁹¹ *Ibid.*

⁹² Wendy Wood and Alice H Eagly, ‘A Cross-Cultural Analysis of the Behavior of Women and Men: Implications for the Origins of Sex Differences’ [2002] 128 *Psychological Bulletin* 699, 704.

⁹³ *Ibid.*, 701.

⁹⁴ Sarah Blaffer Hrdy, *Mothers and Others: The Evolutionary Origins of Mutual Understanding* (Belknap Press: Harvard University Press, 2009) 204 - 238, 239 - 243, 261 - 265, 287 - 290.

⁹⁵ Ruth Rosen, *The World Split Open: How the Modern Women’s Movement Changed America* (New York and London: Penguin, 2001) 107, 116, 122, 126, 129.

⁹⁶ Brownmiller (n 34); David P. Bryden and Sonja Lengnick, ‘Rape in the Criminal Justice System’ [1997] 87 *Journal of Criminal Law & Criminology* 1194, 1195 - 1198.

6.3 As regards war rape and patriarchy, the ICTY very lucidly observed in 2001 in the case concerning *Krstic*⁹⁷ that the ‘community of Bosnian Muslims from the Srebrenica area was ‘patriarchal’, and that patriarchy was instrumental in the commissioning of genocide by committing rape.’⁹⁸ Moreover, world history is itself a witness of the fact that the crime of rape has been in existence since ancient periods of wartime where patriarchy was found to be an instrument of sexual violence.

6.4 Initially, rape was theorized as a private concern of “disobedient” or “penurious” soldiers instead of as a matter of public concern.⁹⁹ However, due to its conventional acceptance as a by-product of almost all armed conflicts, either “International Armed Conflict (IAC)” or “Non-International Armed Conflict (NIAC)”, rape was regarded as both the inexorable part of armed conflict and an effect of defeat in war.

6.5 Many states have started to consider war rape from the perspective of morality factoring in relevant customs and re-enacting domestic laws.¹⁰⁰ However, the view that, the actual physical batter of soldiers would disrupt women’s mental and physical integrity had been historically ignored.¹⁰¹ Some have argued that male soldiers used to rape women during war to assert their superiority and show their power to the men of such women’s communities or groups.¹⁰² Accordingly, the philosopher Claudia Card has clearly pointed out that ‘[the war rape is a] cross-cultural language of male domination’.¹⁰³ The policy of war rape was adopted mostly to undermine the political, cultural, and national solidarity of the targeted people with a view to changing the identity of that particular group or community.¹⁰⁴ Nevertheless, and reflecting on this ignorance of the matter of using rape as a “tool of war”, a leading commentator December Green, has opined that rape is ‘one of the most pernicious and least understood aspects of war.’¹⁰⁵

⁹⁷ IT-98-33-T (Trial Chamber), 02 August 2001.

⁹⁸ Doris E. Buss, ‘Knowing Women: Translating Patriarchy in International Criminal Law’ [2014] 23 *Social & Legal Studies* 73-74, 92; David P. Bryden and Erica Madore, ‘Patriarchy, Sexual Freedom, and Gender Equality as Causes of Rape’ [2016] 13 *Ohio State University Journal of Criminal Law* 299, 345.

⁹⁹ Heaven Crawley, ‘Engendering the State in Refugee Women’s Claims for Asylum’ in Susie Jacobs et al. eds., *States of Conflict: Gender, Violence and Resistance* (London: Zed Books, 2000) 87, 95.

¹⁰⁰ William A. Schabas, *Genocide in International Law* (Cambridge: Cambridge University Press, 2000) 162.

¹⁰¹ *Ibid.*

¹⁰² Robert M. Hayden (n 56).

¹⁰³ Claudia Card, ‘Rape as a Weapon of War’ [1996] 11 (4) *Hypatia* 5, 18.

¹⁰⁴ Cunningham and Ruby (n 7).

¹⁰⁵ December Green, *Gender Violence in Africa: African Women’s Response* (New York: St. Martin’s Press, 1999) 51, 241.

6.6 Concerning the contexts of rape that happened during the Liberation War of Bangladesh and the trials of the perpetrators, in the *Md. Idris Ali Sardar and others case*¹⁰⁶ the ICT-BD noted:

‘Rape is an offence which is more than murder. The trauma the victim sustains kills her endlessly. Bodily harm the victim sustains gets healed but psychological and mental harms are never erased. Rape or sexual violence causes serious bodily and mental harm not to the victim only but to her family, the society and the community she belongs.’¹⁰⁷

6.7 Considering these factors, the Tribunal found that committing rape and other sexual violence upon Hindu women captives in this particular case portrays the genocidal intent of the perpetrators to destroy Hindu religious group(s).¹⁰⁸ The Tribunal also opined that rape was used as a “tool of destruction”, and a “tool of genocide” of the targeted group(s) causing both physical and psychological annihilation of Bengali Hindu women.¹⁰⁹ Besides, as regards the bodily and mental harm of women who suffered from instance of such genocidal rape, the Tribunal stipulated that since ‘[f]amily honour and religious group identity are enmeshed with female chastity [,] [w]omen who endured the genocidal rape had to cope not only with their physical injuries and trauma they sustained, but with a society and community they belong.’¹¹⁰

6.8 In its verdict on the *Md. Moslem Prodhan and Syed Md. Hossian case* of the ICT-BD, the Tribunal also viewed rape as a “tool of genocide”.¹¹¹ Concerning the course of destruction, the Tribunal pointed out the ‘coercive and horrific situation’ created by the perpetrators committing rape and other sexual violence upon Hindu religious women in targeted localities.¹¹² Like the *Md. Idris Ali Sardar and others case*, the Tribunal noted in this case as well that the acts of rape not only caused bodily and mental harm to women but also to their families and communities which ultimately lead it to conclude that the perpetrators intended to destroy Hindu religious groups, either wholly or partly.¹¹³ From the above description, it is therefore clear that the perpetrators used rape of Bangladeshi women not only as a “weapon of war” but also as a “tool of genocide”.

¹⁰⁶ *Md. Idris Ali Sardar and Others*, ICTBD (I) Case No. 06 of 2015.

¹⁰⁷ *Ibid*, para. 335.

¹⁰⁸ *Id*, para. 332.

¹⁰⁹ *Id*, para. 343.

¹¹⁰ *Id*, para. 355.

¹¹¹ *Md. Moslem Prodhan and another*, ICTBD (I) Case No. 01 of 2016, para. 420.

¹¹² *Ibid*, para. 394.

¹¹³ *Id*.

6.9 As an end note to this part, it should be mentioned that in case of the war in Bosnia and Herzegovina in the 1990s, it was reported by the Williams Institute that some 0.003 million men and boys were raped but their stories remain untold in Bosnia's macho culture.¹¹⁴ Similarly, in the case of the Liberation War of Bangladesh, such cases have been a part of oral history that many men were also raped by the perpetrators but any data or report in this regard is yet to be explored.

7. UNDERSTANDING JUSTICE: GLOBAL PERSPECTIVES

7.1 The demand for justice is not confined within the wall of only "justice", rather, it has to be extended to meet the demand for "complete justice" in our time. We hear from here and there that injustices are committed in many places around the world. However, what really is justice? We often ask this question to others and sometimes even to ourselves. We do not always get a convincing explanation in this regard.

7.2 Preliminary Concept of Justice

7.2.1 Justice is a universal and absolute concept which is codified by laws, principles, religions, cultures, traditions *etc.*¹¹⁵ With the passage of time, many justice principles and theories have emerged but a unitary concept of justice is yet to be developed. Scholars have attempted to divide the concept of justice into different categories such as social, legal, criminal, civil, global, commutative, distributive, open, organizational, poetic, restorative, retributive, spatial, occupational justice, and absolute justice.¹¹⁶

7.2.2 This research work is however concerned about socio-legal aspects of justice, mainly for the 1971 war rape victims in Bangladesh. Thus, the connection between social justice in relationship to legal justice will be explored in this part referring to prevalent principles and theories of justice. To determine what social justice means it is necessary to define justice at the very beginning. Thus, this part firstly defines justice, and then delineates social justice with regard to legal justice and then attempts a critical evaluation of such concepts.

¹¹⁴ Maja Garaca Djurdjevic and Banja Luka, 'Wartime Rapes of Men Remains Taboo in Bosnia' [2017] *Balkan Transitional Justice*, available at <<http://www.balkaninsight.com/en/article/male-victims-of-war-related-sexual-abuse-shunned-in-bosnia-05-18-2017-1/1455/4>> accessed on 25 March 2017.

¹¹⁵ Max Travers, 'Understanding Comparison Research Foundation: An Interpretive Perspective,' [2008] 18 *International Criminal Justice Review* 389, 395; Michael Head, 'Law, Social Change and Social Justice,' [2001] 5 *University of Western Sydney Law* 3, 17.

¹¹⁶ Robert Wablder, 'The Concept of Justice and the Quest for a Perfectly Just Society' [1966-67] 115 *University of Pennsylvania Law Review* 1, 13; Alice Erh-Soon Tay, 'The Concept of Justice as Social Regulator in Law, Politics, Economics and Culture' [1981] *Bulletin of the Australian Society of Legal Philosophy* 2, 9-10.

7.3 Defining Justice

7.3.1 Graveson defined ‘justice is to a great extent a legal reflection of ethical and moral values conditioned by time, place and circumstances, much as the concept of reasonableness in common law is a reflection of contemporary social values.’¹¹⁷ This definition may be more appropriate for the present research. Nevertheless, there are number of remarkable notions and theories of justice that have evolved from the ancient period of time. At a very early period of time, the Ancient Greek philosopher Plato declared that ‘justice is that justice is the having and doing of what is one’s own.’¹¹⁸ This view-point of Plato was applicable both at the individual level and at the universal level.¹¹⁹ With the passage of time, many theories have emerged and gradually been developed by theorists like John Locke, John Stuart Mill, John Rawls, Robert Nozick, Immanuel Kant and C. S. Lewis and so on.

7.3.2 The advocates of the “command theory” believe that justice is nothing but an authoritative command of God.¹²⁰ On questions of morality and justice, Plato criticized this theory by asking as to ‘[i]s what is morally good commanded by God because it is morally good, or is it morally good because it is commanded by God?’¹²¹ In other words, the former question implies that the existence of morality is more pertinent than the question of the God whereas the later question suggests the arbitrariness of justice. In this regard, Immanuel Kant responded that when objective morality exists, God also exists and *vice versa*.¹²² Hence, justice is simply a reflection of morality that comes from the command of the God.

¹¹⁷ Barbara A. Hudson, *Understanding Justice* (Open University Press: United Kingdom, 1996) 192, 221.

¹¹⁸ R. W. Carlyle & A. J. Carlyle, *A History of Mediaeval History in the West: The Theory of the King and Justice* (Barnes & Noble: New York, 3rd ed., 1903) 219, 226.

¹¹⁹ Ibid; Anton-Hermann Chroust and David L. Osborn, ‘Aristotle’s Conception of Justice,’ [1942] 17 (2) *Notre Dame Law Review* 129, 152-3; Robert Wablder, ‘The Concept of Justice and the Quest for a Perfectly Just Society’ [1966 - 1997] *University of Pennsylvania Law Review* 1, 27.

¹²⁰ Robert Rubinson, ‘A Theory of Access to Justice,’ [2004-5] 29 *Journal of the Legal Profession* 89, 103; See also, Eugene Kamenka and Alice Erh-Soon Tay, ‘Marxist Ideology, Communist Reality, and the Concept of Criminal Justice’ [1987] 6 *Criminal Justice Ethics* 3, 16.

¹²¹ R. W. Carlyle and A. J. Carlyle, *A History of Mediaeval History in the West: The Theory of the King and Justice* (New York: Barnes & Noble, 3rd ed., 1903) 219, 227 - 228; Anton-Hermann Chroust and David L. Osborn, ‘Aristotle’s Conception of Justice’ [1942] 17(2) *Notre Dame Law Review* 129, 159.

¹²² Kieran McEvoy, ‘Beyond Legalism: Towards a Thicker Understanding of Transitional Justice,’ [2007] 34 *Journal of Law & Society* 411, 424; See also, Samuel Taylor Morison, ‘A Hayekian Theory of Social Justice’ [2005] 1 *NYU Journal of Law & Liberty* 225, 232.

7.3.3 From the “natural law” theory perspectives, during the 17th century, John Locke opined that justice is itself a part of natural law and it is a result of an action and/or choice.¹²³ Interestingly, seen from the perspective of the third principle of the “Laws of Motion of Newton”, justice is what an individual, being the offender and victim, deserves, based on his/her action(s) and harm caused respectively as an equal and opposite reaction of such action.¹²⁴ Next, during the 19th century, John Stuart Mill, a utilitarian thinker, explained the sources of the concept of justice and stated that it was derived from standards of rightness as well as consequentialism.¹²⁵ Whether a principle of justice is regarded as the most accepted one depends on its consequence measured by the extent of well-being it contributes to society.

7.3.4 Another theory of justice is the “distributive justice” theory which includes, *inter alia*, wealth, power, opportunities, respect distributed to the human beings, members of a society, a nation in the forms of social justice, fairness, property rights, maximization of welfare *etc.*¹²⁶ The notion of social justice will be explored in the following part although it is important to mention at the outset that according to John Rawls ‘distributive justice, is a form of fairness’ with the connection of social contract theory.¹²⁷ Significantly, social justice is a branch of the virtue of justice which advises us to use our best efforts to ensure a more just justice to people. What’s more, Robert Nozick notes that distributive justice is property rights-based justice which takes advantage of the overall resources of an economic system.¹²⁸

¹²³ Marius Van Staden, ‘Towards a South African Understanding of Social Justice: The International Labour Organisation Perspective,’ [2012] *Journal of South African Law* 91, 93; Bradley C. Bobertz, ‘Toward a Better Understanding of Intergenerational Justice,’ [1987] 36 *Buffalo Law Review* 165, 167.

¹²⁴ John Braithwaite, ‘Restorative Justice and Social Justice,’ [2000] 63 *Saskatchewan Law Review* 185, 188-9; Anton-Hermann Chroust and David L. Osborn, ‘Aristotle’s Conception of Justice’ [1942] 17(2) *Notre Dame Law Review* 129, 131.

¹²⁵ *Ibid*, Braithwaite, 190; See also, Matthew Kramer, ‘The Deferral of Nature in Hume’s Theory of Justice’ [1989] 2 *Canadian Journal of Law & Jurisprudence* 139, 151.

¹²⁶ Leroy Marceau, ‘A Descriptive Theory of Justice,’ [1944-6] 6 *Louisiana Law Review* 350, 363; *See also*, George Mousourakis, ‘Understanding and Implementing Restorative Justice,’ [2003-4] 11 *Tilburg Foreign L. Rev.* 626, 657.

¹²⁷ *Ibid*, Mousourakis, 632; Roger Wertheimer, ‘Understanding Retribution’ [1983] 2 *Criminal Justice Ethics* 19, 26-27.

¹²⁸ *Id*; *See also*, Julius Stone, ‘A Critique of Pound’s Theory of Justice,’ [1934-5] 20 *Iowa Law Review* 531, 536.

