

CHAPTER 8

After Hijacked Justice: Rethinking Accountability Mechanisms

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Abstract

This chapter critically examines the prospects for transitional justice in Bangladesh in the aftermath of the 2024 student-led uprising. It explores how civil society actors, youth activists, and legal professionals have advanced proposals for truth-telling, reparations, and institutional reform in a context marked by historical impunity and entrenched authoritarianism. Using the justicecraft framework, particularly the dimensions of materiality, labor, and skill, the chapter analyzes how past transitional justice efforts, including the International Crimes Tribunal, inform contemporary debates and expectations. It also assesses the risks of elite capture, bureaucratic inertia, and justice fatigue, while highlighting emergent bottom-up strategies aimed at inclusive accountability illuminated by justicecraft elements of skills and labor. The chapter concludes by reflecting on how contested sites of memory and digital justice practices are reshaping Bangladesh's transition and expanding the repertoire of transitional justice.

Introduction

The Bangladesh Awami League's political legitimacy was largely derived from the collective memory of Bangladesh's independence struggle. The national liberation struggle against Pakistan united diverse interests under the pursuit of statehood; however, once independence was achieved, there was a fracture in the political consensus that held the independence movement together. To be sure, for religious communities the war for independence was perceived as a struggle against Islamism. This helped establish a longstanding religious-secular divide in Bangladesh's collective memory and politics.

After independence, the Awami League chose not to form a national unity government with representation from all parties, instead formed an AL led administration and gave party position to the people who fought alongside AL in the liberation war. In 1973, Bangladesh held parliamentary elections, and the AL ensured that it secured almost all parliamentary seats. Sheikh Mujib's government faced challenges to the legitimacy of the administration. The failure of the to create an inclusive administration led dissatisfaction among the left-wing groups. The

new government of Bangladesh failed to secure the recognition from the US and China, the two powerful actors (Siddiqui et al. 2019).

In the early years of Bangladesh's independence, justice struggles for atrocities perpetrated by Pakistan during the war for independence became central to legitimizing the new government. Three million people were killed and many women were victims of wartime sexual violence (BISS, 2019). Drawing upon the legacy of international justice established at Nuremberg and Tokyo, the International Crimes Tribunals Act 1973 was adopted by the parliament of Bangladesh to establish a court that had the authority to punish the responsible persons who were involved in committing internationally defined crimes, such as genocide, crimes against humanity, war crimes and other crimes under international law. According to the Act, the Tribunal has the jurisdiction over any individual or group who commits or has committed crimes to the nationality by using any arms or defense forces in the territory of Bangladesh. After independence, Bangladesh has suffered several problems such as military intervention from 1975 to 1990, political instability. Post-colonial legacy and Pakistani rule is still an obstacle to good governance in Bangladesh (Shafiqul Huque 2011). Good governance is a key to ensure accountability and legislative accountability mechanisms are the pillar of good governance.

Half a century after the liberation war, Bangladeshi demands for justice remained central to political power and the ruling party's relationship with party members (D'Costa 2015). Thus, in 2010, it was not surprising to see the reestablishment of the ICT, the same year Bangladesh ratified the Rome Statute to join the International Criminal Court. Indeed, it was during the 2008 elections that the Awami League invoked the memory of independence war atrocities in its promise to bring back the ICT. However, as Bangladeshi courts have traditionally been dominated by the ruling party, the ICT was criticized for targeting Islamist opposition groups, in particular *Jamaat-e-Islami* (Shams 2013). In 2014, the ICT sentenced Motiur Rahman Nizami to death for his role in the May 1971 Dera massacre. Nizami was executed in 2016, drawing criticism from international human rights groups such as Amnesty International for Bangladesh's administration of the death penalty and due process irregularities during the trial process (Amnesty International 2016).

Bangladesh requires transitional justice frameworks tailored to its societal fabric, marked by entrenched social conservatism and persistent political discord, even though similar mechanisms have achieved success in post-conflict societies like South Africa. In Bangladesh's long history, student-led movements have sparked political and social change, and civil society has been crucial for encouraging these initiatives. These groups advocated for sustainable solutions and stood up against systemic inefficiencies. While the International Crimes Tribunal (ICT) provides a precedent for addressing war crimes, it has yet to tackle contemporary challenges such as systemic corruption and abuse of power (Shafiqul Huque 2011). Despite the rhetoric surrounding

evidence-based reforms in Bangladesh, practical implementation remains sporadic. In Bangladesh, innovative justice systems and governance reforms are heavily supported by student leaders and civil society organizations, which can act as agents of change to bring constitutional law abidance culture.

