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On: 25 November 2011, At: 04:31

Publisher: Routledge

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## Journal of Genocide Research

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/cjgr20>

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Available online: 25 Nov 2011

To cite this article: Sarmila Bose (2011): The question of genocide and the quest for justice in the 1971 war, *Journal of Genocide Research*, 13:4, 393-419

To link to this article: <http://dx.doi.org/10.1080/14623528.2011.625750>

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# The question of genocide and the quest for justice in the 1971 war

SARMILA BOSE

The 1971 war in South Asia that ended with the break-up of Pakistan and the creation of Bangladesh has been framed in terms of genocide in popular representations and the nationalist history of Bangladesh. It has been depicted as genocide by the Pakistan army against the linguistically defined ethnic Bengalis in East Pakistan, in which three million Bengalis were said to have been killed. This article explores some of the problems with categorizing the killings of 1971; assesses, using detailed information on many incidents of violence during the year, which of them might be termed genocide according to the 1948 UN Convention for the Prevention and Punishment of the Crime of Genocide; considers how to treat those crimes that do not fit the definition of genocide, and what the implications are for the quest for justice for the crimes of 1971. It concludes that genocide is not the most useful framework to analyze the conflict; that some of the killings committed by both sides could be termed genocide while others might not, but that they still constitute serious crimes; and that a broader conceptualization of the violence of the war and engagement by the international community were necessary to achieve true justice for the victims of violence in 1971.

## Introduction: genocide and the 1971 war

The 1971 Bangladesh war has been framed in terms of genocide in the dominant narratives and popular representations of that conflict. Bangladeshi nationalist narratives also frequently use the term ‘holocaust’ in an attempt to associate the 1971 war with the horrors of Nazi Germany. There is a related attempt to ‘rank’ the 1971 war, for instance, as ‘the worst genocide after Second World War’.<sup>1</sup> The ‘ranking’ is based on the claim that three million Bengalis were killed by the Pakistan army during the conflict in their bid to crush the Bengali/Bangladeshi nationalist rebellion in the then province of East Pakistan. In this context, the use of the term ‘genocide’ is virtually interchangeable with ‘mass killings’. It is simply used to signify a massive atrocity—a gigantic crime against humanity. Ever since 1971, there have been demands by Bangladeshi nationalists for war crimes trials to try Pakistan army personnel and their local Bengali and ‘Bihari’ allies whom they termed *razakar* (collaborators).<sup>2</sup>

The term genocide is thus not used by Bangladeshi nationalists or popular commentators with any definitional clarity. In popular parlance, no particular effort is

made to make its use consistent with the definition of genocide in the 1948 UN Convention.<sup>3</sup> Its use is primarily political, intended to indict Pakistan, and in particular the Pakistani army, as brutal killers and war criminals, while depicting ‘Bengalis’—a linguistically defined identity—as largely blameless victims, who had been killed for merely demanding their democratic rights. Indeed, Bangladeshi nationalist depictions typically refer to genocide having been committed by the Pakistani army against ‘innocent Bengalis’, suggesting that the victims were non-combatants, killed solely because of their identity as Bengalis.<sup>4</sup>

Over time, the claim of ‘genocide of three million’ took on the status of a sacred *mantra* in the popular telling and political culture of Bangladesh, the ritual chanting of which signals a particular political allegiance. It acquired a political meaning in Bangladesh that has little to do with the definition of genocide in international law or the veracity of the casualty figure of three million. A few Western journalists had doubted in the aftermath of the war that millions of non-combatants had been killed by the Pakistan army.<sup>5</sup> Over time, a few scholars also questioned such claims.<sup>6</sup> However, the few early questioning voices in the Western media appear to have become submerged under a much larger volume of material repeating the allegation of the genocide of millions, scholarly voices of dissent were largely not reflected in the popular sphere, and references to the alleged killing of millions of Bengalis found their way into other, broader works on genocide or history.<sup>7</sup> It has been extremely difficult for Bangladeshis to challenge this *mantra* in public without being labelled a *razakar* (collaborator) or ‘Islamist’, the latter having acquired the status of an internationally recognizable term of vilification in recent years. Outsiders who question the official story risk being labelled a ‘denier’, in keeping with the attempt of those who claim genocide of millions to associate themselves with the horrors of Nazi Germany.

The assertion by Bangladeshi nationalists, that the Pakistan army committed genocide during 1971, was believed widely around the world. The framing of the entire conflict as one massive crime against humanity, committed solely by the Pakistan army and its few local allies, is embedded in the narrative with which generations have grown up in India and Bangladesh. It is also believed by many Pakistanis, in particular those who are critical of the military repeatedly taking power in their country, and are ashamed of what the armed forces were reported to have done in East Pakistan. This critical view is also found within the armed forces itself—for instance, when an officer from the 18 Punjab regiment returned to West Pakistan after the war, his own father demanded to know what his unit had been doing in East Pakistan, given the disturbing reports that had been circulating about the regiment’s conduct there.<sup>8</sup>

While the term genocide may be used as a political tool by Bangladeshi nationalists or their Indian allies in the context of the 1971 war, it is not used with consistency even by genocide scholars. Its use can be arbitrary and there is discontent among genocide scholars about the UN definition of genocide.<sup>9</sup> The problem with the UN definition appears to be that it can be both too restrictive and too expansive: it refers to the persecution and killing of particular racial or ethnic groups, rather than mass killings in general or political killings. At the same time, it is

not restricted to killings alone but includes a variety of other activities designed to destroy an identifiable group. Criticisms of the UN definition also includes complaints that it focuses narrowly on state actions only, suffers from Euro-centrism and tends to treat peoples and institutions as monolithic entities.<sup>10</sup>

An additional obstacle is the lack of reliable data. According to Gerlach: ‘The biggest problem of genocide studies is the lack of an empirical foundation. This emptiness is obvious at every genocide conference’.<sup>11</sup> The problem of reliable data is acute with regard to the 1971 war.<sup>12</sup> The abundance of political rhetoric is matched by a paucity of carefully documented data. If nobody knows, or different parties cannot agree on, what actually happened in 1971, it is impossible to embark upon any kind of analysis.

This article considers the various types of violence in the 1971 war, and makes an assessment of which of them can be termed genocide on the basis of the closest approximation to an international consensus on what constitutes genocide—the 1948 UN Convention, how to treat the violence that may not fit the UN definition of genocide but still constitute crimes against humanity, and what the implications are for the quest for justice with regard to the 1971 war. For this purpose, it is necessary to have a working definition of genocide against which to assess the various incidents of violence. It would be counter-productive to become enmeshed in the definitional debates. The article therefore adheres to the UN definition of genocide, while not being restricted by that definition in its assessment of the crimes committed in the 1971 war and the quest for justice for its victims.<sup>13</sup> This is also apposite as Bangladeshis who claim that genocide occurred during the 1971 war typically do not question the UN definition, but make the claim either within its definition or without any reference to it. It is also of practical relevance as Bangladeshis have long sought justice through war crimes trials.

To address the question of genocide in the 1971 war, the article utilizes detailed information on many incidents on the ground gathered by this author through extensive fieldwork, and examination of published and unpublished material, including many reminiscences, in both Bengali and English, and data emerging out of a few other recent independent studies of the war.<sup>14</sup> It addresses the following questions: what are some of the key problems with categorizing the killings during the 1971 conflict as genocide or not? Which types of the violence during the 1971 war might be termed genocide as per the UN definition? How should we treat the persecution and killings that do not fit the UN definition of genocide? What do the answers to the above suggest for the pursuit of justice in relation to the events of 1971?

## **Problems with the categorization of genocide in the 1971 conflict**

### *Conceptual challenges*

The Pakistani regime was accused of genocide in East Pakistan much earlier than in 1971. The term was used by a section of Indian politicians as early as 1950 to describe the treatment of Hindus in Pakistan. That year India and Pakistan nearly

went to war when communal riots in East and West Bengal led to an exodus of Hindu refugees from East Pakistan into India, and Muslim refugees from West Bengal into East Pakistan. A crisis that might have plunged the two new post-colonial states into war was triggered by a single incident in a village in the district of Khulna in East Pakistan. In an eerie forerunner of Indira Gandhi's actions in 1971, Nehru's government seriously considered the possibility of invading East Pakistan on the grounds of 'protecting' the Hindu minority and stemming the flow of refugees into India. Exactly how this would be achieved by war is not clear. The crisis seems to have been set off by a police action to arrest a suspected communist in a predominantly Hindu village in Khulna. India painted the incident in 'communal' (Hindu-Muslim) colours, while Pakistan insisted that the action was against communists, not Hindus. In other words, Pakistan's position was that the police action was addressing a political problem, while the Hindu Mahasabha labelled it Pakistan's 'policy of genocide towards the Hindus'.<sup>15</sup>

To address the limitations of the concept of genocide in analyzing cases of mass violence, such as in the 1971 war, Gerlach has proposed an alternative framework of 'extremely violent societies'. He argues that this new conceptual framework is not a vague description of levels of violence, but incorporates particular characteristics, like the participation of diverse population groups as well as state organs, in which the victims are also diverse social groups, the causes of violence are multiple and the level of physical violence is very high.<sup>16</sup> This is not the place to recount debate with regard to its meaning and usefulness, but this approach argues that the explosion of violence at certain points of time, such as in 1971, is best understood in the context of a much longer term social and political history of these societies.<sup>17</sup> While this is a valid argument, this article is not about the long-term historical context of the violence of 1971. Its objective is to focus on the war itself, and utilize detailed examinations of particular incidents to contribute to filling the empirical 'emptiness' identified by Gerlach.<sup>18</sup>

On the basis of the examination of numerous incidents of violence during the 1971 war in East Pakistan/Bangladesh, this article concurs that 'genocide' is not very useful as a framework with which to analyze this conflict.<sup>19</sup> It is too limiting. There was much violence and many killings during the war that do not fit the UN definition of genocide, and yet they are crimes that require a response in the interest of justice. There is also a false dichotomy set up by the political use of the term 'genocide' by Bangladeshi nationalists, which assumes that if the killings committed by the Pakistan army during the 1971 war are not termed 'genocide', they are being condoned. This is simply untrue and unhelpful, not only for understanding what happened during the 1971 war, but also for the pursuit of justice for crimes committed during the conflict.