7.3.5 Other popular theories of justice are the “retributive justice” theory and the “restorative justice or reparative justice” theory. The former theory is concerned with providing appropriate punishment to offenders for committing crimes, whereas the later one concentrates on the needs of victims and offenders considering what is for their good.¹²⁹

7.3.6 Together with the scholars’ views and theories of justice, from time to time certain stages have been perceived in the evolution of the idea of justice. For example, the ancient idea was that justice is an essential device for keeping peace in society.¹³⁰ ‘Whatever served to avert private vengeance and prevent private war was an instrument of justice.’¹³¹ At one time, many laws existed as a body of rules and regulations based on which the disputes were resolved nonbelligerently.¹³² As the outcome of the justice process, injured persons were given a ‘substitute for revenge’.¹³³ Nonetheless, in modern justice system, the offenders are compelled to provide “compensation” to the injured for the desire to be avenged.¹³⁴ In Roman law, such compensation was given under the head of “insult”.¹³⁵ The Salic law used to impose “double compensation” to the offenders to accustom to right their own wrongs for generations to adjust the same.¹³⁶

7.3.7 Greek philosophy and Roman law regarded the “idea of justice” as a device for the preservation of the social *status quo*.¹³⁷ In other words, Plato explained it saying that, ‘in an ideal state, “every member of the community must be assigned to the class for which he proves himself.”’¹³⁸ In this context, Roman legal genius added that such social status quo has to be

¹²⁹ *Id*; Henry M. Gottlieb, ‘Legal Rights and Social Justice’ [1932-1933] 2 *University of Detroit Journal of Urban Law* 28, 31.

¹³⁰ Notes and Comments, ‘Social Justice and Legal Justice,’ [1912] 75 *Central Law Journal* 455, 456; Leroy Marceau, ‘A Descriptive Theory of Justice’ [1944 - 1946] 6 *Louisiana Law Review* 350, 350.

¹³¹ *Ibid*.

¹³² Dean J. Spader, ‘Megatrends in Criminal Justice Theory’ [1985 – 1986] 13 *American Journal of Criminal Justice* 157, 170.

¹³³ *Ibid*, 171; See also, Thomas Obel Hansen, ‘Transitional Justice: Toward a Differentiated Theory’ [2011] 13 *Oregon Review of International Law* 1, 14.

¹³⁴ Robert Rubinson, ‘A Theory of Access to Justice’ [2004 – 2005] 29 *Journal of the Legal Profession* 89, 93.

¹³⁵ *Ibid*; See also, Sidney M. Schreiber, ‘Justice Pashman’s Jurisprudential Theory of Justice: Justice’ [1982- 1983] 35 *Rutgers Law Review* 207, 212.

¹³⁶ Notes and Comments, ‘Social Justice and Legal Justice,’ [1912] 75 *Central Law Journal* 455, 455 - 556.

¹³⁷ *Ibid*, 456.

¹³⁸ *Id*; Dan W. Brockt, ‘The Theory of Justice’ [1972 – 1973] 40 *University of Chicago Law Review* 486, 490.

upheld by the concerned authority of a State by defining and protecting the interests and powers of the actions of individuals.¹³⁹ Justinian principle of living honourably, avoiding causing injury to others, as well as giving every man his/her due-express is considered a seminal idea of justice.¹⁴⁰ In addition, from the orthodox view of Aristotle, it can be said that justice means the perspectives of the just man 'who is bound to act justly.'¹⁴¹ It should be mentioned here that the idea of justice is not limited to the "duty to act justly", rather, it is extended to the "demand for just treatment".¹⁴²

7.3.8 Even in the anterior period of time, the objective of such justice was to restore the original position i.e. preferring the form of "individual justice" instead of "social justice".¹⁴³ Such kind of justice was not categorized "social justice" on the ground that the claims were not conceived against all members of society, rather, claims were considered more individualistic.¹⁴⁴ On the other hand, Aristotle explained,

It is thought that justice is equality, and so it is, though not for everybody but only for those who are equals; and it is thought that inequality is just, for so indeed it is, though not for everybody, but for those who are unequal.¹⁴⁵

7.3.9 Given the perspectives presented above, it is clear that sometimes the demand for "absolute justice" creates difficulties in questions of justice as mysterious even though the very concept itself may sound noble.

¹³⁹ Rex Martin, 'Rawls's New Theory of Justice' [1993 – 1994] 69 *Chicago-Kent Law Review* 737, 752.

¹⁴⁰ Ibid, 457; See also, Robert E. Rodes, 'Social Justice and Liberation' [1995 – 1996] 71 *Notre Dame Law Review* 619, 642.

¹⁴¹ A. M. Honore, 'Social Justice,' [1961-62] 8 *McGill Law Journal* 77, 79-80; Anton-Hermann Chroust and David L. Osborn, 'Aristotle's Conception of Justice' [1992] 17 (2) *Notre Dame Law Review* 129, 130 – 131.

¹⁴² Ibid.

¹⁴³ Id, 81-82; See also, Marius Van Staden, 'Towards a South African understanding of social justice: The International Labour Organisation Perspective' [2012] *Journal of South African Law* 91, 92.

¹⁴⁴ Ibid, 83.

¹⁴⁵ Robert Wablder, 'The Concept of Justice and the Quest for a Perfectly Just Society' [1966-67] 115 *University of Pennsylvania Law Review* 1, 2.

7.4 The Notion of Social Justice

7.4.1 Representing a classical Western traditional view, Thomas Aquinas defined justice as a virtue which is a character in a human being's willpower to act rightly.¹⁴⁶ Corresponding to the previous discussion on the concept of justice, Thomas opines that "commutative" and "distributive" are two forms of justice.¹⁴⁷ It should be mentioned that the very idea of "distributive justice" is similar to the up-to-date use of "social justice".¹⁴⁸ It should be noted that every, so often, distributive justice and social justice are considered as separate from the standpoint that the former one is determined geometrically as per the common good, while later one is resolute arithmetically demanding for absolute justice.¹⁴⁹

7.4.2 However, John Augustine Ryan emphasis both the commutative and distributive justice to define social justice.¹⁵⁰ He suggested that the idea of social justice broadened understanding of its concept.¹⁵¹ In this regard, Professor Conor Gearty has argued that 'Ryan's early use of the concepts of "human welfare" and the "common good" in determining his understanding of "social justice" and its influence upon his conception' was not sound.¹⁵² Although, Ryan did not define the concept of social justice, he has very lucidly stated that "social justice" is a combination of "legal justice", involving obligation of the individuals along with distributive justice.¹⁵³

¹⁴⁶ John Wehrly, 'Conservative Social Justice' [2009] 3 *University of St. Thomas Journal of Law & Public Policy* 113, 113; Eric Rakowski, 'On a New Theory of Justice' [1994] 82 *California Law Review* 231, 239.

¹⁴⁷ *Ibid*, 113 - 4.

¹⁴⁸ *Id*; D. J. Bentley, 'John Rawls: A Theory of Justice' [1972 – 1973] 121 *University of Pennsylvania Law Review* 1070, 1103.

¹⁴⁹ *Ibid*, 114; See also, Barbara A. Hudson, 'Understanding Justice' [1998] 18 *Critical Social Policy* 125, 131.

¹⁵⁰ Harlan R. Beckley, 'The Legacy of John A. Ryan's Theory of Justice' [1988] 33 *American Journal of Juris* 61, 76.

¹⁵¹ *Ibid*.

¹⁵² *Id*; See also, Hugo Adam Bedau, 'Retribution and the Theory of Punishment' (1978) *The Journal of Philosophy* 75, 616.

¹⁵³ *Ibid*, 77; Maduabuchi Dukor, 'Conceptions of Justice' [2004], available at <<http://www.unipu/q/english/IPQ/21-25/PDF/24-4-4.pdf>> accessed on 3 May 2017.

7.4.3 Corresponding to Ryan’s view, throughout the last century it has been iterated that ‘legal justice between wrongdoer and victim is only a partial and incomplete form of justice’.¹⁵⁴ The notion of social justice has received attention everywhere in the present century. In relation to this growing interest in the idea of justice, traditional “criminal justice theory” arises from the hypothesis that it is the whole society which is harmed by the wrongdoing of criminals.¹⁵⁵ The criminal justice system is often concerned with proving an accused person’s guilt and awarding punishment through a process comprising a contest between the State and accused person(s).¹⁵⁶ Along with such punishment, imposing reparation on the guilty to provide it to the victims has gradually been considered as one of the forms of ensuring social justice throughout the criminal justice scheme in the current century.¹⁵⁷ Friedrich Hayek stipulates that the term “social justice” refers to the distribution of economic rewards either by the guilty person as a form of legal justice, or by the government in other situations.¹⁵⁸

7.4.4 In connection to wartime crimes, during the establishment of the ICTY, the United Nations Security Council stated in its Resolutions 808 and 827 that even prior to the conclusion of conflicts, the Tribunal should commence trials to bring perpetrators to justice.¹⁵⁹ It observed that the tension between peace and justice in the wartime situation in the former Yugoslavia made it clear to the whole world that the ‘international justice cannot ignore the surrounding political environment.’¹⁶⁰ Antonio Cassese, the then President of the ICTY, said that ‘only justice can break the cycle of revenge and violence.’¹⁶¹ He added that ‘[t]he quest for justice for yesterday’s victims of atrocities should not be pursued in such a manner that it makes today’s living the dead of tomorrow.’¹⁶²

¹⁵⁴ Brian Barry, *Theories of Justice* (Berkeley: University of California Press, 1989) 111.

¹⁵⁵ *Ibid*, 91; David Schmitz, *Elements of Justice* (New York: Columbia University Press, 2006) 45.

¹⁵⁶ George Mousourakis, ‘Understanding and Implementing Restorative Justice’ [2003-04] 11 *Tilburg Foreign Law Review* 626, 626.

¹⁵⁷ *Id*; John Rawls, ‘Justice as Fairness: Political not Metaphysical’ [1985] 14 (3) *Philosophy and Public Affairs* 223, 251.

¹⁵⁸ Samuel Taylor Morison, ‘A Hayekian Theory of Social Justice’ [2005] 1 *NYU Journal of Law & Liberty* 225, 226.

¹⁵⁹ Pierre Hazan, ‘The Revolution by the ICTY: The Concept of justice in Wartime’ [2004] 2 *Journal of International Criminal Justice* 533, 536.

¹⁶⁰ *Ibid*.

¹⁶¹ *Id*, 537.

¹⁶² *Id*, 537 – 8; *See also*, Harry Brighouse, *Justice* (Cambridge: Polity Press, 2004) 196.

7.5 Conceptualizing ‘Complete Justice’

7.5.1 Very recently, it has been observed in the case of the *Jean-Pierre Bemba Gombo*¹⁶³ that ‘legal justice’ is really important for survivors of rape and other sexual violence.¹⁶⁴ Noticeably the judgment in this case provides recognition of survivors’ grief as well as acknowledges their victimhood. Nevertheless, the International Criminal Court (ICC) emphasizes that ‘legal justice is only one part of a complex justice mosaic.’¹⁶⁵ The judges noted that ‘[w]hen their rapes were known within their communities, victims were ostracised, socially rejected, and stigmatised’.¹⁶⁶ Thus, the Trial Chamber of the ICC admitted the margins of legal justice because whether a legal judgement alone can alter ‘social attitudes’ towards rape survivors is still a question.

7.5.2 These propositions of the ICC draws the concept of ‘complete justice’ which may remind us of the Latin maxim ‘*[f]iat justitia ruat cælum*’ that means ‘[l]et justice be done, though the heavens fall.’¹⁶⁷ But there is no set standard of conceptualizing ‘complete justice’ from a broader perspective. Understanding of justice differs from person to person, place to place, and time to time. As a matter of fact, the notion of justice differs in every culture since the cultures of different places depend upon a collective history, mythology and religion.¹⁶⁸ Besides, the concept of justice is influenced by the moral and ethical values of every culture.

7.5.3 In this respect, it should be mentioned that in both the *Sesay, Kallon and Gbao (RUF Trial)*¹⁶⁹ and the *Brima, Kamara and Kanu (AFRC trial)*¹⁷⁰ cases, the issue of “forced marriage”

¹⁶³ *The Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08 (Trial Chamber III), 21 March 2016.

¹⁶⁴ Janine Natalya Clark, ‘The Bemba Judgement and ‘Justice’ for Survivors of Rape and Sexual Violence’ (15 July 2016), available at <<http://www.svri.org/blog/bemba-judgement-and-%E2%80%98justice%E2%80%99-survivors-rape-and-sexual-violence>> accessed on 28 April 2017.

¹⁶⁵ Ibid.

¹⁶⁶ *Jean-Pierre Bemba Gombo* (n 163) para 331, page 149.

¹⁶⁷ ‘Supreme Court for ‘Complete Justice’ The Telegraph (India), (20 April, 2017), available at <https://www.telegraphindia.com/1170420/jsp/nation/story_147334.jsp> accessed on 21 April 2017.

¹⁶⁸ Judith Resnik and Dennis Edward Curtis, *Representing Justice: Invention, Controversy, and Rights in City-states* (United States: Yale University Press, 2011) 310.

¹⁶⁹ *The Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T (Trial Chamber I), 2 March, 2009.

¹⁷⁰ *The Prosecutor v. Brima, Kamara & Kanu*, SCSL-04-16-T (Trial Chamber II), 20 June, 2007.

of the women and girls in Sierra Leone to the Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC) fighters was raised in the SCSL.¹⁷¹ Here lies a question as to whether the events of ‘forced marriage’ of such women and girls can be considered at all as “justice” to the victims. Nonetheless, the *Taylor*¹⁷² trial judgment proposed that the term ‘conjugal slavery’ can be used instead of ‘forced marriage’ since those women and girls had been enslaved for the dual purposes of ongoing rape and forced domestic and other labor.¹⁷³ Thus, the very thought of ensuring justice to rape victims of Sierra Leone by making them agree to forcible marriage to soldiers, was a fallacy.

7.5.4 To ensure justice to war rape victims of the Liberation War of Bangladesh, the ICT-BD observed in the case concerning *Qaiser*¹⁷⁴ that:

‘[t]he war time rape victims are our great mothers and sisters. We cannot shut our eyes any more. The nation, the society must come forward to recognise and salute their sacrifices, to heal their wound, to compensate the barbaric wrongs done to them. The victims of sexual violence including the victims before us need redress in the form of social-service packages with a view of contributing to their rehabilitation and psychosocial permanence. Many of rape victims have already died. They deserve posthumous honour that may reduce the pains and trauma of their dear and near ones.’¹⁷⁵

From this observation of the ICT-BD, the inference of ‘complete justice’ can be presumed, which requires a presence of both ‘legal justice’ and ‘social justice’. In order to expand the concept of ‘complete justice’ in relation to the victims of war rape, the following observations were given in the *A. T. M. Azharul Islam*¹⁷⁶ case:

‘[c]onsidering the sacrifices of the ‘Beerangona’ ..., the government should take necessary measures to include in the curriculum of both school and college level about their sacrifices and painful experiences in 1971 during the Liberation War so that the generation to generation can know the real history of the Liberation War of 1971, the sacrifices of ‘Beerangona’ and the barbaric atrocities including sexual violence committed by the Pakistani occupation army and their local collaborators like the Rajakars, Al-Badrs, Al-Shams and the members of the Peace Committee.’¹⁷⁷

¹⁷¹ Valerie Oosterveld, ‘Gender and the Charles Taylor Case at the Special Court for Sierra Leone’ [2012] 19(1) *William & Mary Journal of Women and the Law*, 7, 9.

