

## Allegations of War Crimes against the leaders of Jamaat

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against the Leaders of

Bangladesh Jamaat-e-Islami

- A Travesty of Truth

Note from the publisher

The issue of war crimes has recently caused much debate. A certain quarter has waged a propaganda war against Jamaat and its leaders accusing them of war crimes. After failing to establish any link between Jamaat and corruption or terrorism, allegations of war crimes are now unfairly being made against it. The main objective of all this is to mislead the general public. In these circumstances, the Central Executive Committee of Bangladesh Jamaat-e-Islami in an extended meeting made a statement regarding the issue of war crimes. This had already been published in various newspapers.

Considering the importance of the statement, the Central Publication Department of Jamaat has published the statement as booklet. We hope that this booklet will help bring the truth to light.

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Jamaat's statement on war crimes

On 14th February 2009 an extended meeting of the Central Executive Committee of Bangladesh Jamaat-e-Islami was held in its central office at Dhaka. The Ameer of Bangladesh Jamaat-e-Islami, former Minister Maulana Motiur Rahman Nizami was in the chair. The meeting strongly condemned the smear

campaign that is going on to falsely depict Jamaat leaders as war criminals. The following statement was issued at the meeting:

"Of late the issue of war crimes (of 1971) is being fomented countrywide. A particular quarter is engaged in ceaseless propaganda maligning the leaders of Jamaat-e-Islami as war criminals.

#### CHARACTER ASSASSINATION CAMPAIGN

No one can have the license to carry on such a misinformation campaign of character assassination. Such foul practice is utter violation of law and objectivity. An emotive issue like war crime is being used as a weapon for political offensive. The purpose is to tarnish the image of Bangladesh Jamaat-e-Islami and give it a bad name. After 38 years of independence, all sorts of lies are being aired to unjustly implicate Jamaat in war crimes, without any shred of evidence. Bangladesh Jamaat-e-Islami is a democratic party committed to constitutionalism and constructive politics. In view of the fact that the architect of national independence and head of government of post-liberation Bangladesh, Sheikh Mujibur Rahman himself disposed of the war crimes issue, and the Collaborators Act 1972 has also been repealed, the attempt to revive the issue is malafide and politically motivated. The war criminals (as defined under international law) were identified and sought to be tried in courts immediately after the war. The scope of trial for any identified and listed war criminal may also arise whenever he is caught if he was absconding. Identified war criminals of World War II evaded justice as fugitives for many years but were brought to book when exposed. In other words, runagates accused of war crimes faced delayed trial.

#### WAR CRIMES ENQUIRY

On December 16, 1971 Bangladesh was liberated. Surrender of 95000 Pakistani soldiers took place. The post-liberation government headed by Sheikh Mujibur Rahman ordered an investigation to identify war criminals. The terms of reference of that investigation included identification of members of Pakistani armed forces and organised bands assisting them in the perpetration of war-crimes. It is through that enquiry that 195 persons were identified as war criminals. An official press release of the Government of Bangladesh made public declaration of the identification of 195 war criminals and of the decision to try them.

#### PUBLIC NOTIFICATION OF 17 APRIL 1973

The press release of the Government of Bangladesh (17 April 1973) on war crimes trial notified that: 'Investigations into the crimes committed by the Pakistani occupation forces and their auxiliaries are almost complete. Upon the evidence, it has been decided to try 195 persons of serious crimes, which include genocide, war crimes, crimes against humanity, and breaches of Article 3 of the Geneva

Convention, murder, rape and arson.

Trial shall be held in Dhaka before a special tribunal, consisting of judges having status of judges of the Supreme Court.

The trials will be held in accordance with universally recognised judicial norms, eminent international jurists will be invited to observe the trials. The accused will be afforded facilities to arrange for their defence and engage counsel of their choice including foreign counsel.

A comprehensive law providing for the constitution of the tribunal, the procedure to be adopted and other necessary materials is expected to be passed this month. The accused are expected to be produced before the tribunal by the end of May 1973.'

In accordance with that notification, the Government of Bangladesh finalised the list of 195 war criminals all of whom were high-ranking military officers of Pakistan. No civilian nor any Bangladeshi person was included in that list.