To be sure, the notion that genocide is the 'crime of crimes', and that all the other terms somehow suggest a lesser crime, does not seem to be limited to Bangladeshi nationalists. In 2005, the International Commission of Inquiry on Darfur felt obliged to explain: 'Genocide is not necessarily the most serious international crime. Depending upon the circumstances, such international offenses as crimes against humanity or large scale war crimes may be no less serious and heinous

as genocide'.<sup>20</sup> It is important to emphasize that in the case of the 1971 war, when some of the killings are deemed not to be genocide as per the UN definition, it does not mean that no crime was committed, but rather that it would be more appropriate to categorize the crime under a different label, both for analytic purposes and for the practical purposes of potential prosecutions.

There are many other terms with overlapping connotations swirling around the scholarly, legal or popular use of the term 'genocide', including 'ethnic cleansing', 'mass killing', 'holocaust', 'atrocities', 'war crimes' and 'crimes against humanity'. There was an added confusion of whether or not such crimes could occur at times of peace as well as war, and what might constitute a state of war. Some feel that a term like 'crimes against humanity' is too general to be of use as a tool of analysis.<sup>21</sup> Others have argued that while the definition of 'genocide' has remained relatively stable in international law, the remit of 'crimes against humanity' has increased, bringing the two concepts closer together while retaining a distinction between them.<sup>22</sup> The question is: what might be the best way to address the many atrocities committed during the 1971 conflict?

This article argues that in the case of the 1971 war, it would be better not to be unduly restricted by the limited, arbitrary and heavily politicized term 'genocide', and instead apply a broader concept of 'crimes against humanity', which would incorporate various types of unlawful killings including genocide. This would be an appropriate approach in the search for both an understanding of the brutalities of the 1971 conflict and dealing with its long-term aftermath. It would indicate that many crimes were just as serious as those that can be legally termed 'genocide' in current international law. In this way, if a particular atrocity cannot be fitted into the UN Convention's definition of 'genocide', it can still be identified as a heinous crime, for which justice may be sought.

### *Was the 1971 conflict a West Pakistani genocide of Bengalis?*

The nationalist popular narrative depicts the 1971 war as a one-sided genocide committed by the Pakistan army upon Bengalis of East Pakistan. From the outset, this depiction runs into a number of analytical problems in terms of the ethnicity of both the alleged perpetrator and the alleged victim. In such a discourse, the Pakistan army is implicitly defined as ethnically West Pakistani. But West Pakistan was not an ethnically homogenous region. It comprises different ethnic groups, such as Punjabis, Pashtuns, Sindhis and Baluchis, all of whom have a strong sense of regional and cultural identity. Moreover, these groups also have a history of conflict between each other and against the Pakistani state. Like the Bengalis in East Pakistan, other provinces in West Pakistan also harboured grievances against the dominant Punjabis and the 'Punjabization' of the state.<sup>23</sup> Many West Pakistanis were sympathetic to the East Pakistani Bengalis' grievances. Confusingly, Bangladeshi narratives often refer to West Pakistanis collectively as 'Punjabis', regardless of the actual ethnicity of the people being referred to.

The victims of the alleged genocide in this depiction are meant to be ethnic Bengalis in the province of East Pakistan. However, as almost everyone in the

population of nearly 70 million in East Pakistan was Bengali, defining the target of genocide as ‘Bengali’ is a non-starter.<sup>24</sup> East Pakistan’s linguistic/ethnic minorities were non-Bengali Muslims, with origins in northern and eastern India, and tribal peoples of the hill areas, while Bengali Hindus were a religious minority within the majority Bengalis.<sup>25</sup> The rebels fighting for an independent Bangladesh were Bengalis in an overwhelmingly Bengali province, so it is hardly a surprise that those killed by the Pakistan army in their bid to put down the rebellion would be mostly Bengalis. Furthermore, all Bengalis did not seek secession, even if they had grievances, with provincial autonomy a much discussed alternative. Many Bengalis in East Pakistan favoured continuing within united Pakistan in some form, and some actively cooperated with the regime in its attempt to put down the insurgency. While many Bengali army officers and police personnel eventually mutinied and joined the battle for liberation of Bangladesh, some Bengali officers and men remained loyal to a united Pakistan, fighting to the end for that cause and becoming POWs in India. With Bengalis an overwhelming majority in the province and on both sides of the war, the claim of genocide of Bengalis becomes rather muddled.

As the vast majority of the province’s population was Bengali, the armed forces’ targets were the rebel Bengalis defined on the basis of a political aim. In their counter-insurgency operations, the regime was actively supported by many fellow Bengalis, in addition to the non-Bengali population of East Pakistan, the ‘Biharis’, who had no reason to support the cause of ‘Bangladesh’ that defined them out of their homeland. It is therefore impossible to depict the regime’s counter-insurgency measures—however brutal and deserving condemnation for its human rights violations—as genocide against all Bengalis as an ethno-linguistic group. It would be more appropriate to indict the regime or members of its armed forces on charges of massacres, extra-judicial executions and other atrocities, some of which might be termed ‘war crimes’, which may be prosecutable under national and international laws. However, it is possible to make a case for genocide by the regime against the sub-group of Hindus, which I discuss in greater detail below.

The depiction of the 1971 conflict solely as a genocide by the army against Bengalis also fails to account for the atrocities committed by Bengalis against each other and against non-Bengalis. The armed forces were not the only ones killing people in 1971. Pro-regime Bengalis were accused of persecuting or killing liberation fighters and their supporters, while pro-liberation Bengali ‘nationalists’—both civilian and military—killed many non-Bengalis (West Pakistanis or ‘Biharis’) and Bengalis who did not support the cause of Bangladesh. In other words, Bengalis on both sides of the war persecuted and killed other Bengalis who did not agree with their respective political projects. Hindu Bengalis were targeted, not only by the army, which suspected them of being a fifth column of India, but also by their Bengali Muslim brethren during the conflict, often for non-political, material reasons. All of these actions also need to be considered when assessing the nature and extent of genocide and crimes against humanity in East Pakistan in 1971.<sup>26</sup>

*Mass killing versus genocide*

A further confusion with regard to the 1971 conflict is the widespread use of the term 'genocide' to actually mean 'mass killing'. The claims of war-dead numbers in 1971 ranges from 26,000, based on situation reports of the Pakistan army submitted to the post-war Pakistani enquiry commission, the Hamoodur Rehman Commission,<sup>27</sup> to the Bangladeshi nationalist/Indian claim of three million, which turns out not to have any accounting basis. Based on the ground-level studies of the 1971 war, the total of 26,000 war dead is clearly implausibly low. It is also well established now that the figure of three million is a false claim.<sup>28</sup> It is important for scholars and commentators to cease repeating this figure, as it gained legitimacy over the years through unquestioned repetition.

Not all deaths during 1971 can be attributed to the direct violence of war. Gerlach concluded that the majority of fatalities during 1971–72 were due to hunger and disease. According to him, 'it is very unlikely that the fatalities in 1971 exceeded one million people' and that 'the data do suggest that deprivation and famine killed a major proportion of those who died during the conflict'. For example, based on a long-term population survey going on in Matlab *thana* in Comilla district, he reported that of 868 'excess deaths' in 1971–72 over the longer term death rate in this *thana*, 571 were children (of whom 60 per cent were girls) and 230 persons were over 45 years (of whom two-thirds were men); 44 (or 5 per cent) of the 'excess deaths' were of men aged between 15 and 44 years. He concludes: 'Hence relatively few direct army killings must have occurred in Matlab *thana*, for able-bodied men were their prime targets'.<sup>29</sup>

The rejection of the claim of three million dead as a wild exaggeration leads inevitably to the question: do numbers matter in the case of genocide or major atrocities otherwise defined? In this author's judgment, while numbers do not matter from a humanitarian perspective—one person killed unlawfully is one person too many from a human rights point of view—numbers do matter in terms of gauging the nature of the event being analyzed. A conflict in which tens of thousands perished is different in nature to one in which several millions were killed. The correction of such a massive discrepancy is not a quibble. As Gerlach put it:

From a human point of view, it seems almost a moot point how many people suffered when mass slaughter approaches abstract magnitudes. But in order to understand what happened and why, it is important to know how many people from which groups became victims, where, when, and in which ways. It is essential to avoid falling into the trap posed by atrocity propaganda.<sup>30</sup>

That the regime would try to minimize reported casualties caused by its counter-insurgency operations is perhaps predictable, though there is also evidence that some armed forces personnel inflated casualty figures to give the appearance of greater enemy strength, and greater 'achievement' for themselves.<sup>31</sup> At the same time, the fact that Bangladeshi nationalists would indulge in such a massive exaggeration of war casualties over several decades also tells us

something about the nature and objectives of the political formations making this claim.<sup>32</sup>

The question of the number of dead is a separate question from whether the killings were 'genocidal' in nature. The crime of genocide is not based on the numbers killed, but on whether victims were targeted on the basis of nationality, ethnicity, race or religion. The mention of deliberate actions intended to bring about the physical destruction of a group 'in whole or in part' suggests that a significant proportion of a group needed to be affected. Moreover, the concept of 'genocide' is also not limited to killings and may include other actions.

