

**International Crimes Tribunal-1 (ICT-1)
Old High Court Building, Dhaka, Bangladesh.**

ICT-BD Case No. 06 OF 2011

(Charges:- Crimes relating to planning, conspiracy, incitement, complicity and superior command responsibility as specified in sections 3(2), 4(1) and 4(2) of the International Crimes (Tribunal) Act,1973 and punishable under section 20(2) of the same Act.

The Chief Prosecutor

Versus

Professor Ghulam Azam

Present:

Mr. Justice A.T.M. Fazle Kabir, Chairman

Mr. Justice Jahangir Hossain, Member

Mr. Justice Anwarul Haque, Member

Date of delivery of Judgment 15th July, 2013.

Prosecutors:-

Mr. Golam Arif Tipu, Chief Prosecutor with

Mr. Syed Rezaur Rahman

Mr. Syed Haider Ali

Mr. Zead-Al- Malum

Mr. Rana Das Gupta

Mr. Hrishikesh Shaha

Mr. Mohammad Ali

Mr. Mukhlesur Rahman Badal

Mr. Sultan Mahmud

Mr. A.K.M. Saiful Islam

Ms. Tureen Afroz

Ms. Nurjahan Begum Mukta

Ms. Rezia Sultana Begum

Mr. Taposh Kanti Boul.

Defence Counsels:-

Mr. Md. Abdur Razzak, Senior Counsel with

Mr. Mizanul Islam

Mr. Tajul Islam

Mr. Munshi Ahsan Kabir

Mr. Tanvir Ahmed Al-Amin

Mr. Imran Siddique

Mr. Asaduddin

Judgment

(Under section 20(1) of the Act XIX of 1973)

I. Introduction:-

1. This Tribunal (ICT-1) has been lawfully constituted as a domestic judicial forum for the purpose of holding trials relating to internationally recognised crimes, such as, offences of planning, incitement, conspiracy and complicity committed during the War of Liberation in 1971. Bangladesh Parliament enacted the International Crimes (Tribunals) Act in 1973 (hereinafter referred to as “the Act”) to provide for the detention, prosecution and punishment of persons for genocide, crimes against humanity, war crimes and other crimes under International law, committed in the territory of Bangladesh during the War of Liberation, particularly between 25 March to 16 December, 1971.

2. On behalf of both the parties the learned prosecutors and defence counsels raised some legal issues and factual aspects relating to superior responsibility of the accused, historical background of War of Liberation, characterization of international crimes, commencement of proceedings, charges framed, and the laws applicable to the case for the purpose of determining criminal liability of the accused.

II. Commencement of proceedings:-

3. On 12.12.2011, the learned Chief Prosecutor filed formal charge along with documents in the Tribunal as required under section 9(1) of the Act against accused Professor Ghulam Azam. On perusal of the formal charge, it was found not properly arranged and classified and thus it was returned to the learned Chief Prosecutor on 26.12.2011 with a direction to resubmit the same afresh in a systematic form by 05.01.2012. The prosecution as per direction of the Tribunal resubmitted formal charge in time. On perusal of the formal charge along with the documents submitted by the prosecution, cognizance of offences specified in sections 3(2), 4(1) and 4(2) of the Act was taken on 09.01.2012 against Professor Ghulam Azam. On that date, Mr. Abdur Razzak, the learned Senior counsel appearing on behalf of accused Professor Ghulam Azam submitted for not to issue any process against the accused, rather he took responsibility to produce the accused before the Tribunal on the date fixed. As per direction of the Tribunal, accused Professor Ghulam Azam was produced before this Tribunal on 11.01.2012 with an application seeking bail for him. The prayer for bail was rejected

and the accused was taken to custody and sent him to Dhaka Central Jail with a direction to provide necessary medical treatment considering his old-age complications. Since then, the accused has been staying in prison cell of Bangabandhu Sheikh Mujib Medical University (BSMMU) Hospital, the highest grade hospital available in Bangladesh. On the prayer of the accused, two defence lawyers were permitted to consult with him inside the central jail on 04.02.2012, 11.02.2012, 18.02.2012 and 21.04.2012 as privileged communications for preparing defence case. On the prayer of the accused, the Jail Authority was also directed to allow home cooked food to the accused in the jail hospital. After hearing the learned lawyers of both the parties and on perusal of the formal charge and documents, this Tribunal framed charges against accused Professor Ghulam Azam on 13.05.2012 under sections 3(2), 3(2)(a), 4(1) and 4(2) of the Act which are punishable under section 20(2) of the Act. The charges framed were read over and explained to the accused on dock to which he pleaded not guilty and claimed to have fair justice and thus the trial started.

III. Historical Background:-

4. In 1971, during the War of Liberation of Bangladesh, atrocities in a large scale, crimes against humanity, war crimes and genocide were committed by Pakistani forces, auxiliary forces and their associates which resulted the birth of Bangladesh as an independent country. It was estimated that during nine month long war, about three million people were killed,

nearly a quarter million women were raped, and over 10 million people were deported to India causing brutal persecution upon them.

5. In August, 1947, the partition of British India based on two-nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The two-nation theory was propositioned on the basis that India will be for Hindus while Pakistan will be a state for the Muslims. This theory culminated into the creation of Pakistan which was comprised of two geographically and culturally separate areas to the east and the west of India. The western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

6. Ever since the creation of Pakistan, the Pakistan Government adopted discriminatory policies backed by its bureaucracy and Army to rule over the people of East Pakistan that caused great disparity in every field including, education, welfare, health, armed services, civil bureaucracy, economic and social developments. One of the first patently discriminatory and undemocratic policies of the Government of Pakistan was manifested when in 1952 the Pakistani authorities attempted to impose Urdu as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognised as a state language thus marking the beginning of language movement that eventually turned to the movement for greater autonomy and self-determination and eventually independence.

Numerous Bangalees sacrificed their lives to realise Bangla as a state language. Since then, the people of East Pakistan started thinking of their own emancipation and started a political movement for getting provincial autonomy for East Pakistan.

7. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman won 167 seats out of 300 seats of the National Assembly of Pakistan and thus became the majority party of Pakistan. Of the 300 seats, 169 were allocated to East Pakistan of which Awami League won 167 demonstrating an absolute majority in the Parliament. Despite this overwhelming majority, Pakistan government did not hand over power to the leader of the majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7th March, 1971 called on the people of Bangladesh to strive for independence if people's verdict is not respected and power is not handed over to the leader of the majority party. On 26th March, following the onslaught of "Operation Search Light" by the Pakistani military on 25th March, Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

8. With this declaration of independence, the war to liberate Bangladesh from the occupation of Pakistan military began that ended on 16th of December, 1971 with the surrender of all Pakistani military personnel present in Bangladesh before the Joint Indian and Bangladeshi forces in

Dhaka. In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/or collaborated with the Pakistan military to actively oppose the creation of independent Bangladesh. Except those who opposed, Hindu communities like others in Bangladesh, supported the Liberation War which in fact drew particular wrath of the Pakistani military and their local collaborators, who perceived them as pro-Indian and made them targets of attack, persecution, extermination and deportation as members belonging to a religious group.

9. As a result, 3 million (thirty lakh) people were killed, more than 2(two) lakh women raped, about 10 million (one crore) people deported to India as refugees and million others were internally displaced. It also saw unprecedented destruction of properties all over Bangladesh.

10. To prosecute their policy of occupation and repression, and in order to crush the aspiration of the freedom-loving people of an independent Bangladesh, the Pakistan government and the military set up number of auxiliary forces such as the Razakars, the Al-Badr, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military in identifying and eliminating - all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian

population of Bangladesh. The truth about the nature and extent of the atrocities and crimes perpetrated during the period by the Pakistani military and their allies became known to the wider world through independent reports by the foreign journalists and dispatches sent home by the diplomatic community in Dhaka.

11. The road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

12. Pursuant to Bangabandhu's Declaration of Independence, a provisional government-in-exile was formed on April 17, 1971 in Mujibnagar with Bangabandhu as the President of Bangladesh. In his absence, Syed Nazrul Islam was the Acting President and Tajuddin Ahmed was the Prime Minister who coordinated the operations to expel the occupying Pakistani forces and to liberate Bangladesh.

13. In order to bring to justice the perpetrators of the crimes committed in 1971, the International Crimes (Tribunals) Act, 1973 was promulgated. However, no Tribunal was set up and no trial took place under the Act until the government established this International Crimes Tribunal on 25th of March 2010.

IV. Brief account of the accused:-

14. Accused Professor Ghulam Azam was born on 07.11.1922 at village birgaon, police station – Nabinagar, District-Brahmanbaria. In his early days, he studied in Madrassa and later obtained Master's degree in Political Science from the University of Dhaka in 1950. He served as a Professor in Rangpur Carmichael College from 1950 to 1955. He joined Jamaat-e-Islami in 1954 and was secretary of that party from 1957 to 1960 and held the post of 'Ameer' (Head) of the said party from 1969 to 1971.

15. At the time of the War of Liberation in 1971 under the leadership of the accused, all the subordinate leaders and workers of Jammat-e-Islami and its student wing Islami Chhatra Sangha actively opposed the Liberation movement. At that time Jamaat-e-Islami itself acted as an auxiliary force under the Pakistan Armed forces. The accused as the 'Ameer' of East Pakistan Jamaat-e-Islami, not only controlled the organizational frame work of Jamaat-e-Islami and Islami Chhatra Sangha but also played the pivotal role in forming santi Committee, Razakars, Al-Badr, Al-shams, etc., to collaborate Pakistani occupation forces while Bangalee people were fighting for liberation, at that time the accused participated in a sham election and was elected uncontested as a Member of National Assembly from District Tangail in 1971. While he realized that Bangladesh was going to be liberated soon, then he left for Pakistan on 22nd November, 1971. After Liberation of Bangladesh on 16 December 1971, he formed a Committee named "Purbo Pakistan Punoruddhar Committee" (East Pakistan Restoration Committee) as a part of his campaign in the 1st part of 1972. As a leader of the committee

upto March 1973, he tried to create public opinion against Bangladesh in the Islamic Countries of the Middle East and campaigned internationally against recognising Bangladesh as an independent and Sovereign state. He left Pakistan for London in the middle of 1973 and set up the head office of the “Purbo Pakistan Punoruddhar Committee” there. He also published a weekly newspaper named “Sonar Bangla” in London which propagated against independent Bangladesh. His Citizenship was cancelled by the Bangladesh Government on 18 April, 1973. He visited Saudi Arabia in March, 1975 and met king Faisal where he also canvassed against Bangladesh. He told the king that Hindus had captured East Pakistan, Holy Qurans had been burnt, mosques had been destroyed and converted into Mandirs (prayer place) and many Muslims had been killed. On the basis of such propaganda, he collected funds from Middle East in the name of re-establishing mosques and Madrassas. Following the assassination of the Father of the Nation Bangabandhu Sheikh Mujibur Rahman, he came back to Bangladesh on 11 August, 1978 with a Pakistani passport and since then he has been residing in this country. He got back his citizenship through court and resumed the office of ‘Ameer’ of Jamaat-e-Islami and he continued till Motiur Rahman Nizami was elected Ameer of Jamaat-e-Islami.

V. Jurisdiction of the Tribunal:-

16. The International Crimes (Tribunals) Act, 1973 has empowered the Tribunal to prosecute and punish not only the armed forces but also the perpetrators who belonged to auxiliary forces or who committed the offence

as an individual or a group of individuals and nowhere in the Act it has been said that without prosecuting the armed forces (Pakistani) an individual or group of individuals having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather it is manifested in section 3(1) that even any person if he is prima facie found criminally responsible for the offences specified in section 3(2) of the Act can be brought to justice. Moreover, the provisions of section 4(1) and 4(2) are the guiding principles for fixing up liability of a person or in the capacity of superior command responsibility, if any offences committed specified in section 3(2) of the Act.

Thus, the Tribunals set up under the Act are absolutely domestic Tribunals but empowered to try internationally recognized crimes committed in violation of customary international law.

VI. Consistency of ICT Act, 1973 with other statutes on international Crimes:-

17. Section 3(2)(a) of International Crimes (Tribunals) Act, 1973 (as amended in 2009) defines the crimes against Humanity in the following manner:

“Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political,

racial, ethnic or religions grounds, whether or not in violation of the domestic law of the country where perpetrated;”

18. Many have expressed their concern by the degree to which the above definition of ‘Crimes against Humanity’ under the Act differs from international standards. It may be stated that ‘international standard’ itself is a fluid concept, it changes with time and requirement through a mechanism of progressive development of law. Therefore, one can look at the concept of ‘standard’ from entirely a technical perspective; whereas, others can see it as a matter of inherent spirit.

19. Looking at the contemporary standards of definition of ‘Crimes against Humanity’ in various statutes on international crimes, the first observation can be made is that there is no ‘consistency’ among definitions. The Statute of the International Criminal Tribunal for the Former Yugoslavia, 1993 (ICTY Statute), the Statute of the International Criminal Tribunal for Rwanda, 1994 (ICTR Statute), the Rome Statute of the International Criminal Court, 1998 (Rome Statute) or the Statute of the Special Court for Sierra Leone, 2002 (Sierra Leon Statute) although share common spirit, do differ in legal technical nitty-gritty.

VII. The Rome Statute: Article-7

Crimes against humanity

20. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;

- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

21. The ICTR Article 3: Crimes against Humanity

The international Criminal Tribunal for Rwanda shall have the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

- (a) Murder
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation;
- (e) Imprisonment;
- (f) Torture;
- (g) Rape;
- (h) Persecutions on political, racial and religious grounds;
- (i) Other inhumane acts.

22. THE ICTY. ARTICLE 5

The International Criminal Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed

conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture
- (g) rape
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.

23. ICT BD

3. (1) A Tribunal shall have the power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act, any of the crimes mentioned in sub-section (2).

- (a) Crimes against Humanity: namely, murder extermination, enslavement, deportation, imprisonment, abduction, confinement, torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated;.

Elements differ in the different statutes.

24. The ICTY requires the crime to be taken place in an armed conflict, be it international or national. The statute does not require the crime to be committed as a part of widespread or systematic attack on the civilian population, nor it requires that the crime to be perpetrated on discriminatory grounds.

25. Case laws:

In February 1995, the Prosecutor of the ICTY indicted Dusko Tadic for war crimes and crimes against humanity. Tadic challenged the ICTY's jurisdiction over crimes against Humanity, Tadic argued that the definition of crimes against humanity did not conform to contemporary International law, which required such crimes to be committed in an international armed conflict. In its decision on the Defense Motion for Interlocutory Appeal on Jurisdiction ("Tadic Decision on Jurisdiction"), the Appeals Chamber of the ICTY rejected this argument by affirming that crimes against humanity can even be committed in peacetime: the Trial Chamber of the ICTY ("ICTY Trial Chamber") reaffirmed that although Article 5 of the ICTY statute required a nexus with armed conflict, such a requirement is unnecessary under international law. The ICTY Trial Chamber also noted that Article 5 required crimes against humanity to be committed under a second set of circumstances, that is, the acts must be "directed against any civilian population. The ICTY Trial Chamber interpreted the term "ANY CIVILIAN POPULATION" "as having three elements. First, the civilian population must

be “specifically identified as a group by the perpetrators of these acts. Although the ICTY Trial Chamber does not articulate the bases for such as identification, this interpretation suggests that the ICTY Trial Chamber accepted the need for a discriminatory motive. The other two components raised by the ICTY Trial Chamber are that the crimes must be “organized and systematic” and “of a certain scale and gravity”. The ICTY Trial Chamber’s approach in reading these elements into the meaning of “any civilian population” is a novel one. The ICTY Trial Chamber also appeared to require both elements to be present, rather than accepting them as alternative conditions.

26. However, customary international humanitarian law requires that the attack to be either systematic or widespread. Rome statute and the ICTR also require these two elements to be alternatively present.

27. Next, the ICTY Trial Chamber noted that a crime against humanity must be widespread or demonstrate a systematic character. However, as long as there is a link with the widespread or systematic attack against a civilian population, a single act could qualify as a crime against humanity. As such, an individual committing a crime against a single victim or a limited number of victims might be recognized as guilty of a crime against humanity if his acts were part of the specified context identified above.

28. So it appears that though the ICTY statute requires the crime to be taken place in an armed conflict, the tribunal holds that armed conflict is not necessary. And though the statute didn’t require the crime to be taken place

as a part of widespread or systematic attack, the tribunal holds that the term any civilian population instead of any civilian people indicates that the crime to be taken place as a part of widespread or systematic attack on civilian population. Court's language the "population" element is intended to imply crimes of a collective nature and thus exclude single or isolated acts. Thus the emphasis is not on the individual victim but rather on the collective, the individual being victimized not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean, as elaborated below, that the acts must occur on a widespread or systematic basis that there must be some form of a governmental, organizational or group policy to commit these acts and that the perpetrator must know of the context within which his actions are taken, as well as the requirement that the actions be taken on discriminatory grounds.

29. The above paragraph and the structure of the opinion made it clear that the ICTY Trial Chamber viewed the term "population" as having three essential components: "widespread or systematic" commission of the acts that constitute crimes against humanity; a discriminatory motive for those acts; and a governmental, organizational, or group policy to commit those acts. Furthermore, the ICTY Trial Chamber held that if a population was "predominantly" civilian, then the presence of a few non-civilians would not defeat this characterization. The Tadic Judgment did not elaborate on how to construe "Widespread" or "Systematic." But customary IHL mandates that

either systematic or widespread is enough to qualify a crime to be a crime against humanity.