¹⁷² *The Prosecutor v. Taylor*, SCSL-03-01-T (Trial Chamber II), 18 May, 2012, para. 2035.

¹⁷³ *Ibid*, paras. 428 – 30.

¹⁷⁴ *Syed Md. Qaiser* (n 11).

¹⁷⁵ *Ibid*, para. 987.

¹⁷⁶ *A. T. M. Azharul Islam Case* (n 12).

¹⁷⁷ *Ibid*, para. 332.

7.5.5 In short, the concept of ‘justice’ is relative, and depends on cultures of different places, considering history, mythology and religion, whereas ‘complete justice’ embraces both ‘legal justice’ and ‘social justice’. On the one hand, as an endeavour to ensure ‘legal justice’ to the war rape victims of the Liberation War of Bangladesh, some of the perpetrators have already been punished through exemplary trials held in domestic tribunals. On the other hand, even though there is no set definition of ‘complete justice’, the observations of the ICC in the Bemba case, the SCSL in the *Taylor case*, and the ICT-BD in the *Qaiser case* as well as the *A. T. M. Azharul Islam case* imply that when ‘social justice’ is ensured along with ‘legal justice’, war rape victims would get proper justice. In other words, awarding both ‘legal punishments’ to perpetrators and giving ‘social recognition as well as respect’ to war rape victims altogether may ensure ‘complete justice’ for them.

8. THE ICT-BD TRIALS ON RAPE OF THE WOMEN

8.1 During the Liberation War of Bangladesh in 1971, perpetrators of sexual violence committed international crimes of an unspeakable magnitude. Most of them, however, was unpunished for a long period. In order to bring, *inter alia*, active members and/or leaders of local auxiliary *para-militia* forces and local collaborators (*inter alia*), however, the International Crimes Tribunal-1 (ICT-1) and subsequently, International Crimes Tribunal-2 (ICT-2) were formed in 2010 and 2012 respectively.¹⁷⁸ Such trials attracted both national and international attention and set a standard of justice for victims of sexual violence, their family members, and people as a whole. It should be mentioned that though the *International Crimes (Tribunals) Act, 1973* (ICTA) came into force on 20 July, 1973, no Tribunal had been set up and no trial took place under the *Act* until the domestic judicial forums were established.

8.2 An Indication of the Rape Prosecutions in the ICT-BD

8.2.1 The ICT-1 and ICT-2 decided 24 and 11 cases respectively on the charges brought as “crimes against humanity” and the “crime of genocide”.¹⁷⁹ In the process, the ICT-BD decided a total 35 cases till date. However, this research focuses on 30 cases decided till 10 January 2018. Out of these 30 cases, the Prosecution brought rape charges successfully in 12 cases; which means that 40% cases of the ICT-BD were related to rape prosecutions.

¹⁷⁸ Website of the ICT- 1, available at <<http://ict-bd.org/ict1/>> accessed on 20 March 2017; the *International Crimes (Tribunals) Act* (ICTA), Section 6.

¹⁷⁹ Websites of the ICT-1 and ICT-2, available at <<http://ict-bd.org/ict1/>> and <<http://ict-bd.org/ict2/>> accessed on 12 March 2017; The ICT-BD is yet to deal with a single charge on the “war crimes”.

8.2.2 As per the following table (Table 1), 8 charges against Abul Kalam Azad;¹⁸⁰ 6 against Abdul Quader Molla;¹⁸¹ 20 against Delowar Hossain Sayeedi;¹⁸² 16 against Motiur Rahman Nizami;¹⁸³ 11 against Zahid Hossain Khokon;¹⁸⁴ 16 against Syed Md. Qaiser;¹⁸⁵ 6 against A. T. M. Azharul Islam;¹⁸⁶ 5 against Md. Forkan Mallik;¹⁸⁷ 4 in the case concerning Boro Mia,¹⁸⁸ Mujibur Rahman,¹⁸⁹ and Md. Abdur Razzak;¹⁹⁰ 5 in the case of Md. Sakhawat Hossain,¹⁹¹ Md. Billal Hossain,¹⁹² Md. Lutfor Morol,¹⁹³ Md. Ibrahim Hossain,¹⁹⁴ Sheikh Mohammad Mujibur Rahman,¹⁹⁵ Md. A. Aziz Sardar,¹⁹⁶ Abdul Aziz Sardar,¹⁹⁷ Kazi Ohidul Islam,¹⁹⁸ and Md. Abdul Khaleque Morol;¹⁹⁹ 4 in the case concerning Md. Solaiman Mollah²⁰⁰ and Md. Idris Ali Sardar and others;²⁰¹ and 6 in the case of Md. Moslem Prodhan²⁰² and Syed Md. Hussain²⁰³ were brought by the ICT-BD Prosecution team. Thus, the total number of charges was 107 in the 12 cases.

¹⁸⁰ Moulana Abdul Kalam Azad (n 15), on pages 5-6, paragraph 12: ‘Moulana Abul Kalam Azad @ Bachchu was born on 5th March, 1947 at village ‘Barakhardia’. He studied in Faridpur Rajendra College and was a close associate of Ali Ahsan Mohammad Mujahid, the then President of East Pakistan Islami Chatra Sangha (ICS). Till formal formation of Razaker force, Moulana Abul Kalam Azad @ Bachchu actively aided the Pakistani army as an armed member of volunteer Razakar Force formed in Faridpur in committing criminal acts alleged. He, during the war of liberation in 1971, assisted the Pakistani occupation force initially in the capacity of ‘Razaker’ and subsequently as chief of Al-Badar bahini of Faridpur. At one time, Moulana Abul Kalam Azad @ Bachchu was ‘rokan’ of jamat-E-Islami and now he is not associated with any political party. He is the chairman of ‘Masjid Council, a non-government organization [NGO]. On 21 April, 1971 he being united with the local anti-liberation circle welcomed the Pakistani army in Faridpur district. He was a close associate of Pakistani army, and actively and substantially assisted them as a potential member of Razakar (Volunteer) force in committing atrocities targeting the civilians and Hindu community and pro-liberation Bangalee people. In Faridpur, he was in charge of Razaker bahini which was equipped with rifles.’

¹⁸¹ *Abdul Quader Molla* (n 14), on page 8, paragraph 17: ‘Abdul Quader Molla was born in 1948. While he was a student of BSC (Bachelor of Science) in Rajendra College, Faridpur in 1966, he joined the student wing of JEI known as ‘Islami Chatra Sangha’ (ICS) and he held the position of president of the organization. While he was student of the Dhaka University, he became the president of Islami Chatra Sangha of Shahidullah Hall unit. In 1971, according to the prosecution, he organized the formation of Al-Badar Bahini with the students belonging to Islami Chatra Sangha (ICS) which allegedly being in close alliance with the Pakistani occupation army and Jamat-e-Islami actively aided, abetted, facilitated and substantially assisted, contributed and provided moral support and encouragement in committing appalling atrocities in 1971 in the territory of Bangladesh.’

¹⁸² *Delowar Hossain Sayeedi* (n 13), on pages 7-8, paragraph 15: ‘Delowar Hossain Sayeedi alias Delu @ Abu Nayeem Mohammad Delowar Hossain @ Allama Delowar Hossain Sayeedi was born on 1 February, 1940. He passed Dhakil Examination from Darns Sunnat Madrasha Sarsina in 1957 and he also passed the Alim Examination in 1960 from Barroipara Madrasha.

He was elected Member of the parliament in the election held in 1996 and 2001. He joined Jamaat-e-Islam and the Nayb-e-Amir of Jamaat-e-Islami Central Committee. He is a writer by profession and known all over the Muslim world as a renowned Oazin and Orator. On perusal of the papers submitted by the accused with the form filled up in the 9th Parliament Election of 2008, it is found that a part of his name “Abu Nayeem Mohammad” is cut off from his name and new names such as ‘Allamma’ and Sayeedi have been added with his name. In the same form he wrote his name “Allama Delowar Hossain Sayeedi” and signed it. It is alleged by the prosecution that after passing Alim Examination he did not receive any higher degree nor he obtained doctorate degree in any subject of Islam religion and as such he is not legally entitled to use the title ‘Allama’ or ‘Maulana’ with his name. During the War of Liberation in 1971 the accused was a grocery shopkeeper, he used to sell oil, salt, onion and pepper at Parerhat Bazar and as such his economic condition was not good. He could speak Urdu well as, he obtained ‘Alim’ from Madrasha. He welcomed the Pakistani Army at Parerhat Bazar and formed local peace committee and subsequently as a member of Rajakar Bahini actively participated in the atrocities committed by Pakistani Army and Rajakar Bahini targeting civilians, Hindu Community and pro-liberation people. By adopting illegal means became a rich man and now he is the owner of huge properties including multistoried buildings in Dhaka and Khulna.’

¹⁸³ *Motiur Rahman Nizami* (n 16), on pages 9-10, paragraph 18: ‘Motiur Rahman Nizami was born on 31st March, 1943. In his early life, he studied in Boalmari Madrasha at Sathia and passed his Dakhil examination in 1955, and then he passed Alim examination in 1959 and Fazil examination in 1961. He got his Kamil degree in Figh from Madrasha-e-Alim, Dhaka in 1963. He also obtained graduation degree in 1967 from the University of Dhaka, as a private student. During the War of Liberation in 1971, he was the President of Pakistan Islami Chhatra Sangha (ICS), the student wing of Jamaat-e-Islami (JEI) and also the chief of Al-Badr Bahini. The Al-Badr Bahini was mainly formed by the members of Islami Chhatra Sangha under the leadership of the accused. Both Jamaat-e-Islami and Islami Chhatra Sangha actively opposed the Liberation War of Bangladesh and those organizations formed Razakar Bahini, Al-Badr Bahini and Al-Shams. After completion of student life he joined the Jamaat-e-Islami and became Ameer of Dhaka city Unit as well as member of central executive committee of Jamaat-e-Islami from 1978 to 1982. He held the post of Assistant Secretary General of Jamaat-e-Islami from 1983 to 1988. He became the Secretary General of the said party in December, 1988 and held the said post up to 2000. He became the ‘Ameer’ (Chief) of Jamaat-e-Islami in 2000 and since then he has been holding the post of ‘Ameer’ of the said party till now. During the War of Liberation, he assisted the then ‘Ameer’ of Jamaat-e-Islami Professor Ghulam Azam in forming Shanti Committees, Razakars, Al-Badr and Al-Shams to collaborate Pakistan occupation forces. He was elected as a Member of Parliament in 1991 and was the leader of Parliamentary party of Jamaat-e-Islami. He was also elected as a Member of Parliament in 2001 and he became the Minister for Agriculture from 2001- 2003 and Minister for Industries from 2003-2006 under the Bangladesh Nationalist Party (BNP) led government.’

¹⁸⁴ *Zahid Hossain Khokon* (n 17), on page 4, paragraph 7: ‘Zahid Hossain Khokon @ M.A Zahid Khokon @ Khokon Matubbar @ Khokon was born on 11th January, 1942. He was the local leader of Jamaat-e-Islami. He took training of arms for becoming a Razakar in April, 1971. In the month of May, 1971, the accused along with his elder brother late Zafor formed a Razakar Bahini in their locality. After the death of his elder brother RazakarZafor in a combat

with freedom fighters, he took absolute leadership of local Razakar Bahini as a commander. He was directly involved in the commission of ‘Crimes against Humanity’ and genocide as committed in different places of Nagarkanda, Faridpur. Subsequently, he joined Bangladesh Nationalist Party (BNP) giving up Jamaat-e-Islami politics.’

¹⁸⁵ *Syed Md. Qaiser* (n 11), on page 9, paragraph 24: ‘Syed Md. Qaiser @ Md. Qaiser @ Syed Qaiser @ SM Qaiser @ Qaiser was born on 19 June 1940. He obtained matriculation from Armanitola New Government High School, Dhaka and studied in Jagannath College Dhaka. He, however, studied up to BA class as found from the registration form filled up and submitted to the Habiganj Election Office. Accused Qaiser is an industrialist and owns a number of industrial concerns. It is alleged that Syed Md. Qaiser became associated with the politics of Convention Muslim League in 1962 and was elected Member of Sylhet District Board in 1966 and occupied the chair till 1971. Qaiser contested Provincial Assembly Election in 1970 as an independent contestant and was defeated. During the war of liberation in 1971 he was allegedly associated with the local occupation army and carried out atrocious criminal activities throughout the period of war in the localities of Habiganj and Brahmanbaria sub-division [now district] , as alleged by the prosecution. Instantly either before or after the victory achieved on 16 December 1971, accused Qaiser allegedly went into hiding and fled to London, UK, quitting Bangladesh. The prosecution also alleges that the accused Syed Md. Qaiser returned back home in 1978. In 1979 he contested second parliamentary election as an independent candidate and was elected in Sylhet-17 constituency and afterwards joined the Bangladesh Nationalist Party [BNP] and became the president of Habiganj district BNP. In 1982 he became the joint secretary general of BNP [Shah Azizur Rahman group]. Afterwards, he joined the Jatio Party of General Ershad and was elected as president of Habiganj Jatio Party. In 1986, and 1988 he was elected Member of Parliament contesting the Jatio Parishad election as a candidate of Jatio Party, in Habiganj-4 constituency [Madhabpur-Chunarughat]. Later on, he became the State Minister for the Agricultural Ministry. In 1991, 1996 and 2001 he contested the parliamentary elections as a candidate of Jatio Party, but was defeated. At a stage, he, quitting jatio Party, joined PDP.’

¹⁸⁶ *A. T. M. Azharul Islam Case* (n 12), on page 16, paragraph 27: ‘A.T.M Azharul Islam was born on 28th February, 1952. He was a student of H.S.C in Rangpur Carmichael College during 1969 to 1971. At that time, he was the president of Islami Chhatra Sangha (ICS), the student wing of Jamaat-e-Islami (JEI) Rangpur unit and also commander of Al-Badr Bahini of Rangpur district. In 1971, during the War of Liberation of Bangladesh, the accused collaborated Pakistani army to execute their plan and design in committing crimes against Humanity and genocide all over Rangpur district. He, being the commander of Al-Badr Bahini, resisted the War of Liberation and committed atrocities in all over the district through his members of Al- Badr Bahini.’

¹⁸⁷ *Forkan Mallik* (n 18), on pages 2-3, paragraph 5: ‘Md. Forkan Mollik @ Forkan studied up to class IV. As per prosecution, the accused is an employee in a Non-Government Organization (NGO) in Dhaka and also a farmer, by profession. In 1971, he joined the local Razakar force and used to carry out criminal acts under the local Razakar commanders. He was an active supporter of Muslim League and subsequently since 1977 he has been with the political party BNP.’