However, in the case of the 1971 war, casualty figures and the use of the term 'genocide' are often intricately linked, not only in popular narratives, but also in scholarly works. For instance, in an early comment on the war appended to her study of the alienation of East Pakistan, Rounaq Jahan wrote of 'savage brutalities of the Pakistan army and the genocidal nature of their killings', and stated, 'Between one and three million people were reportedly killed during the nine-month struggle'.<sup>33</sup> Jahan did not cite any specific source for these claims. Thirty years later, in her Pulitzer Prize-winning book *A Problem from Hell: America and the Age of Genocide*, which focused on other cases of genocide, Samantha Power threw in a reference to the 1971 war, asserting: 'Beginning in March 1971 . . . Pakistani troops killed between 1 and 2 million Bengalis and raped some 200,000 girls and women'. Power too cited no source for this assertion.<sup>34</sup> Such unverified claims by scholars in responsible positions do bear out Gerlach's criticism that 'Genocide scholars and human rights activists tend to present high-end estimates for victim numbers to underline the seriousness of their topic, exaggerating the proportion of direct killings while under-stating the deadly share of hunger, exhaustion and disease'.<sup>35</sup> Commenting on the broad acceptance of such claims internationally, Sisson and Rose wrote: 'India had, of course, a good case to make in terms of Pakistani atrocities in East Pakistan, and it found the foreign press incredibly gullible in accepting, without effort at verifying, the substantial exaggerations that were appended to the list of horror stories from Dhaka'.<sup>36</sup>

### *Killing of West Pakistani army personnel by Bengali nationalists*

While the killing of non-Bengali civilians by Bengali nationalists is more easily recognized as an atrocity that fits the definition of genocide, the issue becomes more complicated when West Pakistani army officers and soldiers were killed, either in non-combat situations or when unarmed or disarmed, particularly when Bengali army personnel were spared in the same incidents. For example, in March 1971, before the start of military action, a West Pakistani army officer named Lt Abbas was killed by Bengali assailants when buying food in a market. According to the commanding officer of the area:

The murder of army personnel, caught in ones and twos, became an everyday occurrence. In our area we lost Lt Abbas of 29 Cavalry, a West Pakistani. With an escort of Bengali

soldiers, he had ventured out of the unit lines to buy fresh vegetables for the troops. The escort was 'rushed' by the militants, the officer was killed, weapons were 'confiscated' and the Bengali members of the guard sent back unharmed.<sup>37</sup>

There are some curious aspects to Lt Abbas' killing. It is unclear why the Bengali soldiers who were escorting Lt Abbas did not try to protect him when they were 'rushed' by 'militants'. There is no evidence that they made any effort to fend off the attackers, despite being armed. If they had, surely it would have resulted in death or injury to at least some of the attackers, and possibly some harm to the soldiers themselves. Instead, they seem to have been disarmed easily, though it is unclear whether the 'militants' were armed and if so with what. The Bengali soldiers also seem to have been accepted back into their unit without question despite their failure to protect the officer they were escorting—there is no evidence of an internal enquiry. Finally, it is unclear how exactly Lt Abbas was killed and what happened to his body. No action seems to have been taken to investigate his killing or bring his killers to justice. According to his commanding officer: 'Both effective action to arrest the culprits and punitive action to discipline the area were considered inadvisable because of fear of retaliation . . . The inadequacy of our response emboldened the militants and demoralized the armed forces'.<sup>38</sup> The 'fear of retaliation' that informed this sort of inaction appears to have been motivated by a policy of trying to minimize inter-ethnic violence while negotiations were ongoing, in order to allow a political settlement to be arrived at.

It is clear that Lt Abbas was killed by Bengali militants because he was West Pakistani. He had been accompanied by Bengali soldiers who were not harmed. Therefore, the assailants had not attacked members of the armed forces as an institutional entity, but targeted the victim on the grounds of his ethnicity. This was not a combat death even though the victim was an army officer. This was a 'peace time' killing that happened before the military action to put down the rebellion had started in East Pakistan. The officer was not killed while on combat duty, but when buying vegetables in the market. From the commanding officer's description, it seems Lt Abbas' killing was not an aberration, but fits a pattern of murder of army personnel 'caught in ones and twos'. The evidence indicates that these were part of an attempt to eliminate the minority non-Bengalis from the territory. It would seem, therefore, that the murder of Lt Abbas could be viewed as part of genocide by Bengali militants as per the UN Convention.

However, there may be another way to view this type of genocide. There are many other cases of West Pakistani officers and men being killed in non-combat situations or when they were unarmed.<sup>39</sup> West Pakistani civil servants were also murdered by Bengali nationalists.<sup>40</sup> In many cases, their wives and children were also killed, which is more easily identified as a completely unjustified crime. The case of uniformed men or civil servants who were part of the ruling regime, but killed during peace times or when unarmed, clearly on account of being West Pakistani, is more problematic. Is this genocide, as the victims are killed because of their ethnicity? In such instances, the recent conceptualization

of ‘genocides by the oppressed’ may be relevant. These are instances when the ‘oppressed group seeks revenge and liberation by waging genocide against their oppressors’.<sup>41</sup>

*Can the killing of an individual be genocide?*

During the first night of the military action on 25–26 March, Dhaka University was one of the principal targets of the army action codenamed ‘Operation Searchlight’. Professor Jyotirmoy Guhathakurta, the Provost of the Hindu hostel, Jagannath Hall, was taken out of his flat and shot in cold blood by a Pakistani army officer. The officer entered Professor Guhathakurta’s home in the faculty quarters on campus, asked him to accompany him outside, asked his name and religion, and then shot him. Professor Guhathakurta died of his injuries four days later.<sup>42</sup>

Professor Guhathakurta supported the Bengali movement for the independence of Bangladesh. He was not armed and was asleep in his own home when awakened by the start of the military action. His killing cannot simply be ascribed to his being a Bengali, not only because virtually the whole population of East Pakistan was Bengali, but also because the same army unit killed non-Bengali staff at the university during the same operation. As Professor Guhathakurta was asked his religion before being shot, and he was a Hindu, it might seem that his killing could be termed genocide on the basis of religion. However, the situation is muddied by the fact that another professor, Professor Maniruzzaman, was also killed in the same faculty quarters in the same incident, along with two of his male relatives and a visitor. Professor Maniruzzaman and his relatives were Muslims. Thus, in this particular incident, four Muslims and one Hindu—all men—were killed by the army. Women and children were unharmed. The evidence shows that had the officer who killed Professor Guhathakurta managed to discover the other male faculty members and their families who were hiding in their apartments, the other professors would have been killed too. All of them were Muslim as well. The killer of Professor Guhathakurta, therefore, appears to have been on a killing spree of all the adult men he could find on campus, regardless of whether they were Hindu or Muslim, Bengali or non-Bengali.

On the basis of this incident alone, therefore, it is difficult to term Professor Guhathakurta’s murder as an act of genocide, though it was certainly cold-blooded murder and a crime against humanity. It appears to have been either a political killing, if the officer in question had assumed everyone on campus to be secessionist rebels, or the result of a trigger-happy officer on an indiscriminate killing spree. It should be emphasized that even if Professor Guhathakurta’s killing cannot be termed ‘genocide’ in international law, it was murder—an extra-judicial execution during the conduct of a military operation—which demands the prosecution, conviction and punishment of his killer.

There is, however, a way in which, despite the difficulties discussed above, Professor Guhathakurta’s killing could still be categorized as genocide. This is because, despite the killing of many more Muslims in this particular incident, and indeed of more Muslims than Hindus in the conflict as a whole, the armed

forces of Pakistan can be shown to have targeted Hindu men in particular in the conflict overall.<sup>43</sup> In other words, Hindu men were at a disproportionately higher risk of being suspected of being a ‘rebel’, and thus of being picked up or executed. Targeting a population for persecution or killing on the basis of religion fits the UN definition of genocide. At the same time, while this might make it possible for a charge of genocide to be mounted against the officer who shot Professor Guhathakurta, in the interest of justice he also needs to answer for the killing of Professor Maniruzzaman and the three other victims in the same faculty quarters. True justice, therefore, can only be served by not limiting the quest to the prosecution of genocide alone.

*State versus non-state actors*

The study of genocide has tended to be state-centric, even though the UN Convention does not specify that genocide can only be committed by the state, and makes no statement about the nature of the perpetrator or the power relationships between the involved parties.<sup>44</sup> As Talbot has pointed out, so many believe that state action is integral to genocide that major incidents of collective violence and group killing—like the mass killings that accompanied the partition of India in 1947—have been omitted from genocide studies.<sup>45</sup> Official histories of the post-colonial states also tend to play down the dark side of independence, so as to better present the moment of liberation as a new dawn.<sup>46</sup>

In much of the ‘liberation literature’ of Bangladesh, only the Pakistani regime and its army is depicted as the perpetrator of genocide, assisted in some cases by their local collaborators, who are both non-Bengali and Bengali. The killings perpetrated by pro-liberation Bengalis are conspicuous by their absence in most of this literature.<sup>47</sup> In commentary that acknowledges some violence by Bengali nationalists against non-Bengalis, it is often assumed that not only was this violence sporadic and exceptional, but that the violence committed by non-state actors such as Bengali rebels had to be insignificant compared to that perpetrated by the organized forces of the state. In other words, non-state actors are assumed to be able to do less harm, for instance, killing fewer people.

In the case of 1971, such distinctions and assumptions do not hold. With regard to the issue of state versus non-state actors, what mattered was who had effective power on the ground in particular areas at particular times. In March 1971, for instance, the writ of the official Pakistani government appears to have ceased in East Pakistan. Not only was there a collapse of state authority, it was effectively replaced by a ‘parallel government’—rule by decree by Sheikh Mujibur Rahman, the leader of the Bengali nationalist party the Awami League. Whether due to genuine political support or intimidation, Sheikh Mujib’s word was obeyed, and his was also the putative government. The official ‘state’, therefore, wielded far less power during this period than the formally ‘non-state’ actors. The overall pattern that emerges for the year 1971 is that the pro-liberation Bengalis held the upper hand until April; as the army regained control of the province, loyalist ‘Biharis’ and Bengalis exacted revenge until the end of the year; the Indian

invasion, surrender of the Pakistan army and establishment of Bangladesh returned the pro-liberation Bangladeshis to a position to exact another round of vengeance.<sup>48</sup>

Nor was it necessarily true that non-state actors killed fewer people. For example, Bengali attackers killed thousands of non-Bengali men, women and children, by their own account, in the jute mill quarters of Khulna on 27 March 1971.<sup>49</sup> A year later, on 10 March 1972, when Sheikh Mujib and his Awami League were officially in government in independent Bangladesh, non-Bengali men, women and children were massacred, again in their thousands, in the same mill colonies of Khulna.<sup>50</sup> Of the ten million refugees, mostly Hindus, reported to have fled to India, many had been driven out by persecution by their Muslim fellow villagers.<sup>51</sup> While the exact number of casualties of the war will likely never be known, it is clear from available evidence that the 'non-state' actors killed significant numbers of people and drove out many more. Even Anthony Mascarenhas, the Pakistani journalist who excoriated the army action in *The Sunday Times* newspaper after fleeing to the UK, estimated the numbers of non-Bengalis killed by Bengalis in the same range as Bengalis killed by the army.<sup>52</sup> As non-Bengalis were a small minority in East Pakistan, even conservative estimates would result in a much higher proportion of casualties among the non-Bengali population compared to Bengalis.