30. Law in the international crimes tribunal Bangladesh:

(1) existence of armed conflict is not necessary though it is admitted that there was an armed conflict in 1971.

(2) There is no requirement of discriminatory element except in the case of persecution. The plethora of international case law suggests that “ law in this area is mixed”. But as our statute clearly mentioned the discriminatory element for the act of persecution, the proper law should be to impose the existence of discriminatory elements only for persecution and not for the other acts mentioned in section 3(2)(a).

(3) Widespread or systematic. Our law doesn't require the attack to be part of a widespread or systematic attack. But as discussed in Tadic case by ICTY the word civilian population indicates that the attack to be a part of widespread or systematic attack. It is now well-settled that the attack in Bangladesh in 1971 was widespread and systematic in nature. Tadic case elaborately discussed what constitutes an attack widespread and systematic.

(4) The criterion of “widespread” describes a quantitative element. The widespread nature of the attack can arise from the number of victims or its extension over a broad geographic area. The criterion of a “Systematic” attack is qualitative in nature. It refers to the organized

nature of the committed acts of violence and thus serves to exclude isolated acts from the notion of crimes against humanity. Earlier case law of the ad hoc Tribunals required that the individual act follow a predetermined plan or policy. The Appeals Chamber of the Yugoslavia Tribunal has now distanced itself from such a requirement. Although attacks on a civilian population will typically follow some form of predetermined plan, this does not make the existence of a plan or policy an element of the crime. Under customary international law, crimes against humanity do not call for a “policy element”. However, Article 7(2) (a) of the ICC Statute requires that the attack on a civilian population be carried out “pursuant to or in furtherance of State or organizational policy to commit such attack.”

31. Summary:

The International Crimes Tribunals, Act, 1973, Bangladesh defines crimes against humanity in the following manner:

“3.(1) A Tribunal shall have the power to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, irrespective of his nationality, who commits or has committed, in the territory of Bangladesh, whether before or after the commencement of this Act, any of the crimes mentioned in sub-section(2).

(a) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, imprisonment, abduction, confinement , torture, rape or other inhumane acts committed against any civilian population or persecutions on political, racial, ethnic or religious grounds, whether or not in violation of the domestic law of the country where perpetrated;”

32. To our understanding the proper construction of this section should be-

(1) Crime against humanity can be committed even in peace time; existence of armed conflict is , by definition, not mandatory. Neither in the preamble nor in the jurisdiction sections of the Act was it mentioned that crime against humanity requires the existence of an armed conflict. Indiscriminate attack on civilian population based on their political, racial, ethnic or religious identity can be termed as crime against humanity even if it takes place after 1971. For example, minority oppression in 2001 was a pure example of crime against humanity. However, no one denies the fact that there was an armed conflict in 1971.

(2) Though the statute of the tribunal doesn't explicitly requires the attack to be a part of systematic or widespread attack against the civilians, the very term “ any civilian population” instead of civilian people indicates the plurality of the attack and thus implies that the attack to be part of a systematic or widespread attack against civilian (Tadic case for references). However the term ‘ systematic and widespread’ is a disjunctive, rather than

cumulative requirement. The Rome statute and the ICTR statute provide that the attack must be part of a systematic or widespread attack against civilians. That means the existence of either systematic or widespread attack is enough to qualify crime against humanity.

(3) “Widespread” refers to the large-scale nature of the attack which is primarily reflected in the number of victims. “Systematic” refers to the organized nature of the acts of violence and the “non-accidental repetition of similar criminal conduct on a regular basis.” Widespread is quantitative while systematic is qualitative.

(4) The “population” element is intended to imply crimes of a collective nature and thus exclude single or isolated acts. Thus, the emphasis is not on the individual victim but rather on the collective, the individual being victimized not because of his individual attributes but rather because of his membership of a targeted civilian population. This has been interpreted to mean that the acts must occur on a large scale basis (widespread) or, that there must be some form of a governmental, organizational or group policy to commit these acts (systematic, targeted) and that the perpetrator must know of the context within which his actions are taken (knowledge and intent), and finally that attack must be committed on discriminatory grounds in case of persecution.

(5) The attack must be directed against any civilian population. The term “civilian population” must be interpreted broadly and refers to a population that is predominantly civilian in nature. A population may qualify as

“civilian” even if non-civilians are among it, as long as it is predominantly civilian. The presence within a population of members of armed resistance groups, or former combatants, who have laid down their arms, does not as such alter its civilian nature.

After making comparative analysis of the definitions provided for crimes against humanity, crimes against peace, genocide and war crimes under section 3(2)(a), (b) (c)(d) of the International Crimes (Tribunals) Act, 1973 those are found to be fairly consistent with the manner in which these terms are defined under recent statutes for the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court (ICC) Rome Statute, and the statute of the Special Court for Sierra Leone (SCSL), it can be safely said that ICT Act of 1973, legislation with its amendments upto 2013 provides a system which broadly and fairly compatible with current international standards.

VIII. Procedural History:

33. On the basis of a complaint, registered at serial no. 5 of the Complaint Register dated 01.08.2010, the Investigation Agency established under the Act completed investigation of the case and the investigation officer submitted report to the learned Chief Prosecutor. On perusal of the investigation report, statement of witnesses and the documents collected during investigation, the prosecutors prepared the Formal Charge and

submitted the same on 12.12.2011 in the office of the Tribunal. Upon receipt of the Formal charge, the Tribunal fixed 26.12.2011 for taking cognizance of offence. On perusal of the Formal charge, it was found that the proposed charges were not classified and not in form, then for the ends of justice, it was returned to the prosecution for resubmitting the same in a systemic form after doing the needful and it was resubmitted on 05.01.2012 before this Tribunal. Upon perusal of the Formal charge and the documents annexed therewith, this Tribunal took cognizance of offence on 09.01.2012 against accused Professor Ghulam Azam for the offences specified under section 3(2) and 3(2)(a) read with section 4(1) and 4(2) of the Act. Accused was directed to appear before the Tribunal on 11.01.2012, on that date the accused was sent to custody rejecting his prayer for bail. Since then the accused has been staying in the Prisoncell of Bangabandhu Sheikh Mujib Medical University (BSMMU) Hospital, Dhaka by the order of the Tribunal in order to provide him the best treatment available in Bangladesh, and upon a prayer of the accused he was supplied home cooked food subject to some ordinary conditions. The accused filed several bail applications before the Tribunal and those applications were disposed of in accordance with law. Sometimes the accused could not be produced before the Tribunal due to his long ailment, in that event, trial continued in presence of his counsel as per provision of Rule-43A of the Rules of Procedure, 2010 (hereinafter referred to as "The ROP"). On several occasions, the engaged counsels of the accused were given permission to meet the accused inside the prison cell as

privileged communications. On the prayer of the accused, this Tribunal also directed jail authority to supply some religious books, namely (1) the Holy Quran translated in Bangla, (2) Biography of Prophet (PLIBH) (3) Hadish Collection and (4) Book of DUA to the accused in Prison cell for reading the same.

Special feature of laws and rules applicable to trial procedure:-

34. The proceedings before this Tribunal shall be guided by the International Crimes (Tribunals) Act, 1973 and the Rules of Procedure, 2010 (ROP) formulated by the Tribunal under the powers given in section 22 of the Act. Section 23 of the Act prohibits the applicability of the Code of Criminal procedure, 1898 and the Evidence Act, 1872. The Tribunal is authorized to take into its judicial notice of facts of common knowledge and some official documents which are not needed to be proved by adducing evidence (section 19(3) and (4) of the Act). The Tribunal may admit any evidence without observing formality, such as reports, photographs, newspapers, books, films, tape recordings and other materials which appear to have probative value (section -19(1) of the Act). The Tribunal shall have discretion to consider hearsay evidence too by weighing its probative value (Rule-56(2)). The defence shall have right to cross-examine prosecution witnesses on his credibility and to take contradiction of the evidence given by him (Rule -53(ii)). The accused deserves right to conduct his own case or

to have assistance of his counsel (section-17 of the Act). The Tribunal may release an accused on bail subject to conditions as imposed by it (Rule-34(3)). The Tribunal may, as and when necessary, direct the concerned authorities of the Government to ensure protection, privacy, and well-being of the witnesses and victims (Rule-58-A).

IX. Witnesses adduced by the Parties:-

35. The prosecution submitted a list of 88 witnesses along with Formal Charge while the defence submitted a voluminous list of 2939 witnesses for obvious reasons which need not be expressly disclosed. At the time of trial, the prosecution examined only 16 witnesses of whom 7 were seizure list witnesses, 8 were witnesses of occurrence and one was investigation officer. On the other hand, this Tribunal by exercising power under Rule – 51A(2) of the ROP, allowed the defence to examine maximum number of 12 witnesses out of listed 2939 witnesses.

36. The defence examined only one witness who is one of the sons of the accused. The defence took ten working days to complete the examination in chief of DW.1, while the prosecution took five working days to complete cross-examination of DW.1. The defence failed to produce further witnesses in two consecutive dates and examination of further D.W. was closed for want of defence witness.

37. It may be mentioned here that International Criminal Tribunal of Yougoslavia (ICTY) also enjoys the same right to fix up number of defence witness as per provisions of its Rules of Procedure.

The way of adjudicating charges found against the accused.

38. We perused the formal charge, documents and the statement of witnesses upon which the prosecution intended to rely upon and carefully considered the submissions of the learned lawyers of both the parties on charge matter. Having considered all the documents, we found sufficient ground to presume that the accused has committed offences described under sections- 3(2), 3(2)(a), 4(1) and 4(2) of the Act and accordingly as many as five broad charges including 61 incidents were framed against accused Professor Ghulam Azam on 13.05.2012 which were read over and explained to him to which he pleaded not guilty and claimed to have fair justice.

39. Defence case

The defence case, as it appears from the submissions and documents filed by the defence, is that Ghulam Azam was born in 1922 at Laxmibazar, Dhaka. In his early days, he studied in Madrassa and later obtained Master's degree in political science from the University of Dhaka in 1950. Being one of the student leaders, he actively participated in the Language Movement during his student life. He served as a professor of political science in

Rangpur Carmichael College from 1950 to 1955. He joined the Jamaat-e-Islami in 1954 and ultimately he was elected as Ameer (Head) of East Pakistan Jamaat-e-Islami in 1969. He was the Ameer of East Pakistan Jamaat-e-Islami and one of the members of central Peace Committee during the War of Liberation in 1971, but he had no command or control over the alleged peace committees, Razakars, Al-shams and Al-Mujaheeds and he never directed them to commit atrocities in 1971. Therefore, he is not responsible for the activities of Pakistan forces and their collaborators during the War of Liberation of Bangladesh.

All the accused's actions, statements, speeches and meetings with the Pakistani rulers during 1971 were made only to protect solidarity of Pakistan and to implement its ideology among the people. He did nothing against the War of Liberation of Bangladesh. He is innocent.

40. The incidents took place about 41/42 years back in 1971 and as such memory of live witnesses may have been faded as a result discrepancy may have occurred in their versions made in the court. The case before us depends mostly on documentary evidence which claims that the accused had superior responsibility by whose order or direction his subordinates committed atrocities all over the country or he did not take step to prevent such crimes. Despite the undisputed atrocities of the crimes committed during the War of Liberation in 1971 by the Pakistani forces in collaboration with local perpetrators guided by Civilian Leaders like accused Professor Ghulam Azam, we require to examine the facts constituting offences on the

basis of evidence on record, keeping in mind that the accused is presumed to be innocent.

41. It should be borne in mind that the alleged incidents took place about 42 years back in 1971 and as such memory of live witnesses may have been faded and some documentary evidence may have been destroyed due to long passage of time. Therefore, in case like one in our hand involving adjudication of charges for the offences of crime against humanity, we are to depend upon (i) facts of common knowledge (ii) documentary evidence (iii) reporting of newspaper, books, etc. having probative value (iv) relevancy of circumstantial evidence (v) evaluation of oral evidence (vi) determination of political and religious status of the accused and whether he had hierarchy over all organs of Jamaat-e-Islami as civilian superior responsibility (vii) the jurisprudence evolved on the issues in the foreign Tribunals dealing with international crimes and (viii) whether the accused had any link with the top executives of the government of Pakistan and what was the status and role of the accused in the commission of offences charged.

42. The accused has been charged with the offences of planning, conspiracy, incitement, complicity and murder, etc. specified under section 3(2) of the Act which were committed in violation of customary international law and thus, this Tribunal shall not be precluded from borrowing guidance from the modern jurisprudence as to offences mentioned above.

X. Backdrop and context of the War of Liberation

43. The backdrop and context of the commission of untold barbaric atrocities in 1971, during the War of Liberation of Bangladesh is the outcome of oppression and disparity between Bangalee nation and the Pakistani Government that pushed the Bangalee nation for self determination and eventually for freedom and emancipation. The War of Liberation started following the operation searchlight in the night following 25 March, 1971 and lasted till 16 December 1971 when Pakistani occupation forces surrendered. The Pakistani armed forces in order to implement their organizational policy and plan they created some paralleled forces namely, Razakar Bahini, Al-Badr Bahini, Al-Shams, and Peace Committee as auxiliary forces which provided supports, assistance, and substantially contributed and also physically participated in the horrendous atrocities in the territory of Bangladesh. It is the fact of common knowledge that thousands of incidents happened throughout the country as a part of organised and planned attack. Target was pro-liberation Bangalee civilian population, Hindu Community, pro-Liberation political groups, freedom-fighters and finally the intellectuals of the country.

44. The charges against the accused person arose for the reasons of holding superior position and responsibility as to liability for crimes and also a particular event of murder constituting the crimes against humanity during the War of Liberation in 1971.

45. In determining culpability of the accused for the commission of offences for which he has been charged, we are to adjudicate the fundamental issues such as:- (I) whether the accused as a civilian had superior responsibility during the War of Liberation of Bangladesh, (II) whether the accused had link and complicity with the Executives of the Pakistani Government and thereby exercising superior power and position substantially contributed and facilitated the offences committed during Liberation War, and (III) whether the accused actively contributed in killing with one Siru Mia and 37 others which falls within the purview of crimes against humanity. We always remind that the burden of proving charge lies upon the prosecution and mere failure to prove defence plea shall not render the accused guilty.

Before going into discussion of the evidence on record, we consider if convenient to address legal issues regarding charges framed which were agitated at the time of summing up the arguments by the learned lawyers of both the parties.

XI. Summing up the prosecution case by the prosecutors.

46. Mr. Ziad-Al-Malum with Mr. Sultan Mahmud, the learned prosecutors submit that only five broad charges having total 61 counts of conspiracy, planning, incitement, complicity and murder and torture relating to crimes against humanity, genocide and other crimes specified in section

3(2) of the Act were framed against accused Professor Ghulam Azam who by exercising superior responsibility committed aforesaid crimes in all over Bangladesh during the War of Liberation in 1971. It is contended that admittedly the accused was the Ameer of East Pakistan Jammāt-e-Islami under whose direct control and supervision the subordinate organs of Jamaat-e-Islami, namely, Razakar Bahini, Al-badr, Al-shams and peace committee acted as auxiliary forces in committing atrocities all over Bangladesh in 1971 and he did not take measure to prevent the commission of such crimes and thereby the accused is liable for the charge of superior responsibility under section 4(2) of the Act. It is further contended that prosecution by oral and documentary evidence have successfully proved superior status of the accused who had actual and constructive control over the subordinate organs of Jamaat-e-Islami but he did not prevent those regimental organizations from committing crimes as specified in section 3(2) of the Act. Lastly, the learned prosecutors have contended that it has been well proved by evidence that the accused being a defacto civil administrator conspired with the Pakistani occupation leaders several times and in a planned way made incited speeches provoking his subordinates to commit crimes against humanity and genocide with intent to destroy Bangalee nationals in whole or in part by killing members of that group specified under section 3(2) of the Act and as such the accused is principally liable for the crimes charged with.

XII. Summing up of defence case by the counsels.

47. Mr. Abdur Razzaq, the learned senior counsel with Mr. Mizanul Islam and Mr. Imran Siddique, in course of summing up the defence case, have taken pain in raising some pertinent legal issues with reference to some decisions passed by international Tribunals. It is argued that the prosecution has failed to produce any document to show that any agreement for conspiracy and planning was reached between the accused person and any other person to commit crimes under section 3(2) of the Act and also failed to prove accused's genocidal intent to commit the same. It is argued that the statement and speeches of the accused do not amount to incitement to commit genocide under customary international laws. Moreover, accused did not say anything against any protected group under Genocide Convention, 1948. It is contended that to prove offences of crime against humanity and genocide, nexus requirement is necessary but it is hopelessly absent in this case. It is argued that the charges framed against the accused are vague and defective and no notice of crimes was given to the accused as required in section 16 (1)(c) of the Act,. It is contended that unexplained delay of 40 years to bring the prosecution has made the case highly doubtful. Lastly, it is contended that accused Professor Ghulam Azam was a political leader who had no civil superior responsibility in the administration of Pakistan and the prosecution could not establish relationship of the accused with the alleged perpetrators as his subordinates and as such he cannot be held liable under section 4(2) of the Act.

