

The Issue of Prisoners of War (POWS), 1971 and Recognition of Bangladesh

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ABSTRACT

After the surrender of Pakistan army, near about 93,000 Pakistani military personnel and civilians were taken to India as Prisoners of war (POWs). The UNO Security Council passed a resolution on December 21, 1971 calling upon the parties to observe the Geneva Convention and not to attach any conditions to the repatriation of the POWs. Article 118 of the Geneva Convention (1949) puts it as a condition that Prisoners of War must be repatriated immediately after the cessation of active hostilities. It also stipulates that detaining power is obliged to work out a plan for their repatriation. India declared as an afterthought that Pakistan Army had surrendered to joint command of India and Bangladesh and therefore it was not within the jurisdiction of India to repatriate the prisoners of war at her own. Sheikh Mujib-ur-Rahman, on the other hand, had declared that he would not take part in any meeting, bi-lateral or tri-lateral, unless Bangladesh was recognized by Pakistan. On August 28, 1973 India and Pakistan signed an agreement in Delhi to repatriate 93000 civil and military prisoners of war to Pakistan. Bengalis in Pakistan were to be returned to Bangladesh. Mujib Ur Rahman clung to his demand of trial of 195 war criminals. Bhutto insisted that Pakistan would not recognize Bangladesh until all prisoners of war were released. Recognition of Bangladesh by Pakistan in February 1974 led to rapprochement between the two countries. A tripartite agreement between India-Pakistan-Bangladesh signed in April 1974 resolved all contentious issues related to 1971 war and paved the way for return of 195 war criminals as well. The last batch of prisoners of war reached Lahore in April 1974.

1. Introduction

After the surrender of Pakistan army, near about 93,000 Pakistani military personnel and civilians were taken to India as Prisoners of war (POWs). Among the POWs there were 56998 armed forces regulars, 18287 para military persons and 17376 civilians including 4616 police and 1628 civilian government servants, 3963 others including over 6000 women and children. (Chopra, 1988) Soon after their surrender, the UNO Security Council passed a resolution on December 21, 1971 calling upon the parties to observe the Geneva Convention and not to attach any conditions to the repatriation of the POWs. (Burke, 1973)

Article 118 of the Geneva Convention (1949) puts it as a condition that Prisoners of War must be repatriated immediately after the cessation of active hostilities. It also stipulates that detaining power is obliged to work out a plan for their repatriation. (Kurta, 1972) But, the Indian government continued to detain Pakistani POWs for a long time on the plea that they had surrendered to the joint command of India and Bangladesh, therefore any decision about their plight should be taken by the mutual consent of both the countries. (Keesing's contemporary Archives, 1971-72). Sheikh Mujib-ur-Rahman, on the other hand, had declared that he would not take part in any meeting, bi-lateral or tri-lateral, unless Bangladesh was recognized by Pakistan. (Chopra, 1988)

Pakistan's stand was that when her armed forces surrendered, the state of Bangladesh had not come into existence, and that Pakistani troops were defending their own country against foreign aggression. Thus, India was solely responsible for their deliverance. (Samina, 1974)

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The repatriation of POWs was a sensitive issue in Pakistan. The Pakistani government was facing a mounting public pressure particularly the relatives of POWs, were demanding immediate action for their repatriation. Nearly twenty thousand relatives of the POWs demonstrated in Rawalpindi on December 5, 1972 demanding recognition of Bangladesh to secure the repatriation of POWs. (Tikoo, 1987) While the Islamic religious political parties from opposition bench were completely against the recognition of Bangladesh by Pakistan.

2. Literature Review

Prisoners of War, 1971 and recognition of Bangladesh by Pakistan is an issue linkage story between Pakistan and Bangladesh. Mujib and Bhutto both used issue linkage tactic, Bhutto wanted to survive Pakistani POWs without any trials in Bangladesh and Mujib demand was to recognition of Bangladesh. Lot of books are available that deals with the situation and War of 1971 and authors of these books explain little about the issue linkage tactics between the issue of POWS and recognition of Bangladesh by Pakistan.

Latest study available on this research area, published by Harvard University Press, is *1971: A Global history of the creation of Bangladesh* by Srinath Raghavan. Author describes that following the Simla agreement, India was in principle open to repatriating the Prisoners of War to Pakistan, but instead that it could not be done without the concurrence of Bangladesh. Sheikh Mujib and his government were clear that this could happen only if Pakistan recognized the state of Bangladesh. *War Crimes/Genocide Trials for Pakistani Soldiers in Bangladesh, 1971-1974* by A. Dirk Moses is also deals with the Prisoners of War and genocide trials for Pakistani soldiers captured by joined the Indian and Bangladeshi forces. "*Pakistan and Bangladesh: From Conflict to Cooperation*" by Dr. Moonis Ahmar. In this book he discussed the area of conflict and cooperation between Pakistan and Bangladesh. He discussed different irritants in bilateral relations like recognition of Bangladesh, stranded Pakistanis in Bangladesh, division of assets and apology over the atrocities committed by Pakistani army in Bangladesh at that time East Pakistan.