### *The question of cultural genocide*

The concept of cultural genocide is missing from the UN Convention, which focuses on the physical destruction of identifiable groups, and attempts to widen the definition of genocide to include it have not succeeded.<sup>53</sup> One of the allegations about the Pakistan army's crackdown on the province of East Pakistan has been that the regime targeted the Bengali intelligentsia, with a view to crippling any attempt to construct a Bengali nationalist identity. Notorious incidents such as the attack by the army on Dhaka University at the start of the military crackdown on 25–26 March, killing many students and professors, and the abduction and killing of dozens of professionals in the last days of the war in December, have lent credence to the allegation of cultural genocide, particularly given the history of conflict over language and the violence of the language movement of 1952. Indeed, the army's demolition of the memorial to the language movement during the attack on Dhaka University would fit the image of a war between two competing cultural nationalisms—one based on the common religion of Islam and the other based on the linguistically defined ethnicity of being a Bengali.<sup>54</sup>

However, the application of the concept of cultural genocide is not straightforward. While professors were killed in Dhaka University at the start of the military action—a serious crime by any standards—the army had targeted the university as some of the student halls were the centres of militant activity. It is unclear what would have happened if the university had not been a target. The abduction and killing of pro-liberation Bengali professionals in December were conducted by

pro-regime Bengalis, not the army. Some Bangladeshis have alleged that this crime was done at the behest of the army, but available evidence does not yet establish such a link.<sup>55</sup> It may be argued that the groups doing the killings were the creation of the regime, but their exact identity and motives remain shrouded in mystery. There is also evidence that pro-liberation activists abducted and attempted to kill intellectuals who favoured a united Pakistan, and pro-regime professionals were persecuted after the war, opening the possibility of cultural genocide as a two-way street.<sup>56</sup> It is unclear whether there was any pattern of attacks upon particular professionals between the start of army action and the end of the war.

A serious problem with the idea of cultural genocide against a Bengali nationalist identity is the problem with the very idea of a Bengali nationalist identity. It has been argued persuasively in recent studies that the notion of Bengali nationalism was an elusive one, whether in 1947 or in 1971. Religious identities trumped the linguistic one in 1947. The Bengali nationalism supposedly being espoused in 1971 did not claim to represent Bengalis who lived in India, or demand a reunification of Bengal. On the contrary, the Awami League had been negotiating until the moment of the military action to assume power in the whole of Pakistan on the basis of their election victory. The idea of Bengali nationalism in this context is in many ways a retrospective construction.<sup>57</sup>

Another aspect of the alleged genocide perpetrated by the Pakistan army has been its gendered nature, with allegations of hundreds of thousands of Bengali women raped by the army, usually coupled with the allegation of millions of civilians killed. Available evidence does not support the figures claimed, much in the way of the millions that had been claimed to have been killed, but even if actual figures are lower, the pertinent aspect of the allegation is that attacks on women were actually attacks on the Bengali community, and hence part of genocide.<sup>58</sup>

Reliable evidence on this issue is hard to find, but available evidence shows that both sides in the war and all ethnic groups raped women in the 1971 war.<sup>59</sup> Some of the attacks on women appear to have been motivated by the political aim of harming the 'other' community, but some seem to have been criminal behaviour, taking advantage of the chaos of war and the breakdown of law and order, and included men raping women of their 'own' group.<sup>60</sup> For example, in a confidential memo to commanders on rampant indiscipline among the troops, the Pakistani commander of the Eastern Command General Niazi wrote: 'Of late there have been reports of rape and even West Pakistanis are not being spared; on 12 April two West Pakistani women were raped, and an attempt was made on two others'.<sup>61</sup> In the fictionalized account by Ibrahim, based on the true stories of seven Bengali women who had been held captive in barracks by the Pakistan army, all except one had been abducted by civilians (four by Bengalis, one by Biharis and one was unclear) and five of them already raped before being passed onto the armed personnel who continued their torment.<sup>62</sup> Some the sexual assaults were instigated by a desire to destroy the 'other' community, as for example in the stunning confession to Saikia of a Bengali *muktijoddha* (freedom fighter) who said that he and five other *muktijoddhas* had assaulted a

young Bihari girl, a neighbour, in April 1971, with the thought that 'I want to rape and destroy this girl. I want to destroy the Biharis, they are our enemies'.<sup>63</sup> However, in many cases women were betrayed by men in their own communities, in what Saikia found to be the 'reality of a horrific past in which Bengali men participated, along with Pakistani and Bihari men, in brutalizing women'.<sup>64</sup> What is emerging of this suppressed history makes it difficult to assign genocide by just one group against another.

### Were the killings perpetrated by the Pakistan army genocide?

The accusation of genocide against the Pakistan army is made from the time the military operation started on the night of 25 March 1971, and covers the period up to 16 December when the open war with India ended. There were many different types of incidents in which people were killed by the Pakistani armed forces and allied paramilitaries.

Some of the incidents of violence involved battles between various arms-bearing groups. At the start of the military crackdown on 25–26 March, significant numbers of Bengali officers, soldiers and police who had rebelled or had resisted being disarmed, along with civilian volunteers who had joined them, were killed by the Pakistan army.<sup>65</sup> Indian army personnel were killed in the 'hot war' at the end of the year, but some covert operatives may have been killed throughout the year. Casualties among combatants, like Bengali army officers, soldiers and police personnel who mutinied, Indian army personnel and covert operatives, and civilian volunteers from East Pakistan who were trained by India and formed the *muk-tibahini* (army of liberation) would be classified as war dead, and their deaths would not constitute crimes on the part of the Pakistan army.

However, the army also killed unarmed people from the start. During 'Operation Searchlight' in Dhaka, street people (apparently homeless poor people sleeping in the streets) appear to have been killed, as well as activists at barricades, who were probably unarmed. Surrendering enemy personnel or disarmed prisoners were killed by the army. For instance, militants or other occupants of the student dormitories Jagannath and Iqbal Halls in Dhaka University, who had surrendered or been captured during the military crackdown on 25–26 March, were shot in the field in front of the halls. Unarmed faculty members and non-teaching staff, Bengali and non-Bengali, were taken from their homes and shot. The following day, Hindu areas of old Dhaka, like Shankharipara, were attacked, and many unarmed civilians were killed there or subsequently in the nearby area called Jinjira where they had fled. Many suspected militants who were picked up by the army during the year were not produced for trial but executed or 'disappeared' and are presumed executed. Torture of detainees appears to have been routine.

At the same time, some prisoners were put through a judicial process of trial and conviction, even if the verdict was sometimes a foregone conclusion. One Bengali army officer who had rebelled was injured and captured in April, but the process of his recuperation and trial took so long that he was still awaiting trial in December when war broke out with India.<sup>66</sup> Another *muktijoddha* (freedom fighter) who was

captured during an operation in October told this author that he and his fellow captives were put on trial due to a specific directive from the Pakistani Eastern commander, General Niazi, to try prisoners and not kill them, as reports of prisoners allegedly being executed was generating negative international publicity. By the time he and his fellow prisoners had been tried, found guilty and sentenced to death, full-fledged war broke out with India and there was no opportunity to carry out the sentence.<sup>67</sup> It is unclear why some prisoners were tried while others were executed without trial. The lack of a uniform pattern is a hallmark of the 1971 conflict.<sup>68</sup>

There were several incidents of male villagers being rounded up by the army and massacred. The massacre of male villagers in Thanapara in Rajshahi district happened on 13 April, as the army spread out into the countryside trying to regain control of the province.<sup>69</sup> However, similar massacres happened much later in the year as well. Male villagers from surrounding villages were asked to gather in Boroitola in Mymensingh district on 13 October, and massacred.<sup>70</sup> These were cases of unarmed civilians being massacred for no reason that they could fathom. In both these cases, the victims were Muslims. The massacre at Chuknagar on 20 May was slightly different—the local Muslim villagers were not harmed, but the men from among the large number of Hindu refugees on their way to India were picked off by a band of attacking soldiers, who were specifically looking for Hindus to kill.<sup>71</sup>

After the army had managed to regain control of the province, bands of men who could be termed ‘death squads’ appeared. Bihari gangs terrorized or killed Bengalis during the year, for example at the Khulna jute mills,<sup>72</sup> and pro-regime Bengali death squads picked up a number of intellectuals and professionals in Dhaka, and killed them in December.<sup>73</sup> As noted above, no direct connection has been established yet between the army and the pro-regime Bengalis who abducted and murdered pro-liberation Bengali professionals in December. However, to the extent that the groups that committed these crimes were the creation of the regime, the Pakistani administration would be held responsible for their actions at least until the point when they were clearly no longer in charge, such as when they surrendered to Indian forces on 16 December. At the same time, many crimes were committed during the war by taking advantage of the breakdown of law and order. Some of them may have been motivated by a private settling of scores or greed.

Were the killings described above genocide, and if so against whom? The Pakistan army did not kill all Bengalis even in the worst instances of massacres, like at Thanapara, Chuknagar or Boroitola. There appeared to be a pattern of targeting adult men while sparing women and children. The allegation of ‘gendercide’ may be more apt, applying to adult males. In several massacres related to this author by eyewitnesses and survivors in Bangladesh, the army appeared to be targeting adult males with clinical precision. For example, the officer who killed faculty members at their quarters at Dhaka University singled out the adult men, and even stated to the wife of one of them that women and girls had nothing to fear; in Thanapara, the women and children were separated from the men and sent back to the village before the men were shot; in Boroitola, only

men were asked to gather; and in Chuknagar, in a crowded riverbank, the soldiers picked out men with such precision that a witness, who later disposed of the bodies, testified that he did not find a single woman among the hundreds of corpses he threw into the river.<sup>74</sup>

The army also did not always spare non-Bengalis. For example, during the military action in Dhaka University, non-Bengali male staff members were killed despite identifying themselves as non-Bengali. Not all adult Bengali men were the target of army action. After adult males had been rounded up, Bengalis judged to be loyal to the regime were let off, as for example at Boroitola. Some Bengali men were active supporters of the regime and helped capture or kill pro-liberation Bengalis. Many others were not active on either side, and the vast majority of such men survived the war. Even some of the men picked up in sweep-up operations and interrogated along with real insurgents, such as the Dhaka guerrilla groups, were released from custody after it was established that they were not involved in militant activity.<sup>75</sup> However, Hindu men appeared to have been more likely to be presumed to be insurgents solely on the basis of their religion. In Chuknagar, for example, the armed forces specifically sought out Hindu men from among the refugees fleeing to India and shot them, but did not kill local Muslim men.<sup>76</sup>