¹⁸⁸ *Boro Mia and Others* (n 19), on pages 20-21, paragraph 27: ‘Mohibur Rahman alias Boro Mia [65] son of late Daras Uddin and Khodeja Khatun of Village Kumurshana, Police Station Baniachang, District Habiganj was born on 01 January 1950 at that village Kumurshana. He studied up to class X in Baniachang Sandalpur BC High School. He was a strong follower of Syed Kamrul Ahsan, a local potential leader of Nejam-e-Islami, a pro-Pakistani political organisation and he and his brothers sided against the war of liberation and joined the local Razakar Bahini, prosecution alleges. His elder brother Kalamdhar was allegedly the Chairman, Peace Committee of Khagaura Union and younger brother Mostofa [now dead] was the commander of Khagaura Razakar camp.’

¹⁸⁹ *Boro Mia and Others* (n 19), on page 21, paragraph 28: ‘Mujibur Rahman alias Angur Mia [60] son of late Daras Uddin and Khodeja Khatun of Village Kumurshana, Police Station Baniachang, District Habiganj was born on 10 March 1955 at said village Kumurshana. He is the younger brother of accused Mohibur Rahman alias Boro Mia. He studied up to class V in Dhulia Ghatua Primary School at Khagaura under Baniachang Police Station of the then Habiganj Sub-Division. He was a committed follower of Syed Kamrul Ahsan, a local potential leader of Nejam-e-Islami, a pro-Pakistani political organisation and he and his brothers took deliberate stance against the war of liberation and joined the local Razakar Bahini, prosecution alleges. According to the prosecution, his elder brother Kalamdhar was the Chairman, Peace Committee of Khagaura Union and his brother Mostofa [now dead] was the commander of Khagaura Razakar camp. After liberation, he started working as a supporter of Jamaat-e-Islami.’

¹⁹⁰ *Boro Mia and Others* (n 19), on page 22, paragraph 29: ‘Md. Abdur Razzak [63] son of late Toij Ullah alias Toij Ali and Khodeja Begum of Village Hossainpur, Khagaura, Police Station Baniachang, District Habiganj was born on 13 August 1952 at the said village. He did not achieve any education. He is the cousin brother of accused Mohibur Rahman and Mujibur Rahman. He also joined the local Razakar Bahini along with accused Mohibur Rahman, a potential follower of local leader of Nejam-e-Islami, a pro-Pakistani political organisation, prosecution alleges.’

¹⁹¹ *Md. Sakhawat Hossain and Others* (n 20), on pages 476-477, paragraph 797(i): ‘Md. Sakhawat Hossain [61], son of late Omar Ali and late Anowara Begum of village Hijoldanga, Police Station Keshobpur, District-Jessore was born on 01.03.1954. He passed Alim Examination in 1967 and Fazil Examination in 1969. He got his Kamil degree from Alia Madrasha, Khulna in 1971, but that examination was cancelled. Thereafter, he obtained his Kamil degree in 1972. He also obtained M.A. degree in 1976 from the department of Islamic Studies of the University of Dhaka. In 1966, he joined Islami Chhatra Sangha [ICS], the student wing of Jamaate-Islami [JEI], the prosecution alleged. After the independence of Bangladesh, he joined the Motijheel Ideal School as an Assistant Teacher. Subsequently, he resigned from that school and joined in the office of Accountant General [A.G] in 1981. He became the ‘Rukan’ of Jamaat-e-Islami in 1986, the prosecution alleged. He was elected as a Member of Parliament in 1991. Thereafter, he joined the Bangladesh Nationalist Party [BNP]. He was also elected as a Member of Parliament in 1996. In 2008, he joined the Jatio Party [JP] and since then, he has been holding the post as ‘Presidium Member’ of the JP.’

¹⁹² *Md. Sakhawat Hossain and Others* (n 20), on page 477, paragraph 797 (ii): ‘Md. Billal Hossain Biswas [75], son of late Yakub Ali Biswas alias Akabbar alias Akbor and late Rupban Bibi of village Nehalpur, Police Station-Keshobpur, District-Jessore was born on 10.05.1940. He joined the Razakar Bahini during the war of liberation in 1971, the prosecution alleged.’

¹⁹³ *Md. Sakhawat Hossain and Others* (n 20), on page 478, paragraph 797(iii): ‘Md. Lutfor Morol [69] (now dead), son of late Joynal Morol and late Mokarjan of village Porchokra, Police Station Keshobpur, District-Jessore was a Member of local Razakar Bahini and an accomplice of accused Md.Sakhawat Hossain, at the time of War of Liberation in 1971, the prosecution alleged.’

¹⁹⁴ *Md. Sakhawat Hossain and Others* (n 20), on page 478, paragraph 797(iv): ‘Md. Ibrahim Hossain alias Ghungur Ibrahim [60] [absconded], son of late Yakub Ali Biswas alias Akabbar alias Akbor and late Rupban Bibi of village Nehalpur, at present Boga, Police Station-Keshobpur, District-Jessore was a member of local Razakar Bahini and an accomplice of accused Md. Sakhawat Hossain at the time of War of Liberation in 1971, the prosecution alleged.’

¹⁹⁵ *Md. Sakhawat Hossain and Others* (n 20), on page 478, paragraph 797(v): ‘Sheikh Mohammad Mujibur Rahman alias Mujibur Rahman [absconded] [61], son of Sheikh Mohammad Afazulla alias Effaztulla and late Pachibibi of village Sheikhpara, Police Station Keshobpur, District-Jessore was a member of local Razakar Bahini and an accomplice of accused Md. Sakhawat Hossain at the time of War of Liberation in 1971, the prosecution alleged.’

¹⁹⁶ *Md. Sakhawat Hossain and Others* (n 20), on page 478, paragraph 797(vi): ‘Md. A. Aziz Sardar [absconded] [65], son of late Ful Miah Sardar and late Nurjahan Begum of village Mominpur, Police Station- Keshobpur, District-Jessore was a member of local Razakar Bahini and an accomplice of accused Md. Sakhawat Hossain at the time of War of Liberation in 1971, the prosecution alleged.’

¹⁹⁷ *Md. Sakhawat Hossain and Others* (n 20), on pages 478-479, paragraph 797(vii): ‘Abdul Aziz Sardar [absconded] [66], son of late Ahmmad Sardar and late Sakina of village Boga, Police Station-Keshobpur, District-Jessore was a member of local Razakar Bahini and an accomplice of accused Md. Sakhawat Hossain at the time of War of Liberation in 1971, the prosecution alleged.’

¹⁹⁸ *Md. Sakhawat Hossain and Others* (n 20), on page 479, paragraph 797(viii): ‘Kazi Ohidul Islam alias Kazi Ohidus Salam [absconded] [61], son of late Kazi Motiassalam alias Motiar Salam and late Hosneara Begum of village Sheikhpara, Police StationKeshobpur, District-Jessore was a member of local Razakar Bahini and an accomplice of accused Md. Sakhawat Hossain at the time of War of Liberation in 1971, the prosecution alleged.’

¹⁹⁹ *Md. Sakhawat Hossain and Others* (n 20), on page 479, paragraph 797(ix): ‘Md. Abdul Khaleque Morol [absconded] [68], son of late Hachan Ali Morol and late Rebeya Begum of village Altapoul, Police Station-Keshobpur, District-Jessore was a member of local Razakar Bahini and an accomplice of accused Md. Sakhawat Hossain at the time of War of Liberation in 1971, the prosecution alleged.’

²⁰⁰ *Md. Idris Ali Sardar and Other* (n 21), on page 296, paragraph 613(1): ‘Md. Solaiman Mollah(now dead)[now dead] Accused Md. Solaiman Mollah(now dead)(84), son of late Chand Mollah and late Shaharjan Bibi of Kashipur Muslim Para, Ward No. 5, Police Station-Palong, District- Shariatpur was born on 12.06.1931. He passed Dawra Examination. Since 1963 he joined Muslim League [Fazlul Quader group] and became Organizing Secretary of Palong Thana Muslim League, the prosecution alleges. In the year 1970 he joined Jomiatul Ulama-e-Islami and contested in the election to be a member of the Provincial Assembly, but he was defeated. He formed local Peace Committee and Razakar Bahini and led them in aiding Pakistani occupation army in his locality i.e. Palong Thana area of the then Madaripur Sub-Division, the prosecution alleged.’

²⁰¹ *Md. Idris Ali Sardar and Others* (n 21), on pages 296-297, paragraph 613(2): ‘Idris Ali Sardar [67], son of late Haji Hakim Ali Sardar and late Maju Bibi of village West Kashabhog, Police Station Palong, District- Shariatpur was born on 01.04. 1948 [as per S.S.C. certificate] and on 03.03.957[as per NID]. He passed S.S.C. Examination in 1966. He was an activist of Islami Chhatra Sangha [ICS] while he was a student of Rudrakar Nilmoni High School, Shariatpur in the year 1962-1966, the prosecution alleged. In the year 1969, he was a leader of Islami Chhatra Sangha. During War of Liberation in 1971, he was an active leader of Islami Chhatra Sangha. He joined local Razakar Bahini to collaborate with the Pakistani occupation army, the prosecution alleged. Since the War of Liberation of Bangladesh, he was a leader of Jamaat-e- Islami [JEI].’

²⁰² *Md. Moslem Prodhan and another* (n 111), on page 11, paragraph 15(1): ‘Md. Moslem Prodhan (67) son of late Labhu Sheikh and late Rezia Akhter of village Kamarhati, Police Station-Nikli, and District-Kishoreganj was born on 31.12.1948. He did not receive any formal education. He is only an alphabet-literate. During the War of Liberation in 1971, accused Md. Moslem Prodhan individually and jointly committed crimes of genocide and crimes against humanity in different localities of the then Kishoreganj SubDivision, and then he was known as ‘Razakar Commander’ of ‘Nikli Union’, the prosecution alleges. He has been involved in the politics of Bangladesh Nationalist Party [BNP]’

²⁰³ *Md. Moslem Prodhan and another* (n 111), on pages 11-12, paragraph 15(2): ‘Syed Md. Hussain alias Hossain [64] son of late Syed Musleh Uddin and late Syeda Fatema Banu was born on 15.09.1951. His permanent address is village Machihata, Police Station and District Brahmanbaria. His last known current address is House No. 2, Road No. 6, Pink City, Police Station Khilkhet, Dhaka. However, during 1971, he lived at Hoybat Nagar, Police Station Kishoreganj Sadar under the then Kishoreganj Sub-Division of District Mymensingh, prosecution alleges. He passed S.S.C Examination in 1967 from Kishoreganj High School and H.S.C Examination in 1969 from the Gurudoyal College, Kishoreganj. Later, he also passed B.A Examination in 1975 from the same college. During pre-liberation period he was involved with Chhatra League [student wing of Awami League] politics of his college, however, during the Liberation War of 1971, he adopted the ideological position of Pakistan Democratic Party [PDP] and he individually and jointly committed a number of crimes of genocide and crimes against humanity in different localities of the then Kishoreganj Sub-Division, and then he was commonly known as ‘Razakar Daroga’ of Nikli Thana, prosecution alleges ...’

8.2.3 It can be seen from the table (Table 1) that the Prosecution brought only 1 rape charge against *Abul Kalam Azad*, 1 rape charge against *Abdul Quader Molla*, 4 rape charges against *Delowar Hossain Sayeedi*, 2 rape charges against *Motiur Rahman Nizami*, 1 rape charge against *Zahid Hossain Khokon*, 2 rape charges against *Syed Md. Qaiser*; 1 rape charge against *A. T. M. Azharul Islam*; 2 rape charges against *Md. Forkan Mallik*; 1 rape charge in the case of the *Mohibur Rahman alias Boro Mia, Mujibur Rahman alias Angur Mia and Md. Abdur Razzak and others*; 1 rape charge in the case of the *Md. Sakhawat Hossain, Md. Billal Hossain Biswas, Md. Lutfor, Md. Ibrahim Hossain, Sheikh Mohammad Mujibur Rahman, Md. A. Aziz Sardar, Abdul Aziz Sardar, Kazi Ohidul Islam, and Md. Abdul Khaleque Morol*, 1 rape charge in the case of the *Md. Idris Ali Sardar and Md. Solaiman Mollah*, and finally 1 rape charge in the case of the *Md. Moslem Prodhan and Syed Md. Hussain*. Therefore, out of 107 charges, a total of 18 rape charges were brought against the accused. Hence, it is clear that 16.82% rape charges were brought against the said convicts.

8.2.4 From the table (Table 1), it is clear that out of 18 rape charges, the Prosecution successfully proved 15 charges during the ICT-BD trial by producing adequate number of witnesses and adducing proper evidences as well as submitting their respective arguments. Thus, the conviction rate of the ICT-BD rape prosecutions is remarkably, 83.33%.

TABLE-1

SL	Case Name	Total Number of Charges	Total Number of Rape Charges	Total Number of Rape Conviction Charges
1	Delowar Hossain Sayeedi	20	4	2
2	Abdul Quader Molla	6	1	1
3	Moulana Abdul Kalam Azad	8	1	1
4	A. T. M. Azharul Islam	6	1	1
5	Motiur Rahman Nizami	16	2	1
6	Syed Md. Qaiser	16	2	2
7	Zahid Hossain Khokon	11	1	1
8	Md. Forkan Mallik	5	2	2
9	Boro Mia and Others	4	1	1
10	Md. Sakhawat Hossain and Others	5	1	1
11	Md. Idris Ali Sardar and Other	4	1	1
12	Md. Moslem Prodhan and Other	6	1	1
TOTAL		107	18	15

8.3 Remarkable Observations of the ICT-BD Regarding Rape Charges

8.3.1 The landmark case of the ICT-BD on 1971 war rapes is the case concerning Syed Md. Qaiser. It was found in this case that a Pakistani soldier had said, “[h]um ja rahe hain lekin beej chhor kar ja rahe hain” (“[w]e are leaving but leaving our seeds”) during the surrender of the

West Pakistani troops to the Indian army.²⁰⁴ During this war, Pakistani soldiers raped aged widows, married women, and schoolgirls with the help of their local collaborators.²⁰⁵ Pakistani soldiers forcefully confined the women for months within regimental barracks, bunks and even tanks in order to sexually abuse them.²⁰⁶ The ICT-BD pointed out that the perpetrators used rape as a “weapon” of attacking the people of Bangladesh.²⁰⁷ In other words, it can be said that rape was used as a “weapon instead of a bullet” as they intended to break-down the societal bond of people by creating social and gender stigmas and defeating the morale of families, communities, and the entire Bengali entity.²⁰⁸ The observation of the Tribunal on this issue reads as follows:

‘War time rape victims cannot be viewed as a mere woman who lost her chastity. In fact they fought by laying their highest self-worth, for the cause of our independence. Time has come to unlock our collective voice to recognise and honour our great mothers and sisters, the war heroines. Social ostracism particularly against village women living in economically down trodden condition acts as the main barrier in digging out the forgotten narratives of sexual invasion committed upon them, in 1971 during the war of liberation.’²⁰⁹

8.3.2 The case of *Syed Md. Qaiser* is significant for the reason that the aftermath of mass rape on the victim Majeda Begum²¹⁰ and her daughter Shamsun Nahar²¹¹ (war baby) was discovered in this case.²¹² Majeda Begum was considered as a primary victim who had to give up normal life,

²⁰⁴ *Syed Md. Qaiser* (n 11), paragraph 682; See also, Md. Pizuar Hossain, ‘Rape as “War Weapon” and “Genocidal Tool” Covered as War Tactics: The Bangladesh Experience’, (2017) 3(1) *Bangladesh Journal of Dalit and Minority* 7, 16.