XIII. Reply of prosecution to the argument made by the defence.

48. Mr. Syed Haider Ali with Ms. Tureen Afroz, the learned prosecutors replied to those legal points raised by the defence. In replying to delay in prosecution, Mr. Syed Haider Ali submits that there is no limitation in bringing criminal prosecution particularly when it relates to the international crimes committed in violation of customary international laws. Moreover, the International Crimes (Tribunals) Act was enacted in 1973, but after assassination of Bangabandhu Sheikh Mujibur Rahman and his family members on 15 August 1975, the process was halted and even Collaborators Order, 1972 was repealed on 31.12.1975. There was no favourable situation and strong political will to prosecute the offences under the Act, 1973. The present government under a strong political will established the Tribunal on 25 March 2010 for the first time after 37 years of the Act enacted. This history of common knowledge is self-explanatory as to long delayed prosecution and as such it cannot be said that delay is unexplained. It is contended that copy of Formal Charge was submitted to the accused long before commencement of trial in which the superior responsibility of the accused has been manifestly narrated along with the relationship with his subordinates and as such it can not be said that accused had no notice about the charges brought against him. It is argued that nexus is not an element for crimes against humanity and genocide which has already been decided by order No.25 passed in respect of framing charge by this Tribunal. It is

contended that during War of Liberation the accused had superior responsibility as Ameer of East Pakistan Jamaate-e-Islami and he acted as a 'light house' of crimes which resulted widespread killing of civilians by his subordinate allied forces and as such he is liable to be held responsible for the crimes against humanity and genocide committed in all over Bangladesh. It is argued that during War of Liberation, the accused in the name of saving ideology of Pakistan, conspired with Pakistani Martial law authorities and made incited speeches publicly with intent to destroy in whole or in part of the Bangalee nation which is a protected group of genocide under section 3(2) of the Act as well as Genocide Convention, 1948.

XIV. Discussion and decision

Before discussing the charges brought against the accused, we consider it expedient to address some of the legal issues upon which the learned counsel for the defence drew our attention.

Tripartite Agreement and immunity to 195 Pakistani war criminals:-

49. It is not acceptable to say that no individual or member of auxiliary force as stated in section 3 of the Act can be brought to justice under the Act for the offence (s) enumerated therein for the reason that 195 Pakistani war criminals belonging to Pakistan Armed Forces were allowed to evade justice on the strength of 'tripartite agreement' of 1974. Such agreement was an 'executive act' and it cannot create any clog to prosecute member of 'auxiliary force' or an 'individual' or member of 'group of individuals' as

the agreement showing forgiveness or immunity to the persons committing offences in breach of customary international law was derogatory to the existing law i.e the Act enacted to prosecute those offences.

50. It is settled that the jus cogens principle refers to peremptory principles or norms from which no derogatory is permitted, and which may, therefore, operate a treaty or an agreement to the extent of inconsistency with any such principles or norms. We are thus inclined to pen our conclusive view that the obligation imposed on the state by the UDHR and the Act is indispensable and inescapable and as such the Tripartite Agreement which is an ‘executive act’ cannot liberate the state from the responsibility to bring the perpetrators of atrocities and system crimes into the process of justice.

51. As a state party of UDHR and Geneva Convention, Bangladesh cannot evade obligation to ensure and provide justice to victims of those offences and their relatives who still suffer the pains sustained by the victims and as such an ‘executive act’ (tripartite agreement) can no way derogate this internationally recognized obligation. Thus, any agreement or treaty if seems to be conflicting and derogatory to jus cogens (compelling laws) norms does not create any hurdle to internationally recognized state obligation.

52. Next, the Act is meant to prosecute and punish not only the armed forces but also the perpetrators who belonged to ‘auxiliary forces’, or who committed the offence as an ‘individual’ or member of ‘group of

individuals' and nowhere of the Act says that without prosecuting the armed forces (Pakistani) the person or persons having any other capacity specified in section 3(1) of the Act cannot be prosecuted. Rather, it is manifested from section 3(1) of the Act that even any person (individual or member of group of individuals), if he is prima facie found individually criminally responsible for the offence(s), can be brought to justice under the Act. Therefore, the argument that since the main responsible persons (Pakistan Army) have escaped the trial, on the strength of the tripartite agreement providing immunity to them, the next line collaborators cannot be tried is far-off to any canons of criminal jurisprudence.

53. Therefore, we are of the view that the 'tripartite agreement' is not at all a barrier to prosecute civilian perpetrator under the Act. Thus, we also hold that the Act was not enacted only for holding trial of 195 Pakistani war criminals, rather it has jurisdiction under section 3(1) of the Act to try armed forces, auxiliary forces, an individual or group of individuals for the commission of offences specified under section 3(2) committed in Bangladesh before and after commencement of the Act.

Amendment of section 3(1) of the Act in 2009-

54. It is submitted by the learned counsel appearing on behalf of the accused that since the subsequent amendment brought in 2009 of the Act of 1973 by inserting the words 'individual', or 'group of individuals' in section 3(1) carries 'prospective effect', in reality, the present accused cannot be prosecuted in the capacity of an 'individual' or a superior for the offences

underlying in the Act which is admittedly 'retrospective'. Since such amendment has not been expressly given retrospective effect interpretation stands that the amendment is prospective.

55. At the out set, it is to be noted that it is rather admitted that even under retrospective legislation (Act enacted in 1973) initiation to prosecute crimes against humanity, genocide and system crimes committed in violation of customary international law is quite permitted. It is further to be noted that the ICTY, ICTR, SCSL and the judicial bodies backed by the UN have been constituted under their respective retrospective Statutes. Only the ICC is founded on prospective Statute.

56. We are to perceive the intent of enacting the main Statute together with fortitude of section 3(1). At the same time we cannot deviate from extending attention to the protection provided by the Article 47(3) of the Constitution to the Act which was enacted to prosecute, try and punish the perpetrators of atrocities committed in 1971 during the War of Liberation. The legislative modification that has been adopted by bringing amendment in 2009 has merely extended jurisdiction of the Tribunal for bringing the perpetrator to book if he is found involved with the commission of the criminal acts even in the capacity of an 'individual' or member of 'group of individuals'. It is thus validly understood that the rationale behind this amendment is to avoid letting those who committed the most heinous atrocities go unpunished. This is the intent of bringing such amendment.

57. It may be further mentioned here that the words ‘individual’ or member of ‘group of individuals’ have been incorporated both in section 3 of the Act and in Article 47(3) of the Constitution of the Peoples Republic of Bangladesh by way of amendments in 2009 and 2011 respectively. The right to move the Supreme Court for calling any law relating to internationally recognised crimes in question by the persons charged with crimes against humanity and genocide has been taken away by the provision of Article 47A(2) of the Constitution. Since the accused has been prosecuted for offences recognized as international crimes as mentioned in the Act he does not have right to call in question any provision of the Act or any of amended provisions thereto. Thus, we hold that the application of prospectiveness or retrospectivity as to amendment to section 3 and subsequent amendments of the Act raised by the accused is quite immaterial to him in consideration of his legal status and accordingly the defence objection is not sustainable in law, particularly in the light of Article 47(3) and Article 47A of the Constitution.

Delay in bringing prosecution

58. From the point of morality and sound legal dogma, time-bar should not apply to the prosecution of human rights crimes. Neither the Genocide Convention of 1948, nor the Geneva Convention of 1949 contains any provision on statutory limitation to war crimes and crimes against humanity. General Assembly Resolution No. 2391(XXIII) of 26 November 1968 provides protection against even any statutory limitation in prosecuting

crimes against humanity, genocide etc. Thus, criminal prosecutions are always open and not barred by time limitation.

59. It may be cited here that the Second World War was concluded in 1945 but still the Nazi War Criminals are being prosecuted. Similarly, the trial of international crimes committed during Chilean revolution in 1973 is still going on. In Cambodia during polpot regime, international crimes were committed in the year 1975 to 1978 but due to internal conflicts and lack of political will, the then government could not start prosecution against perpetrators in time. The Royal Government of Cambodia waited 25 years for attaining a strong political will, thereafter in association with the United Nations, they established a Hybrid Tribunal and thus trial against the perpetrators was started in 2003 which is still going on. In fact, the criminal prosecution as regards international crimes is always open and not barred by any time-limit. The Sovereign immunity of Slobodon Milosevic of Serbia, Charles Taylor of Liberia and Augusta Pinochet of Chile, as head of the states could not protect themselves from being detained and delayed prosecution for committing genocides, crimes against humanity and war crimes.

60. In view of the above settled position and in the absence of statutory limitation, only the delayed prosecution does not preclude prosecutorial action to adjudicate the culpability of the perpetrators of core international crimes. It requires strong public and political will together with favourable and stable political situation for holding such trial. Therefore, justice delayed

is no longer justice denied, particularly when the perpetrators of core international crimes are brought on the process of justice. However, delay may create a doubt but such matter is addressed after taking all the factual circumstances into consideration.

61. The defence submitted that the alleged statements and speeches of the accused do not amount to incitement to commit genocide under customary international law. The Tribunal has to consider it in the light of culture of the country and specific circumstance of the case whether such speeches constitute direct incitement to commit genocide in a particular context.

62. It is not correct to say that during War of Liberation, no protected group as required under Genocide Convention was targeted by Pakistani occupation forces and its allied forces to commit offences of genocide. It is gathered from common facts of knowledge that the occupation forces launched war in the night following 25 March 1971 against a protected group Bangalee nation who sided for the independence of Bangladesh.

63. It is submitted by the defence that only Razakar Bahini was the statutory body which acted as an auxiliary force under the command of Pakistan occupation forces but other organs namely, Peace Committee, Al-Badr, Al-Shams and Al-Mujaheed were not statutory auxiliary forces upon which the accused had no command or control and as such he cannot be held liable for any kind of superior responsibility as contemplated in section 4(2) of the Act.

Section 3(1) of the Act of 1973 was amended in 2009 by incorporating the phrase ‘any individual’ or ‘group of individuals’ with intent to broaden the jurisdiction of the Tribunal so that both armed and non-armed persons can be brought to justice. We do not hesitate to hold that after amendment of section 3(1) of the Act, it has become immaterial to determine whether the alleged subordinate organs of Jamaat-e-Islami were statutory or non-statutory body for the purpose of holding trial against them under the Act. Now, law stands that any person or group of persons or their superiors whether armed forces or not can be prosecuted on the charge of offences as specified in section 3(2) of the Act.

64. It is not true that the charges brought against the accused are vague as no notice of crimes and liability were given to the accused as required in section 16(1)(c) of the Act. It is evident on record that the copy of the Formal Charge was duly supplied to the accused before commencement of trial. It is also revealed from both the Formal Charge and the order No.25 (framing charge) that the accused being the head of a religious party had superior responsibility which has been manifestly narrated therein with the name of his subordinate organs over which he had exclusive control and as such it can not be said that the accused was not given due notice about the charges brought against him.

65. It may be mentioned here that by the order of framing charge being No.25, it has already been settled by this Tribunal that nexus is not required

during armed conflict, when such attack is directed against civilian population to cause crimes against humanity or genocide.

XV. Whether crimes against humanity, genocide and other class crimes were committed during war of Liberation of Bangladesh in 1971.

66. The term genocide was created by Rahael lemkin in 1944 to describe what was happening to the Jews of Europe. He combined the word ‘geno’ which in Greek means race and ‘cide’ which means killing. So literal defination of genocide is race killing.

67. It is undeniable that a massive genocide took place in 1971 in the then East Pakistan (now Bangladesh) which is perhaps the greatest massacre after the atrocities of the Second World War. This massacre can only be compared with the slaughters committed by Nazis under the leadership of Hitlar.

68. Since creation of Pakistan in 1947, its government adopted discriminatory policies backed by its bureaucracy and Army to rule over East Pakistan and caused great disparity in every field including education, welfare, health, armed forces, civil bureaucracy, economic and social developments. In 1952 the Pakistani authorities attempted to impose Urdu as the only state language of Pakistan ignoring Bangla, the language of majority Bangalee nationals of Pakistan. The people of the then East

Pakistan started movement and sacrificed their lives to get Bangla as a state language of Pakistan. Since then Bangalees started movement for greater autonomy and self determination and eventually independence.

69. In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman won the majority seats in the Parliament election. Despite this overwhelming majority, Pakistani Military Junta did not handover power to the leader of the majority party as democratic norms required. Rather, in a planned way Pakistani forces in the night following 25 March 1971 started “operation search light” upon civilian people of East Pakistan with intent to destroy the Bangalee nationals. With that motive, they committed one of the massive genocide in the history of the world with utmost brutality and cruelty.

An important aspect is required to be mentioned here for better understanding as to why West Pakistani people used to cherish hostile attitude towards Bangalee people of East Pakistan.

70. People of East and West Pakistan were culturally and mentally very much different. Islam was all they had in common but their languages were different and even the food they ate was different. West Pakistan Society was run by landlords and military elite. Bangali Society was very rural and manned by peasants belonging to poor class. From the very creation of Pakistan, its rulers used to believe that Hindus are the cause of all troubles of Pakistan. Because, the Hindus were educated elite who could mould and change the Bangalees into being more Hindu. They also believed that

Bangalee Muslims of East Pakistan were not Muslim enough as they were for closely tied to Hinduism because Hindus composed thirteen percent of East Pakistan's population. During partition of India most of the Hindus were driven out from West Pakistan but unfortunately such step was not taken in East Pakistan. So, a large number of Hindus living in East Pakistan was a headache of Pakistani rulers.

71. President Ayub Khan being the most infamous dictator of Pakistan, depicted the characteristic of Bangalee people in his political biography named 'Friends not Master' as follows:- " Bangalees have all the inhibitions of lower trodden races and have not yet found it possible to adjust psychologically to the requirements of new born freedom"

Source:- Friends not Master (1967) page 187.

72. Within one month of the declaration of the independence of Bangladesh on 26 March 1971, two blocs were automatically created among the people for taking part in for or against the War of Liberation.

(1) The first bloc was consisted of all most all the Bangalee people who supported and participated in the call to free Bangladesh.

(2) Awami league and other pro-liberation political parties and specially Hindu Community as religious group who whole-heartedly supported the War of Liberation.

73. On the other hand, the second bloc was consisted of a little number of pro-Pakistani, some religion-based political parties and Biharis who joined

and /or collaborated with the Pakistan armed forces to actively oppose the creation of independent Bangladesh. Specially Jamaat-e-Islami as a political party and organization actively participated to resist independence of Bangladesh.

74. It may be mentioned here that provision of section 19 of the Act has empowered this Tribunal to take judicial notice of the documents mentioned therein without formal proof- “ A Tribunal shall not require proof of facts of common knowledge but shall take judicial notice thereof.” This Act clearly suggests that in appropriate cases the Tribunal must take mandatory judicial notice of common knowledge.

75. None has denied the incidents of human right violations happened in Bangladesh during the Liberation War in 1971. The unjust and unlawful War of Pakistan against unarmed people of East Pakistan (now Bangladesh) is evidenced as war crimes, genocide and crimes against humanity. The birth of Bangladesh on 16 December 1971 was a unique phenomenon that it was the first nation-state to emerge after waging a successful liberation war against a post colonial state. From March to December 1971, the nine month long liberation war drew world’s attention because of genocide and crimes against humanity committed by Pakistani occupation forces and their collaborators which resulted by murder of approximately 3 million people and nearly a quarter million girls and women were raped, leading to approximately 25,000 pregnancies. Ten million Bangalees reportedly took refuge in India to avoid the massacre of Pakistani army and thirty million

people were internally displaced within the country. The above crimes undoubtedly rank first after Nazi holocaust during the Second World War(1939-1945).

Now let us peruse some news –reportings and books written about atrocious activities committed during War of Liberation of Bangladesh by Pakistani occupation forces with the aid of local perpetrators for the purpose of taking judicial notice of it.

76. Horrendous atrocities committed by Pakistan Army during War of Liberation of Bangladesh was true like anything that even Army Generals of Pakistan could not deny such fact. Major General Tajammel Hossain Malik made an interview about the liberation war of Bangladesh which was published in Pakistan Defence Journal. A little portion of such interview is quoted below:-

“I learnt through my other officers that during the earlier operations against the Mukti Bahinis, thousands of innocent people were killed. In one of my defensive position at Santahar, large number of people were massacred. General Tikka Khan and Lieutenant General Jahanzeb Arbab had earned their reputations of being “butcher of East Pakistan”.

So there were many other Brigadiers and Generals. Mukti Bahini may also have done in retaliation but it was very negligible as compared to the atrocities committed by the West Pakistan troops against the East Pakistanis.

Source:- Major General (Retd.) Tajammal Hossain Malik.

“Remembering our warriors” August, 2000.

77. “On the night between 25/26 March 1971 General Tikka struck. Peaceful night was turned into a time of wailing, crying, and burning. General Tikka let loose every thing at his disposal as if, raiding an enemy, not dealing with his own misguided and misled people. The military action was a display of stark cruelty, more merciless than the massacres of Bukkara and Bagdad by Changez Khan and Halaku Khan or at Jallianwala Bagh by the British General Dyer.”

78. General Tikka instead of carrying out the task given to him, i. e. to disarm armed Bengali units and persons and to take into custody the Bengali leaders, resorted to the killing of civilians and a scorched –earth policy. His orders to his troops were; “ I want the land and not the people.” These orders were carried out in letter and spirit by Major General Forman and Brigadier (Later Lt. Gen.) Jahanzeb Arbab in Dhaka. Major General Rao Farman had written in his table diary “Green land of East Pakistan will be painted red” It was painted red by Bengali blood.

Source:- ‘The Betrayal of East Pakistan’ (page – 45-46) written by General Niazi.