Political Instrumentalization of Justice

Jelena Subotić defines hijacked justice as the political instrumentalization of transitional justice norms. In Bangladesh accountability for atrocities committed during Bangladesh's war for independence constitute an example of this practice. To be sure, there is a lot of criticism of the trials conducted under ICT in Bangladesh. An expatriate Bangladeshi lawyer advised Justice Mohammed Nizamul Huq, the presiding judge of the Tribunal. *The Economist* news magazine and Amar Desh newspaper published the leaked materials in December 2012, as a result Justice Mohammed Nizamul Huq resigned. However, this incident did not mitigate the fear of unfair justice proceedings. None of the bench in the case had heard the entirety of the evidence in the case because of the resignation of the Tribunal Chair. But the Tribunal gave the death penalty to Sayedi for convicting eight cases. It was not the only case of unfair justice mechanism, the bench delivered final verdict without hearing the entirety of the evidence of Nizami and Azam cases also. Another unfair mechanism happened on Abul Kalam Azad's trial which raised concern about the due process. He was tried and sentenced to death in his absence. The ICT act allows trial death penalty in the absence of the accused and there is no chance for retrial if they come back to Bangladesh. Leaked judicial communication showed that the Bangladesh government officials pressured the judge of the Tribunal in 2013 when the Tribunal sentenced Jamaat leader Abdul Quader Mollah for crimes against humanity in 1971, and also the government changed the ICT Act to allow prosecution against sentences which challenged Mollah's sentence before the Supreme Court. The Supreme Court changed the life sentence to the death sentence and also rejected Mollah's petition on 12 December 2013. He was hanged in prison without being given the opportunity to file a mercy petition to the president of Bangladesh which raised tension between the other political parties in Bangladesh and the ruling party Awami League (Chopra 2015)

The Limits of Transitional Justice

Siddiquee argued that parliament was ineffective or suspended in Bangladesh, as a result the judiciary system was always dominated by the ruling party from 1991 (Siddiqui et al. 2019). Huque stated that the internal bureaucratic accountability mechanisms remain in Bangladesh's justice systems which is a barrier of free and fair justice mechanism, and the ruling party is always abusing power (Shafiqul Huque 2011). Ahsan and et al found that the corrupted institutional system in Bangladesh is an obstacle to the fairness of the justice mechanism (Ahsan and Panday 2018). Chopra stated that the International Crimes Tribunals in Bangladesh was also unable to show its fairness because of the ruling party (Chopra 2015). Transitional justice encompasses mechanisms to address past human rights abuses and promote reconciliation in

post-conflict societies (Hoon 2020). While traditionally focused on criminal trials and truth commissions, the field has expanded to include legal reforms, political restructuring, and reparations (Aoláin 2008). However, accountability-based approaches face challenges, including selectivity and uneven international attention (Aoláin 2008). Scholars have proposed frameworks to evaluate transitional justice measures, such as Grodsky, B. (2009) "transitional justice spectrum." The interplay between different mechanisms can create tensions, as seen in Sierra Leone's dual approach using a Truth and Reconciliation Commission alongside a Special Court (Apori-Nkansah, n.d.). Corporate accountability in transitional justice contexts is an emerging area of study (Michalowski, 2013). Critics argue that traditional justice mechanisms may have discriminatory aspects and are not fully understood by outsiders (Allen & Macdonald, 2013). Successful implementation requires a secure environment, legitimate authority, and comprehensive strategies reflecting local needs (Stover et al. 2008). Teitel (2003) argues that justice mechanisms evolve, balancing legal prosecution with societal healing. However, Huntington (1991) and Snyder & Vinjamuri (2003) caution that politically controlled justice systems often prioritize stability over genuine accountability. These perspectives contextualize why Bangladesh's ICT has faced criticisms of inefficiency and political bias. Bangladesh's ICT, established to address the 1971 war crimes, follows a retributive model.