²⁰⁵ *Ibid.*

²⁰⁶ *Id.*

²⁰⁷ *Syed Md. Qaiser* (n 11), paragraph 709; See also, *Forkan Mallik* (n 18), paragraph 152; *Boro Mia and Others* (n 19), paragraph 382; *Md. Sakhawat Hossain and Others* (n 20), paragraph 191.

²⁰⁸ *Syed Md. Qaiser* (n 11), paragraphs 709 and 714; See also, *Forkan Mallik* (n 18), paragraph 382; *Md. Sakhawat Hossain and Others* (n 20), paragraph 191.

²⁰⁹ *Ibid.*, paragraph 720

²¹⁰ Majeda Begum was the Prosecution Witness 5 (P.W. 5).

²¹¹ Shamsun Nahar was the Prosecution Witness 10 (P.W. 10).

²¹² *Syed Md. Qaiser* (n 11), paragraphs 714 - 715.

and lost the husband's affection, and saw the conjugal bondage with her husband swapped.²¹³ The Tribunal, thus, specified the following:

‘... we have found that Majeda Begum a brave mother of the soil has shown courage in making narratives of her immense trauma still she is carrying, by overcoming the vulnerability. Not only she, but her daughter the war baby Shamsun Nahar has also testified her post-birth trauma. We consider their valor as a battle against the existing social ostracism. They deserve salute. The society, the nation, the state and the humanity must and must value their tormenting sacrifice, breaking silence.’²¹⁴

8.3.3 The war baby *Shamsun Nahar* was considered as a secondary victim in this case. It has been depicted that birth of a child as a result of rape is a curse and therefore, she is still living with immense grief of separation and loss in our society.²¹⁵ The Tribunal also noted that, ‘[a] social stigma is also placed on the child born as a result of the use of rape as a weapon of war and it amplifies the trauma and impoverishment of her mother too.’²¹⁶ The Tribunal mentioned that:

‘Already more than four decades have been elapsed. But the war rape victims and the war babies who are still alive, we presume, have been suffering from long-term psychological effects of rape that often include many types of disorders, such as, panic attacks, flashbacks, feeling of shame and dishonour, sense of insecurity and many other disorders affecting normal livelihood. These effects can last even lifelong if the victims and war babies born as a result of sexual violence do not get support and care from the society and the state.’²¹⁷

‘Hundreds of thousands of rape survivors remained socially ostracized and unattended. The nation must raise a collective voice that they are war heroines. They are brave ‘freedom fighters’ as they too sacrificed their supreme self-worth, for the cause of our independence. We recall with laudable appreciation that the father of the nation Bangabandhu Sheikh Mujibur Rahman, in recognition

²¹³ *Syed Md. Qaiser* (n 11), paragraph 714; Please note that in the *Forkan Mallik Case*, the ICT-BD reiterated the same findings as regards the aftermath of rape upon *Aleya Begum*, paragraph 218.

²¹⁴ *Ibid*, paragraph 721.

²¹⁵ *Id*, paragraph 71.

²¹⁶ *Id*, paragraph 717.

²¹⁷ *Syed Md. Qaiser* (n 11), paragraph 985.

of their glorified sacrifices, honoured them as ‘war heroines’, immediately after the independence. After the War of Liberation, Bangabandhu Sheikh Mujibur Rahman pleaded with his countrymen to give due honor and dignity to the women oppressed by the Pakistani army [Bangladesh Observer, February 28, 1972, p.1]. In 1972, the Bangladesh Government established the Women’s Rehabilitation Board to institutionalize women’s rehabilitation project, with the Central Women’s Rehabilitation Organization coordinating the Government’s post-war policies. But After the assassination of Sheikh Mujib [the father of the nation], the rehabilitation programme was effectively closed, the records were seized and all the Dhaka and district centres were turned over to the Women’s Directorate²¹⁸

8.3.4 The story of *Golapi Rani* was narrated in the *Forkan Mallik case*.²¹⁹ *Golapi Rani* is a victim of mass rape who was taken away from her house.²²⁰ Subsequently, she was left abandoned in front of her house in bleeding condition and as a consequence, she died due to torture and the trauma she sustained.²²¹ Therefore, the ICT-BD concluded that the Pakistani soldiers used rape as an instrument of threat²²² in order to cripple Bangladeshi families.²²³

8.3.5 The ICT-BD observed in the *Boro Mia and Others case* that ‘[r]ape or sexual violence, either in war or in peace time, is a beastly act of robbery that takes away the thing that cannot be given back.’²²⁴ According to the ICT-BD, the purpose of the Pakistani Army was to send a message of terrorization to the pro-liberation forces and society as a whole through raping Bangladeshi women.²²⁵ The story of *Agarchand Bibi*, a rape victim, who committed suicide a few days after she was raped by the Pakistani Army, was also discovered in this case.²²⁶ The Tribunal noted in the *Md. Sakhawat Hossain and Others case* that *Ashura Khatun* died in 2011 but the trauma and agony she had undergone still traumatize her dear and near ones.²²⁷ Such outrageous incidents have left permanent wounds on the minds and bodies of victims, traumatized their families, whole communities, and the nation as a whole during the 1971 Liberation War and afterwards.²²⁸

²¹⁸ Ibid, paragraph 986.

²¹⁹ *Forkan Mallik* (n 18), paragraph 153.

²²⁰ Ibid.

²²¹ *Forkan Mallik* (n 18), paragraph 154.

²²² *Id*, para. 144.

²²³ *Id*, para. 158.

²²⁴ *Id*, para. 381.

²²⁵ Ibid.

²²⁶ *Id*, para. 384.

²²⁷ *Ashura Khatun’s* husband was Prosecution Witness No. 10 (P.W. 10) and her son was Prosecution Witness No. 12 (P.W. 12); *Md. Sakhawat Hossain and Others* (n 19), para. 191.

²²⁸ *Md. Sakhawat Hossain and Others* (n 20), para. 191.

9. OVERALL FINDINGS OF THE SURVEY

9.1 It has already been mentioned that for empirical approach, many rape victims of the Liberation War of Bangladesh were interviewed. This research project involved interviewing total 385 rape victims of total 53 Districts of all the 8 Divisions of Bangladesh. Thus, it can be said that this research work surveyed rape victims of 82.8% Districts of Bangladesh as a whole.

9.2 The following table (Table 2) shows the number of rape victims interviewed in each Division of Bangladesh:

TABLE-2

Serial No.	Division	Number of Respondents
1	Barishal	30
2	Chittagong	61
3	Dhaka	49
4	Khulna	16
5	Mymensingh	22
6	Rajshahi	42
7	Rangpur	123
8	Sylhet	42
TOTAL:		385

9.3 The Division-wise percentage of the total rape victims who were surveyed for this particular research project stands as 7.8% from Barishal, 15.84% from Chittagong, 12.73% from Dhaka, 4.15% from Khulna, 5.71% from Mymensingh, 10.90% from Rajshahi, 31.95% from Rangpur, and 10.90% from Sylhet. Out of the total 385 respondents, 71.43% were Muslims and 28.57% were non-Muslims. However, this research work did not intend to find out any Division or District-wise trend of minimum or maximum ratio of 1971 Liberation War rape victims of Bangladesh. Here it should be mentioned that project researchers also interviewed a number of ICT-BD Prosecutors, investigators, and even judges who had dealt, in their professional capacities, with war rape cases of the 1971 Liberation War over the decades.

9.3.1 The following table (Table 3) shows the Division-wise percentage of the total rape victims who were surveyed for this particular research project:

TABLE-3

Serial No.	Division	Percentage of the total rape victims surveyed
1	Barishal	07.8%
2	Chittagong	15.84%
3	Dhaka	12.73%
4	Khulna	04.15%
5	Mymensingh	05.71%
6	Rajshahi	10.91%
7	Rangpur	31.95%
8	Sylhet	10.91%
TOTAL:		100%

9.4 It must be mentioned that none of the 385 rape victims surveyed wanted to hide their identities. When asked to do so, they all agreed to disclose their names, experiences, details about their families for research purposes. It is indeed quite a courageous stand on their part. The major trends reflected in this empirical study will be discussed in detail in the next section.

9.5 Background of the Rape Victims Surveyed

9.5.1 Most of the rape victims surveyed in this research project were uneducated and simple village women. Their economic condition was not at all secure. Most rape victims surveyed in this research did not receive any formal education at all. For example, Momena Khatun of Kushtia district and Shushoma of Patuakhali district studied up to 7th grade; Mst. Morjina Begum of Dinajpur District, Momena Begum of Dhaka district, Shova Rani Karmakar of Patuakhali district and Nazma Khatun of Chapainawabganj district studied up to 8th grade; Meera Rani Barua of Rangamati district studied up to 9th grade; Asma Khatun of Dinajpur district studied up to the Intermediate level; only Ferdousi (Priyobhashini) Begum of Faridpur district had graduated from a university and Rawshan Ara Begum of Dhaka district had completed her Masters.

9.5.2 The rape victims surveyed in this research were married as well as un-married women. Some of them were engaged at the time the war broke out and were getting ready for their wedding ceremony when they were raped. Many (48%) of the married rape victims also had children from previous marriages when they were raped in 1971. Many were (12%) also pregnant at the time of rape but due to physical torture, they would essentially lose their unborn babies.

9.5.3 In most (99.74%) cases this survey found that rape victims belong to the groups which supported the war of liberation. However, in only one of the cases this survey discovered that the rape victim actually belonged to or was connected with the anti-liberation forces of 1971. Rape victim, Meherjaan Khatun of Bagerhat district, was actually the wife of a *Razakaar*; nevertheless, she was raped by the Pakistan Army in 1971!

9.6 Range of Age of the Rape Victims Surveyed

9.6.1 The survey found that women who were raped during the Liberation War of 1971 belonged to different age groups. Their ages varied and were between 7 and 80. Among the target respondents of this research, the age range stretched from 9 years to 54 years. For example, Sabeda of Baniachong, Habiganj district, Elijaan Nesa of Kushtia district and Asiron Begum of Jamalpur district were only 9 years old, and Jomila Khatun of Barguna district and Zorifon of Panchgarh district were only 11 years old when they were raped in 1971 during the war of liberation. Ayesha Khatun and Roison of Bagerhat district, Shurbala Singh of Mymensingh district, Bidya Shundori Shutrodhor and Shova Rani Shutrodhor of Kishoreganj district, Shahajaadi Begum of Narshingdi district, Bhokti Rani Pal of Tangail district, Khotina Begum of Lalmonirhat district, Chittobala of Thakurgaon district and Asia Begum of Shirajganj district were all 34 years old when they were raped in 1971. Gyanoda Barmoni of Syedpur, Nilphamari district, Rabeya Bewa of Thakurgaon district, Probashi Malakar of Moulbhibazaar district, Rawshan Ara of Gopalganj district, Haulamaso Aung Marma of Mohalchhori, Khagrachhori district, Bahaton Bewa and Komola Begam of Shirajganj district were all 40 years old and Asiran of Sherpur district was 43 years old when they were raped in 1971. This survey came across Modhu Bala Dey of Shariatpur district as the oldest rape victim of 1971 among all the rape victims surveyed. She was 54 years old in 1971.

9.7 Place and Duration of Torture (Rape)

9.7.1 As far as the place of torture is concerned, the survey found that there were commonly two places where women were raped. According to our research finding, there were many women (53%) who were raped in their home (spot rape) although a number of women (47%) were raped in the camp of the perpetrators (continuous rape).

9.7.2 Among the rape victims were many who were taken to camps, raped and detained there from one day to eight months. For example, Safia Khatun of Kumilla district was continuously raped for three months; Bishamuni Bagti and Shuvodra Bunarji of Moulbhibazaar district, Bokul of Faridpur district, Haulamaso Aung Marma of Mohalchhori, Khagrachhori district, Mallika Ganguly of Barguna district, Sreejita Roy of Patuakhali district and Nazma Begum of Pirojpur district were raped continuously for four months; Moumita Rani Bala of Patuakhali district for six months; Pushpo Rani Boiddo of Chunarughat, Habiganj district for six and a half month; Shabitri Nayek of Habiganj, Ferdousi (Priyobhashini) Begum of Faridpur district, Asma Khatun of Dinajpur district and Latifa Begum of Rajshahi district were raped continuously for as long as eight months in various camps.

9.8 Medical Treatment Received by the Rape Victims Surveyed

9.8.1 On 7 January 1972, the “Central Organization for Women’s Rehabilitation” (*Kendrio Mohila Punorbashon Songstha*) was established. Sufia Kamal became its chairperson and Taslima Abed, a member of Parliament, became its treasurer.²²⁹ In addition, Shahera Ahmed of the Social Welfare Ministry, was the secretary; Hajera Khatun was in charge of domestic and medical arrangements for rescued rape victims.²³⁰

9.8.2 Afterwards, the Government established the “Bangladesh Women’s Rehabilitation Board”²³¹ on 18 February 1972 as a semi-autonomous organization.²³² This organization was associated with the Ministry of Social Welfare.²³³ The governing board of the organization was constituted of 13 members headed by Justice K. M. Sobhan, then a sitting Supreme Court judge, while other members included prominent women political leaders and war widows.²³⁴

²²⁹ Syedur Rahman and Craig Baxter, ‘Historical Dictionary of Bangladesh,’ (2002) *Scarecrow* 1, 52.

²³⁰ *Ibid*, 53.

²³¹ Please be informed that this Board subsequently became the “Women’s Rehabilitation and Welfare Foundation”.

²³² Rahman and Baxter (n 229), 53.

²³³ *Ibid*.

²³⁴ The board members were: Justice K. M. Sobhan, Budrunnessa Ahmad, Nurjahan Murshed, Sajeda Chowdhury, Momtaz Begum, Rafia Akhtar Dolly, Nilima Ibrahim, Sufia Kamal, Jahanara Rabbi, Lily Chowdhury, Basanti Guhathakurta, Mushfequa Mahmud and Abdul Awal (Executive Director); ‘High Powered Body to Rehabilitate Women Victims,’ *The Bangladesh Observer*, 24 February 1972, 1.

9.8.3 It must be mentioned that the rehabilitation centers primarily provided medical aid to war rape victims, including arranging abortion in case of unwanted pregnancies, treatment for diseases, and other socio-economic support. However, in our survey, most (83%) respondents revealed that they were provided with private treatments in their locality.