The available evidence indicates that the Pakistan army committed political killings where the victims were suspected to be secessionists in cahoots with arch-enemy India, and thus considered ‘traitors’. Such political killings do not fit the UN definition of ‘genocide’, but they were crimes against humanity and war crimes, and deserve to be prosecuted as such. We know that the Pakistan army used proxies, or ‘profiling’ as the process is termed in current usage, to identify their political targets. Sometimes the proxy might have been political affiliation (membership in the Awami League, for instance), but at other times the proxies appear to have been age (adult), gender (male) and religion (Hindu). It is the latter proxies, in particular the disproportionate probability of being presumed to be an insurgent on the basis of religion—Hinduism—that resulted in the army committing killings that may have been ‘political’ in motivation, but were ‘genocide’ in practice.<sup>77</sup> Gerlach also concludes that the army’s ‘pattern of action suggests that they intended to drive the Hindu minority out of East Pakistan by the brutal killing of large numbers of men in particular’.<sup>78</sup>

Hindus who were left unharmed by the Pakistan army during 1971 faced persecution from a different quarter. Many of the Hindu refugees leaving their villages and fleeing to India said to this author that they were fleeing not because of any action of the army, but because of persecution by their Bengali Muslim neighbours. Much of the harassment of Hindus by their fellow-Bengali Muslims appeared to be non-political, motivated by material greed. This type of intimidation, killing and hounding out of Hindus—whether by the army or by their Bengali Muslim neighbours—amounted to what has later come to be termed ‘ethnic cleansing’.

The abduction and killing of several pro-liberation Bengali professionals in the final days of the war has been alleged to be ordered by the army with the intention

of crippling the new state of Bangladesh. However, the testimony of the family members of the victims and the lone known survivor shows that the abductors and killers of these Bengali professionals were all Bengali themselves, and so far no reliable evidence has surfaced to connect the army with these killings.<sup>79</sup> As Gerlach also concludes: 'The available data do not support the view that the Pakistani army wanted to exterminate the Bengali intelligentsia'.<sup>80</sup>

What is clear is that a narrow focus on 'genocide' would lead to a number of cases of persecution and killings by Pakistan army personnel to be excluded from the kind of investigation and prosecution they deserve. There is also often a lack of a consistent pattern of behaviour—some officers and units committed serious crimes while others in similar circumstances did not. In the interest of justice, it would be better to use a broader definition of 'crimes against humanity', with the charge of genocide reserved for a subset such as the killing of Hindus, and to distinguish among officers depending on their actual conduct.<sup>81</sup> Senior officers in positions of authority may be held responsible, not just for orders given but for condoning human rights violations when they were discovered.<sup>82</sup>

### **Were the killings perpetrated by Bangladeshi nationalists genocide?**

Bengali 'nationalists' formed an amorphous group in 1971. There were those who belonged to political parties, like the Awami League, but there were many who were sympathizers or supporters who may not have held formal affiliations. There were also men in arms—from the Pakistani army, navy, air force and police—who rebelled and joined the fight for Bangladesh's liberation. Among the mobs that terrorized and killed many non-Bengalis there may have been some motivated by local score-settling or material greed, mixed with those with political or military affiliations. But in one way or another, these were people inspired—or incited—by the idea of a Bangladesh as a homeland for Pakistan's Bengalis, where by definition non-Bengalis did not belong, and those with continuing allegiance to the idea of Pakistan were enemies. Their revolt ended the experiment of Pakistan as the homeland for South Asia's Muslims, which had been the rationale behind the partition of British India in 1947 and the cause of immense bloodshed at the time.

As has been noted about the partition violence in 1947 or the long history of 'communal riots' in South Asia, such incidents of collective violence are not spontaneous outbursts of primordial hatred, but are products of the politics of the region and involve a certain degree of organization. As Talbot observes about the violence of 1947: 'Violence was purposeful, rather than temporary acts of madness'.<sup>83</sup>

There were many different types of violence and killings perpetrated in the name of 'Bengali nationalism' in 1971. While much of the literature and commentary focus on the start of the military action on 25 March as a kind of start date for the war, it is necessary to consider the period before that date to form a true picture of the violence of that year. There were many incidents of arson and looting of homes and properties of non-Bengalis, as well as killing of non-Bengali civilians,

prior to the military action. Non-Bengali military personnel were also killed, on account of their ethnicity, when going about their daily life. Many non-Bengali families were forced to flee to West Pakistan.<sup>84</sup>

With the start of the military crackdown and full-blown civil war, massacres of both civilian and military non-Bengalis erupted in a number of places. For example, Bihari men, women and children were killed in the Khulna jute mills, in the colonies in Santahar and Karnaphuli Mill in Chittagong; West Pakistani-origin businessmen were murdered in Jessore. Killings by the Bengali nationalists were often committed with *'da's*—a kind of a curved blade or sickle. Men in uniform who had decided to rebel and join the fight for Bangladesh were often joined by civilian volunteers, and local nationalist political activists, in attacks on the perceived 'enemy'. Rebellious Bengali army officers and soldiers killed their fellow West Pakistani officers, for example in Joydevpur, Gazipur, Tangail and Chittagong. In many cases, West Pakistani officers were killed even when they were unarmed or disarmed, and civil servants and the families of West Pakistani personnel were killed as well. Initially during this period people who fled to India were non-Bengali Muslims escaping Bengali nationalists; subsequently the exodus turned into one of Bengali Hindus, who were targeted both by the army and by their Bengali Muslim neighbours.<sup>85</sup>

During the year, Bengali nationalists killed military personnel of the regime, or their allies among the local population, in several types of incidents that might be termed legitimate acts of combat in a war. These included pitched battles between rebels and the army, as in Tangail and Kushtia in March and April, or guerrilla warfare, which included acts of sabotage or assassination, as by guerrilla groups in Dhaka and Jessore later in the year.<sup>86</sup> Casualties were also incurred during the open war as the Bengali nationalists re-entered East Pakistan/Bangladesh with the Indian army.

Retribution against those who had opposed the formation of an independent state of Bangladesh or cooperated with the Pakistan regime started in December. In a much publicized incident, a leading Bengali freedom fighter and his men tortured several captives to death in full view of the international press.<sup>87</sup> While it is unclear whether his victims were Bengali or Bihari, or what their political activity had been if any, the abduction and attempted murder of pro-Pakistan Bengali intellectuals by pro-liberation Bengalis were clearly politically motivated.<sup>88</sup>

Did the Bengali nationalists, who accuse the Pakistan army of genocide, also commit genocide themselves? The killing of non-Bengali minorities—West Pakistani and Bihari—on the grounds of their ethnicity, as part of a bid to establish a Bengali state, would constitute genocide according to the UN Convention. The hounding out of both non-Bengalis, who fled to West Pakistan in fear of their lives, and Hindu Bengalis, at least some of whom fled to India due to persecution by their Bengali Muslim neighbours, would constitute 'ethnic cleansing'. The attacks on pro-regime East Pakistanis, whether Bengali or non-Bengali, on the grounds of their allegiance to united Pakistan, could be termed political killings, but not genocide. Some of these may be considered crimes against humanity, depending on the circumstances.

There is some confusion and a certain asymmetry of expectations between state and non-state actors in similar situations. State actors are expected to hold trials for accused rebels through established courts, for instance, and not commit extra-judicial executions. Non-state actors, like rebel fighters, operate without formal, or internationally recognized, institutional apparatus. This cannot excuse executions of captives or political opponents on their part. There is also the question of what constitutes 'combat' in a guerrilla war. Would the killing of pro-regime functionaries by pro-liberation activists constitute legitimate acts of war? Would the summary execution of these militants by the state also be considered part of combat?

### Who killed whom?

Whatever the total number of casualties in 1971, there is a serious problem of identifying the victims, their killers, or cause and time of death and, as a result, to estimate with any degree of confidence the composition of the total death toll. As Sisson and Rose found, 'it is still impossible to get anything like reliable estimates as to: (1) how many of these were 'liberation fighters' killed in combat; (2) how many were Bihari Muslims and supporters of Pakistan killed by Bengali Muslims; and (3) how many were killed by Pakistani, Indian or Mukti Bahini fire and bombing during the hostilities'.<sup>89</sup>

The finding of human remains in Bangladesh from time to time has not helped, in the absence of credible forensic investigations. A few months after the end of the war, William Drummond wrote in *The Guardian*: 'Of course, there are "mass graves" all over Bangladesh. But nobody, not even the most rabid Pakistani-hater, has yet asserted that all these mass graves account for more than about 1,000 victims. Furthermore, because a body is found in a mass grave does not necessarily mean that the victim was killed by the Pakistani Army'.<sup>90</sup> The problem is just as valid today. There is a tendency among Bangladeshi nationalists to declare any human remains that are discovered to be those of Bengali victims of the Pakistan army or their auxiliary forces.<sup>91</sup> But unless credible scientific probes are carried out, it cannot be ascertained whether the dead were Bengali or non-Bengali, combatant or non-combatant, whether death took place in the 1971 war, what the cause of death was, or whether it was caused by the Pakistan army or someone else. Large-scale death and destruction was also caused by floods during the monsoons of 1970 and a devastating cyclone in November 1970, further complicating the matter. The coups, counter-coups and cycle of violence in independent Bangladesh have added further victims.

Despite the lack of precise numbers, the evidence indicates that a significant proportion of the dead during the 1971 conflict were non-Bengali victims, killed by Bengalis in the name of Bengali nationalism. This was the product of the politics of linguistic nationalism pursued by Bangladeshi nationalists, with accusations of colonial exploitation and the creation of an 'other' in the form of non-Bengalis, and the 'enemy within' in the non-Bengali residents of East Pakistan. In the stories of corpses littering the land and clogging up the rivers, many

would have been Biharis, especially where the victims were men, women and children, as Bengali mobs appear to have killed non-Bengalis indiscriminately while the Pakistan army appeared to target adult men when they rounded up and massacred civilians.