These books do not sufficiently cover and analyze all the dimensions of POWS and Recognition of Bangladesh. Hence a purposeful research-oriented study is needed to make sense of and analyze these two issues between Pakistan and Bangladesh.

3. Trials of POWS

The repatriation of the POWs to Pakistan was complicated by Bangladesh government's insistence of trying certain POWs for their alleged war crimes. Such intentions were firstly expressed by Syed Nazrul Islam, Vice President and Acting President of Bangladesh in the absence of Mujib-ur-Rehman. On December 23, 1971, he said that his government would ask India to hand over Pakistani officers guilty of genocide for trials as war criminals. (Keesing's contemporary Archives, 1971-72) Upon liberation and with Pakistani soldiers in custody, Mujib Ur Rehman, declared that war criminals among them would be put on trial for war crimes, crimes against humanity, and genocide. (Moses, 2010) The Pakistan government strongly opposed it and said that it would be in defiance of the Geneva Convention. (Moses, 2010) It contended that during the war, Pakistan army was defending their own territory and being a disciplined body it was bound to obey the orders of the high command. However, if any excesses had been committed by them, only the Pakistan government had the legitimate authority to try them. (Facts of File, 1972)

However, rejecting all these arguments, Indian government favored on many occasions Bangladesh's claim to try certain POWs. In a press conference on March 18, 1972, the Indian government spokesman said in Dhaka that her government would not discuss POWs case with Pakistan until she recognized Bangladesh and also said that "India would hand over to Bangladesh POWs against whom Dhaka filed a "prime facie case" involving atrocities and similar offences committed against Bangladeshis." (Facts of File, 1972) An official spokesman of Bangladesh told newsmen that Dhaka had prepared a list of 1500 military personals as war criminals. He also said that the government was thoroughly examining whether "prime facie case" against them existed. (Chopra, 1988)

Pakistan was very sensitive on this issue. Zulfikar Ali Bhutto visited different countries to get their support in this regard. In January 1972, he visited Iran, Turkey, Morocco, Tunisia, Algeria, Libya, Egypt and Syria to

win their support in his favour. (Burke and Zairing, 1991) These countries favored Pakistan's point of view and called for negotiations between the elected leaders of "the two parts" of Pakistan to determine their future relationship without foreign interference and end military occupation and repatriate POWs without delay. (Keesing's contemporary Archives, 1971-72)

Simla Agreement was signed between India and Pakistan on July 2, 1972. The agreement followed from the war between the two nations in the previous year that had led to the independence of East Pakistan as Bangladesh. The agreement laid down the principles that should govern their future relations. It also conceived steps to be taken for further normalization of mutual relations. Most importantly, it bound the two countries "to settle their differences by peaceful means through bilateral negotiations". It also cemented the Line of Control as something close to a permanent border. "In Jammu and Kashmir, the Line of Control resulting from the cease-fire of December 17, 1971 shall be respected by both sides without prejudice to the recognized position of either side. Neither side shall seek to alter it unilaterally irrespective of mutual differences and legal interpretations. Both sides further undertake to refrain from threat or the use of force in violation of this Line." The agreement also paved the way for diplomatic recognition of Bangladesh by Pakistan. As a gesture of goodwill India decided not to try 93,000 (80,000 military and rest civilians) Pakistan Prisoners of War for war crimes and released them. The treaty was signed in Simla, India, by Zulfikar Ali Bhutto, the President of Pakistan, and Indira Gandhi, the Prime Minister of India (Simla Agreement July 2, 1972).

At Simla Summit, Pakistan's top priority was the repatriation of POWs. (Tikoo, 1987) But Z.A.Bhutto failed to persuade India to release POWs. After the Simla Summit, Z.A.Bhutto repeatedly asked Indian government to discuss the repatriation of POWs.

In order to find out a solution P.N.Hasker, Indian Primer Minister's special envoy paid a five-day visit to Bangladesh in the first week of April 1973. His visit was reciprocated by the Foreign minister of Bangladesh Kamal Hussain on April 13-16, 1973. In the joint declaration issued at the end of their meetings a distinction was made between the humanitarian and political problems, placing the problem of the POWs in the former category. It suggested for the repatriation of all POWs except 195 charged with war crimes. (Misra, 1974) The Bangladeshi foreign Minister Dr. Kamal Hussain announced at a press conference in Dhaka on April 17 that these 195 POWs would be tried by a special tribunal consisting of judges of the Supreme Court of Bangladesh. (Keesing's Contemporary Archives, 1973)

Pakistan's reaction to this joint statement was mixed. Pakistan's Minister of State for Defense and Foreign Affairs Aziz Ahmad welcomed it. In an interview on April 23, 1973, he said that it was good news for Pakistan that the statement had not made the recognition of Bangladesh a precondition for the release of the POWs. (Hussain, 1973)

However, Z.A.Bhutto rejected the competence of the authorities in Dhaka to try any of the POWs. He insisted on constituting a tribunal of such character and composition, which could inspire "international confidence" to try indicted prisoners. He invited the representatives of the government of India to Rawalpindi for negotiations on the joint declaration. (Chopra, 1988)

3.1 Delhi Agreement

In the midst of controversial situation, negotiations between Pakistan and India were held in New Delhi on August 18, which resulted in a consensus being reached between the two sides on August 28, 1973. (Keesing's contemporary Archives, 1973)

The agreement signed between the two sides provided.