9.8.4 The reasons for seeking treatment thus were various, mainly due to, non-accessibility of formal or governmental medical facilities during war and social embarrassment. Many (96%) rape victims interviewed mentioned that as they were raped while the War of Liberation was going on, they could not actually access any formal or governmental medical facilities. Moreover, commuting during war time was actually a challenge. So, they had to manage with local informal medical support.

9.8.5 Also, many (73%) rape victims mentioned that they did not want to go out and seek formal medical assistance after the war due to pressure from their families to keep rape incidents secret. Their families did not want any kind of social embarrassment and as such, did not allow the rape victim/s within their family to go out and seek proper medical treatment. Therefore, most (96%) rape victims surveyed had to manage with whatever local and secret informal medical support they could manage. This resulted in long-term health complications for many (83%) of the rape victims.

9.9 Family Rehabilitation of the Rape Victims Surveyed

9.9.1 On the question of acceptance of war rape victims by their families, either parental or in-laws, most (79%) war rape victims interviewed were found to have been accepted by their respective families, although there are also some cases where they (21%) were not accepted by their respective families. But even in cases, where the families accepted them, they were not well-treated and their family members were quite unhappy to deal with them.

9.9.2 The survey of this research project found significant variations in the treatment of rape victims in their families by male and female members. In many cases (41%), it was seen that rape victims were well-treated by male members and in some cases (21%), they were neglected by female members of their families. There are also a number of opposite scenarios. However, in most cases (79%) female family members treated war rape victims better than male family members. For example, Sabeda of Habiganj district received very sympathetic treatment from her female family members; even though the male members of her family treated her very cruelly.

9.9.3 The nature of the treatment by new members of the family brings in a different dimension to the scenario. The survey found that apart from old members of families of war rape victims, new members including daughter-in-laws, son-in-laws and their relatives used to mistreat them. Even sons and daughters of war rape victims were insulted by their in-laws and relatives for their mother being raped during the Liberation War of Bangladesh in 1971. In many cases, incidents of rape were not disclosed to new relatives. Nevertheless, the moment the matter got known, the treatment towards rape victims and their families turned out to be quite unsympathetic. The survey found out that only in two cases did daughter-in-laws were found very sympathetic towards rape victims who were their mother-in-laws. Madhubala Dey and Romola Dey of Shariatpur district were such two lucky ones to get respect, love and care from their own daughter-in-laws.

9.10 Society's Reaction towards the Rape Victims Surveyed

9.10.1 The survey found that the society as a whole was and is still very unwilling to treat war rape victims. Almost all respondents (100%) expressed their long-lasting agony of being offended by members of their community. Immediately after the war, some male members of their community made many indecent proposals to them, treating them like prostitutes. Not only the male members, some female members of some community used indecent words addressing them and abused them.

9.10.2 The survey found that social ostracism is one of the toughest situations for war rape victims to tackle. Of course, it was not their fault if they were raped. However, the most of them had to face social ostracism all through their lives. Some war rape victims tried to hide rape incidents and wanted to start life anew, which they have the right to do. However, the moment their past was disclosed, the process of cruel social exclusion began and some left no stone unturned to humiliate them in every way. For example, Nurjahan of Shirajganj district got married after disclosing the incident of her victimization to her husband before her marriage. So, the wedding took place because her husband chose her. However, after a few years of her marriage family members of the husband of Nurjahan discovered the truth and forced her husband to divorce her.

9.10.3 The survey found that not only the rape victims, but children they had out of legal wedlock also suffered social banishment and exclusion for no fault of their own. Aleya, the daughter of war rape victim Monowara of Feni district, got divorced when her in-laws got to know that she was a daughter of a war rape victim. This was also the experience of Moyna, the daughter of war rape victim Mahela Bewa of Shirajganj district and children of the war rape victim Tara Banu of Hobiganj district.

9.10.4 It may be mentioned that three war rape victims who came to Dhaka to testify against the war criminals during the public trial of war criminals in 1992, all were socially ostracized after their return to their hometown. Their sons lost their job and their daughters got divorced. Such was the experience of Dulijan Nesa, Elijan Nesa and Masuda Khatun of Kushtia district.

9.10.5 According to the survey findings, war rape victims are addressed in a derogatory manner by society. They are called names such as, prostitutes, sixers of Paki armies, wives of Paki armies, etc. It is in fact heart-breaking to note that these women who had sacrificed themselves for the liberation of Bangladesh were never received the proper respect from Bangladeshi society. According to some survey respondents though they were named "*Birangonas*" [War Heroines], this very word actually was used to shame them after the independence of Bangladesh.

9.10.6 It may be mentioned here that on 27 January 2014, the "Bangladesh National Women Lawyers' Association (BNWLA)" filed a 'Public Interest Litigation (PIL)' under Articles 102(1) and 102(2)(a)(i) of the Constitution of the People's Republic of Bangladesh of 1972 demanding enacting a law to recognize 'Birangonas' as 'freedom fighters'.²³⁵ Following this action, the

²³⁵ 'Recognising the Role of Women in the Liberation War,' *Community Legal Services*, available at <<http://communitylegalservice.org/hello-world/>> accessed on 27 December 2018.

High Court Division (HCD) of the Supreme Court of Bangladesh issued a rule asking the Government of Bangladesh to explain in 4 weeks, starting from 18 May 2014, why ‘Birangonas’ would be not recognized as ‘freedom fighters’ and accordingly, provided with all the same facilities, benefits, and privileges as the latter group.²³⁶

9.10.7 On 29 January 2015, the Government of Bangladesh passed a law in Parliament for the purpose of recognizing ‘Birangonas’ as ‘freedom fighters’.²³⁷ In order to implement such a law, a total 185 ‘Birangonas’ were recognized as ‘freedom fighters’ till 9 July 2017 by issuing a ‘Gazette Notifications’ in several stages.²³⁸ It should be mentioned that all ‘Birangonas’ who received recognition as ‘freedom fighters’ are entitled to get all the facilities that a freedom fighter usually enjoys in Bangladesh such as monthly allowance, tuition fees waiver for their children, and so on.

9.11 Financial Sustainability of the Rape Victims Surveyed

9.11.1 Our survey found that maintaining livelihood of the rape victims after the end of the war was a great challenge for them. Many (32%) 1971 war rape victims lost their husbands, who were killed by the perpetrators of war. Thus, the war resulted in not only making them rape victims also widows. They, therefore, had to earn their livelihood working in households. Some women even used to beg for meals (for example, Shabitri Nayek of Habiganj district). Women whose husbands were alive used to earn their livelihood with the earnings of their husbands. The unmarried women were maintained by their fathers and brothers.

9.11.2 The survey found that the financial support provided to war rape victims, whether by the Government and/or the Private sector, was meager. The survey discovered that there were a very few women (2%) who were provided such monetary support. However, most of the respondents did not get any financial assistance till date.

9.11.3 According to survey findings, in the non-governmental sector, a number of organizations did try to provide some kind of financial assistance to a number of rape victims of 1971. However, the effort was quite meager. For example, in our survey we found only 11 rape victims of 1971 receiving such financial assistance. This amounts to only 2% of our surveyed rape victims. Also, it is interesting to find that most rape victims belong to Kurigram district. For example, Janata Bank provided Tk. 50,000/- each to Mst. Asma Begum, Mst. Asia Begum, Mst. Basiran Begum, Mst. Gendi Bewa, Mst. Khoteja Begum, Mst. Khuki Begum, Mst. Meherjaan, Mst. Moyna Begum, Mst. Shurujun Bewa and Toru Bala Roy, all of Kurigram district. Similarly, as per our survey findings, Bashundha Group of Companies provided Tk. 1,00,000/- to Ms. Mst. Khuki Begum of Kurigram district.

²³⁶ Ibid.

²³⁷ ‘24 More ‘Birangonas’ Recognised as Freedom Fighters,’ *The Dhaka Tribune* (24 November 2016), <<https://www.dhakatribune.com/bangladesh/2016/11/24/24-birangonas-recognised-freedom-fighters/>>.

²³⁸ Ibid.

9.12 Marriage and Re-Marriage of the Rape Victims Surveyed

9.12.1 As already mentioned, many rape victims were unmarried (27%) and very young in 1971. The survey found that the question of moving on with their lives after the rape incident was surely a formidable challenge for them. Family and social rejection actually led many 1971 rape victims to opt for suicide. Many (43%) did not get married afterwards, as they were considered to be untouchables or spoiled by society.

9.12.2 The survey found that some (16%) unmarried rape victims did get married afterwards. Nevertheless, these marriages were not very happy ones. In most cases, the families of the rape victims paid a huge amount of money and offered gifts to the grooms to get the rape victims married and yet such marriages did not last for long. It was also found that a number of marriages took place without the woman disclosing the fact of rape. Unfortunately, the moment the husband or his family got to know the truth, they abandoned the woman. For example, Kanchanmala of Munshiganj district, Ramala Devi of Narayanganj district and Nurjahan of Shirajganj district all were divorced when their husband(s) and in-laws came to know about the incident of rape.

9.12.3 An interesting and painful case can be cited in this regard. It is not always that rape victims suppressed the rape incident they underwent after marriage. In one case the husband took the rape victim as his wife after knowing the whole truth; nevertheless, he divorced her after a while for no good reason. Nurjahan of Shirajganj district had to go through this experience.

9.12.4 This survey also found that many (39%) married rape victims had to marry for a second (or third or fourth) time after either being rejected by their former husbands or due to the death of their husbands in the 1971 war. However, these marriages were only compromises worked out to get the rape victims accommodated in society somehow. They became the second or third wives of the men they got married, did not receive any respect, and in most cases they were used only to provide sexual pleasure to their so-called husbands.

9.12.5 Also, it is noticeable that the age difference between the rape victims and their husbands was huge. For example, Nazma Begum of Pirojpur district, Rashida Devi Chakma of Rangamati district, Meera Rani Barua of Rangamati district, Tara Banu of Habiganj district, Asiron of Sherpur district, Asma Khatun and Mst. Moyna Begum of Dinajpur district and Mst. Zahera Begum of Nilphamari district got married to someone who was almost 25 years older to them. Similarly, the husband(s) of Eshnu of Jokeygonj, Sylhet district, Kanchanmala of Munshiganj district, Konarani Das of Narshingdi district, Noorjahan Begum of Barishal district, Amena Begum of Dinajpur district, Mst. Hapon of Syedpur, Nilphamari district, Sabia of Chilahati, Nilphamari district and Debai of Panchagarh district were almost 35 years older to them. The age difference with the husband(s) of Sabeda of Baniachong, Habiganj district, Apela Begum of Panchagarh district, Mst. Marjina Begum of Dinajpur district and Chanmoni Shokhina of Thakurgaon district was almost 45 years. The survey also came across Monowara of Munshibazaar, Moulbhibazaar district, Monowara of Feni district and Shobita Rani Dhar of Jhalokathi district who were all around 55 years younger than their husband(s)!

9.12.6 This research work found that at times rape victims who became widows during the 1971 War of Liberation had to marry their own brother-in-laws for various reasons. For example, rape victims Moymona Bibi of Habiganj district and Rawshan Ara of Tangail district got married to their own brother-in-laws to protect their children from earlier marriages from uncertainty.

9.12.7 Among rape victims married after their rape incident, the worst experience was found in case of Apela Begum of Nilphamari district. Though she was married four times, basically it was a sex slave. She had no social or legal protection against such heinous treatment.

9.13 War Babies

9.13.1 The question of war babies is not a new thing. This research project also tried to explore this issue. Even though it is assumed that most rape victims would not be willing to disclose the identity of the war baby (if any), this research has newly explored the tale of some war babies. While doing this survey we came across as many as 19 rape victims who got pregnant as a result of war rapes during 1971. Out of a total number of rape victim respondents, this is almost 5%.

9.13.2 It was very much expected that rape victims becoming pregnant as a result of rape would prefer abortion and terminate such pregnancies. The government of Bangladesh also made legal provisions to make such a process legally acceptable right after the War of Liberation. In this regard, pregnancies which could not be terminated due to the health condition of the rape victims, the government of Bangladesh enacted new law of adoption so that war babies would be given opportunities to be adopted abroad.

9.13.3 After the war, the government included a scheme of adoption of war babies by foreigners.²³⁹ Specifically, under the purview of the Bangladesh Abandoned Children (Special Provision) Order of 1972, the then Government stimulated foreign adoption agencies to take war babies from Bangladesh.²⁴⁰ Consequently, many adoption agencies such as the “US branch of the Geneva-based International Social Service”, the “Families for Children (Canada)”, the “Kuan-Yin Foundation (Canada)”, the “Holt Adoption Program (US)”, and “Terre des Hommes (Switzerland)” took the war babies of Bangladesh to Western countries.²⁴¹

9.13.4 Further, the abortion law of Bangladesh was temporarily waived from January to October, 1972 for women who were victims of rape during the war.²⁴² Moreover, with the direct support

²³⁹ ‘Rape is a War Crime and those Committed in 1971 should be Tried as such, Argues Kajalie Shehreen Islam,’ The Daily Star, 5 December 2014.

²⁴⁰ Bina D’Costa, ‘Tragic silence over Bangladesh’s babies of war of 1971,’ Himal Southasian, December 2008, available at <<http://www.sacw.net/article581.html>> accessed on 25 December 2018.

²⁴¹ Ibid.

²⁴² Nayanika Mookherjee, ‘Available Motherhood: Legal Technologies, ‘State of Exception’ and the Dekinning of ‘War Babies’ in Bangladesh,’ (2007) 14(3) Journal of Global Child Research 349.

of the World Health Organization and the International Planned Parenthood Federation, a Government-mandated victim relief program was introduced to provide abortion facilities to war rape victims.²⁴³ It was reported by one of the doctors involved with this program that approximately 0.17 million abortions of pregnancies resulted from rapes were conducted, while the births of 0.03 million war babies took place during the first 3 months in 1972.²⁴⁴

9.13.5 In our survey, out of 19 rape victims who got pregnant due to war time rape, we found that only 6 aborted their conceived children. This is almost one-third of the pregnant rape victims. They included Ferdousi (Priyobhashini) Begum of Faridpur district, Romisa Khatun of Mymensingh district, Mollika Ganguly of Barguna district, Sreejita Ray of Patuakhali district, Asma Khatun of Dinajpur district and Mst. Jamila Bewa of Nilphamari district.

9.13.6 However, two third of the pregnant rape victims (i.e. 13 in number) interviewed gave birth to children. They are, Mst. Majeda Begum (Madhobpur) and Heeramoni Shaotal (Chunarughat) of Habiganj district, Bishamuni Bagti and Provarani Malakar (Komolganj) of Moulbhibazaar district, Mukta Bhanu of Daulatpur, Shunamganj district, Elijaan Nesa of Kushtia district, Bokul of Faridpur district, Saleha Begum of Gopalganj district, Safia khatun of Kumilla, Meherun Nahar of Chapainababganj district, Mst. Amina Khatun and Mst. Hapon of Nilphamari district, and Tepri Rani Burman of Thakurgaon district.