It is also hard to distinguish between combatant and non-combatant casualties, as so many combatants on the Bangladeshi nationalist side were civilians or were dressed in civilian attire while engaged in acts of war. Many civilians also perished in crossfire or bombings. Realistically, it is no longer possible to apportion the total number of dead reliably into any categories—Bengali or non-Bengali, combatant or non-combatant, deliberate target or so-called ‘collateral damage’, but internationally credible forensic examination of all alleged grave sites and available human remains would be immensely helpful in setting the record straight, and helping build cases for prosecutions for crimes against humanity.

### **The question of genocide and the quest for justice**

The Bangladeshi nationalist side’s emphasis on genocide in the 1971 war seems ill-judged for two reasons. First, both sides in the war committed killings that may be termed genocide, so the emphasis on genocide does not give the Bangladeshi nationalists any particular advantage. The Pakistan army’s political killings became genocide when religious ‘profiling’ was used for the selection of victims and Hindus were disproportionately targeted, while the killing of non-Bengalis—Biharis and West Pakistanis—by Bengali nationalists was clearly genocide as per the UN definition. Many Bengali Muslims in East Pakistan also committed ‘ethnic cleansing’ of non-Bengali Muslims and Bengali and non-Bengali Hindus, from a territory the victims could rightfully call their homeland.

Second, many instances of violence and killings by the Pakistan army, its allies or Bangladeshi nationalists during 1971 may not fall into the category of genocide, but are heinous crimes nevertheless, and deserve a quest for justice. These include political killings, extra-judicial executions and ‘disappeared’ people. The preoccupation with the political use of the term ‘genocide’ has prevented a broader focus on crimes against humanity, which would serve the cause of justice for all the victims of 1971 much better.

The application of the term ‘genocide’ in a one-sided manner to the Pakistan armed forces’ actions alone does not stand up to independent scrutiny. The available evidence clearly indicates that significant crimes—whether defined as genocide, crimes against humanity or war crimes—were committed by all sides in the conflict. Any real quest for justice must therefore include all such crimes.

The invocation of the European Holocaust by Bangladeshi nationalists in their representation of the 1971 conflict is inaccurate and inappropriate. The ‘liberation literature’ of Bangladesh repeatedly uses the words ‘genocide’ or ‘holocaust’ in depicting 1971, in an obvious attempt to place the 1971 conflict in a comparable footing with the horrors of Nazi Germany. The claim of ‘millions’ of innocents killed by the regime appears to have become part of a morbid competition with the extermination of six million Jews, political dissidents and other minorities

by the Nazis, in an attempt to obtain the attention and sympathy of the international community. In terms of international comparisons, this often descends into a 'my-genocide-is-bigger-than-yours' game. As has been shown earlier, some scholars and outside observers have accepted such claims far too easily.<sup>92</sup>

It is important to reject this false and distasteful bid by a section of Bangladeshi 'nationalists' to benefit by association with the real Holocaust, the systematic extermination of millions of European Jews, other minorities and political dissidents by the Nazis and their allies during the 1930s and 1940s. On available evidence, there is simply no comparison between the 1971 conflict in East Pakistan and the European Holocaust, either on the scale or the nature of events. Such careless references are an insult to both the victims of the Nazi Holocaust as well as the casualties of the 1971 conflict, who do not require their suffering to be exaggerated or distorted in order to be taken seriously.

Despite the passage of time, trials of accused perpetrators of crimes against humanity under the auspices of the international community would be an appropriate course of action with regard to the 1971 conflict. Conducting internationally credible trials would be a good way to establish the true cases of genocide, other war crimes or crimes against humanity, and exemplary punishment to even a few of the perpetrators, from both sides of the conflict, would go a long way to break a corrosive cycle and start a process of healing in Pakistan and Bangladesh. Such trials can only be held under international auspices and would require considerable international expertise in law, evidence gathering and prosecution in order to be successful.<sup>93</sup> A truly independent and fair trial is extremely difficult to conduct in the aftermath of war. At the Tokyo war crimes trials, after the end of the Second World War, the sole dissenting judgment was delivered by an Indian Bengali judge, Justice Radha Binod Pal. Justice Pal, in whose view both sides in the war had committed war crimes, acquitted the accused at the Tokyo trials, including wartime Japanese premier General Hideki Tojo, on the grounds that the trials were a 'sham employment of legal process for the satisfaction of a thirst for revenge'.<sup>94</sup> Unfortunately the 'war crimes trials' being conducted currently in Bangladesh are widely perceived as a political vendetta, falling far short of the required international standards and reinforcing the sense of injustice in the region.<sup>95</sup>

At the same time, a 'truth and reconciliation' process could also have an important role to play in the healing process in South Asia. Too many people in Pakistan and Bangladesh still do not know what happened to their loved ones and where their remains may be located. A 'truth and reconciliation' process that produces such information would help such people achieve 'closure' of a sort. As always, a way to balance the essential contradictions between trials for crimes and a truth and reconciliation process would need to be worked out first. To obtain the necessary information to arrive at 'closure', some of the perpetrators of serious crimes would likely have to be given immunity from prosecution. Such a balance between justice and closure would be hard to achieve even with the best will in the world. There is no likelihood of either justice or closure being achieved in the still polarized and partisan environment of Bangladesh, or in

Pakistan or India. Only independent action by the international community could offer the hope of true justice or a measure of closure in the case of the 1971 war.

## Notes and references

- 1 See, for instance, Liberation War Museum, *1971: Documents on crimes against humanity committed by Pakistan army and their agents in Bangladesh during 1971* (Dhaka: Liberation War Museum, 2000), 'Introduction' (no page numbers) and p. 12; Liberation War Museum website, <http://liberationwarmuseum.org/>; Salahuddin Ahmed, *Bangladesh Past and Present* (New Delhi: APH Publishing Corporation, 2004), pp. 1, 201.
- 2 See for instance Van Schendel, *A History of Bangladesh* (Cambridge: Cambridge University Press, 2009), p. 172. There was a decision to hold war crimes trials in 1972, but Sheikh Mujib declared an amnesty in 1973. In the 1990s Jahanara Imam, mother of Rumi, one of the 'disappeared' freedom fighters of 1971, led a civil society effort to hold a 'people's court' in Dhaka. The current Awami League government is conducting a war crimes trial, which is seen by many observers as not meeting international standards (*The Economist*, 24 March 2011). A list of 200 officers of the Pakistan army, described as 'war criminals', was published by the Liberation War Museum in Dhaka. The list was considered incomplete as it only contained names of those officers who had become POWs in India after the war, and not those who had left East Pakistan earlier during the year. The publication also lists approximately 170 names of local 'collaborators', ranging from members of 'peace committees' or the paramilitary group 'Al Badr', to university professors, Bengali members of the UN delegation, etc., ranging in position from 'Vice President of Bangladesh' to 'peon'. Some names appear more than once. One sub-section is headed 'East Pakistanis Who Met Yahya Khan', suggesting that meeting the then president of the country was considered a traitorous offence by some supporters of secession: Liberation War Museum, *1971: Documents*, pp. 175–182, 216–241.
- 3 The Bangladeshi allegation of genocide by the Pakistan army against Bengalis is sometimes made with reference to the UN (and its recognition of other mass killings as genocide) or with no specific reference to the UN Convention. In general Bangladeshis seeking recognition of the killings of 1971 as genocide by the Pakistan army do not appear to have definitional issues with what is the closest thing to an international consensus on what constitutes genocide, but rather seek recognition within that consensus. Nor is the Euro-centric origin of the concept necessarily seen as a problem: on the contrary, the repeated references to the European Holocaust seek to connect 1971 to the European history of genocide.
- 4 It is important to note that Bangladesh is not the land of Bengalis. Bengalis are a much larger population, around 40 per cent of whom live in India, principally in the state of West Bengal. The majority of Indian Bengalis are Hindu, but there is a substantial Muslim minority. Bengal as it existed under British rule was partitioned in 1947 as the British departed India, as part of the creation of the two new states of India and Pakistan. Its eastern areas were carved out to create the eastern wing of Pakistan, which was meant to be a homeland for South Asia's Muslims. The notion of Bengali 'nationalists' in East Pakistan/Bangladesh therefore is a misnomer, as they neither do nor claim to speak for all Bengalis. Similarly, Bengalis in India appear content with being part of a multi-lingual, multi-religious nation-state, and do not consider the Bangladeshi political parties such as the Awami League to be representing them.
- 5 William Drummond, 'The Missing Millions', *The Guardian*, 6 June 1972.
- 6 Notably Richard Sisson and Leo Rose, *War and Secession: Pakistan, India and the Creation of Bangladesh* (Berkeley: University of California Press, 1990). Publications like the polemical *Behind the Myth of Three Million* by M. Abdul Mu'min Chowdhury (London: Al-Hilal Publishers, 1996) have remained in the obscure fringes of the discussion and largely unknown to the general public. More recent contributions expressing doubt about the three million figure include Mushtaq Khan, 'Bangladesh: Partitions, Nationalisms and Legacies for State-Building' (London: unpublished, 2010), p. 59; former Bangladesh foreign secretary S. A. Karim refers to the claim as a 'gross overstatement' in a footnote in his book *Sheikh Mujib: Triumph and Tragedy* (Dhaka: The University Press Limited, 2005, 2009), p. 340, fn. 1.
- 7 Samantha Power, *A Problem from Hell: America and the Age of Genocide* (Jackson, TN: Basic Books, 2002), p. 82; Rounaq Jahan, *Pakistan: Failure in National Integration* (New York: Columbia University Press, 1972), pp. 203–204. Anthony Mascarenhas' expose in the *Sunday Times* was headlined 'Genocide' in large bold type (13 June 1971), and the representation of the 1971 war as a one-sided genocide by the Pakistan army against ethnic Bengalis has stuck. The following year Indian journalist Kalyan Chaudhuri, whose grandfather, a senior politician in East Pakistan, was killed by the Pakistan army, published *Genocide in Bangladesh* (New Delhi: Orient Longman, 1972); in a recent media article on contemporary Bangladesh, the novelist Tahmima Anam repeated the *mantra*: 'During those nine months, the Pakistan army conducted a systematic campaign of ethnic cleansing, killing up to three million civilians and forcing as many as