- a) All POWs held in India would be repatriated to Pakistan with the exception of 195 who, according to Bangladesh, were to be tried for war crimes.
- b) That Bengalis held in Pakistan would be allowed to come to Bangladesh
- c) A "substantial number" of the so called Biharis in Bangladesh would be repatriated to Pakistan. (Levie, 1974)

After the agreement, extreme hostility between Pakistan and Bangladesh soothed to a considerable extent and a favorable environment for the solution of unresolved issues was created, Bangladesh government's decision to grant amnesty to about 40,000 prisoners charged with collaboration with Pakistan during the 1971 war was welcomed in Pakistan. Pakistani sources also expressed hope that Bangladesh would also drop her demand for trials of 195 POWs. (Samina, 1974) On Pakistan's request International Court of Justice removed the case from its list.

3. Recognition of Bangladesh by Pakistan

The recognition of Bangladesh was a highly explosive issue in Pakistan. Most of Pakistani people and a number of political parties like Jamat-i-Islami and Jamiat-Ulema-Islam were against it. Zulfikar Ali Bhutto's rhetorical attitude towards the recognition of Bangladesh changed after the Simla Summit. This lends credence to the saying of some Indian official sources about an understanding between Prime Minister Indira Gandhi and Z.A.Bhutto at Simla that India would persuade Bangladesh to reduce the number of military men indicted in war crime trials to a minimum, whilst President Z.A.Bhutto would ask the National Assembly to debate the recognition of Bangladesh. (Keesing's Contemporary Archives, 1973)

In July 1973, the government of Pakistan referred the question of recognition of Bangladesh to the Supreme Court of Pakistan for its advice on the legal aspect of according recognition. (Samina, 1974) The Court unanimously gave the decision that there was no legal bar to the National Assembly adopting a resolution authorizing the government to accord such recognition at an appropriate time. (Dawn, July 7, 1973) The National Assembly on July 10, 1973 gave President Z.A.Bhutto authority to recognize Bangladesh when it was in the best interest of Pakistan to do so. (The Pakistan Times, July 11, 1973)

After getting the consent of the National Assembly, President Z.A.Bhutto said that recognition of Bangladesh was not yet appropriate because of the detention of Pakistani POWs in India and Bangladesh government's insistence on the trials of selected POWs. (Facts on file, 1973)

The convening of Islamic Summit in Lahore in February 1974 proved to be auspicious for the solution of these controversial issues between Pakistan and Bangladesh and it provided a base for further rapprochement. Bangladesh was formally invited on February 5, to participate in the Islamic Summit at Lahore when Mr. Hasan-ul-Tohmay, the Secretary General of Islamic Secretariat, visited Dhaka. He described the invitation as "the first step towards recognition of Bangladesh by Pakistan". (Keesing's contemporary Archives, 1974) Sheikh Mujib-ur-Rahman, Prime Minister of Bangladesh however, refused to participate until the formal recognition of Bangladesh was extended by Pakistan.

The stalemate continued until February 20, because of the inflexible attitude of Sheikh Mujib-ur-Rehman on the trials of 195 Pakistani POWs. Just two days before the start of Islamic Summit, Foreign Ministers of Islamic countries in Lahore adopted a proposal introduced by Somalia that they should send a special mission to Dhaka as a last minute attempt to persuade Bangladesh to attend the Summit. The mission consisted of Mr. Hasan-ul-Tohmay and representatives of Kuwait, Somalia, Lebanon, Algeria and Senegal. (Facts on File, 1974) The said mission succeeded in persuading Sheikh Mujib-ur-Rehman to drop the trials of POWs for the recognition of Bangladesh by Pakistan. (Pakistan Horizon, 1974) Pakistan recognized Bangladesh on February 22, 1974 and the same evening Mujib Ur Rehman flew to Lahore to attend the Islamic Summit. (Farzana, 1988)

After the recognition by Pakistan, Sheikh Mujib-ur-Rehman's attitude towards the trials of POWs changed. He reversed his earlier stand and began to minimize the importance of the trials asserting that Bengalis were great enough to forgive those who had treated them inhumanly. Later, a tripartite conference of the Indian External Affairs Minister Swarn Singh, Bangladesh's Foreign Minister Dr. Kamal Hussain and Pakistan's Minister of State for Defense and Foreign Affairs Aziz Ahmad was held in New Delhi on April 5 1974. The agreement was signed on April 9, 1974. Bangladesh agreed to abandon the demand of the trials of 195 Pakistani POWs. The Pakistan government agreed to accept a limited number of the Biharis who fulfilled the criteria set by the Pakistan Government. (Keesing's contemporary Archives, 1974) Moreover, the Pakistan government condemned and deeply regretted any crimes that may have been committed by the 195 POWs. The recognition of Bangladesh by Pakistan and the dropping of trials of 195 POWs by Bangladesh set the ground for the restoration of normal relations with Bangladesh.

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