79. Senator Kennedy made comments on the situation of the then East Pakistan during War of Liberation as follows:-

“Mr. President, reports from East Pakistan tell of a heavy toll being paid by the civilian population as a result of the current conflict. It is a story of indiscriminate killing, the execution of dissident political leaders, students, and thousands of civilians suffering and dying every hour of the day. It is a story of dislocation and loss of home. It is a story of little food and water. And coming in the after math of tragedy by natural disaster, the current violence and near total disruption of government services in East Pakistan is compounding an already difficult situation. It threatens near famine for millions and the spread of epidemics and disease”.

Source:- Bangladesher Shadinota Juddha Dalil Patra

(Ist. Govt. Publication in 1982) XIII volume, page 279.

80. A report sent by Mort Rosenblum was published in the ‘Washington Evening Star’ on 12 May 1971 under the caption “vultures too full to fly”.

The above caption news gives a horrendous picture of mass killing happened in Bangladesh during 25 March to 12 May, 1971. It is reported that the river side Vultures used to fill up their stomachs by taking human flesh to excess that they even could not fly. If we think over the matter for a while by closing our eyes, every one will easily guess the magnitude of massacre allegedly committed by the perpetrators during the early part of the Liberation War in 1971. The report is quoted below:-

“Dacca, East Pakistan:- Vultures too full to fly perch along the Ganges River in grim contentment. They have fed on perhaps more than a half million bodies since March. Civil war flamed through Pakistan’s eastern wing on March 25, pushing the bankrupt nation to the edge of ruin. The killing and devastation defy belief.

From a well at Natore, fetid gasses bubble up around bones and rotting flesh. A tiny child gazes at a break in the lavender carpet of water hyacinths in a nearby pond where his parents bodies were dumped”.

Source:- Dalil Patra, (Govt. Pub.) XIII Volume, page No. 304-305.

81. A news report was published in the Daily Observer on 4.1.1972 under the caption “Pak Army Killed 75,000 people in Dinajpur” which is quoted below in relevant part.

DINAJPUR:- Jan-4-- More than 75,000 persons were killed in the district of Dinajpur by the Pakistan occupation forces and their collaborators during the last nine months, according to the preliminary reports of an unofficial survey says ENA. The Survey revealed that besides mass killing, about 20,000 women were dishonoured by the Pakistani occupation forces and their agents in the district. The said news report has been proved by prosecution and marked as Ext. No. 119 on 17.09.2012.

82. A news report was published in the daily observer on 05.01.1972 under the caption “Pak Army killed over 30 lakh people” which is quoted below in relevant part.

The Communist party news paper ‘pravda’ has reported that over 30 lakh persons were killed throughout Bangladesh by the Pakistan occupation forces during the last nine months, reports ENA. Quoting its special correspondent stationed in Dacca the paper said that the Pakistan Military forces immediately before their surrender to Mukti Bahinis and the Allied forces had killed about 800 intellectuals in the capital city of Bangladesh alone. The said news-report has been proved by prosecution and marked as Ext. No. 120 on 17.09.2012.

83. A news report was published in the ‘Daily Observer’ on 08.01.1972 under the caption “Over one lakh killed in Khulna town” which is quoted below in relevant part.

KHULNA Jan 6:- Over one lakh people were killed or injured, 20 lakh pucca and kutcha houses were destroyed or burnt and an equal number of people rendered homeless partly or completely at the hands of barbarous pakistani Army and their collaborators during their nine months reign of terror in Khulna district, according to an unofficial estimate available here from various sources. The said news report has been proved by prosecution and marked as Ext. No. 121 on 17.09.2012.

84. A news report was published in the “Daily Bangladesh Observer” on 17.02.1972 under the caption “ Pak- Army killed 30,000 persons in Hajigang” which is quoted below in relevant part.

COMILLA Feb.-16:- Horridness of mass killing of unarmed innocent children and women by the brute Pakistan occupation Army and their collaborators during 9 long months in Bangladesh have been coming to light everyday. In Hajiganj Police Station of Chandpur Sub-Division about 30,000 people were murdered by Pakistan bandit army reports ENA. The said report has been proved by prosecution and marked as Ext. No. 133 on 17.09.2012.

85. A news report was published in “the Daily Bangladesh Observer” on 10.02.1972 under the caption “3000 women violated” which is quoted below in relevant part.

THAKURGAON, Feb.-9:- During nine months of their occupation the Pakistan Army had killed nearly one thirtieth of the total of ten lakh population in the Sub-Division, violated 3000 women destroyed 8000 houses and looted all most all the valuables of the people. BSS Correspondent gathered here. The said report has been proved by the prosecution and marked as Ext. No. 164 on 18.09.2012.

86. Another news report was published in the Daily Azad on 10 February 1972 which has been proved and marked as Ext. No. 229 on 18.09.2012.

In a condolence meeting, Dr. Mozaffar Ahmed Chowdhury, the then vice – Chancellor of Dhaka University firmly declared that during war of Liberation, Pakistan occupation forces killed more than 30 lakh people.

87. It may be recalled here that General Niazi in his book named “The Betrayal of East Pakistan” has narrated at its page Nos. 45-46 that General Tikka ordered his troops uttering “I want the land and not the people”. In continuation of such barbaric mission, the General Head quater of Army sent a message “Burn every thing, kill everyone at sight”.

The barbaric purpose of the Military Junta was not unknown to us who were in West Pakistan, when from General Head Quarters of the Pakistan Army the message went out; “Burn everything, kill everyone in sight”

Source:- (Laurence Lifs Chultz) Bangladesh;

“The Unfinished Revolution,” page -77.

88. President Yahya Khan made a comment during struggle for Bangladesh which gives a total picture of genocide committed by the Pakistani Army and their collaborators. President Yahya commented –“Kill three million of them and the rest will eat out of our hands”.

Source:- Robert Payne ‘Massacre’ page 50.

89. Robert Payne has given a chilling account of the Pakistani genocide in his widely read book “Massacre”. For month after month in all the regions

of East Pakistan the massacre went on. They were not the small casual killing of young officers who wanted to demonstrate their efficiency but organized massacre conducted by sophisticated staff officers, who knew exactly what they were doing. Muslim peasants, went about their work mechanically and efficiently until killing defenceless people became a habit like smoking cigarettes or drinking wine.

90. From the citations made above, we can safely draw a conclusion that since creation of Pakistan in 1947, the rulers of West Pakistan used to cherish very bad impressions about the Bengalee people of East Pakistan as to their religious belief and norms of life. Obviously, Pakistani Janta did not hesitate to commit crimes against humanity and genocide upon unarmed civilians of Bangladesh in 1971. Though the commission of offences of mass killing and genocide in Bangladesh has not been denied nevertheless, the documentary evidence cited above manifestly proves that a horrendous atrocities were committed by Pakistan occupation army and their collaborators in Bangladesh, during the War of Liberation. It may be noted here that the genocide in Bangladesh has been recognised in some publications outside the sub-continent, for example, the Guinness Book of Records lists the Bengali atrocities as one of the top 5 genocides in the 20th century.

91. It is undeniable that during the War of Liberation of Bangladesh in 1971, Pakistani forces and their collaborators in a planned way made attacks upon unarmed civilians with intent to wipe out in whole or in part Bengalee

nation and sometimes against Hindu Community as a religious group . It is evident that the perpetrators committed crimes against humanity such as mass killing, extermination, deportation, abduction, torture, rape and genocide in a large scale and such attacks were directed against unarmed civilians. These occurrences of crimes against humanity and genocide have been confirmed by old documentary evidence such as books on liberation war, scholarly articles, newspaper reporting of both local and foreign media, Government and NGO reports which deemed to have probative value. The facts of mass killing, torture, rape and genocide of Bangladesh in 1971 has become a part of world history, a classic instance of a “fact of common knowledge”.

Now let us examine both oral and documentary evidence keeping those in mind as old evidence for adjudicating the charges independently.

XVI. Adjudication of charge No. 1- conspiracy and charge No. 2 planning in respect of crimes against humanity and genocide:-

92. The charge No. 1- Conspiracy contains 06 counts while charge No. 2 planning contains 03 counts. The prosecution has brought aforesaid two charges against accused Ghulam Azam which arose from holding group meetings with the Chief Martial Law Administrator of Pakistan and making press-briefing for several times to that effect, during War of Liberation, 1971. The allegations of making conspiracy and planning appear to be inter-

related which arose from same group of persons with intent to commit crimes against humanity and genocide in Bangladesh, and accordingly these two charges are taken up together for convenience of discussion.

As many as 6 counts of conspiracy have been brought against the accused. Conspiracy to commit crimes under section 3(2)(g) of the Act has been described in the Act but not well defined.

93. Conspiracy is defined in section 1(1) of the Criminal law Act 1977 as amended by section -5 of the Criminal Attempts Act 1981 in England. The section provides; if a person agrees with any other person or persons that a course of conduct shall be pursued which, if the agreement is carried out in accordance with their intentions, either; will necessarily amount to or involve the commission of any offences by one or more of the parties to the agreement; or would do so but for the existence of facts which render the commission of the offence or any of the offences impossible.

Actus reus;

- (1) The conspirators will not be liable when they never acted on their own plan.
- (2) The fact that the conspirators give a second thought and withdraws does not provide any defence.

Mens Rea

The Partner must intend that the crime will be carried out.

94. The crime of conspiracy should be limited to agreements to commit criminal offences: an agreement should not be criminal where that which it was agreed to be done would not amount to a criminal offence if committed by one person. Once the parties have agreed, the conspiracy is complete, even if they take no further action, because, for example they are arrested. Conspiracy is a continuing offence. The opportunity conspiracy offers to roll together a course of criminal conduct under one charge and on one indictment is a significant attraction for prosecutors. It has been held that a single agreement can embrace conduct involving several offences, without infringing the rules against duplicity. Roberts [1998] 1 Cr App R 441; Greenfield [1973] 1 WLR 1151; Taylor [2002] Crim LR 2005.

Mens Rea

95. Conspiracy is a crime where it is more difficult than usual to distinguish between actus reus and mens rea, some of the elements discussed below in the context of mens rea might have been dealt with as easily as actus reus. The actus reus may be said to be an agreement : but agreement is essentially a mental operation, though it must be manifested by acts of some kind. ‘In the case of conspiracy as opposed to the substantive offence, it is what was agreed to be done and not what was in fact done which is all important. In short, the requirements of mens rea are: (i) an intention to agree, (ii) an intention to carry out the agreement, (iii) intention or knowledge as to any circumstances forming part of the substantive offence.

Conspiracy to commit Genocide

96. Several ICTR Trial Chambers have convicted individuals of conspiracy to commit genocide. Like incitement, conspiracy is an inchoate offence, and completed genocide need not occur in order for a conviction to obtain. This is consistent with the common law understanding of conspiracy i.e. that once the individuals in question make the criminal agreement, the crime has in fact occurred. Several scholars have noted that this distinguishes conspiracy to commit genocide from conspiracy as a mode of liability as found in the doctrine of joint criminal enterprise.

97. The ICTR noted in *Musema* that the travaux préparatoires to the Genocide Convention made clear that the rationale for penalizing conspiracy to commit genocide was ‘to ensure, in view of the serious nature of the crime of genocide, that the mere agreement to commit genocide should be punishable even if no preparatory act has taken place. Although the concept of conspiracy is far less accepted in the civil law, the ICTR accepted and applied basic principles of common law conspiracy on the theory that the drafters of the Genocide Convention (and presumably by extension the drafters of the ICTY Statute, i.e. the Security Council), meant to codify the common law concept of conspiracy with full knowledge that the concept’s acceptance was not universal among all legal systems, but that its application in the case of genocide was warranted by the exigencies of the crime. Consequently, the ICTR borrowed the common law definition of conspiracy and eschewed the civil law version of complot.

As for the elements, the ICTR held that the mens rea for conspiracy to commit genocide is the *dolus specialis* of genocide (i.e. the intent to destroy, in whole or in part, a national, ethnic, racial or religious group). As for the material element, the requirement is that the individual agree with one or more individuals to commit genocide, also known as a ‘concerted agreement to act’. The element of acting ‘in concert’ is key because it distinguishes a conspiracy from mere ‘conscious parallelism’. The agreement need not be an express or formal one but may be inferred from the ‘concerted or coordinated action on the part of the group of individuals.’ Consequently, a ‘tacit understanding of the criminal purpose is sufficient.’

Count-1: Dainik Azad: April, 6. 1972 (copy of paper clipping)

Leaders’ meeting with Lt, General Tikka Khan.

Assurance of assistance to restore.....

98. By a Press release of the Martial Law Administrator it was reported that Mr. Nurul Amin led a team comprised of 12 special leaders to meet with Lt. General Tikka Khan, Chief Martial Law Administrator of ‘Kha’ zone.

Among others renowned leaders like Khaza Khayeruddin, Mr. Golam Azam, Mr. Shafiqul Islam, Maulana Nuruzzaman and Maulavi Farid Ahmed etc. were also present in that meeting. They have proposed to the Chief Martial Law Administrator to form a Citizen’s Committee in Dhaka which will work to bring normalcy and to remove unnecessary and less fear from

the mind of the citizens. They have also ensured that they will give full assistance to CMLA for restoring normalcy within the Province.

The Chief Martial Law Administrator thanked them for their assurance of assistance.

Dainik Purbudesh, 06 April, 1971 (copy of paper clipping)

[a picture]

Title of the picture:

99. Mr. Nurul Amin led a team comprised of 12 political leaders to meet with Lt. General Tikka Khan, Chief Martial Law Administrator, 'Kha' zone.

It has been evident that on 04.04.1971 accused Ghulam Azam along with others met Lieutenant General Tikka Khan, the then Chief Martial Law Administrator of Zone-Kha. Such facts were published through Radio Pakistan and also reported in Daily Azad dated 05.04.1971, Daily Azad and Daily Purbudesh both dated 06.04.1971 marked as exhibit-33, exhibit -34 and exhibit -99 respectively. It also appears from exhibit 52, Daily Pakistan dated 06.04.1971, in which it was stated that they all including Ghulam Azam gave assurance of all kind of help and a proposal to form a Nagorik Committee. As Ameer of Jammat-e-Islami Ghulam Azam met Tikka Khan with an intent to make atrocities committed subsequently by his followers.

Count : 2

Dainik Pakistan, 7 April, 1971 (copy of paper clipping)

Dainik Purbodesh Dainik Azad, 07 April, 1971 (copy of paper clipping)**Dainik Azad, 07 April, 1971(copy of paper clipping)****More political leaders met with CMLA**

100. Full assistance ensured to restore normalcy yesterday (Tuesday), more political leaders met with CMLA, 'kha' Zone and ensured their full support to restore normalcy in the province.

In an Govt. handout it was reported that former Foreign Minister Mr. Hamidul Haq, Provincial President of Jamaat-e-Islami Prof. Ghulam Azam, Provincial President of Jomioti Ulamaye Eslamis Pir Mohsen Uddin Ahmed and local renowned lawyer Advocate Mr. A.K. Sadi had individual meetings with General Tikka Khan. It was reported in the handout that the said leaders expressed their concern over India's interference with the internal affairs of Pakistan and over the illegal entrance of the armed in sergeant. They stated that the patriots of the province will assist the Pakistani Armed Force to foil any conspiracy of India. The accused met Tikka Khan in the then Governor House with a view to form auxiliary forces which was published in Daily Pakistan dated 07.04.1971 marked as exhibit -53. Subsequently Shanti Committee, Rajakar, Al-badr, Al-Shams Bahini were constituted at the inspiration of accused by meeting with Tikka Khan in the governor house.

Count:3

Fortnightly Report, Ist half of April, 1971, Para-9 to 12

101. Leaders of different political parties and the intelligentsia including the lawyers reacted sharply against the Indian interference in the internal affairs of Pakistan and condemned the same as well as the mischievous propaganda launched by India.

102. On 14.4.1971 a meeting of the East Pakistan Peace and Welfare Steering Committee was held in Dhaka with its president Mvi Farid Ahmad (PDP) in the chair. All the nine members of the Committee who attended the meeting took oath of complete dedication to the cause of Islam and integrity and sovereignty of Pakistan. The meeting outlined the policy and programme regain confidence of the people, restore normally in the province and organise the people to fight against Indian designs and aggression.

103. It is evident that on 14.04.1971 accused Ghulam Azam took part in a meeting as a member of Peace and Welfare Steering Committee where all participants including accused pledged to protect Islam and preserve the unity and sovereignty of Pakistan. It has emerged from exhibit 479 that accused Ghulam Azam attended a meeting of Peace and Welfare Steering Committee expressing to regain confidence of people against so called Indian plans and aggressions and they were agreed upon to organize the people.

Count:4

Dainik Sangram, 20 June, 1971, (copy of paper clipping)

Pro. Ghulam Azam in Pindi Press briefing

Only Patriot can suppress Separatist (Biccinnotabadi)

Rawalpindi, 19 June, PPI.

104. The Ameer of the East Pakistan Jamaat-e- Islami said that till the normalcy was restored in East Pakisatan, power must not be transferred to civil population. Professor Ghulam Azam said that in a Press Briefing in Rawalpindi following his meeting with the President. He said that the present separatist movement can be effectively suppressed by the patriots only and for that arms must be handed over to those who believe in the ideology and unity of the country (Pakistan).