- 10 million into exile in neighbouring India. Two days before the war ended, knowing they were on the brink of defeat, the retreating army assassinated hundreds of academics, physicians, artists and journalists in order to give the yet-to-be-born country as little chance of surviving as possible' (*Financial Times*, 18 March 2011). Apart from the repetition of the claim of three million civilians killed by the Pakistan army and the erroneous use of the term 'ethnic cleansing', the imagery of a retreating army killing Bengali professionals is disingenuous, as all the available evidence shows that these killings were carried out by other Bengalis, and the question of whether the army ordered them or not is a contested and unresolved one. In the same piece, Anam also describes an incident in Joydevpur on 19 March 1971, which is entirely at variance with available evidence from both sides in the war: see Bose, *Dead Reckoning: Memories of the 1971 Bangladesh War* (London: C. Hurst and Columbia University Press, 2011), pp. 34–46.
- 8 Interviews of officers of 18 Punjab regiment in Sarmila Bose, *Dead Reckoning*, pp.112, 217, fn. 24.
- 9 Christian Gerlach, *Extremely Violent Societies: Mass Violence in the Twentieth-Century World*, (Cambridge: Cambridge University Press, 2010), pp. 1–14, 255–289. Gerlach writes that there is unhappiness among genocide scholars about the particular definition of genocide in the UN Convention, confusion about the defining of races or ethnicities, a 'state focus' for the crime of genocide, as also the assumption of the state as a monolithic, homogenous entity.
- 10 Gerlach, *Extremely Violent Societies*, pp. 6–7; Dan Stone, 'Introduction', in Dan Stone (ed.), *The Historiography of Genocide* (Hampshire: Palgrave Macmillan, 2010).
- 11 Gerlach, *Extremely Violent Societies*, p. 7.
- 12 See Bose, *Dead Reckoning*, Bibliographical Note, pp. 185–198. In his Introduction to *The Historiography of Genocide*, Dan Stone regrets the omission of Bangladesh, among other cases, from the book due to too little work on these cases (Stone, *Historiography of Genocide*, p. 1).
- 13 The definition of 'genocide' as stated in the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948:
- ... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.
- 14 Bose, *Dead Reckoning*; Gerlach, *Extremely Violent Societies*; Yasmin Saikia, 'Beyond the Archive of Silence: Narratives of Violence of the 1971 Liberation War of Bangladesh', *History Workshop Journal*, No. 58, 2004, pp. 275–287.
- 15 Srinath Raghavan, *War and Peace in Modern India: A Strategic History of the Nehru Years* (New Delhi: Permanent Black, 2010), pp. 152, 149–187. The Hindu Mahasabha was a Hindu nationalist political party formed in 1915. The 1950 crisis escalated into waves of communal riots in both countries—producing refugees in both directions—troop mobilization by India, Nehru contemplating resignation, international diplomatic activity and eventually the Nehru–Liaquat Pact to defuse the crisis.
- 16 Gerlach, *Extremely Violent Societies*.
- 17 There is a vast literature on collective violence in South Asia, including 'communal' riots between religious groups and 'ethnic' violence between different linguistic or 'tribal' groups, state military or police action against 'separatists' or sub-national movements seen as secessionist, as well as 'communal' pogroms in which the state has been accused of complicity, such as the 1984 massacres of Sikhs in Delhi, or the 2002 massacres of Muslims in the state of Gujarat. This history of group violence has not been discussed in terms of genocide. See Veena Das, 'Collective Violence and the Shifting Categories of Communal Riots, Ethnic Cleansing and Genocide', and Ian Talbot, 'The 1947 Partition of India', in Stone, *Historiography of Genocide*, pp. 93–127 and 420–437.
- 18 Gerlach, *Extremely Violent Societies*, pp. 7–11.
- 19 Numerous incidents of violence during the 1971 conflict are chronicled in detail in Bose, *Dead Reckoning*. Reference is made to them as necessary in this article.
- 20 William Schabas, 'Genocide Law in a Time of Transition: Recent Developments in the Law of Genocide', *Rutgers Law Review*, Vol. 61, No. 1, 2008, pp. 191–192. Philip Short argued in his study of the violence in Cambodia that the mass killings of the Pol Pot regime were better conceptualized as 'crimes against humanity' rather than 'genocide': Philip Short, *Pol Pot: Anatomy of a Nightmare* (New York: Henry Holt, 2005).
- 21 Gerlach, *Extremely Violent Societies*, pp. 291–292.

- 22 Schabas, 'Genocide Law'.
- 23 Christophe Jaffrelot (ed.), *Pakistan: Nationalism without a Nation?* (London: Zed Books, 2002); Ian Talbot, *Pakistan: A Modern History* (New York: St Martin's Press, 1998); Ian Talbot, 'The Punjabization of Pakistan: Myth or Reality?', in Jaffrelot, *Pakistan*, pp. 51–62; Omar Noman, *Pakistan: Political and Economic History Since 1947* (London: Kegan Paul International, 1990); Yunas Samad, *A Nation in Turmoil: Nationalism and Ethnicity in Pakistan, 1937–1958* (New Delhi: Sage Publications, 1995).
- 24 According to one report available through the UNHCR, approximately one million non-Bengali 'Biharis' are said to have migrated to East Pakistan at the time of the partition of India in 1947, with about 750,000 still living in Bangladesh, with up to 300,000 in internal camps (Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples— Bangladesh: Biharis*, 2008, available at: <http://www.unhcr.org/refworld/docid/49749d58c.html>). However, the 1951 census in Pakistan estimated only 700,000 'refugees' in East Pakistan, only a third of whom were Urdu-speaking migrants from Bihar and Uttar Pradesh (Ian Talbot, *Pakistan: A Modern History* [New York: St. Martin's Press, 1998], p. 101). The population of the Biharis should have risen between 1947 and 1971, but even if the starting point was about a million, they still formed a tiny minority compared to the nearly 70 million Bengalis.
- 25 The proportion of non-Muslims, the majority of whom were Hindus, was 23 per cent in the 1951 census (cited in Talbot, *Pakistan*, p. 24). This proportion declined, and Bengali Hindus are estimated to have been about 12 per cent of the population of East Pakistan at the time of the 1971 war.
- 26 That massive violations of human rights were committed by both sides in the war was also the conclusion of the International Commission of Jurists, *The Events in East Pakistan, 1971* (IJC, 1971), even though the Commission did not conduct its enquiry on the ground, or hear the testimony of victims and eyewitnesses directly, relying instead on contemporary books and newspaper reports, some testimony from refugees and statements primarily from Europeans and Americans.
- 27 Justice Hamoodur Rehman, who headed the three-man commission set up by Zulfikar Ali Bhutto, was a Bengali.
- 28 Richard Sisson and Leo Rose, *War and Secession: Pakistan, India and the Creation of Bangladesh* (Berkeley: University of California Press, 1990); Gerlach, *Extremely Violent Societies*; Bose, *Dead Reckoning*; see also letter from Serajur Rahman to *The Guardian* newspaper (*The Guardian*, 24 May 2011). This author estimates that a total death toll of up to 100,000, including all warring parties and all linguistic and religious groups, can be made with a high degree of confidence, but figures beyond 100,000 are hard to support with available evidence: Bose, *Dead Reckoning*, p. 181.
- 29 Gerlach, *Extremely Violent Societies*, p. 136. Gerlach also dismisses the calculations of 'democides' by R. J. Rummel, *Death by Government* (New Brunswick, NJ: Transaction Publishers, 1994) as highly inaccurate and unreliable, dubbing them 'sensationalist': 'The epitome of qualitative arguments derived from quantitative data far removed from actual empirical work are the sensationalist publications by Rudolph Rummel; based on secondary sources themselves, his greatly inflated numbers have unfortunately repeatedly been lent credence by reputable scholars, and so the process is perpetuated' (Gerlach, *Extremely Violent Societies*, p. 257). He explains that Rummel 'arrives at exaggerated death figures for most "democides" by so-called bracketing; instead of primary research, he takes the mean of available published estimates, mostly out of works of general character and therefore secondary quality, and from scholarly and journalistic accounts, to determine mortality': Gerlach, *Extremely Violent Societies*, p. 468. Other scholars have also found that Rummel's 'method of estimation is fundamentally flawed' (Anton Weiss-Wendt, also citing Tomislav Dulic, in his 'Problems in Comparative Genocide Scholarship', in Stone (ed.), *The Historiography of Genocide*, p. 46).
- 30 Gerlach, *Extremely Violent Societies*, p. 256.
- 31 Bose, *Dead Reckoning*, pp. 58, 66.
- 32 'Random checks at the local level' by Marcus Franda in 1972 also showed 'invariably' that Awami League functionaries had inflated victim numbers between three and ten times (Gerlach, *Extremely Violent Societies*, p. 381).
- 33 Jahan, *Pakistan*, pp. 203–204.
- 34 Power, 'A Problem from Hell', p. 82. The only book related to Bangladesh in Power's bibliography is Lawrence Lifschultz, *Bangladesh: The Unfinished Revolution* (London: Zed Books, 1979), which is about the coups and counter-coups in Bangladesh in 1975, not the 1971 war. Sisson and Rose's assessment of Lifschultz's book on the coups of 1975 was: 'our own careful reading of the Carnegie files on Bangladesh do not support any of Lifschultz's imaginative conspiracy theories; indeed, in several places he distorts the substance of the comments made by the interviewees by selective quotation or by omitting qualifying phrases' (Sisson and Rose, *War and Secession*, p. 302). On the issue of rape during the 1971 war, see Saikia, 'Beyond the Archive of Silence'. Saikia's research shows that rapes were committed by all sides in the conflict. She also recounts the obstacles she faced when trying to hear the victims' stories directly