9.13.7 This research work also found that bringing up war babies has not been an easy task at all. The mother and the war baby, and on certain occasions, the entire family accommodating a war baby faced social ostracism. There were raped mothers who brought up the war babies themselves despite the society. For example, Mukta Bhanu of Daulatpur, Shunamganj district, Bokul of Faridpur district and Tepri Rani Burman of Thakurgaon district looked after their war babies themselves. They had to go through a lot of slights from the society for doing so. They did not have family support as such, but did not remarry to bring up their war babies on their own.

9.13.8 This research project also found that some rape victims giving birth to war babies did receive support from their own families to bring up their children. In many cases, their husbands supported them to accommodate the war babies within the family. For example, the husbands of Heeramoni Shaotal (Chunarughat) of Habiganj district, Bishamuni Bagti and Provarani Malakar (Komolganj) of Moulbhibazaar district, Mst. Amina Khatun and Mst. Hapon of Nilphamari district accepted the war babies of their wives.

9.13.9 At times, other family members of rape victims surveyed came forward to shoulder the responsibility of bringing up war babies. For example, the war baby (Shamsun Nahar) of Mst. Majeda Begum of Habiganj was brought up and taken care of by Mst. Majeda Begum's own paternal uncle. This uncle also arranged the marriage of the war baby Shamsun Nahar. Even though the rape victim Ms. Tepri Rani Burman of Thakurgaon took up the responsibility of her war baby (Shudhir) on her own, she did get a lot of support from her father while he was alive.

²⁴³ Amena Mohsin, 'Gendered Nation, Gendered Peace: A Study of Bangladesh,' (2005) *Indian Journal of Gender Studies* 223.

²⁴⁴ *Ibid.*

9.13.10 This research project looked at the social treatment given to war babies and his/her rape victim mothers. Society was essentially very cruel in its treatment of war babies. Even though many war babies were given for foreign adoption, the lives of the ones who were left behind in Bangladesh have been quite intolerable. They were subject to constant social slurs and treated as outcasts. They were called names, such as, “Punjabi’s Child”, “Khan’s Child”, “Bastard”, etc. since their birth.

9.13.11 Furthermore, even when the war baby (Shamsun Nahar) of Mst. Majeda Begum of Habiganj was almost 33 years old and happily married, and the information of her being a war baby reached her in-laws, they started abusing her both physically and mentally for months. At times, they chained her just to show people that she had turned insane and therefore was not capable of continuing with her conjugal life. The husband, finally, divorced her and threw her out of the house for no fault of her own.

9.13.12 Also, war babies remained all through their lives targets of abuse of society. They have not been secure in society. There have always been life threats issued to them in the social culture they grew up. For example, the war baby (Shohodev) of Heeramoni Shaotal (Chunarughat) of Habiganj district was never secure in the vicinity where he grew up. He was ultimately killed at the age of 25.

9.13.13 When the war baby of rape victim Mst. Saleha Begum of Gopalganj district died 4 days after his birth, no one in society actually volunteered to do his death rituals. Painfully, the mother did it on her own and she remembers the incident sadly till date. Many rape victims apprehended the antagonistic treatment their war babies would get and therefore, tried to disown their children. For example, after giving birth to her war baby (a girl), rape victim Safia Khatun of Kumilla district abandoned it in front of someone else’s house. Today she feels guilty about the incident but says that she had no other option as there was no one to support her or the baby at that time.

9.14 Trial and its Aftermath

9.14.1 The International Crimes Tribunal of Bangladesh (ICT-BD) turned on the light of justice for people of Bangladesh after almost 40 years by bringing local perpetrators of rape into the court. Many accused persons have been convicted of committing, inter alia, the crime of rape of Bengali women in the 1971 war.

9.14.2 The present research projects that all rape victims are satisfied with the ongoing trial of war criminals. They noted that they want the highest punishment i.e. death penalty to be awarded to war criminals. However, all rape victims feel that they should be compensated by the war criminals for the crimes committed against them.

9.14.3 Many of them also sought both the government and private facilities for meeting their basic necessities. Their demands mainly include providing them with a decent living place, decent employment for their children and family members, old-age benefit packages on a priority basis, and health care facilities free of cost for the rest of their lives. Some even hope to receive psychological counseling as war rape victims. For example, Kiranbala of Nilphamari district thinks that war rape victims have gone through so much trauma in their lives that there is a need to provide them with mental counseling support.

9.14.4 Many war rape victims (95%) claim that there should be state recognition of war babies. These babies are children of Bengali mothers and therefore there can be no barrier to transmit the nationality to them under the current law. All war rape victims (100%) also demand trial of Pakistani soldiers, which is yet to take place at the ICT-BD. They include Debai and Purathi of Panchgarh district and Laili Begum of Rangpur district.

9.14.5 All (100%) war rape victims would like to see a separate law with strict punishment to be enacted for insulting war rape victims. For example, Azima of Domar of Nilphamari district feels very strongly that the lack of such a law makes war rape victims quite vulnerable in society. To this end, enactment of a prohibitory law is a must for her so that war rape victims can take recourse to the court of law.

9.14.6 It is interesting to note that the survey found that most war rape victims (91%) do not want to be identified or called “*Birangonas*”. This feeling is strongly expressed well across the country. For example, Chhyayarun of Sylhet district, Bidya Shundori Shutrodhor of Kishoreganj district, Rawshan Ara of Tangail district, Mst. Asma Begum of Kurigram, and Amina Khatun of Nilphamari district, are only a few of the women who expressed such sentiment.

9.14.7 Finally, all (100%) of the war rape victims state very strongly that even though the trials of war criminals have brought legal justice to society, they as a group did not get their due share of recognition and respect for the contribution they made for the independence of the country. Their agony has not been reflected in the general narratives of society as it has remained for ages a matter of deliberate national forgetting. Their contribution has also not been narrated in school textbooks. If not individually recognized and respected, at least some sort of murals can be made in every single district of the country so that the new generation is constantly reminded of the contribution war rape victims made during the war of liberation.

10. CONCLUSION

10.1 To conclude, it can be stated that sexual violence and rape, committed whether during war or peacetime, was widespread and that the women were often victimized by Pakistani men and their collaborators. The experience of the 1971 Liberation War of Bangladesh when perpetrators used the rape of women as a war tactic is hardly discussed in the international arena. However, a growing number of cases recognizing war rape as an illegal act have been taken up partly as a result of the heinous use of rape as a tactic of genocide in both Rwanda and Yugoslavia during 1990s. This study has described various legal mechanisms to hold perpetrators of sexual violence liable under the IHL, the ICHL, decisions in recent war crimes tribunals such as the ICTY, the ICTR, the ICC etc., the *Geneva Convention IV*, the *Genocide Convention*, the *Hague Conventions on the Laws of War etc.*

10.2 Besides, this study shows that the intensive observations of the ICT-BD demonstrated again and again that rape of women was used as a weapon by perpetrators of rape. From the perspectives of Bangladesh, ensuring legal justice is indeed the first step to be taken to redress the wrong done to the victims. The demand of rape victims to get social justice is widespread. This study would like to conclude that while legal justice has been examples, social justice is still demanded by victims of the 1971 Liberation War in Bangladesh. This study claims that there is ample scope to provide social justice to rape victims in various ways so that they can enjoy complete justice to some extent in their lifetime.

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ANNEXURE 1

জরিপ

নাম

বয়স..... ধর্ম.....

আদি বাড়ী কোন জেলাতে? এখন কোন জেলাতে থাকেন ?

বর্তমানে কি স্বামী আছে?..... বর্তমানে কতজন সন্তান আছে ?.....

এখন কার কার সাথে থাকেন?..... কতদূর পড়ালেখা করেছেন?.....

হ্যাঁ ✓ না X

নির্যাতন সংক্রান্ত তথ্য	
১	১৯৭১ সালে আপনার বয়স কত ছিল?
২	আপনি কি তখন বিবাহিত ছিলেন?
৩	যদি বিবাহিত থাকেন তবে, আপনার কি কোন সন্তান ছিল সে সময়?
৪	যদি সন্তান থেকে থাকে, তাহলে কয়জন সন্তান ছিল?
৫	১৯৭১ সালে আপনাকে কি আপনার নিজ বাড়িতে নির্যাতন করা হয়েছিল?
৬	১৯৭১ সালে আপনাকে কি কোন ক্যাম্পে নির্যাতন করা হয়েছিল?
৭	১৯৭১ সালে আপনাকে কত দিন/মাস ধরে নির্যাতন করা হয়েছিল?
৮	নির্যাতনের পর সরকারী/বেসরকারী কোন চিকিৎসা সেবা পেয়েছিলেন?
৯	১৯৭১ সালে কোন বালক শিশুর নির্যাতনের কথা আপনার জানা আছে কি?
পারিবারিক ও সামাজিক আচরন সংক্রান্ত তথ্য	
১০	১৯৭১ সালে নির্যাতনের পর আপনার পরিবার কি আপনাকে পুনরায় পরিবারে স্থান দিয়েছিল?
১১	আপনার পরিবার যদি আপনাকে পুনরায় পরিবারে স্থান দিয়ে থাকে, তবে আপনার প্রতি আপনার পরিবারের পুরুষ সদস্যদের আচরন কি সহানুভূতিশীল ছিল?
১২	আপনার পরিবার যদি আপনাকে পুনরায় পরিবারে স্থান দিয়ে থাকে, তবে আপনার প্রতি আপনার পরিবারের নারী সদস্যদের আচরন কি সহানুভূতিশীল ছিল?
১৩	১৯৭১ সালে নির্যাতনের পরে সমাজ কি আপনাকে নির্যাতিতা নারী হিসেবে অসম্মান বা অপমান করত?
১৪	১৯৭১ সালে নির্যাতনের পরে সমাজ যদি আপনাকে নির্যাতিতা নারী হিসেবে অসম্মান বা অপমান করে থাকে তবে তারা কি আপনাকে খারাপ ভাষায় গালিগালাজ করত?
১৫	আপনার ছেলের বউ কি আপনাকে নির্যাতিতা নারী হিসেবে অসম্মান বা অপমান করত বা করে?
১৬	আপনার মেয়ের জামাই কি আপনাকে নির্যাতিতা নারী হিসেবে অসম্মান বা অপমান করত বা করে?
১৭	আপনার সন্তানদের শ্বশুরবাড়ি কি আপনাকে নির্যাতিতা নারী হিসেবে অসম্মান বা অপমান করত বা করে?
১৮	আপনার সন্তানদের শ্বশুরবাড়ি কি আপনার সম্প্রদায়কে নির্যাতিতা নারীর সন্তান হিসেবে অসম্মান বা অপমান করত বা করে?
১৯	১৯৭১ সালে নির্যাতনের পর আপনার পরিবার যদি আপনাকে পুনরায় পরিবারে স্থান না দিয়ে থাকে, তবে আপনি কোথায় থাকলেন?
২০	তারা কি আপনার সাথে কোন যোগাযোগ রাখতেন?

অর্থনৈতিক পরিস্থিতি সংক্রান্ত তথ্য	
২১	১৯৭১ সালে নির্যাতনের পর আপনি কিভাবে জীবিকা নির্বাহ করতেন?
২২	১৯৭১ সালে নির্যাতনের পর নির্যাতিতা নারী হিসেবে সরকারী কোন আর্থিক সহযোগিতা পেয়েছিলেন?
২৩	১৯৭১ সালে নির্যাতনের পর নির্যাতিতা নারী হিসেবে বেসরকারী কোন আর্থিক সহযোগিতা পেয়েছিলেন?
পুনর্বিবাহ সংক্রান্ত তথ্য	
২৪	১৯৭১ সালে নির্যাতনের আগে যদি আপনি অবিবাহিত ছিলেন, তবে কি আপনি পরবর্তীতে বিয়ে করেন?
২৫	১৯৭১ সালে নির্যাতনের আগে যদি আপনি বিবাহিত ছিলেন, তবে কি আপনি পরবর্তীতে আগের স্বামীর ঘরে ফেরত যান?
২৬	১৯৭১ সালে নির্যাতনের আগে যদি আপনি বিবাহিত ছিলেন, আর যদি আপনার আগের স্বামী আপনাকে গ্রহণ করতে অস্বীকার করেন, তবে কি পরবর্তীতে নতুন করে অন্য কাউকে বিয়ে করেছেন?
২৭	নতুন স্বামী কি পূর্ব বিবাহিত ছিল?
২৮	নতুন স্বামীর ঘরে কি সতীন ছিল?
২৯	নতুন স্বামীর সাথে আপনার বয়সের পার্থক্য কত বছর ছিল?
৩০	নতুন স্বামীর ঘরে কি আপনাকে নির্যাতিতা নারী হিসেবে অসম্মান বা অপমান করা হত?
বিচার সংক্রান্ত তথ্য	
৩১	১৯৭১ সালে বাংলাদেশের নারীদের ওপর যারা নির্যাতন করেছে, আপনি কি তাদের বিচার চান?
৩২	যুদ্ধের প্রায় ৪০ বছর পর যেসকল অপরাধীরা নারী-নির্যাতনের সাথে জড়িত ছিল তাদের বিচার সরকার শুরু করেছে তাতে কি আপনি খুশি?
৩৩	আপনি কি মনে করেন যে, এই বিচারের মাধ্যমে নির্যাতিত নারীরা ন্যায় বিচার পেয়েছেন/পাচ্ছেন/পাবেন?
৩৪	১৯৭১ সালে বাংলাদেশের নারীদের ওপর যারা নির্যাতন করেছে, আপনি যদি তাদের বিচার চান, তবে তাদের সঠিক শাস্তি কি হওয়া উচিত বলে আপনি মনে করেন?
৩৫	আপনি কি মনে করেন, ১৯৭১ সালে যেসকল অপরাধীরা নারী-নির্যাতনের সাথে জড়িত ছিল তাদের কাছ থেকে ক্ষতিপূরণ আদায় করা উচিত?
৩৬	আপনি কি মনে করেন যে, এই বিচারের পর ১৯৭১ সালে নির্যাতিত নারীদের প্রতি সমাজের ধারণার কোন পরিবর্তন এসেছে?
৩৭	১৯৭১ এর নির্যাতিত নারীদের জন্য বর্তমানে রাষ্ট্র ও সমাজ আরও কী কী করতে পারে বলে আপনি মনে করেন? বিনা পয়সায় চিকিৎসা সেবা প্রদান অর্থনৈতিক সহযোগিতা বা বিশেষ ভাতা প্রদান বাসস্থানের ব্যবস্থাকরণ সামাজিক স্বীকৃতি নিশ্চিতকরণে প্রতি জেলাতে ভাস্কর্য নির্মাণকরণ নারী মুক্তিযোদ্ধা হিসেবে সনদ প্রদান পাঠ্য বই-এ নির্যাতিত নারীদের অবদানের ইতিহাসকে অন্তর্ভুক্তিকরণ অন্যান্যঃ

যুদ্ধশিশু সংক্রান্ত তথ্য

৩৮	১৯৭১ সালে নির্যাতনের ফলে কি আপনি গর্ভবতী হয়েছিলেন?	
৩৯	যদি গর্ভবতী হয়ে থাকেন, তবে সেই বাচ্চার কি গর্ভপাত ঘটানো হয়?	
৪০	যদি গর্ভপাত না ঘটানো হয়, তবে তার জন্ম কবে হয়?	
৪১	যদি গর্ভপাত না ঘটানো হয়, তবে যে বাচ্চার জন্ম হয় সে কি ছেলে না মেয়ে?	
৪২	এই বাচ্চাকে কে বা কারা লালন পালন করে?	
৪৩	এই বাচ্চাকে কি আপনার নতুন স্বামীর পরিবারে স্থান দেয়া হয়েছিল?	
৪৪	এই বাচ্চার প্রতি আপনার পরিবার এর আচরন কি সহানুভূতিশীল ছিল?	
৪৫	এই বাচ্চার প্রতি সমাজের আচরন কি সহানুভূতিশীল ছিল?	
৪৬	এই বাচ্চাকে কি সমাজ অসম্মান বা অপমান করত?	
৪৭	এই বাচ্চাকে সমাজ যদি অসম্মান বা অপমান করে থাকে, তবে তারা কি তাকে খারাপ ভাষায় গালিগালাজ করত?	