105. Accused Ghulam Azam, in continuation of a conspiracy took part in a high level meeting on 19.06.1971 and on the same day he met the then President, Aga Mohammed Yahya Khan at Rawalpindi informing him the latest situation of East Pakistan and had a discussion with Aga Mohammed Yahya Khan to evaluate the activities of previous three months and resistance of the common people of East Pakistan through the uses of armed force. Such steps taken by accused were published in the Daily Sangram dated 20.06.1971 marked as exhibit-4.

Count:5

Dainik Pakistan, 21 June, 1971 (copy of paper clipping)

Dainik Azad, 21 June, 1971(copy of paper clipping)

Ghulam Azam in Lahore Press Briefing

Our reluctance to follow ideology is to blame for the present situation
Lahore, 20 June.

106. The Ameer of E.P.J.I said that Sheikh Mujib was arrested since he advocated for separation, however, those who are still openly advocating for separation are yet to be arrested. He reiterated that the miscreants (duskritokarira) are still active in East Pakistan and continuing their activities. Peace loving people must get arms for their own defence.

107. It appears from evidence of exhibit -62, Daily Pakistan dated 21.06.1971 which reported that accused Ghulam Azam participated in a meeting with all Pakistan Jammata-e-Islami Chief Syed Abul Ala Moududi on 20.06.1971 where they discussed about the activities of followers of Jammata-e-Islami and also discussed to implement their intended views in committing atrocities and genocide during the liberation war.

Count : 6

Daily Ittefaq, 02 Dec. 1971 (copy of paper clipping)

A true call to hold fresh election

Rawalpindi, 1 Dec. (APP).

108. After a 70-minute long meeting with the President, EPJI Ameer Prof. Ghulam Azam said in a press conference that during that meeting he suggested the President that presently main duty is to eradicate all injustices and to earn the confidence of the people of East Pakistan. President's

reaction was encouraging, he said. Terming the so-called ‘muktibahini’ as enemy force, he said Razakars are enough to take care of them. In this regard he urged to increase the number of razakars.

109. It has also revealed from the Daily Ittefaq dated 02.12.1971 marked as exhibit -97 that accused Ghulam Azam took part in a seventy minute long conspiratorial meeting with the then former President Yahya Khan of Pakistan at Rawalpindi on 01.12.1971 where accused with a full confidence made demand to increase membership of Rajakar forces and also urged Pakistan Government to supply arms to those peoples who believe in the ideal of an unity of Pakistan. Sensing inevitable defeat by auxiliary forces accused invited the then President of Pakistan to supply more arms to his followers who committed genocide and crimes against humanity across the country. Failure to regain as aimed the accused finally conspired with others in order to kill intellectuals that continued till 16th December, 1971.

XVII. [Planning involving the commission of crimes specified in section 3(2) of the Act, 1973]

Summary Charge No. 02: Accused Prof. Ghulam Azam, by his acts and commissions, planned to commit crimes against humanity, genocide and other offences- as a result of which crimes mentioned in section 3(2) of the Act were committed in all-over Bangladesh, and, therefore, the accused is charged under section 3(2) (f) read with section 4(1) and section 4(2) of the

Act to plan to commit crimes specified in section 3(2) of the Act, which are punishable under section 20(2) of the Act.

110. In the above charge, the allegation brought against accused Prof. Ghulam Azam is that during Liberation War, 1971, he connected himself with the planning involving the commission of crimes specified in section 3(2) of the International Crimes (Tribunals) Act, 1973. But the offence “planning” is not defined in the said Act, but it is available in the international statutes. In the Naletilic Trial Judgment (IT-98-34), the Trial Chamber held that “planning” means that, one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases. The existence of a plan can also be proved by circumstantial evidence. An accused held responsible for having committed a crime will not be found responsible for planning such crime.

111. In the Krstic Trial Judgment (IT-98-33), the Trial Chamber also observed as follows:

“The Trial Chambers of the ICTY and the ICTR and the Appeals Chamber of the ICTY have identified the elements of the various heads of individual criminal responsibility in Article 7(1) of the Statute. The essential findings in the Jurisprudence may be briefly summarized as follows:

“Planning” means that one or more persons design the commission of a crime at both the preparatory and execution phases;

.....”

There are three counts under charge no.02 which are discussed as below:

Count No. i: That on 04-04-1971, accused Prof. Ghulam Azam and others planned to form an organization named ‘Nagorik Committee’ in order to support the occupying Pakistani forces and on the same day placed this plan before Lt. General Tikka Khan. The said organization committed above mentioned crimes in all-over Bangladesh.

Discussion of Documentary Evidence:

The Prosecution in support of Count No.i has submitted, amongst other documentary and oral evidence, two newspaper clippings, Ext.33 and Ext. 34 which are discussed as below:

112. Ext. 33 is a copy of a newspaper clipping of “ দৈনিক আজাদ” dated 05-04-1971 wherein it is stated under the caption ‘টিক্ক খান সকাশে নেতৃত্বন্দ’ as follows:

“ পূর্ব পাকিস্তানের ‘খ’অঞ্চলের সামরিক আইন প্রশাসক লেফটেন্যান্ট জেনারেল

টিক্কা খানের সহিত আজ ঢাকায় জনাব নূরুল আমিন, খাজা খয়েরউদ্দিন, জনাব গোলাম

আজম, জনাব শফিকুল ইসলাম ও মওলানা নুরজ্জামান সাক্ষাৎ করেন বলিয়া আজ রাত্রে রেডিও পাকিস্তানের এক খবরে বলা হইয়াছে।”

113. Ext. 34 is a copy of a newspaper clipping of 'দৈনিক আজাদ' dated 06-04-1971 wherein it is stated under the caption 'লে: জেনারেল টিক্কা খানের সহিত নেতৃবৃন্দের সাক্ষাৎকার' as under:

“গত রবিবার অপরাহ্নে জনাব নুরুল আমিনের নেতৃত্বে ১২ সদস্য বিশিষ্ট নেতার সমন্বয়ে গঠিত এক প্রতিনিধিদল 'খ' অঞ্চলের সামরিক আইন প্রশাসক লেফটেন্যান্ট জেনারেল টিক্কা খানের সহিত সাক্ষাৎ করেন বলিয়া সামরিক আইন কর্তৃপক্ষের এক প্রেস বিজ্ঞপ্তিতে জানানো হইয়াছে।

জনাব নুরুল আমিন ছাড়াও খাজা খয়েরউদ্দিন, জনাব গোলাম আজম, জনাব শফিকুল ইসলাম, মওলানা নুরজ্জামান ও মওলবী ফরিদ আহমদ প্রমুখ নেতৃবৃন্দ এই প্রতিনিধিদলে সংশ্লিষ্ট ছিলেন। নেতৃবৃন্দ প্রদেশে সম্পূর্ণ স্বাভাবিক অবস্থা ফিরাইয়া আনা এবং জনগণের মন হইতে অহেতুক ও ভিত্তিহীন শঙ্কা দূর করার উদ্দেশ্যে ঢাকায় নাগরিক কমিটি গঠন করার জন্য সামরিক আইন প্রশাসকের নিকট প্রস্তাব দান করেন। প্রদেশের স্বাভাবিক অবস্থা ফিরাইয়া আনার ব্যাপারে সামরিক আইন প্রশাসককে পূর্ণ সহযোগিতা দানেরও তাঁহারা আশ্বাস দিয়াছেন। তাঁহারা পাকিস্তানের আভ্যন্তরীণ ব্যাপারে ভারতের হস্তক্ষেপের এবং ভারতের বিদ্রোহপূর্ণ ও ভিত্তিহীন প্রচারনার তীব্র প্রতিবাদ জানান।

.....

..”

114. On perusal of Ext.33 and Ext. 34 it appears that Nurul Amin, Khawaja Khayeruddin, accused Prof. Ghulam Azam, Shafiqul Islam, Moulana

Nuruzzaman, Moulavi Farid Ahmed and some others on 04-04-1971 met Lt. General Tikka Khan, the then Martial Law Administrator of Zone- 'Kha' of East Pakistan at Dhaka and, in that meeting they placed a proposal to him to form an organization named 'Nagorik Committee' in order to support the occupying Pakistani forces.

Count no. ii: That on 09-04-1971, with the goal to commit the above mentioned crimes, accused Prof. Ghulam Azam and others in a united and planned manner formed the 'Shanti Committee' and nominated Khawaja Khayeruddin as the Convener of the committee. As part of the plan, the accused decided to form Shanti Committees in various parts of Cities, Unions and Mohallas and it was decided that those Shanti Committees would operate as per the directions of the Central Shanti Committee. The said organization committed the above mentioned crimes in all-over Bangladesh.

Discussion of Documentary Evidence:

The Prosecution in support of Count No ii has submitted, amongst other documentary and oral evidence, three newspaper clippings, Ext. 37, Ext. 101 and Ext. 167 which are discussed as below:

115. Ext. 37 is a copy of a newspaper clipping of 'দৈনিক আজাদ' dated 11-04-1971. In that newspaper cutting it is stated under the caption 'নাগরিক শান্তি কমিটি গঠন' which reads as follows:

“ঢাকা, ১০ই এপ্রিল। - শহরের নাগরিকদের প্রাত্যহিক জীবনে সত্বর স্বাভাবিক পরিবেশ সৃষ্টির উদ্দেশ্যে গতকাল এখানে খাজা খয়েরউদ্দিনকে আহ্বায়ক করিয়া ১৪০ সদস্য বিশিষ্ট একটি নাগরিক শান্তি কমিটি গঠন করা হইয়াছে। উক্ত কমিটি এক কেন্দ্রীয় কমিটির কর্মসূচী মোতাবেক আগামী মঙ্গলবার জোহর নামাজের পর বায়তুল মোকাররম হইতে চকবাজার পর্যন্ত মিছিল বাহির করার পরিকল্পনা করিয়াছে। গত ৯ই এপ্রিল (১৯৭১) ঢাকা শহরের নাগরিকদের প্রতিনিধিদের এক সভায় একটি শান্তি কমিটি গঠন করা হইয়াছে। কমিটি খাজা খয়েরউদ্দিনকে উহার আহ্বায়ক নির্বাচিত করিয়াছে। ১৪০ সদস্য বিশিষ্ট কমিটি। অনুরূপ ধরণের কমিটি-সমূহ কো-অপ্ট করার ক্ষমতা রহিয়াছে। উল্লেখযোগ্য যে, কেন্দ্রীয় কমিটির পরিচালনাধীনে বৃহত্তর ঢাকায় ইউনিয়ন ও মহল্লা পর্যায়ে অনুরূপ শান্তি কমিটি গঠন করা হইবে।

.....

...

কমিটির মধ্যে প্রখ্যাত ব্যক্তিদের মধ্যে রহিয়াছেন জনাব কিউ এম শফিকুল

ইসলাম, অধ্যাপক গোলাম আজম, মাওলানা সৈয়দ মুহম্মদ মাসুম.....ও

অন্যান্য।”

116. Ext. 101 is a copy of a newspaper clipping of ‘দৈনিক পূর্বদেশ’ dated 11-04-1971 wherein it is stated under the caption ‘স্বাভাবিক জীবন যাত্রা ফিরিয়ে আনার জন্য শহরে শান্তি কমিটি গঠন’ as under:

“ঢাকা, ১০ই এপ্রিল (এ পি পি)।- শহরের জনগনের দৈনন্দিন জীবন-যাত্রায় স্বাভাবিক অবস্থা ফিরিয়ে আনতে তরান্বিত করার উদ্দেশ্যে পরিবেশ সৃষ্টির জন্য গতকাল জনাব খওয়াজা খয়ের উদ্দিনকে আহ্বায়ক মনোনীত করে একটি শান্তি কমিটি গঠন করা হয়েছে। এ কেন্দ্রীয় কমিটির অধীনে শহরের সব শান্তি কমিটিগুলো কাজ করবে।

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ঢাকার প্রতিনিধি স্থানীয় নাগরিকদের এক সভায় গতকাল শান্তি কমিটি গঠন করা হয়। কমিটি জনাব খওয়াজা খয়ের উদ্দিনকে কমিটির আহ্বায়ক নির্বাচিত করেন। বর্তমানে ১৪০ জন সদস্য নিয়ে এ শান্তি কমিটি গঠন করা হয়েছে। কমিটিকে আরো সদস্য কো-অপ্ট করার ক্ষমতা দেয়া হয়েছে।

শহরের বিভিন্ন এলাকায় ইউনিয়ন এবং মহল্লা পর্যায়েও শান্তি কমিটি গঠন করা হবে এবং তারা কেন্দ্রীয় কমিটির নির্দেশে কাজ করবেন। কমিটি শহরের দৈনন্দিন জীবন যত শীঘ্র সম্ভব স্বাভাবিক অবস্থা ফিরিয়ে আনার জন্য সর্বতোভাবে চেষ্টা করবেন।

.....।

কমিটিতে সদস্যদের মধ্যে রয়েছে এ, কিউ, এম, শফিকুল ইসলাম, অধ্যাপক গোলাম আজম, মওলানা মোহাম্মদ মাসুম.....প্রমুখ।”

117. Ext. 167 is a copy of a newspaper clipping of 'দৈনিক পয়গাম' dated 11-04-1971. In that newspaper clipping it is stated under the caption 'খাজা খয়েরউদ্দিন আহ্বায়ক মনোনীত ঢাকায় নাগরিক শান্তি কমিটি গঠিত' which reads as follows:

“গত শুক্রবার ঢাকায় খাজা খয়েরউদ্দিনকে আহ্বায়ক করিয়া ১৪০ সদস্য বিশিষ্ট একটি নাগরিকদের শান্তি কমিটি গঠন করা হইয়াছে। নাগরিকদের দৈনন্দিন জীবনে দ্রুত স্বাভাবিক অবস্থা গ্রহণের জন্যই শান্তি কমিটি গঠন করা হয় বলিয়া জানা গিয়াছে।

কমিটি মঙ্গলবার জোহর নামাজের পর বায়তুল মোকাররম হইতে চকবাজার মসজিদ পর্যন্ত একটি মিছিল বাহির করিবে। কমিটি এক কেন্দ্রীয় কমিটির অধীনে কাজ

করার পরিকল্পনা রহিয়াছে। গত ৯ই এপ্রিল ঢাকায় প্রতিনিধিত্বশীল নায়কদের এক সভায় এক শান্তি কমিটি গঠন করা হইয়াছে। কমিটি খাজা খায়েরউদ্দিনকে আহবায়ক মনোনীত করিয়াছেন।

কমিটিতে মোট ১৪০ জন কমিটির বৃহত্তর ঢাকার ইউনিয়ন ও মহল্লা পর্যায়ে অনুরূপ কমিটি গঠনের ক্ষমতা রহিয়াছে। কেন্দ্রীয় কমিটির পরিচালনায় এই গুলি কাজ করিবে। নাগরিকদের দৈনন্দিন জীবনে দ্রুত স্বাভাবিক অবস্থা পুন প্রতিষ্ঠায় পরিবেশ সৃষ্টির জন্য কমিটি সকল ব্যবস্থা গ্রহণ করিবে।

কমিটিতে অন্যান্য বিশিষ্ট সদস্যদের মধ্যে রহিয়াছে এ, কিউ, এম, শফিকুল ইসলাম, গোলাম আজম, ও অন্যান্যরা।”

118. According to Ext.37, Ext.101 and Ext. 167 as stated above, on 09-04-1971, in a meeting held at Dhaka, a ‘Shanti Committee’ was formed consisting of 140 members and Khawaja Khayeuddin was nominated as the Convener of the committee and, in that meeting accused Prof. Ghulam Azam and others were present and, at the time of forming the said committee, it was also decided to form Shanti Committees in various parts of Cities, Unions and Mohallas.

Count no. iii: That accused Prof. Ghulam Azam participated and formulated planning in the meeting held on 04-05-1971 for the purpose of forming units of the ‘Shanti Committee’ at various Unions of the Dhaka city. That meeting, which was held at the residence of A.Q.M. Shafiqul Islam at Elephant Road, Dhaka was also attended by Khawaja Khayeruddin, A.Q.M.

Shafiqul Islam, Abdul Jabbar Khaddar, etc. The said organization committed above mentioned crimes in all-over Bangladesh.

Discussion of Documentary Evidence:

In support of Count No. (iii) the Prosecution has submitted, amongst other documentary and oral evidence, two documents, Ext. 457 and Ext. 481 which are discussed as under:

119. Ext. 457 is a copy of the East Pakistan Police Abstract of Intelligence, Vol. XXV, Dhaka, Saturday, the week ending May 8, 1971 on Political Affairs wherefrom it appears that a meeting of the then East Pakistan Peace Committee was held on 4th May, 1971, at the Elephant Road Residence of A.Q.M Shafiqul Islam (CML) with Khawaja Khayeruddin, Convener of the Committee, in the chair. It was attended, amongst others, by Prof. Ghulam Azam (J I), Abdul Jabbar Khaddar (PDP) and A.Q.M. Shafiqul Islam (CML). The meeting discussed the formation of Peace Committees in different Unions of Dhaka city for the restoration of alleged normalcy and the proposed observance of Eid-i-Milad-un-Nabi on 8th May, 1971.

120. Ext. 481 is a copy of the Fortnightly Report on Political Situation for the First Half of May, 1971 from Special Branch, the then East Pakistan, Dhaka, Number 7 of 1971 wherefrom it also transpires that a meeting of the then East Pakistan Peace Committee was held on 04-05-1971 at the residence of A.Q.M. Shafiqul Islam (CML) at Elephant Road, Dhaka with Khawaja Khayeruddin, Convener of the Committee, in the chair. The

meeting was attended, amongst others, by Prof, Ghulam Azam (J I), Abdul Jabbar Khaddar (PDP) and A.Q.M. Shafiqul Islam (CML). Resolutions were adopted in the meeting demanding protection of lives and properties of the general public, including the peasants, against the miscreants.