#### INTERNATIONAL CRIMES ACT

On the 19th of July 1973, the Bangladesh Parliament enacted a law called International Crimes (Tribunal) Act 1973. For the purpose of this enactment, prior amendment to the Constitution was necessary. This was done on 15 July 1973 to remove contradictions with the provisions of fundamental rights of citizens guaranteed in the Constitution. During the next one year, intense negotiations took place amongst Bangladesh, India and Pakistan. The government of Pakistan acknowledged its wrong-doing and appealed to the people of Bangladesh to forgive and forget. All three governments acknowledged the need for peace and cooperation in the subcontinent. It was therefore decided by the Government of Bangladesh that the prisoners of war who committed war crimes would be released without trial. By a tripartite agreement dated April 9, 1974 signed in New Delhi amongst Bangladesh, India and Pakistan, the matter of release of the 195 war criminals was finalised. The signatories to the agreement were Bangladesh Foreign Minister Dr. Kamal Hossain, Indian External Affairs Minister Sardar Swaran Singh and Pakistan's State Minister for Defence and Foreign Affairs, Mr Aziz Ahmed. In accordance with articles 13, 14 and 15 of that agreement, the 195 war criminals were pardoned and sent back to Pakistan. Thus, the issue of war criminals was settled at the state level (under sovereign executive authority) and the matter of trial of war crimes committed during the liberation war was dispensed with.

## COLLABORATORS ACT

On 24 January 1972, the government of Bangladesh enacted another law to try those who did not side with the liberation war or politically opposed the call of liberation war or willingly cooperated with the Pakistan Army or committed criminal acts. It was called the Collaborators Act, 1972. More than a hundred thousand persons were arrested under that Act. Of them, 37,471 persons were charged. Another 30,623 could not be prosecuted for lack of evidence. A total of 2,848 were brought to trial. Of them, 752 were found guilty. The remaining 2,096 accused persons were found not guilty and freed. Taking into account the overall situation (of discontent) obtaining in the country, in November 1973 the Government of Bangladesh under the leadership of Sheikh Mujibur Rahman declared a general amnesty. It goes without saying that the architect of Bangladesh Sheikh Mujibur Rahman thought it fit to wipe the slate clean of all conflicts, adversities and contradictions that cropped up during the liberation war by declaring the general amnesty. By virtue of the general amnesty, those accused or convicted for minor crimes under the Act were all set free. But those accused of rape, murder, arson or plunder were not pardoned. In other words, the general amnesty kept the scope of prosecution and trial of those accused of such serious crimes under the Act. On December 31, 1975, the Collaborators Act was repealed by a Presidential order. After the amnesty, the Act remained in force for a little over two years. In that period, no case was filed for the said four serious offences. Perhaps that was the logic behind repeal of the law in 1975.

## JAMAAT NEVER INDICTED

We can firmly assert, in the circumstances, that no Jamaat leader was involved in any criminal activity of the nature of plunder, rape, murder or arson during the liberation war. The Jamaat leaders against whom smear campaign is going on, accusing them of serious war crimes, were not even indicted under the Collaborators Act. Nor was any of Jamaat leaders included in the list of 195 war criminals identified by the-then Bangladesh Government through proper enquiry. How could they be accused of war crimes when they did not take part in the war at all?

The Jamaat leaders are engaged in their respective professions or in politics or social work with earnestness and honesty of purpose. Many of them participated in general elections and were elected as Members of Parliament. They faithfully discharged their duties as MPs and as ministers. Two Jamaat ministers while in office in Bangladesh Government earned good name at home and abroad for their honesty, efficiency and incorruptibility. According to the amended Representation of the People Order, a war criminal is debarred from candidature in general elections. Had Jamaat leaders been implicated in war crimes, they would not have been allowed to take part in the last general elections in 2008. They obtained huge voter endorsement. This could not have happened if they were involved in any serious offence like war crime.