Although significant efforts have been made to discuss the events of 1971 and prosecute the perpetrators through the ICT, notable research gaps remain in understanding justice and accountability processes in Bangladesh. Existing literature on transitional justice has primarily focused on historical mechanisms like the ICT and its role in prosecuting war crimes, leaving contemporary developments underexplored. First, there is limited research on the potential of student leaders and civil society organizations to advance innovative justice mechanisms, despite their active role in democratization efforts. Additionally, the relationship between various GNTPs and international transitional justice paradigms—such as truth commissions and reparative justice—and their applicability to Bangladesh's sociopolitical context remains an under-examined area. Second, the disconnect between historical and contemporary frameworks for justice and accountability requires further analysis. While the ICT provides a foundation, its capacity to address present-day issues like power abuse and corruption, especially in a politically polarized environment, remains in question. Lastly, the lack of cross-country comparisons restricts opportunities to draw lessons from international experiences in transitional justice. The interplay between historical violence and future justice frameworks has not been sufficiently studied, even though these dimensions are clearly linked and essential for building comprehensive accountability mechanisms. This chapter aims to address these gaps by analyzing proposed justice frameworks and evaluating their potential to ensure accountability in Bangladesh. This chapter will highlight two principal causes of hijacked justice in order to elucidate how justice practice must change in order for justice struggles in Bangladesh to effectively address Bangladesh's legacies of violence. First, the political instrumentalization of the justice process by leaders continues to constitute a barrier to the implementation of effective

justice and accountability systems in Bangladesh. The second is that corruption within bureaucratic institutions in Bangladesh leads to a perception of illegitimacy when it comes to criminal justice processes.

Transitional justice mechanisms are aimed to deal with past violations of human rights and humanitarian law which can be defined as a set of practices, mechanisms. That justice mechanisms can be taken by pursuing criminal trials, establishing truth commissions, removing the past offenders from the public sector. Studies found transitional justice mechanisms to be effective in postwar societies but they must meet some conditions. Such as a secure environment for the witness, authorities must ensure that transitional justice measures will have significant time to achieve their intended goals and political power transformation will not affect the justice mechanisms, transitional justice measures are most effective when it is selected through a genuine process of consultation with the most affected people in violence (Stover et al. 2008) Many scholars and activists argue that traditional justice is a fully integrated approach, this approach includes combining conventional legal processes with other methods of justice.

Transitional Justice is broadly categorized into retributive justice (criminal prosecutions) and restorative justice (truth commissions and reconciliation). In Bangladesh, transitional justice instrumentalized by political elites has centered justice processes in retributive processes within a justice system where the death penalty is practiced. Dominant justice discourses shaped by the Awami League also emphasized vengeance and exclusion. Restorative Justice frameworks, on the other hand, pursue to fix harm through dialogue, community engagement and truth-telling where full legal accountability is difficult practically or politically. Truth commissions fall under this model.

Transformative Justice's approach, which focuses on fixing the deeper problem rather than punishing someone, such as inequity and unfair systems, women rights, institutional reform. It focuses on changing the conditions that may create conflict. As such, process is emphasized over goals. Gready and Robins (2020) stated that transitional justice often does not have a clear theory of change. They suggested moving away from goal based models to complex and process-oriented approaches which emphasize local agency and important context. Each of these theoretical frameworks has a different lens in practice transitional justice mechanism which may sometimes be a blend from several frameworks. Bangladesh's ICT, established to address the 1971 war crimes, follows a retributive model.

Student Movements and Justicecraft

Globally, student movements have played a vital role in strengthening transitional justice. Brysk & Mehta (2014) argue that civil society actors, particularly students, act as catalysts in pressuring governments for legal and institutional reforms. McEvoy & McGregor (2008) further highlight how grassroots activism can lead to lasting justice reforms, as seen in Latin America's

post-dictatorship trials and South Africa's Truth and Reconciliation Commission. Applying these frameworks, the 2024 Bangladeshi student movement can be seen as a crucial force in demanding justice reforms beyond the ICT processes. Justicecraft provides an illuminating framework because the student movement was catalyzed around situated struggles for justice, but at the same time did not express their demands in the language of transitional justice, which had been institutionalized and instrumentalized by the autocratic regime they were protesting against. Their advocacy aligns with the broader global trend where student-led movements challenge state-controlled justice systems to ensure greater accountability.

The Bangladesh interim government may establish a youth-led truth commission to document the abuses during the 2024 protest. Establishing a community reconciliation forum can be a step of reforming the justice system, where state leaders, victims, and civilians engage through dialogue. The student movement is not only demanding justice but also they are imaging how justice can be looked like. Indeed, in August 2024, Bangladesh established a Commission of Inquiry on Enforced Disappearances, which submitted its interim report which documented widespread torture on the part of the Hasina regime (Bergman 2025a).

However, despite the diverse justice processes, a retributive model for justice continues to attract significant attention and support from elites. In September 2024, Bangladesh's transitional government appointed Muhammad Tajul Islam, as the ICT's new Chief Prosecutor. Tajul Islam was tasked with prosecuting individuals accused of international crimes related to the 2024 uprisings. Tajul Islam was a highly symbolic choice in repudiating the legacy of the ICT trials that targeted Bangladesh's Islamist opposition during the previous decade because Tajul Islam had served as a defense attorney for Jamaat-e-Islami accused at the time (Bergman 2025b).