Discussion of Oral Evidence relating to Charge No 1 and 2.

121. P.W.1 Moontassir Uddin Khan Mamun alias Moontasir Mamun, a Professor of the History Department of Dhaka University, has deposed that after March 1971, mainly Jamaat-e-Islami, different groups of Muslim League, P.D.P and sections of some other political parties supported the central government of the then Pakistan, but the activities of Jamaat-e-Islami and Muslim League were more than other main political parties; that in the first week of April, they altogether met Lt. General Tikka Khan when Pakistani Army used to commit killing, looting, rape every day in different areas of Bangladesh and, among the leaders of those political parties, Nurul Amin and accused Prof. Ghulam Azam were prominent and as per their advice and zeal Peace Committee was formed in the month of April. He has further deposed that Peace Committees were formed at grass root level and thereafter Rajakar, Al-Badar, Al-Shams, etc. Bahinis were formed and in those Committees and Bahinis Jamaat-e-Islami had primacy and the leaders of Jamaat-e-Islami had also leadership over Al-Badar Bahini and, that among the leaders of political parties, accused Prof. Ghulam Azam, the then Ameer of Jamaat-e-Islami, played the most important role to assist the Pakistani Army. He has also deposed that he and others who were in the

country saw and heard the brutal activities of Rajakar Bahini, Al-Badar and Peace Committee and , that the Peace Committee was spread over from the centre to grass-root levels and the Peace Committee showing paths took the Pakistani Army to different places, killed or assisted to kill, raped Bengalee women or assisted to rape them and plundered the valuables, particularly, of the workers of Awami League and Hindu Community and, accused Prof. Ghulam Azam, the then Ameer of Jamaat-e-Islami was the master mind of the Peace Committee who instigated and inspired Pakistani Army which is evident from the then newspapers. He has further deposed that though Rajakar Bahini was initially formed with the workers of Jamaat-e-Islami, but afterwards the government of the then Pakistan brought them within the legal frame-work. Rajakar Bahini also showing paths took Pakistani Army to different places and assisted them, identified the freedom-fighters and they also participated in killing, rape, looting and arson and, the members of Peace Committee and Rajakar Bahini indiscriminately committed genocide, rape and looting and it was assessed that during Liberation War, thirty lakh people were killed, but it is more than that which came out from his research. He has also deposed that accused Prof. Ghulam Azam in the first part of April met Lt. General Tikka Khan twice and thereafter he met Yahya Khan, the then President of Pakistan and he also met the political leaders of Pakistan who supported the commission of genocide and atrocities that during Liberation War more than four lakh girls and women were raped. He identified the accused in the dock.

122. P.W.1 has stated in his cross-examination that he was a student of 3rd year of Hon's in the month of March, 1971 and, that he started research on the Liberation War since 1974 and that perhaps the Peace Committee was formed first on April 9 under the leadership of Khawaja Khayeruddin and so far he remembers, Advocate A.Q.M. Shafiqul Islam, Sayed Md. Masum, Ghulam Azam (accused) and others were within 140-member Shanti Committee and of them, he is sure, accused Prof. Ghulam Azam was a member of Jamaat-e-Islami and the accused was present in the first meeting of Executive Committee of the Peace Committee. He has further stated in cross-examination that accused Prof. Ghulam Azam contested the election from Mirpur area where he (P.W.1) used to live in 1970. He has denied the defence suggestion that accused Prof. Ghulam Azam was not involved in any killing, rape, looting committed in 1971.

123. P.W.2 Mahabub Uddin Ahmed, Bir Bikrom has deposed that he is a freedom-fighter and he joined the then Pakistan Civil Service in Police Cadre and, in 1971 he was posted at Jhinaidah, sub-division, as S.D.P.O. He has further deposed that the leaders of political parties e.g. Jamaat-e-Islami, Muslim League, PDP, etc. in the first part of April having met Lt. General Tikka Khan supported the Operation Search Light, conducted by Pakistani Army since 25th March, and planned to form Peace Committees country-wide to assist Pakistani Army and he heard that Prof. Ghulam Azam (accused), Khawaja Khayeruddin and Nurul Amin were with the persons who met Lt. General Tikka Khan; that Islami Chatra Shangha was the

student front of Jamaat-e-Islami and the Islami Chatra Shangha formed Rajakar Bahini and they also formed Al-Badr Bahini and, accused Prof. Ghulam Azam met Yahya Khan, the then President of Pakistan, to form the Peace Committee, Al-Badr and Rajakar Bahinis armed. He also deposed that the Peace Committee, Al-Badr, Al-Shams and Rajakar Bahinis along with Pakistani Army committed genocide, killing, rape, arson, looting, etc. in different places of the country and, Jamaat-e-Islami and its student front took the lead in committing those crimes against humanity and accused Prof. Ghulam Azam was the leader of said Jamaat-e-Islami and under his leadership those offences were committed.

124. P.W.2 has stated in his cross-examination that perhaps in the month of September, 1970 he joined as S.D.P.O at Jhinaidah and he was incharge of sub-sector 'A' (Alpha Company) of Sector No.8 since May, 1971; that Lt. General Tikka Khan was the then Governor of East Pakistan and Martial Law Administrator of East Zone of Pakistan Military Government. He has further stated that he heard that Khawaja Khayeruddin was the Chief of the Peace Committee and amongst others accused Prof. Ghulam Azam was a member of that Committee.

125. P.W.3 Sultana Kamal is an Advacate who has stated that she is a freedom-fighter and at present she is the Executive Director of the Ain-o-Shalish Kendro. She has testified that in 1971, she was a student of Dhaka University; that during Liberation War, 1971, genocide was being committed and in April she came to know that some political parties, based

on religion, and Pakistani Army hand to hand started activities against Liberation War and that Jamaat-e-Islami, P.D.P, Muslim League and accused Prof. Ghulam Azam were involved with those activities and the accused used to meet frequently Lt. General Tikka Khan and the leaders of Pakistani Army and discussed with them how to save the unity of Pakistan and he also used to deliver speeches and made statements wherefrom it appeared that Pakistan meant Islam and opposing Pakistan meant opposing Islam. Firstly they started organizing activities in the name of Peace Committee and thereafter in May they formed Rajakar Bahini and they also formed Al-Badr and Al-Shams Bahinis with the students of Jamaat-e-Islami and young workers and, accused Prof. Ghulam Azam was the leader of all those ill-activities and at that time the accused visited Pakistan and during his visit he talked against the Liberation War and the freedom-fighters. She has further deposed that the members of those Bahinis having caught hold of women of different ages handed over them to Pakistani Army camps and bunkers wherein they were raped and many of them were killed after rape. The accused Prof. Ghulam Azam, as the overall leader of Rajakar, Al-Badr and Al-Shams Bahinis, was established as a symbol against the freedom-fighters who were infavour of Liberation and during Liberation War, 1971, and genocide, killing, rape, looting, conversion of Hindus to Muslims, etc. were committed by the members of those Bahinis along with Pakistani Army. She has also testified that she took interview of 19 women who were raped by Pakistani Army and most of them were handed over to Pakistani

Army by the members of those Bahinis. She identified the accused in the dock.

126. P.W.3 has stated in her cross-examination that Khawaja Khayeruddin was the Convener of the Peace Committee which was formed with the members of Jamaat-e-Islami, Muslim League and P.D.P. She has also stated that they heard that accused Prof. Ghulam Azam was the Ameer of the then East Pakistan Jamaat-e-Islami and that during Liberation War, Rajakar, Al-Badar and Al-Shams Bahinis were formed in April, 1971 or thereafter and accused Prof. Ghulam Azam had the most important role in forming those Bahinis along with the Peace Committee.

127. P.W.16 Md. Motiur Rahman, Additional Superintendent of Police is the investigation officer of this case. He has deposed that during investigation, after having seized alamats, perused documents, visited the place of occurrence and examined the witnesses, it clearly appeared to him that accused Prof. Ghulam Azam was the Ameer of the then East Pakistan Jamaat-e-Islami since 1969 to 1971. In the night of 25th March, 1971, Pakistani Army, with modern weapons, started committing crimes against humanity, genocide and other crimes on the unarmed bangalees in the name of Operation Search Light and in that situation the accused along with 12 others having met Lt. General Tikka Khan at the then Governor House, supported those atrocities and assured him that they would co-operate with the Pakistani Army and that in continuation of said conspiracy and planning, on 9th April, 1971 the accused formed 140-member Central Peace

Committee in order to co-operate Pakistani Army in committing the atrocities and the accused himself was the third man of the top of that Committee. He has further deposed that for the continuous wide criminal activities of accused Prof. Ghulam Azam, during Liberation War, thirty lakh people were killed, two lakh women of different ages were raped, one crore people were compelled to deport out, some people of minority community were compelled to convert their religion and thousands of houses, shops, schools, colleges, Universities, mosques, temples, bridges, etc were destroyed. He has also testified that accused Prof. Ghulam Azam was the mastermind of all those criminal activities and he was the key-man of the central Peace Committee, Rajakar, Al-Badr and Al-Shams Bahinis.

128. D.W.1 Abdullahil Amaan Azmi is a son of accused Prof. Ghulam Azam. He has deposed that the then Chief Martial Law Administrator, General Yahya Khan on 25th March, 1971 conducted the most hateful killing of the history through Operation Search Light and that Peace Committee was formed in 1971 and his father Prof. Ghulam Azam was a member of the Central Peace Committee.

129. D.W.1 has stated in his cross-examination that he came to know that on 4th April, 1971, his father accused Prof. Ghulam Azam met the Military Authority of Pakistan, but he does not know whether his father met the Military Authority of Pakistan before or after that date. During Liberation War his father went to Pakistan more than once, but he does not know how many times he went there. His father was the Ameer of the then East

Pakistan Jamaat-e-Islami. He has further stated that the book named ‘জীবনে যা দেখলাম’ written by his father is a autobiographic book which was published in nine Volumes of which he exhibited first and third Volumes which were marked as Ext. H and H1 respectively. He has further stated that at page 133 of Ext. H1 it is stated as follows:

“১৯৭১ সালের ২৬শে মার্চ তারিখে আমার পিতা ড্রাইভার সহ গাড়ি নিয়া বাসার বাইরে যান এবং ঢাকা শহরের ঢাকা বিশ্ববিদ্যালয় এলাকা, নবাবপুর রোড, গুলিস্থান এলাকায় ১৯৭১ সালের ২৫শে মার্চ রাত্রে সংঘটিত হত্যায়ত্ত ও ধ্বংসায়ত্ত নিজ চোখে দেখেন এবং মনে করেন যে, সেনাবাহিনী যেন কোন শত্রুদেশ জয় করার জন্য আক্রমণ চালিয়েছে।”

130. D.W.1 has further stated in cross-examination that it is stated at page 154 of that book that in April, 1971 at the initiative of Khawaja Khayeruddin and Mowlovi Farid Ahmed, a meeting was held in the house of Nurul Amin and in that meeting his father Prof. Ghulam Azam along with representatives of different political parties were present. It is also stated at page 157 of that book that a peace committee was formed making Khawja Khayeruddin as its convener. He also stated that he exhibited a part of the book named ‘ একাত্তরের যুদ্ধাপরাধ এবং যুদ্ধাপরাধীদের বিচার’ edited by Shahriar Kabir (Ext. F1) wherein at page 63 it is stated as follows:

“ ইনি সেই গোলাম আযম-যিনি ১৯৭১ সালে পাকিস্তানি হানাদার বাহিনীর প্রতিটি অন্যায, বেআইনী, অমানবিক ও নিষ্ঠুর কাজ প্রকাশ্যে সমর্থ করেছিলেন; যিনি মুক্তিযোদ্ধাদের দেশদ্রোহী বলে আখ্যা দিয়ে তাদেরকে সমূলে ধ্বংস করার

আহবান জানিয়েছিলেন; যিনি আলবদর বাহিনী গড়ে তুলে দেশের শ্রেষ্ঠ সন্তানদের নির্মমভাবে হত্যা করার প্ররোচনা দিয়েছিলেন। গোলাম আজমের প্ররোচনায় শহীদ বুদ্ধিজীবীদের মধ্যে আছেন আমার শিক্ষক মুনির চৌধুরী, মোফাজ্জল হায়দার চৌধুরী, সন্তোষ কুমার ভট্টাচার্য ও সিরাজউদ্দিন হোসেন, আমার অগ্রজপ্রতি শহিদুল্লাহ কায়ছার, আমার বন্ধু গিয়াসউদ্দিন আহম্মদ, আমার সহকর্মী আবুল খায়ের, আনোয়ার পাশা, রাশিদুল হাসান ও মোহাম্মদ মোর্তজা, আমার ছাত্র আ,ন,ম, গোলাম মোস্তফা ও সৈয়দ নজরুল হক- যাদের মৃত্যুতে আমি ক্ষতিগ্রস্ত, শোকাহত ও ব্যাথাতুর।”

Evaluation of evidence and findings

The prosecution has mainly relied upon documentary evidence to prove charge Nos. 1 and 2.

131. D.W.1 Abdullahil Aman Azmi, the son of the accused has admitted in cross-examination that his father wrote autobiography named “ Jibon-e-Ja-Dekhlam” volume-III (Ext. H-page-133) in which it has been stated that his father went out of their house on 26.03.1971 riding on their car and visited Dhaka University area, Nawabpur Road, Gulistan area and witnessed the marks of massacre and destructions thereof caused by Pakistan army in the night following 25 March, he thought, Pakistan army as if launched an attack on an enemy country with intent to capture it.

132. It is revealed that on the following day of 25 March, accused Ghulam Azam visited Dhaka city and acquired direct knowledge about the atrocities and massacres committed by Pakistan army.

133. Despite of the fact, the accused along with his like minded leaders met Tikka Khan, CMLA on 04.04.1971 (Exts. 33,34) and gave assurance to provide all assistance to the CMLA for restoring normalcy within the province.

134. The news clippings of the Daily Azad, Daily Purbodesh and Daily Paigam Exts. 37, 101 and 167 go to speak that the accused and his associates made meetings with Tikka Khan as a part of conspiracy and planning to commit crimes against humanity and genocide as a result of which horrendous crimes as specified under section 3(2) (a) (c) (f) (g) of the Act were committed in all over Bangladesh by Pakistan occupation army with the help of collaborators during nine months struggle in 1971. Since conspiracy to commit crimes against humanity and genocide is an inchoate offence, it is not necessary to prove that genocide occurred pursuant to the conspiracy and planning. Agreement between two parties may be proved by direct evidence. Besides this, such agreement to conspiracy and planning may be inferred from circumstantial evidence. Concerted action on the part of the conspirators can constitute evidence of an agreement. In the instant case, we find from the documentary evidence cited above that the accused with his associates held meeting with Tikka Khan, CMLA and the President of Pakistan for several times and pursuant to such conspiracy and planning the accused as head of Jamaat-e-Islami substantially contributed much in forming para-militia forces such as Peace Committees up to grass-root level, Razakar, Al-Badr and Al-shams to resist independence of Bangladesh. It is

further evident that the accused urged the President of Pakistan to supply arms to true patriots of Pakistan and to increase the number of Razakars to annihilate pro-liberation people of Bangladesh. The circumstantial evidence that arose from the activities of the accused during War of Liberation lead us to hold that the accused is guilty for committing crimes for conspiracy and planning which resulted massive crimes against humanity and genocide in a large scale in all over Bangladesh by his subordinate para militia forces as discussed in paragraph nos. 64 to 89 of this judgment.

XVIII - Adjudication of charge No.-3

(Incitement involving the commission of crimes specified in section 3(2) of the Act, 1973)

Accused Ghulam Azam by his acts and commissions, made statements and speeches instigating his followers to commit crimes against humanity and genocide in all over Bangladesh in 1971. Therefore, the accused has been charged under section 3(2)(f) read with section 4(1) and 4(2) of the Act for committing crimes specified in section 3(2) of the Act.

135. Incitement is not an offence which has been specifically mentioned in section 3(2) of the Act. However, direct and public incitement to commit crime against humanity and genocide is a recognised crime under customary international law and as such the offence of incitement is a crime under international law which is also specified in section 3(2)(f) of the Act. Incitement to commit genocide is an inchoate offence. Therefore, it is not

necessary to prove genocide has occurred in order to prove the offence of incitement to commit genocide (para-678, Nahimana case, Appeal Chamber).

INCITEMENT:

136. The definition of incitement in the draft Criminal Code, cl, 47 as recently approved by the Divisional Court of Appeal in England is:-

A person is guilty of incitement of committing an offence or offences if he incites another to do or cause to be done an act or acts which, if done, will involve the commission of the offence or offences, by the other, and he intends or believes that the other, if he acts as incited, shall or will do so with the fault required for the offence or offences.

137. The elements of the offence of direct and public incitement to commit genocide are described in both the plea Agreement and the Tribunal jurisprudence as:-

- (I) that the accused incited others to commit genocide;
- (II) that the incitement was direct;
- (III) that the incitement was public and
- (IV) that the accused had the specific intent to commit genocide, that is destroying in whole or in part a nation, ethnic racial or religious group.