## ISLAMIC POLITICS TARGETED

The truth is, a certain group of people have brought up the issue of war crimes to discredit Jamaat and Jamaat leaders and to suppress Islamic politics. Not only Jamaat-e-Islami, but also other Islamic parties, organisations and personalities are being targeted by this group of people. So far they have failed in their ill motives to defame Jamaat by falsely implicating the latter in corruption, terrorism and politics of violence. Indeed, Bangladesh Jamaat-e-Islami is a party devoted to democracy and Islam. By the grace of Allah, and by consensus of the people of Bangladesh, (peace-loving) Islamic orientation of politics is now a decisive factor in Bangladesh.

People of this country are aware that in the case of citizenship of Professor Ghulam Azam, former Ameer of Jamaat-e-Islami, the then Attorney General as the leading counsel on behalf of the Government placed before the High Court a pile of documents purporting to implicate the-then Jamaat chief with Pakistan Army actions in 1971. The onus of killing, burning and looting by the Pakistan Army was brought to bear on the case.

## GHULAM AZAM CITIZENSHIP VERDICT

The High Court dismissed the evidence of Pakistan Army atrocities as unrelated to Professor Ghulam Azam's public position during the liberation war. Even Mr. Justice Muhammad Ismail Uddin Sarker who gave the lone dissenting judgment stating 'Professor Golam Azam was not a citizen of Bangladesh' found the Attorney General's arguments implicating Professor Golam Azam with the atrocities of the Pakistan Army as untenable. The Honourable Judge wrote in his judgment: 'From some news commentaries and a photograph we find that the petitioner Professor Golam Azam met with General Tikka Khan and General Yahya Khan. Apart from that, we find no direct evidence of the Petitioner's involvement with alleged atrocities of the Pakistan Army or their collaborator Razakar, Al-Badr or Al-Shams men. The petitioner obtained the audience of the Military Junta during the liberation war. Other than that, we see nothing in the evidence that may be said to relate the petitioner with the atrocities committed during the liberation war' (vide Dhaka Law Report No. 45, High Court Division, Page 433). It may be mentioned that Professor Golam Azam got back his citizenship of Bangladesh by the judgment of the High Court Division, which was upheld by the Appellate Division of the Supreme Court.

## TAKING LIBERTIES WITH LAW

The demand for trial of Jamaat-e-Islami leaders as war criminals is highly objectionable in the eyes of the law and the constitution. Those who kill civilians, commit genocide, rape, arson and plunder are

indictable as war criminals. Those on both sides in a war situation may commit such crimes. Jamaat-e-Islami leaders did not go to war. Therefore, the question of naming them as war criminals does not arise. There was the Police, the Razakar, the Al-Badr and Al-Shams forces who collaborated with the Pakistan Army. They were under the-then government of East Pakistan. Jamaat had no connection with them. On 2nd August, 1971 the-then Government of East Pakistan formed the Razakar force and placed it under the command of the Police framing an by Ordinance. Jamaat therefore could not possibly have anything to do with those forces. It is our firm position that Jamaat as a party did not have any collective or individual involvement in any war crime whatsoever. To label Jamaat leaders as war criminals before any finding of any Court is patently unconstitutional and against the fundamental principles of national and international law. We firmly hold that the calumny spread these days about Jamaat leaders over war crimes is absolutely false, concocted and malafide.

## HISTORICAL RECORDS

Close cooperation between the leaders of Jamaat and the leaders of the Awami League, who are now in power, through a liaison committee for the movement against the autocratic regime in the eighties is a matter of historical record. Common political programmes used to be chalked out by mutual consultation. Countrymen also remember how the top leaders of Jamaat and the Awami League coordinated the movement for a caretaker government in 1994, 1995 and 1996. Records testify these facts. The Awami League leaders never raised the question of war crimes when Jamaat joined them in the movements against autocracy and for a caretaker government. In the 1991 general elections, no party obtained enough seats to be able to form government. BNP won 140 seats whilst Awami League and Jamaat won 88 and 18 seats respectively in that election. But as Jamaat lent its support to BNP to form the government, the Awami League became angry with Jamaat.