In November 2024, an ordinance containing the amendments to the International Crimes (Tribunal) Act of 1973 was adopted. One significant criticism was that these amendments retained the death penalty, which limits the ability of the United Nations to assist the court through the sharing of any evidence gathered through UN fact finding missions (Bergman 2024). However, despite this significant shortcoming overall the ordinance sought to bring the ICT Act of 1973 closer in line with international standards. Indeed, the 1973 ICT Act defined Crimes against Humanity and Genocide in a manner that was not consistent with how these crimes are defined under international law. For example, Bergman points out that in relation to the offence of Crimes against Humanity, the Act did not specify that killings had to be "part of a widespread or systematic attack directed against any civilian population" and that the accused needed "knowledge of the attack" (2024). When it comes to the crime of Genocide, the 1973 Act included political groups as one of the protected groups (Bergman 2024), alongside national, ethnic, racial or religious groups, even though the targeting of political groups considered to be genocide under international law.

As of February 2025, the ICT's prosecutor's office received 278 criminal complaints, which in turn resulted in the filing of 18 criminal cases against 119 accused individuals. Those accused detained by the ICT include a former minister for Law, Justice and Parliamentary Affairs, Anisul Huq, the former director general of the National Telecommunication Monitoring Centre, Major General Ziaul Ashan, as well as the former head of the National Security Intelligence Agency, Monirul Islam, but most of the accused, including former Prime Minister Sheikh Hasina, have fled Bangladesh and remain out of reach of the ICT (Bergman 2025b).

As Sheikh Hasina fled to India, and India rejected Bangladesh's extradition request for the former Prime Minister, the ICT went ahead with this process in the absence of the accused through an in absentia criminal trial.

Hazards to Justice after 2024

When looking at justice through the narrow lens of institutional mechanisms such as criminal trials and official commissions of inquiry, it is clear that hazards to justice identified in the literature are visible in Bangladesh. These include elite resistance and political polarization (1991). In the case of Bangladesh a recent past of electoral authoritarianism in which two dominant, and autocratic, political parties vie for control of state institutions. In the case of Bangladesh the call for elections is not viewed as an opportunity for democratic founding elections as witnessed after the collapse of single party rule in Central and Eastern Europe, but rather as a risk for state capture by an autocratically minded opposition party. In this context, justice mechanisms are more of a reflection of political party politics than embedding the rule of law.

A second hazard is that of weak institutions (Rose-Ackerman 1999). As noted earlier in this volume, post-independence Bangladesh has suffered from weak institutions since independence when Bangladesh's first post-independence leader ruled Bangladesh as a personal fiefdom. Thus, as governance was more focused on regime security instead of security of the people, state institutions and the civil service became part of ruling party patronage networks. In this context, there exists a gap in terms of knowledge and skills elements within state institutions to pursue justice measures.

A third, related, hazard is that of corruption and lack of judicial independence. Transparency International ranked Bangladesh among the world's least independent judiciaries, which highlights the need for deep institutional reform in terms of both institutions and personnel.

Towards Sustainable and Independent Justice

Bangladesh faces practical, political and institutional barriers to reform transitional justice. The International Crimes Tribunal (ICT) was established to prosecute 1971 war crimes. Despite the appointment of Fajul Islam as the ICT's chief prosecutor, the ICT inherits a legacy of politically

motivated prosecutions and continued practices that are not consistent with international human rights norms, such as the application of the death penalty. Autocratic rule and weak institutions have left a deep imprint in Bangladesh. Civilians, opposition parties and other political parties do not trust the justice system. The institutions are also weak, the judiciary agencies are not independent to carry out neutral investigations and prosecutions. Bangladesh's transitional justice process has faced challenges in addressing war crimes from the 1971 liberation war (Nipun, 2019; Hossain, 2024). While the government initiated prosecutions, a broader strategy including institutional reforms has been lacking (Nipun, 2019). NGOs have played a significant role in Bangladesh's development and human rights advocacy (Lam, 2006; Rahman, 2006). However, the government has placed restrictions on NGOs and media, limiting their effectiveness in promoting human rights and supporting victims' participation in the justice process (Uddin, 2022). The International Crimes Tribunal of Bangladesh has made some jurisprudential contributions, but concerns remain about its procedures and standards (Sultana, 2021). The overall role of human rights NGOs in Bangladesh is constrained by government control and oppression, despite their efforts to uphold human rights (Uddin, 2022). The judiciary's role in protecting rights has been limited by the country's colonial legacy and partisan politics (Khan, 2012).