Incitement is complete when uttered or published:-

138. Nahimana, Barayagwiza and Ngeze, (Appeals Chamber), November 28, 2007 para 723, the Appeals Chamber is of the opinion that the Trial Chamber erred in considering that incitement to commit genocide continuous in time until the completion of the acts contemplated. The Appeals Chamber holds that the crimes of direct and public incitement to commit genocide is completed as soon as the discourse in question is uttered or published, even though the effects of incitement may extend in time. The Appeals Chamber accordingly holds that the Trial Chamber could not have jurisdiction over acts of incitement having occurred before 1994 on the grounds that such incitement continued in time until the commission of genocide in 1994.

Now let us discuss charge no.3 which contains 28 counts in the light of the evidence produced by the prosecution:-

Charge No.-3

Count No.-1

Daily Azad , 08 April, 1971(copy of paper clipping)

139. India's interference in internal affairs: Extreme criticism by different leaders of East Pakistan.

Dhaka, 07 April. -East Pakistan Jamaat-e-Islami: A joint statement was issued by the leaders of East Pakistan Jamaat-e-Islami. The joint statement was issued by Prof. Ghulam Sarwar. In that joint statement, they stated that they gravely believed that the patriots of East Pakistan will

eliminate these Indian intruders wherever they see them, the inhabitants of East Pakistan will never allow these Indian intruders to pay with the sovereignty of East Pakistan.

140. It appears from Daily Azad dated 08.04.1971 marked as exhibit 36 that on 07.04.1971 accused Ghulam Azam made a joint statement by treating the members of Jammat-e-Islami, Shanti Committee, Rajakar Bahini, Al-badr Bahini and Al-shams Bahini as patriots and urging them to destroy Indian spies including Hindu religious group, supporters of Awami-league, Bangalees and pro-independence of Bangladesh. He incited by giving orders to the members of auxiliary forces to destroy in whole when they saw them at any place in the territory of the then East Pakistan.

Count-2

Daily Azad, 11 April 1971(copy of paper clipping)

Ghulam Azam against Indian Interference: Unwanted generosity is a new trick of

141. Dhaka, 10 April. -In a speech aired over Radio Pakistan, Prof. Ghulam Azam has called general people for becoming architects of their own fate. ... He further stated that, practically by sending armed intruders, India has challenged the patriotism of the East Pakistani People. India should keep it in mind that it should not interfere for the freedom of a country. I believe that these intruders will never get any assistance from the Muslims of East Pakistan. Practically, India is playing a role to engage the

people of East Pakistan in a war with an army financed by it He reiterated, “we should be the architect of our own future.”

Same news different heading:

1. Daily Purbodesh, 11 April 1971(copy of paper clipping)

Ghulam Azam’s Radio Speech: India engaged in a conspiracy to destroy Pakistan.

2. Daily Pakistan, 11 April 1971(copy of paper clipping)

Ghulam Azam cautioned Indian Leaders.

142. It has come into evidence by Daily Azad dated 11.04.1971 marked as exhibit 38, Daily Purbadesh dated 11.04.1971 marked as exhibit-102 and Daily Pakistan dated 11.04.1971 marked as exhibit 54 that on 10.04.1971 accused Ghulam Azam as Ameer of Jamaat-e-Islami gave a provoking speech to the nation through Radio Pakistan that intimidated against the leaders of India who allegedly challenged the people of East Pakistan. By which the followers of accused Ghulam Azam were incited to commit atrocities during the liberation war and at his influence and instigation many unarmed Bangalees including a group of Hindus, supporters of Awami-league who had sided with an independent Bangladesh, were also killed.

Count-3

Daily Purbodesh, 23 April 1971 (copy of paper clipping)

Central Peace Committee’s Appeal: Co-operate with armed forces

143. Dhaka, 22 April (APP). Central Peace Committee appealed to all patriots of East Pakistan to protest against all subversive activities and to cooperate with the armed forces.....Central Peace Committee informed that everywhere in East Pakistan the people who are committing subversive activities against the state are losing their hopes and currently has undertaken the principle of ‘ burnt soil’ or poramati neeti to create disturbances to the peace loving general people and has started to disrupt transport services.....

144. The Committee has advised that wherever the army visits, the local people, after taking a national flag in their hands, should go to meet with them. In this way, the army will be able to get rid of people engaged in subversive activities and miscreants. Committee also stated that, there was reason for the general people to be afraid of the army.... The Central Peace Committee hailer Allah for the ideal role played by the Army in saving the country from the separatists.

145. Daily Purbodosh dated 23.04.1971 marked as exhibit -105 had reported that on 22.04.1971 Ghulam Azam as Ameer of Jamaat-e-Islami and part of Central Shanti Committee by a press release urged the patriotic citizens to resist the destructive activities of traitors and to assist the members of the Pakistani Army in all possible ways so that they could destroy the persons who had sided with an independent Bangladesh. He also advised members of the Shanti Committee to greet members of Pakistan Army with the national flag. According to this incitement Pakistan Army

along with auxiliary forces committed genocide and crimes against humanity all over the country during the liberation war in 1971 and he controlled members of all organizations in capacity of being prime leader to destroy enemies who fought for independence of Bangladesh.

Count-4

Fortnightly Report 1st Half of May, 71

146. In a meeting (100) held by the Dhaka City Jamaat-e-Islami on 2.5.1971 at its office, with its Ameer Khurram Jah Murad in the chair, discussion was held about the present situation of the country. The meeting urged the party workers to make all possible efforts for restoration of complete normalcy and peaceful functioning of the mills and factories and also requested them to advise both local and non-locals to foster brotherly feeling amongst themselves. Prof. Ghulam Azam, Ameer, EPJI, also addressed the party workers stressing on the need of Islamic ideology.

Paragraph-8

147. A meeting (30) of the East Pakistan Peace Committee was held on 4.5.1971 at the residence of A.Q.M. Shafiqul Islam (CML) at Elephant Road, Dhaka with Khwaja Khairuddin, Convener of the Committee in the chair. It was attended, amongst others, by Prof. Ghulam Azam (JI), Abdul Jabbar Khaddar (PDP) and A.Q.M. Shafiqul Islam (CML). Resolutions were adopted in the meeting demanding protection of life and properties of the general public, including the peasants, against the miscreants.

148. It has emerged from fortnightly report on political situation in the 1st of May, 1971 from a special branch, East Pakistan, Dhaka marked as exhibit-481 that a meeting held by Dhaka city Jamaat-e-Islami on 02.05.1971 at its office in which Ghulam Azam was present. The meeting invited the party workers to give all possible efforts for bringing back the so called state in a normal position. This state report gives indication that Ghulam Azam as Ameer of the party showed his involvement in the incitement by holding a party meeting at its office on 02.05.1971.

Count -5

Daily Sangram, 18 May 1971(copy of paper clipping)

Recommendation of Citizens Meeting in Dhaka: Call to amend Peace Committee's name as Peace and Solidarity Committee.

149. Yesterday (Monday) a meeting of citizens from all spheres of life was held in Dhaka to review the situation of East Pakistan. In the news of APP it was reported that the meeting took place at the residence of former M.N.A. Mr. Abul Kashem and the meeting was presided over by Maj. Gen (Retd.) Omrao Khan. The meeting, among others, was attended by Khaja Khayeruddin, Mr. Shafiqul Islam, Prof. Ghulam Azam, Maj Afsar Uddin, Mr. Abul Kashem, Dewan Warsat Hossain Khan, Mr. Toyaha Bin Habib, etc. Retired Maj. Gen. Omrao Khan said in his speech that the country is going through deep crisis due to the subversive activities of the outlawed Awami League and their allies from the other side of the border. ... Mr.

Khan re-emphasized on sacrificing all political difference so that everyone can fight against the general enemies. In the meeting the Army was highly praised for their role in safeguarding the country from the subversive activities committed by the Awami League.

150. From the meeting it was demanded that Pakistan takes hard actions against all the traitors and to achieve that all the Islamic political parties of East Pakistan must unite together to extend their support towards the army. It was emphasized that to find out the miscreants and to restore full normalcy in the province, each and every partriot must try hard and work selflessly.

151. In a proposal adopted in that meeting following names were recommended as the members of the Provincial Peace Committee : (1) Dewan Warasat Hossain Khan, (2) Sayeed Khaja Khayeruddin, (3) Mr. Shafiqul Islam, (4) Prof. Ghulam Azam, (5) Mr. Akhter Ahmed Khan, (6) Mr. Abul Kashem, (7) Mr. Mohammad Sabir Ali, (8) Mr. Jodur Ahmed, (9) Major Afsaruddin, (10) Mr. A.K. Rofiqul Hasan, (11) Mr. Musaffar Ahmad, (12) Mr. A. Mallick, (13) Mr. S.M. Ziaul Hoque, (14) Mr. Aftab Ahmad Siddiq, (15) Mr. A.H. Manik, (16) Mr. Md. Nurul Amin, (17) Mr. Anjar Mallik, (18) Mr. Mahabub Iqbal, (19) Mr. S.H. Hasan, (20) Mr. Anwarul Haque, (21) Mr. Akhter Hamid Khan, (22) Mr. Hasan Raja, (23) Mr. Salaiman Usmani, and (24) Mr. Toyaha Bin Habib.

Same news with different heading:

Daily Pakistan, 18 May 1971(copy of paper clipping)

Meeting of Peace and Solidarity Committee: Call for taking severe action against the persons committing treason.

152. Daily Sangram dated 18.05.1971 marked as exhibit-2 and Daily Pakistan dated 18.05.1971 which reported that a meeting held by Nagorik Shanti Committee in Dhaka on 17.05.1971 and praised Pakistan army for taking necessary measures against duskritikaris, members of the banned Awami-league. The meeting invited patriotic citizens to find out duskritikari (freedom fighter) and to take strong steps against them for destroying them in whole which demonstrated incitement in killing the freedom fighters and innocent people who had sided with the independence of Bangladesh.

Count – 6

Dainik Paigam, 22th May, 1971 (copy of paper clipping)

Jamaat Leader's Call after Provincial laws

153. Save country from the destructive conspiracy of the Indian Assistants Dhaka, 20 May. The Jamaat leader's on tour in East Pakistan called all the concerned people of Pakistan to save the country from the destructive conspiracy of out lawed Awami League and its Indian allies. Secretary of Jamaat-e-Islami, Chowdhury Rahmat Elahi said he is satisfied that the local people are assisting the Military.

154. On last Tuesday in a large public gathering in Mohammadpur Town Hall organized by the Central Peace Committee, Maj Gen (Rtd.) Omrao Khan, a Central Jamaat Leaders stated that,he praised the role of the Army in this critical juncture of the country. He said, there are other obligations (for us) to comply with(Omrao Khan). Before noon, he spoke in different places including Mirpur, Lalbag, Chawk, Lalmatia and Thatari Bazar. In these meetings organized by peace committee, Khaja Khayeruddin, Abul Kashem, Professor Ghulam Azam, Major Afsaruddin, Dewan Orasat Ali were present.

155. Exhibit 169, Daily Poigam dated 22.05.1971 which has reported that accused Ghulam Azam had visited various parts of Bangladesh including Jessore and Khulna where he met leaders of his party as well as his followers and he also visited some places of Dhaka including Mirpur, Lalbagh, Chawk, Lalmatia and Thatari Bazar where he held series of meeting and gave speeches by which he urged leaders of Jammat-e-Islami and all quarters of Pakistan to protect the nation against evil designs of members of the banned Awami-league and its Indian associates. Making such speeches he incited his followers and supporters of undivided Pakistan to commit crimes against humanity which subsequently happened across the country during the liberation war. The Pakistan Army, with the help of Rajakars, Al-badrs, Al-shams, by the incitement of Ghulam Azam, used to commit killing, looting, igniting houses of innocent people and rape of women throughout the country.

Count- 7**Daily Sangram, 22 June 1971 (copy of paper clipping)**

Try to understand the situation of East Pakistan: Ghulam Azam.

156. The Muslims of East Pakistan will never leave Islam. For that reason they will never leave Pakistan. East Pakistan has sacrificed a lot for Islam and to be with Pakistan. They are willing to make more sacrifices. Recently EPJI Ameer Prof. Ghulam Azam made these comments in an interview with a journalist of Daily Jasarat, a daily published from Karachi. He called for the people of West Pakistan not to get confused by the false propaganda of the enemy. He requested the general people and the intellectual group of West Pakistan to cordially understand the situation of East Pakistan. He urged for their assistance in resolving these problems. After expressing his grief he said, an opportunistic group always the time conspired against the democracy of this country. The nation expected a lot of things in the last election. But the party which won in the last election was a fascist group in reality, even though they claimed them to be a democratic party. Prof. Ghulam Azam said, President Yahya Khan has introduced a legal structure to uphold the security of the country as well as the Islamic Ideology. However, the party winning the last election had such ideologies, activities and slogans which are contrary to that legal structure. The elected members did such activities that were not expected from them.

157. Daily Sangram dated 22.06.1971 marked as exhibit-5 which has revealed that in the month of June, 1971 accused Ghulam Azam in an interview with Pakistan Daily Jasarat urged the people not to be confused by propagandas of supporters of independence of Bangladesh and at the interview accused also identified the supporters of independence of Bangladesh as enemies. By attending such interview accused provoked the auxiliary forces and activists of his political party to conduct a criminal activities in the name of undivided Pakistan.

Count- 8

Daily Sangram, 23 June, 1971 (copy of paper clipping)

Daily Ittefaq,23 June, 1971

Prof. Ghulam Azam in Karachi: People of East Pakistan will always stay in fraternity with West Pakistan.

158. It has appeared in the Daily Sangram dated 23.06.1971 marked as exhibit-6 and Daily Ittefaq dated 23.06.1971 that on 22.06.1971 Ghulam Azam at a press conference at Karachi in Pakistan urged all concerned to actively oppose those who were duskritikari and state antagonists. Ghulam Azam praised Pakistan Army for keeping Pakistan from destructive activities of the said duskritikari. He also invited to get help of members of auxiliary forces by showing instigation.

Count- 9

East Pakistan Police Abstract, 18 July 1971

Prof. Ghulam Azam addresses a crowd in Brahmanbaria .

159. Comilla. – On 18th July, 1971 a Peace Committee meeting (2000) was held at Republic Square, Brahmanbaria with A. R. Mollah (CML) of Brahmanbaria, in the Chair. Prof. Ghulam Azam (para -437) President, EPJI, A.Q.M. Shafiul Islam, Advocate (CML) and A.T.M. Obaidullah (PDP), Advocate, Brahmanbaria delivered speeches urging upon the audience to safeguard the integrity of Pakistan.

160. Exhibit -469, East Pakistan Abstract of intelligence, para 820 which has disclosed that on 18.07.1971 accused Ghulam Azam as Ameer of Jamaat-e-Islami of East Pakistan in a Shanti Committee meeting at Brahmanbaria Republic Square gave a speech inciting all to attack those who did not believe in unity of Pakistan. Such demonstration forms an offence of incitement.

Count-10

Daily Sangram, 19 July 1971 (copy of paper clipping)

161. Ghulam Azam: No evidence of Hindus being the friends of Muslim.

Rajshahi, 16 July. Recently, EPJI Ameer Prof. Ghulam Azam while addressing a gathering of hon'ble citizens organized by the local Peace Committee in the local Municipal Hall said about the miscreants that those who do not have any strength of their own want to be independent

depending on the assistance of the Hindustan. He emphasized strongly that, there is no documentary evidence to show that the Hindus are the friends of Muslims. All the times they are enemies of the Muslims and even after the partition, Muslims are killed everyday in India. He further said, it is the credit of the Hindus that they have successfully created divisions among the Muslim brothers by raising the question of bangalee and obangalee. He thinks that it is not possible for Hindus and Muslims to become one nation unless and until a division is created in the question of language.

162. Daily Sangram dated 19.07.1971 marked as exhibit -09 published that on 16.07.1971 a meeting organized by Rajshahi Shanti Committee at the local municipal hall where accused Ghulam Azam declared that there were no proof of evidence that the Hindus could be friends of muslims. They always were enemies of Muslims. During his speech accused Ghulam Azam blamed Hindus for creating rift between muslims focusing the issue on bengali and non-bengali. By making such inciting speech accused Ghulam Azam had divided the people of Bangladesh and made them a target for attack, subsequently it happened in a heinous manner across the country.

Count-11

Daily Sangram, 3 August 1971 (copy of paper clipping)

Prof. Ghulam Azam

163. EPJI Ameer Ghulam Azam termed the present situation as war time situation. This is not a war of arms, but a war of ideology. We must win this

war to establish Din of Allah and to save this country.....Regarding the role of the army he said, their duty is to protect the country and that's what they are doing. Now it is the duty of the Islamists to establish Islam in this country.

Fortnightly Report, First Half of August, 1971

164. A conference of Pakistan J.T.A. was held on 2.8.71 in two sessions at the Dhaka University Gymnasium. The morning session was presided over by Dr. Hasan Zaman, Director of Academy for Pakistan Affairs and addressed, amongst others, by Maulana Abdur Rahim (JI), Khawaja Khairuddin (CML) and Matiur Rahman Nizami (ICS). The afternoon session was presided over by Saiyid Md. Nurul Haq and addressed, amongst others, by Prof. Ghulam Azam (JI) and Farid Ahmad (PDP). Discussion centred around the importance of Islamic education and the need for framing a constitution based on Islamic ideology. The conference was followed by a procession (500) wherein slogans were raised demanding Islamic University and Islamic Constitution, condemning secular education and Indian Imperialism.