During the tenure of the Jamaat-supported BNP government from 1991 to 1996, the Awami League prompted an undemocratic agitation against the-then Ameer of Jamaat, Professor Ghulam Azam through the so-called Ghatak Dalal Nirmul Committee. The agitation was successful in creating a rift between BNP and Jamaat. But for political expediency, the Awami League later undertook a simultaneous movement with Jamaat as an ally. At one stage of the movement, the Awami League, Jamaat and Jatiyo Party MPs resigned from their seats at the same time. During 1994, 1995 and 1996, Jamaat, Jatiyo Party and Awami League leaders often met and made joint press briefings as part of their movement against the-then BNP government (surviving on reserved women seat members' parliamentary support). The present Prime Minister Sheikh Hasina and Jamaat's Ameer Maulana Motiur Rahman Nizami held a joint press conference at that time. Prior to that when late Abbas Ali Khan was the acting Ameer of Jamaat, Sheikh Hasina herself invited top Jamaat leaders including Abbas Ali Khan, the present Ameer of Jamaat Maulana Motiur Rahman Nizami and present Secretary General Ali Ahsan Mohammad Mojaheed to a meeting at her home in Road No. 32, Dhanmondi. Many meetings of Jamaat, Jatiyo Party and Awami League leaders also took place in the office of the-then Leader of the Opposition Sheikh Hasina in the Parliament building, in the Kalabagan residence of late Abdus Samad Azad, and in

the house of Sajeda Chowdhury.

#### AWAMI LEAGUE VOLTE FACE

The Presidential candidate of the Awami League (in 1991), Justice Badrul Haider Chowdhury met the then Ameer of Jamaat Professor Ghulam Azam at the latter's residence to seek Jamaat's votes and his blessings.

In the 1996 general elections, Professor Ghulam Azam campaigned on behalf of Jamaat all over the country. No allegations were made against Jamaat during that hustings. Awami League obtained parliamentary majority in 1996 June election largely on account of fielding of separate Jamaat candidates in all constituencies. In 1991, an influential member of the Awami League Presidium representing Sheikh Hasina sought the support of Jamaat to form a coalition government in exchange for three ministries and seven reserved women's seats for Jamaat. Since Jamaat did not respond to that proposal, Awami League was alienated. Thereafter, Jamaat formed the 4-party alliance with BNP to move against the misdeeds and undemocratic measures of the Awami League Government elected in 1996. The Awami League is under the impression that it would not have been possible for the 4-party alliance to build a movement and public opinion against the Awami League without the participation of Jamaat. In 2001, BNP and Jamaat formed an electoral alliance in filing candidates, and the alliance obtained more than two-thirds majority. Therefore, as a stratagem to break that alliance, the war crimes issue has been projected and a virulent campaign started against Jamaat-e-Islami.

#### PROPAGANDA WAR

A virtual propaganda war was then undertaken by forming the Sector Commanders' Forum which spent crores of Takas in countrywide campaign against Jamaat, apart from newspaper and satellite TV propaganda already going on. The entire wrath (of the pro-Awami League forces) fell on Jamaat for its active and forceful role in national politics. An issue settled at the state level is being resurrected only to belittle Jamaat leaders politically with the stigma of war crimes. Some are suggesting that war crimes trial is possible to be conducted afresh under the 1973 Act. But that Act was specifically made to try the 195 Pakistani military officers identified as war criminals. To use that law for a mock trial by forming a Tribunal to penalise political opponents will be a despicable act against humanity and human rights. A tribunal appointed by the accusers cannot be expected to deliver justice.

In the past also, Jamaat had weathered all adverse situations by the grace of Allah and with the support and cooperation of the people of this country. Insha-Allah, Jamaat will also face with the people by its side, politically and legally any attack that may come on it in the name of war crimes trial unjustly

undertaken for political vengeance.

#### JAMAAT'S CALL

An abysmal whirlpool of conspiracy is under way nationally and internationally against Islam and Islamic politics these days. The conspirators do not dare to confront Islam in a straightforward manner. That is why they are adopting all sorts of devious ways to suppress Islam. The Central Executive committee of Bangladesh Jamaat-e-Islami therefore calls upon all Islamic organisations, Alem-Ulama-Pir-Mashayikh (Religious Leaders-Scholars) students, workers, peasants, teachers, lawyers, businessmen and people in all strata of national life to come forward irrespective of differences and political party affiliations, and foil that conspiracy."