Retributive vs. Restorative Models

Retributive justice mechanisms focus on punishing the perpetrator, while restorative justice mechanisms focus on repairing the relationship between the victim and perpetrator. These two forms of justice mechanisms are not mutually exclusive and victims may seek both. For example, the South African Truth and Reconciliation Commission combines restorative justice with the potential for prosecutions in Rwanda's Gacaca tribunals. There is ongoing debate in this justice mechanism, some believe that punishment is necessary for moral reparation while some argue that restorative justice should focus on repairing harm (Iqbal and Bilali 2018).

In Bangladesh, preferences for retributive justice and restorative justice both were assessed in a survey. Respondents were asked: to what extent do you agree that the following measures would restore justice for events of 1971? The survey examined among educated Bangladeshi youth in the context of the 1971 war and the collective violence in Bangladesh after the independence. The survey showed that youth has preference on both justice mechanisms but a slightly more preference on restorative justice than retributive justice (Iqbal and Bilali 2018).

While institutional mechanisms such as the ICT and the Commission of Inquiry into Enforced Disappearances will continue to play a prominent role in Bangladesh's justice process, both operate in an institutional environment in which there are significant hazards to their work. However, if we consider justice struggles more broadly, Bangladesh's youth have honed skills and knowledge in continuing situated struggles for justice. As institutional and personnel reform are an important part of transitional justice, centering recruitment practices for civil service and

reform of institutions as key ministries including the Ministry of Justice could help address some of the structural governance challenges that Bangladesh continues to face.

In addition, commemoration and memorialization practices can help create a more inclusive narrative of Bangladeshi statehood that moves away from the polarizing discourses associated with the 1971 war for independence. One way to do this is not to repeat the exclusionary practices that cast crimes as one-sided as one done in the past. The transition government's immunity order for revenge crimes committed in the aftermath of the 2024 uprising constitutes a worrying development that could lead to the erasure of voices and experiences that run counter to the dominant narrative of the uprising among its protagonists (Radio France International 2024). Memorialization and commemorative practices should also include acknowledgement of abuses and excesses of those who participated or supported the revolution no matter how uncomfortable it may be to discuss this.

Conclusions

Narrow justice frameworks that exclusively focus on criminal trials and official commissions risk distorting justice struggles into focusing on one aspect of justice that is administered by the state. However, it is unlikely that the ICT will establish itself as a widely accepted forum for justice due to its past and also its inability to secure custody of some of the most high profile accused, including former prime minister Sheikh Hasina. Moreover, the materiality, labor, and skills of students and civil society actors who challenged the autocratic ruling party, provide a deep resource for undertaking longer-term justice struggles. Rather than seeing transitional justice as a break with the past and a transition to a new post-authoritarian order, justicecraft elements recognize the ongoing character of justicecraft, which is not narrowly bound to transition.

To establish a justice system that is resistant to corruption and political influence, Bangladesh should consider:

- **Independent Judicial Oversight:** Establishing an autonomous commission, free from executive control, to oversee war crimes tribunals and human rights violations. By ensuring merit based judicial appointment, Bangladesh can establish a neutral justice system, which resists political influence and provides neutral justice to the victims.
- **Transparency Measures:** If the judicial system can ensure transparency, people will trust the system. By implementing digital case tracking, public trials, and regular judicial reviews, Bangladesh can prevent undue influence on its justice system.
- **Student and Civil Society Participation:** Incorporating civilian and student-led monitoring bodies to ensure government accountability. Social audits and public hearings may encourage civilians to participate in the justice system reforming process.

- **Truth and Reconciliation Commissions (TRC) model:** Introducing restorative justice elements to supplement criminal trials, as seen in South Africa and Argentina, fostering long-term reconciliation. To avoid large trials which could destabilize the fragile democracy, South Africa's TRC model shifted the focus from retribution to restoration that is helping the country comfort its violent past. On the other hand, Argentina's method is a combination of legal accountability with collective memory, which is showing that truth and justice can grow over time.

The above recommendations are drawn from the earlier analysis of justice struggles in Bangladesh and aim to inform ongoing justice struggles. In sum, while Bangladesh's justice struggles remain deeply entangled in the legacies of politicized trials and fragile institutions, they are equally animated by the labor, skills, and resilience of students and civil society actors who continue to push the boundaries of accountability. Yet, these situated struggles cannot be understood in isolation; they raise broader questions about how justicecraft might evolve in the years ahead. The following chapter turns to these forward-looking debates, outlining possible futures for transitional justice in Bangladesh by drawing on comparative models and proposing pathways for a more inclusive and sustainable justice framework

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