ANNEXURE 2

LIST OF INTERVIEWEES

BARISHAL	Barishal	1	Nurjahan Begum
	Barguna	2	Amina Khatun
		3	Anima Ganguli
		4	Horidashi Ghosh
		5	Jomila Khatun
		6	Mollika Ganguli
		7	Putul Rani Roy
		8	Smriti Dashi Ghosh
		Bhola	
	Jhalokathi	9	Asha Rani Mondol
		10	Shobita Rani Dhar
		11	Shova Rani Das
		12	Shyamoli Pal
	Patuakhali	13	Fulburu Begum
		14	Hajera Khatun
		15	Jamila Khatun
		16	Joyful Banu
		17	Monowara
		18	Monowara Begum
		19	Moumita Rani Bala
		20	Mst. Aleya Begum
		21	Mst. Aliya Begum
		22	Pijita Ray
		23	Rizia Begum
		24	Shova Rani Karmakar (1)
		25	Shova Rani Karmakar (2)
		26	Shushoma Karmakar
		27	Srijita Ray
	Pirojpur	28	Nazma Begum
		29	Shova Kar
	30	Shuruchi Rani Shaha	
CHITTAGONG	Bandarban		
	Brahmanbaria	31	Rezia Begum
	Chandpur	32	Honufa Begum
	Chittagong	33	Amena Begum
		34	Amena Khatun (1)
		35	Amena Khatun (2)
		36	Amena Khatun (3)
	37	Anowara Begum (1)	

CHITTAGONG	Chittagong	38	Anowara Begum (2)
		39	Apia Khatun
		40	Bhanumoti Das
		41	Bibi Kulsum
		42	Bokul Rani De
		43	Delwara Begum
		44	Fazarer Nesa
		45	Firoza Khatun
		46	Halima Begum
		47	Haradhon Bibi
		48	Hazera Khatun
		49	Hosne Ara
		50	Jahanara Begum
		51	Jahera Begum
		52	Jharna
		53	Joleikha Begum
		54	Jyotsna Begum
		55	Kadarer Nesa
		56	Kanchan Mala
		57	Khadija Begum
		58	Minu Das
		59	Monowara
		60	Monowara Begum
		61	Moriom Bibi (1)
		62	Moriom Bibi (2)
		63	Mst. Shurma Khatun
		64	Mst. Zamina Khatun
		65	Nojum Bia
66	Noorjahan Begum		
67	Ofula Khatun		
68	Rawshan Ara Begum		
69	Saleha Bibi		
70	Shabitri Das		
71	Shorifa Begum		
72	Sofura Khatun		
73	Sokhina Khatun		
74	Sufia Begum (1)		
75	Sufia Begum (2)		
76	Tahera		
77	Torikunnesa		
78	Zohra Khatun		

CHITTAGONG	Comilla	79	Aleya (Anu)
		80	Safiya Khatun
	Cox's Bazar		
	Khagrachhari	81	Cheng Sama Mogh
		82	Hola Mraso Aung Marma
	Lakshmipur	83	Hazera Khatun
	Feni	84	Monowara
	Noakhali	85	Ankurer Nesa
		86	Hasina Begum
		87	Monsura Khatun
	Rangamati	88	Jharna Das
		89	Meera Rani Barua
		90	Noorjahan Begum
		91	Rashida Debi Chakma
DHAKA	Dhaka	92	Honufa Khatun
		93	Momena Begum
		94	Rawshan Ara Begum
	Faridpur	95	Bokul
		96	Beauty Begum
		97	Ferdousi (Priyobhashini) Begum
	Gazipur	98	Shoilo Bala Das
		99	Momtaz Begum
	Gopalganj	100	Laili Begum
		101	Meera Banik
		102	Mst. Saleha Begum
		103	Nazma Begum (Kakon Bala)
		104	Rawshan Ara
	Kishoreganj	105	Shuruchi Bishwash
		106	Bhanumoti Shutrodhor
		107	Bidya Shundori Shutrodhor
108		Komola Bormon	
109		Razia Khatun	
110		Rashmoni Chakrabarty	
111		Shobha Rani Shutrodhor	
112		Shomola Bormon	
Madaripur			
Manikganj			
Munshiganj	113	Kanchan Mala	
Narayanganj	114	Lokhkhii Rani Pal	
	115	Romola Devi	
Narsingdi	116	Jyotsna Begum	

DHAKA	Narsingdi	117	Kona Rani Das
		118	Rezia Begum
		119	Shahzadi Begum
		120	Shorifa Khatun
	Rajbari	121	Rizia Khatun
	Shariatpur	122	Ananta Bala Pal
		123	Anjali Malo
		124	Anju
		125	Arati
		126	Banu Bibi
		127	Bijoya Malo
		128	Jharna Bala Dey
		129	Jogomaya Malo
		130	Jyotsna
		131	Kamala
		132	Minoti Bala Poddar
		133	Modhu Bala Dey
		134	Ramala Dey
		135	Shumitra
	136	Toruni Devi	
137	Usha Malo		
Tangail	138	Bhakti Rani Pal	
	139	Bhanu Begum	
	140	Rawshan Ara	
KHULNA	Bagerhat	141	Ayesha Khatun
		142	Meherjan Khatun
		143	Roison (Suraiya Begum)
	Chuadanga		
	Jessore	144	Ashura Khatun
	Jhinaidah		
	Khulna	145	Fulera Begum
		146	Gurudashi Mondol
	Kushtia	147	Dulzan Nesa
		148	Elizan Nesa (1)
		149	Elizan Nesa (2)
		150	Masuda Khatun
		151	Momena Khatun (1)
		152	Momena Khatun (2)
Magura	153	Lokhkhhi Rani	
Meherpur			
Narail	154	Bela Rani Ghosh	

KHULNA	Satkhira	155	
		156	Jolekha Khatun
			Roison Bibi
MYMENSINGH	Jamalpur	157	Asiron Begum
	Mymensingh	158	Bashonti Rani Rishi
		159	Gita Rani Rishi
		160	Moymona Khatun
		161	Nirmola Rishi
		162	Noorjahan (1)
		163	Noorjahan (2)
		164	Poribin Nesa Bibi
		165	Romesa Khatun
		166	Shurbala Singh
		167	Zahira Khatun
	Netrokona	168	Jyotsna Rani
		169	Mst. Kanchan Mala
		170	Roma Boti Bose
	Sherpur	171	Asiron
		172	Hafiza Bewa
		173	Hasena Banu
		174	Jobeda Bewa (1)
175		Jobeda Bewa (2)	
176		Korfuly Bewa	
177		Mst. Hachhen Banu	
178		Shomola Bewa	
RAJSHAHI	Bogra		
	Chapainawabganj	179	Meherunnahar
		180	Mst. Razakunnesa
		181	Mst. Shamsun Nahar
		182	Mst. Shareefa Khatun
		183	Nazma Khatun
		184	Roza Begum
	Joypurhat		
	Naogaon	185	Bani Bala Pal
		186	Kali Rani Pal
		187	Khanto Bala Pal
		188	Mayabala Shutrodhar
		189	Rashmoni Shutrodhar
		190	Renu Bala Pal
191		Shondhya Rani Pal	
192	Shushoma Bala Shutrodhar		

RAJSHAHI	Naogaon	193	Shushoma Pal
	Natore	194	Johura Begum
	Pabna		
	Rajshahi	195	Latifa Begum
		196	Parul Begum
		197	Shurjan
		198	Shova
	Sirajganj	199	Asia Begum (1)
		200	Asia Begum (2)
		201	Aymona Begum
		202	Aysha Begum
		203	Bahaton Bewa
		204	Hajera Khatun
		205	Hamida Begum
		206	Hasina Bewa
		207	Joygun Begum
		208	Jyotsna Banu
		209	Komola Begum
		210	Korimon Begum
		211	Mahela Bewa
212		Monu Kundu	
213	Mst. Shamsun Nahar Begum		
214	Noorjahan		
215	Rahila Begum		
216	Rahima Bewa		
217	Raju Bala De		
218	Samina Khatun		
219	Shurjo Begum		
220	Suraiya Begum (Dhuli)		
RANGPUR	Dinajpur	221	Asma Khatun
		222	Mst. Morzina Begum
	Gaibanda	223	Fulmoti Rani Robidas
		224	Shonaban
	Kurigram	225	Mst. Abiron Bibi
		226	Mst. Aklima Begum
		227	Mst. Ambia Begum
		228	Mst. Amena Begum
229		Mst. Asia Bewa	
230		Mst. Asma Begum	
231		Mst. Aysha Begum	
232		Mst. Bosiron Begum	

RANGPUR	Kurigram	233	Mst. Bulbuli Rani
		234	Mst. Dolo Bewa
		235	Mst. Fatema Begum (1)
		236	Mst. Fatema Begum (2)
		237	Mst. Fatema Begum (3)
		238	Mst. Gendi Bewa
		239	Mst. Hasina Begum
		240	Mst. Hazera Begum
		241	Mst. Jarina Khatun
		242	Mst. Khairun Begum
		243	Mst. Khoteja Begum (1)
		244	Mst. Khoteja Begum (2)
		245	Mst. Khuki Begum
		246	Mst. Kobila Begum
		247	Mst. Kosvan Begum
		248	Mst. Maleka Begum
		249	Mst. Meherjan (1)
		250	Mst. Meherjan (2)
		251	Mst. Meherun Nesa
		252	Mst. Mojida Begum
		253	Mst. Mollika Begum (1)
		254	Mst. Mollika Begum (2)
		255	Mst. Morium Bewa
		256	Mst. Moyna Begum
		257	Mst. Moyna Bewa
		258	Mst. Nesamon Begum
		259	Mst. Nosimon Bewa
		260	Mst. Poniron Begum
		261	Mst. Rani Begum
		262	Mst. Rezia Khatun
		263	Mst. Rohima Begum
		264	Mst. Rohima Khatun
		265	Mst. Rupban Bewa
		266	Mst. Sahera Begum
		267	Mst. Saheron Bibi
		268	Mst. Saleha Begum
		269	Mst. Saleha Bewa
		270	Mst. Shamsun Nahar
		271	Mst. Shobjaan Begum
		272	Mst. Shurujjon Bewa
		273	Mst. Tokiron

RANGPUR	Kurigram	274	Mst. Toru Bala Roy
		275	Mst. Zaheda Begum
	Lalmonirhat	276	Khaleya Bewa
		277	Khotina Begum
		278	Monowara Begum
		279	Mst. Khotiza
		280	Mst. Ramisa
		281	Saleha Khatun
		Nilphamari	282
	283		Gyanoda Bormoni
	284		Jamila Begum
	285		Kiron Bala
	286		Mst. Amina Khatun
	287		Mst. Asia Khatun
	288		Mst. Ayesha Begum
	289		Mst. Begum Ara
	290		Mst. Eziron Begum
	291		Mst. Hapon
	292		Mst. Jamila Bewa
	293		Mst. Jomila Begum
	294		Mst. Korima Begum
	295		Mst. Momtaz Begum
	296		Mst. Morjina Begum (1)
	297		Mst. Morjina Begum (2)
	298		Mst. Morjina Begum (3)
	299		Mst. Rahima Khatun
	300		Mst. Rokeya Begum
	301		Mst. Rokeya Khatun
	302		Mst. Zaheda Begum
	303		Mst. Zahera Begum
	304		Mst. Zohra Khatun
305	Nobiya Begum		
306	Nolita Rani		
307	Nurjahan		
308	Ojifa		
309	Sabiya		
310	Shorifa		
311	Shyamla Bala		
312	Sohiron		
313	Somari Begum		
314	Zorina Begum		

RANGPUR	Panchgarh	315	Apela Begum	
		316	Debai	
		317	Purathi	
		318	Zorifon	
	Rangpur	319	Anwara Begum	
		320	Layli Begum	
		321	Mst. Monsura Khatun	
	Thakurgaon	322	Amena Begum	
		323	Amina Begum	
		324	Chanmoni Sokhina	
		325	Chitto Bala	
		326	Hafeza Begum	
		327	Hanufa Begum	
		328	Hasina Begum	
		329	Jamela Khatun	
		330	Jharna Rani Mondol	
		331	Jobeda Bewa	
		332	Maleka Begum	
		333	Moni Kisku	
		334	Mortuza Khatun	
		335	Mst. Rezia Begum	
		336	Mst. Romesa Begum	
		337	Muklesa Begum	
		338	Noorjahan Begum	
		339	Rabeya Bewa	
		340	Sheeta Hemran	
		341	Shumi Rashugi	
	342	Sreemoti Tirtha Bala		
	343	Tepri Rani Barman		
	SYLHET (4)	Habiganj	344	Abeda Khatun
			345	Abeda Khatun Akshi
			346	Budhuni Urang
			347	Chhabeda
			348	Jolika Begum
349			Mondo Tanti	
350			Mosammat Majeda Begum	
351			Moymona Bibi	
352			Pushpo Rani Boidyo	
353			Shabitri Nayek	
354			Tarabanu	
Moulvibazar		355	Arina	

SYLHET (4)	Moulvibazar	356	Bishamuni Bagti
		357	Boishakhi Bunarji
		358	Fulbashia Chasha
		359	Heeramoni Shaontal
		360	Janki Tanti
		361	Monowara
		362	Nidra Bunarji
		363	Probashi Malakar
		364	Probha Rani Malakar
		365	Safia Khatun
		366	Shobita Bagti
		367	Shondhya Rani Deb
		368	Shottoboti Ghashi
		369	Shuvodra Bunarji
	Sunamganj	370	Bilashi Bibi
		371	Bolchan Bibi
		372	Elassi Bibi
		373	Jomila Khatun
		374	Kulsum Bibi
		375	Kushum Debi
		376	Lal Banu
		377	Mon Begum
		378	Mukta Bhanu
		379	Muktaban Bibi
		380	Promila Das
		381	Pyara Begum
		382	Zahera Begum (Hazera)
		Sylhet	383
	384		Eshnu
	385		Jyotsna



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