- from them. In a breakthrough, Saikia reports interviewing a (repentant) 'perpetrator', in this instance a Bengali *Muktijoddha* (freedom fighter).
- 35 Gerlach, *Extremely Violent Societies*, p. 257. Gerlach also points out the implausibly exaggerated claims about internally displaced people in East Pakistan in 1971, quoting Jahan's claim that 'approximately thirty million people from the cities took refuge in the villages', and pointing out that '[t]he total urban population of East Pakistan stood at five to six million' (Gerlach, *Extremely Violent Societies*, p. 384).
- 36 Sisson and Rose, *War and Secession*, p. 217.
- 37 H. A. Qureshi, *The 1971 Indo-Pak War: A Soldier's Narrative* (Karachi: Oxford University Press, 2003), pp. 16–17.
- 38 Qureshi, *1971 Indo-Pak War*, p. 17.
- 39 For example, in Joydevpur and Gazipur non-Bengali personnel and their families were killed by rebel Bengali officers and soldiers on 27–28 March; unarmed/disarmed West Pakistani officers were killed in Tangail by rebel officers shortly thereafter; West Pakistani officers and their families were killed in Chittagong, 25 March; a Pakistani officer and his wife were detained by Bengalis in Rajshahi, and the officer was mutilated and killed; West Pakistani officers and their families were killed in Thakurgaon in their home (Bose, *Dead Reckoning*, pp. 77–80, 85–89, 104, 143).
- 40 For example, Waqar Naseem Butt, a West Pakistani civil servant posted in Kushtia, was killed and his body reportedly dragged through the streets, with a photograph of his severed head held up by Bengali nationalists appearing in a news magazine (Bose, *Dead Reckoning*, pp. 71–72, 89–91, 212).
- 41 Adam Jones and Nicholas A. Robins, 'Introduction: Subaltern Genocide in Theory and Practice', in Nicholas Robins and Adam Jones (eds.), *Genocides by the Oppressed: Subaltern Genocide in Theory and Practice* (Bloomington: Indiana University Press, 2009), p. 4. The perceived 'oppressors', of course, need not be the actual oppressors, merely their ethnic brethren. The expulsion of Germans from Eastern Europe after the Second World War—in a mirror image of the Nazi perceptions of a land 'purified' of undesirable groups—is one such retributive action of two wrongs that do not make a right.
- 42 For full details see Bose, *Dead Reckoning*, ch. 3, and Sarmila Bose, 'Murder Most Foul', *The Telegraph*, 27 March 2011.
- 43 See for instance Bose, *Dead Reckoning*, ch. 6 and ch. 9; Mascarenhas, 'Genocide'; Archer Blood, *The Cruel Birth of Bangladesh: Memoirs of an American Diplomat* (Dhaka: The University Press Limited, 2002).
- 44 Gerlach, *Extremely Violent Societies*, p. 7; Talbot, 'The 1947 Partition of India', p. 432; Jones and Robins, 'Introduction', pp. 4–5.
- 45 Talbot, 'The 1947 Partition of India', p. 432. As Stone points out in his 'Introduction', Talbot's is a minority voice in seeking to consider partition violence in terms of genocide.
- 46 Talbot, 'The 1947 Partition of India', p. 421.
- 47 See Bose, *Dead Reckoning*, pp. 185–198; Bangladesh Government, Ministry of Information, *History of the War of Independence: documents*, Vols. 1–15; Rashid Haider (ed.), *Smriti: 1971*, Vols. 1–13 (Dhaka: Bangla Academy, 1988–2000); Neelima Ibrahim's *Ami Birangona Bolchhi* (Dhaka: Jagriti Prakashani, 2001) relates in fictionalized form the stories of seven rape victims, all Bengalis; Shahriar Kabir (ed.), *Ekattorer Duhsaha Smriti* (Dhaka: Ekattorer Ghatok Dalal Nirmul Committee, 1999).
- 48 Bose, *Dead Reckoning*, p. 167.
- 49 For details see Bose, *Dead Reckoning*, pp. 80–83.
- 50 For details see Bose, *Dead Reckoning*, pp. 159–160.
- 51 Bose, *Dead Reckoning*, pp. 115–125.
- 52 Mascarenhas, 'Genocide', reported an estimated 100,000 non-Bengali victims of Bengali attacks and up to 150,000 Bengali victims of the army. As Gerlach points out, these figures are speculative and not based on actual accounting: Gerlach, *Extremely Violent Societies*, p. 133. However, what is instructive is that Mascarenhas' estimates place the victims of both army and 'nationalist' Bengali mob violence in roughly the same range.
- 53 Schabas, 'Genocide Law', pp. 171, 190–191. However, Schabas points out that the 'impunity gap' with respect to many serious crimes has been bridged with the expansion instead of the concepts of 'war crimes' and 'crimes against humanity'.
- 54 Bose, *Dead Reckoning*, p. 58.
- 55 See Bose, *Dead Reckoning*, pp. 152–156, 221.
- 56 See for example Bose, *Dead Reckoning*, pp. 157–158 for the abduction and attempted murder of Syed Sajjad Husain, vice-chancellor of Rajshahi University and Dhaka University, pp. 57–58, 210, for the case of Professor Akhtar Imam, Provost of Rokeya Hall, the women's hostel in Dhaka University, in 1971; Syed Sajjad Husain, *The Wastes of Time: Reflections on the Decline and Fall of East Pakistan* (Dhaka: Notun Safar Prokashani, 1995); Akhtar Imam, 'Ekattorer ponchishe March ebong kichhu ghotona', *Vividha Rachana* (Dhaka, 1998) and *Amar Jibankatha: Dhaka Viswavidyalay (1952–1982)* (Dhaka, 2002).

- 57 See for instance Joya Chatterji, *Bengal Divided: Hindu communalism and partition, 1932–1947* (Cambridge: Cambridge University Press, 1994); Khan, 'Bangladesh', pp. 77–82.
- 58 There is a growing literature on the gendered nature of much of the partition violence in 1947, with communities not only attacking 'other' women, but killing their own women in order to prevent their, and thus their family and community's, 'dishonour'. However, there was not necessarily a consistent pattern: 'The patterns of violence were variegated with well-planned genocidal assaults occurring alongside opportunistic killings motivated by temporary lust for loot and women' (Talbot, 'The 1947 Partition of India', p. 432). Much the same appears to have been true in 1971.
- 59 Neelima Ibrahim, *Ami Birangona Bolchhi* (Dhaka: Jagriti Prakashani, 2001); Saikia, 'Beyond the Archive of Silence', pp. 275–287; Bose, 'Losing the Victims: Problems of Using Women as Weapons in Recounting the Bangladesh War', *Economic and Political Weekly*, Vol. 42, No. 38, 2007, pp. 3864–3871.
- 60 As the searing story 'The Return' by Manto illustrated, rape of women by their own communities was a reality in 1947 as well. See Saadat Hasan Manto, 'The Return', trans. Khalid Hasan, in *Mottled Dawn* (New Delhi: Penguin Books, 1997).
- 61 Lt. Gen. A. A. K. Niazi, *The Betrayal of East Pakistan* (Karachi: Oxford University Press, 1998), pp. 282–283.
- 62 Ibrahim, *Ami Birangona Bolchhi*; Bose, 'Losing the Victims', pp. 3869–3871.
- 63 Saikia, 'Beyond the Archive of Silence', p. 285.
- 64 Saikia, 'Beyond the Archive of Silence', p. 277.
- 65 For example, Bengali police at Rajarbag police lines put up a stiff resistance, Bengali army personnel and police were joined by civilian volunteers in a battle of resistance at Satiarchora: Bose, *Dead Reckoning*, p. 67, 87–89.
- 66 Bose, *Dead Reckoning*, pp. 86, 214.
- 67 Bose, *Dead Reckoning*, pp. 145–146.
- 68 Gerlach, *Extremely Violent Societies*, p. 144.
- 69 Bose, *Dead Reckoning*, pp. 97–113.
- 70 Bose, *Dead Reckoning*, pp. 143–145.
- 71 Bose, *Dead Reckoning*, pp. 115–125.
- 72 Bose, *Dead Reckoning*, pp. 82–83.
- 73 Bose, *Dead Reckoning*, pp. 149–156.
- 74 Bose, *Dead Reckoning*, pp. 121–122.
- 75 In one case, a real Bangladeshi freedom fighter, Abul Barq Alvi, trained and armed by India, who had been captured, was able to get released from custody through a combination of ingenuity and luck. See Bose, *Dead Reckoning*, ch. 7.
- 76 See Bose, *Dead Reckoning*, ch. 6 for details.
- 77 Bose, *Dead Reckoning*, p. 182.
- 78 Gerlach, *Extremely Violent Societies*, pp. 255–256.
- 79 See Bose, *Dead Reckoning*, ch. 8 for details.
- 80 Gerlach, *Extremely Violent Societies*, p. 255.
- 81 There is evidence of contradictory behaviour by army personnel in the same or similar incidents. For instance, during the attack on Dhaka University on 25–26 March, one group of soldiers shot three young men in their Art College hostel and looted their belongings, while a different group of soldiers discovered them later and tried to save their lives. Eyewitnesses and survivors of the massacre at Thanapara village told this author that another group of soldiers under a different officer had gone to a similar village a little further down the river and dispersed the crowds without killing anybody. Massacre survivors recounted kind actions by other officers later in the year. See Bose, *Dead Reckoning*, p. 70, 111.
- 82 For example, Brig. Jehanzeb Arbab appears not to have given any order to his subordinate officer to 'take no prisoners' at Dhaka University on 25–26 March, but condoned the officer's actions when told about it (Bose, *Dead Reckoning*, pp. 66–67).
- 83 Talbot, 'The 1947 Partition of India', pp. 432.
- 84 See Bose, *Dead Reckoning*, ch. 2; Gerlach, *Extremely Violent Societies*, ch. 4.
- 85 Sisson and Rose, *War and Secession*, p. 296.
- 86 See Bose, *Dead Reckoning*, pp. 87–91, 128–137, 145–148.
- 87 Bose, *Dead Reckoning*, pp. 156–157.
- 88 Bose, *Dead Reckoning*, pp. 157–158.
- 89 Sisson and Rose, *War and Secession*, p. 306.
- 90 *The Guardian*, 6 June 1972.
- 91 For instance, when this author visited the Liberation War Museum in Dhaka there was a collection of human remains that were stated to be Bengali victims of the Pakistan army, without providing any authenticated

information on who the victims were, how they died, when they died, and how it had been ascertained who the victims and perpetrators were in this case. There did not seem to be an appreciation of the crucial need for a scientific and transparent process of verification, whether for human remains or photographs and other objects in the museum.

92 Gerlach, *Extremely Violent Societies*, p. 257.

93 The International Commission of Jurists had recommended that any war crimes trials should be held under international law in an international court, with the majority of judges from neutral countries (*The Events in East Pakistan, 1971*, 'Conclusions').

94 Norimitsu Onishi 'Decades After War Trials, Japan Still Honors a Dissenting Judge', *New York Times*, 31 August 1997, <http://www.nytimes.com/2007/08/31/world/asia/31memo.html>.

95 See, for instance, *The Economist*, 24 March 2011.

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