165. Exhibit-10, Daily Sangram dated 03.08.1971 and Exhibit-487 a fortnightly report on political situation for the 1st August, 1971 from a special branch, East Pakistan by which it has revealed that during a conference presided over by Director of the Pakistan Affairs Academy Dr. Hasan Zaman organized by Jamaat-e-Talabia-Arabia held at Dhaka University gymnasium, accused Ghulam Azam gave a speech on 02.08.1971

expressing that the war was not only a war of arms but also a war of ideals. He further stated that there was no other option but to win the war. Describing the existing situation during speech he re-marked the war as a war for ideals of Islam and treated the same as Jihad which was fought against non-muslim. Such speech directly incited to eliminate opposing political and religious group. His speech further incited followers to make the supporters of Awami-league into hindu religious group and non-muslim and threw them in the battle field as enemy of Pakistan.

Count-12

Fortnightly Report, First Half of August, 1971

166. At the instance of the District Branch of Jamaat-e-Islami, a meeting (500) was held on 4.8.71 in Khulna Municipal Hall with Maulana Abdus Sattar, Ameer, JI, Khulna in the chair. Raza Md. Basarat, Secretary, WPJI, Dr. Nazir Ahmed (UI-MNA) of West Pakistan and Prof. Ghulam Azam, Ameer, EPJI, delivered speeches in the meeting criticising Sk Mujibur Rahman, the Chief of the outlawed Awami League and his followers for misguiding the people of East Pakistan by launching secessionist movement in the garb of 6-points. The speakers also held them responsible for the present political situation in the province. Prof. Ghulam Azam, in course of his speech, exhorted the audience to unite under the banner of Jamaat-e-Islami and rout the miscreants and secessionists. He pleaded for establishment of Islamic rule in the country on the basis of the Holy Quran and the Sunnah.

167. Fortnightly report for political situation for the 1st half of August, 1971 from special branch East Pakistan, secret No. 13/71, para 11 marked as exhibit-487. By which it has reported that on 04.08.1971 at a meeting held at Khulna Municipal Hall accused Ghulam Azam delivered speech in the meeting criticising Sheikh Mujibur Rahman as the chief of the outlawed Awami-league and blaming his followers for misguiding the people of East Pakistan by launching secessionist movement in the garb of six points. Ghulam Azam during his speech had also exhorted the audience to unite under the banner of Jamaat-e-Islami and rout the miscreants. By the speech he made provocation upon his followers and others to become arrogant to destroy the supporters and workers of Sheikh Mujibur Rahman who vehemently invited the people to liberate an independent country as he won in the election of 1970 by majority seats.

Count-13

Dainik Sangram, 08 August, 1971(copy of paper clipping)

Prof. Ghulam Azam in a large gathering in Kushtia

Same News different Heading

Dainik Pakistan, 08 August 1971(copy of paper clipping)

Sheikh Mujib and his party are traitors: Ghulam Azam

Dainik Azad, 09 August, 1971 (copy of paper clipping)

Ghulam Azam addresses a gathering in Khulna (Wrong caption)

168. A workers conference of Kushtia District Jamaat-e-Islami (JI) held recently at Kushtia was addressed, amongst others, by Raja Mohd. Bassarat, Secretary, Rawalpindi District JI, Dr. Nasir Ahmad Khan (JI), MNA Dera Ismail Khan and Prof. Ghulam Azam, Ameer East Pakistan JI, Raja Mohd Basarat stated that the Hindus were the main enemies of the Muslims and as such every Pakistani should stand firmly against India which had been trying her best to destroy Pakistan. Dr. Nasir Ahmad Khan also warned the party workers to be careful against Indian design.

169. Prof. Ghulam Azam who was the main speaker in the conference stressed on the need for formation of Peace Committee at every village to neutralize the evil design of the rebels. According to him, if the Muslims failed to safeguard the integrity and solidarity of Pakistan, existence of the state and Islam would be at stake. He observed that those who thought the Hindus to be their friends were the enemies of Pakistan. He vehemently condemned the dream of some misguided Muslims for establishment of Independent and sovereign 'Bangladesh' and said as soon as Razakars, Mujahids and police would be able to check the disrupt activities of the rebels in rural areas, the Army would be withdrawn to be sent to the borders to check the Indian infiltrators into East Pakistan.

170. Daily Sangram dated 08.08.1971 marked as exhibit-11, Daily Pakistan dated 08.08.1971 marked as exhibit-64, Daily Azad dated 09.08.1971 marked as exhibit-45 and fortnightly report (secret No. 14/1971) para 12 by special branch marked as exhibit-488 by which it has reported that on

06.08.1971 Ghulam Azam as Ameer of Jammat-e-Islami in the meetings at Kustia and Khulna remarked that Sheikh Mujibur Rahman and the banned Awami-league had entered into an alliance with India and betrayed with the common people of the region. During his speeches he stated further referring to the great sacrifice of Muslims during Azad movement against Hindu domination. He further called the common people to stay alert against so called duskritikari (freedom fighters). It has come into evidence by these exhibits that accused Ghulam Azam instigated the people to treat Sheikh Mujibur Rahman and his followers as traitors of East Pakistan and demonstrated incitement on the part to commit genocide, atrocities against humanity.

Count-14

Daily Sangram, 14 August 1971 (copy of paper clipping)

171. EPJI Ameer Prof. Ghulam Azam in a statement stated that the 25th Azad Day is more significant due to the present critical situation endured by the nation. He wholeheartedly urged the general people to show their respect and love towards the ideology and the solidarity of the country and said, “criminological treachery to our ideology is the main reason for our national turmoil.” He suggested that it can only be cured by establishing an ideology based Pakistan, which is an old promise. Prof. Ghulam Azam said, “If the Islamic ideology, on the basis of which Pakistan was found, was established then all the people irrespective of area would have been benefitted from economic justice, social welfare and democratic rights and it

would have increased the unity within the people. Geographical and cultural differences would not have arisen.”He said, “At present, country’s unity and solidarity is at stake. Sovereignty of the country is threatened by the internal and external enemies of Pakistan. Foreign media and major powers being confused due to the propaganda of Indian media are showing their back to Pakistan.”

172. Daily Azad dated 16.08.1971 marked as exhibit-46, Daily Purbodesh dated 16.08.1971 marked as exhibit -108 and Daily Pakistan dated 16.08.1971 marked as exhibit-65 by which it has published that on 14.08.1971 on the occasion of 25th Azadi Day of Pakistan accused Ghulam Azam in a meeting at Karjon Hall stated that unity of Pakistan was in crisis and its sovereignty was being threatened by internal and external enemies who were supposed to elude to India if they did not realize the reality of Pakistan. He further urged all to destroy them in whole from the safety of handicapped the nation which amounts to incitement.

Count-15

Daily Azad, 16 August 1971 (copy of paper clipping)

173. Leaders address in Karzon Hall symposium: Whole-hearted call to face the enemies unitedly [Photo caption: Mr. Nurul Amin, Azam and Mr. Nawabjada Nasrullah Khan addressing the symposium]. Leaders expressed this strong view in a symposium held at Karzon Hall celebrating Azadi day. This programme was chaired by Mr. Nurul Amin, President of NDP.

Ghulam Azam

174. EPJI Ameer Prof. Ghulam Azam said that, Bengalee Muslims will get their rights one day if Pakistan exists. And Bengalee Muslims will not exist if Pakistan extinct. Those who do not understand this truth, they must be eradicated from the soil of East Pakistan. He also said that, never before I realized the importance of the Azadi Day, like today. It seems Pakistan has reborn. Prof. Ghulam Azam further said that Pakistan will not exist unless we keep our faith on the ideology on the basis of which Pakistan was created.

Same news different heading

Daily Purbodesh, 16 August 1971 (copy of paper clipping)

‘Won’t allow it to become a battleground’

Professor Ghulam Azam

175. The first speaker EPJI Ameer Prof. Ghulam Azam said, Pakistan has reborn in this year’s Azadi Day. Today those people who love Pakistan are celebrating the Azadi Day and those who do not love, are not participating, rather they are mentally dissatisfied.

176. Mr. Azam said, Pakistan is a special name among all the names of the world. 24 years ago there was no country in this name. This country is not named after any area, language or ethnic group. The word ‘Pakistan’ is an adjective one. When this country was created a great obligation was in mind.

If we cannot uphold the respect of this name, then there is a question regarding the existence of this country as well. And if this country fails, then it will be tough to live as Muslim. Mr. Ghulam Azam said, “We will fight to keep this country united and I emphasize that I will ensure all the demands of East Pakistan. We will assist fellow Bengalees to get out of all misunderstandings. If they do not understand then they do not have any right to live in this country. If they consider India as their friend then they should go there.”

Daily Pakistan, 16 August 1971 (copy of paper clipping)

Same news

Ghulam Azam:

177. Prof. Ghulam Azam said that, .. But this time thousands of enemies are created within Pakistan. That’s why, this time the situation is grave. Because the enemies are created within are more dangerous than the ones outside.

178. Ghulam Azam sadly said, this 24 years treachery has been done towards the ideology of Pakistan. For that reason, enemies of Pakistan is in every house (ghore ghore) and they consider India, the born enemy of Pakistan, as their friend. He said emphasizing on establishing connections between the Army and the Peace Committee that, Peace Committee is playing a key role in securing the country from the separatists. The situation would have turned out differently, had Peace Committee did not

acknowledge the whole world that the people of East Pakistan wants to stay united with Pakistan. He said that it is the duty of the Army to secure the country. Therefore, Peace Committee should take the duty of creating awareness among the people. He also emphasized on the duty of finding enemies from each and every house.

179. It has also evident by Daily Azad dated 16.08.1971 marked as exhibit-46, Daily Purbadesh dated 16.08.1971 marked as exhibit-108 and Daily Pakistan dated 16.08.1971 marked as exhibit -65 that on 14.08.1971 accused Ghulam Azam attended a meeting organized by Shanti Committee on the 25th Azadi Day of Pakistan at Curzon hall urging the audience to remove those who did not agree with his views from Pakistan territory. He further stated that Shanti committee was playing important role in protecting the nation from the hands of separatists and he further narrated that those who would not realize the idea as described, would lose the right to remain in the country. His speech instigated the persons who desired to have an independent country, were compelled to go in exile and many of them were killed by the followers of the accused.

Count-16

Daily Purbodesh, 18 August 1971 (copy of paper clipping)

“Reply through war”, Ghulam Azam

180. Lahore, 17 August (APP). EPJI Ameer Prof. Ghulam Azam yesterday said that, India has imposed a war upon Pakistan and we must reply by war

as well. In a meeting with journalist after arriving here from Dhaka he said that, India is supplying arms and ammunitions to the miscreants of East Pakistan and sending armed intruders to divide Pakistan.

Daily Pakistan, 18 August 1971 (copy of paper clipping)

Ghulam Azam in Lahore: India in de facto war with Pakistan

[In addition to above]

181. He said, as early as possible we must attack India and get hold of Asam. It has revealed by evidence of Daily Purbodesh dated 18.08.1971 under the caption (যুদ্ধের মাধ্যমে জবাব দিতে হবে-গোলাম আজম) marked as exhibit - 109 and Daily Pakistan dated 18.08.1971 under the caption (লাহোরে গোলাম আজম-ভারত কার্যত, পাকিস্তানের বিরুদ্ধে যুদ্ধ করছে) that Ghulam Azam told the journalists at Lahore on arrival from Dhaka that since India was supplying arms and ammunition to the duscritikari and sending in insurgents for dividing Pakistan into two pieces(ভারত পূর্ব পাকিস্তানের দুস্কৃতিকারীদের অস্ত্র সস্ত্র গোলাবারুদ সরবরাহ করছে এবং পাকিস্তানকে দ্বিখন্ডিত করার জন্য সশস্ত্র অনুপ্রবেশকারী পাঠাচ্ছে) for which there was only one path left to send a reply by the force of arms. By passing such comments he invited people of East Pakistan to destroy duscritikari who demonstrated to get independence of Bangladesh.

Count-17

Daily Pakistan , 28 August 1971 (copy of paper clipping)

Jamaat Leaders in Lahore: The events of East Pakistan are the result of the conspiracy of India and its spies

Lahore, 23 August 1971, (APP).

182. A reception was organized for the leaders of Jamaat-e-Islami who came here to attend the central council meeting. EPJI Ameer Prof. Ghulam Azam said in his speech that, Pakistan was created by dint of Islami strength. And this strength protected the country on 1965 and recently foiled the Indian conspiracy to divide the country. He said, if it weakens then the base of the country will be demoralized. He said, Islam loving people of East Pakistan is still sacrificing their lives for the unity of Pakistan. He said, those who do not consider Jamaat-e-Islami as a partiotic party, either they do not know or not brave enough to acknowledge that to uphold the ideology of Islam and to fight the separatists, lots of activists of EPJI had lost their lives in the hands of miscreants. He asked, who else was there to hold meetings in every nook and corner of the country in the face of threat and hooliganism of Awami League before the election and which party's activists give their lives while protesting against the subversive slogans of Awami League?

183. Prosecution has placed Daily Pakistan dated 24.08.1971 which has been marked as exhibit-51. From which it appears that on 23.08.1971 in a conference at Lahore Airport accused Ghulam Azam told his party members proudly that Islam loving East Pakistanis were still sacrificing their lives to uphold the unity of Pakistan, no other party did it except Jammat-e-Islami.

He further mentioned that his party members devoted their lives to destroy miscreants and antagonists of Pakistan.

Count-18

Daily Azad, 28 August, 1971 (copy of paper clipping)

Prof. Ghulam Azam said in Pesowar: Practical steps to strengthen the main ideology of Pakistan were not taken.

184. Pesowar, 27 August. The Ameer of EPJI Prof. Ghulam Azam emphasized on strengthening Islami Ideology to ensure the unity between two parts of Pakistans. Yesterday evening in the local town hall in a meeting of activists of JI, Prof. Ghulam Azam said that currently regionalist slogans are chanted in East Pakistan instead of nationalistic slogans. The destructions committed by the miscreants cannot be compensated by slogans alone. He said that, to help the separatists of outlawed Awami League India is sending arms, ammunitions, explosives and intruders through different routes of East Pakistan, specially through Akhaura, Chuadanga, and Brahminbaria. Prof. Ghulam Azam said, at the beginning of Army's action, all the miscreants and intruders fled away for their lives and the Army took total control of East Pakistan within one month from the date of their actions.

Daily Purbodesh, 29 August 1971 (copy of paper clipping)

[In addition to the same news]

185. He commented that the number of people died in the 25 days of non-cooperation movement of Awami League is much higher than the number of people reported in the White Paper published by the Government.

Daily Pakistan, 29 Aug., 1971 (copy of paper clipping)

Same news as above

Daily Sangram, 28 Aug. 1971 (copy of paper clipping)

Same news

186. It has come into evidence by Daily Azad dated 28.08.1971 marked as exhibit-48, Daily Purbadesh dated 29.08.1971 marked as exhibit-112 and Daily Pakistan dated 29.08.1971 marked as exhibit -68 that on 26.08.1971 Ghulam Azam at a party meeting held at the town hall of Peshawar in West Pakistan remarked that the damages done by a group of miscreants, could not be regained by only chanting slogans. It meant by him that an effective measure should have been taken against the miscreants and subsequently it happened across the country committing genocide by his instigation.

Count-19

Daily Sangram, 06 September 1971 (copy of paper clipping)

Leaders speech on Protirokkha Dibosh

Ghulam Azam

187. EPJI Ameer called everyone to keep their head high on ideologies of Pakistan and to be ready to make all sorts of sacrifice to fight against enemies, both internal and external.

Daily Pakistan, 06 Sept. 1971(copy of paper clipping)

In addition to the same news

Prof. Ghulam Azam

188. In the APP news, it was reported that the Jamaat leader in his statement that paid respect to those who died while saving their country six years ago. It appears from exhibit -15, Daily Sangram dated 06.09.1971 and exhibit-71, Daily Pakistan dated 06.09.1971 that on the occasion of Defence Day of Pakistan on 05.09.1971, accused Ghulam Azam through a Message (bani) urged the people of Pakistan, members of Shanti Committee and auxiliary forces to stay in the ideals of Pakistan and to sacrifice their lives against any internal or external attacks by the miscreants.

Count No.20

Daily Sangram, 8 Sept. 1971, (copy of paper clipping)

An interview of Prof. Golam Azam

Question: What kind of situation did the activists of Jamaat-e-Islami have to face before and after 25 March?

Answer: The separatists considered Jamaat as their enemy number one..... In spite of that Jamaat activists are bound to protect the country by

getting admitted in Rezakar force, because they knew that there will be no place for Islam and Muslim in Bangladesh, Jamaat activists may die but cannot change....

Question: Your comments on the activities of communists and future and their impact in the future.

Answer: The most important task at the moment is to free East Pakistan from the grip of those leaders who used to give slogans in support of socialism and presently diverted into fascism....

189. It has come into evidence by Daily Sangram dated 08.09.1971 marked as exhibit-16 that Ghulam Azam at a press conference with the journalists in the 1st week of 1971 told that workers of Jammat-e-Islam were compelled to join Rajakar bahini because they knew that there was no space for Islam and Muslims in Bangladesh. He further told that first and foremost duty of them to free East Pakistan from the hands of so called Ugro Jatiotabadi and leaders of Socialism. He incited members of auxiliary forces by attending many meetings throughout the country during the liberation war in 1971.

Count No.21

Fortnightly Report,1st Half of September 1971, (copy of paper clipping)

190. At the instance of ‘Shahid Mustafa Al-Madani Memorial Committee of Nizam-e-Islam(NI)’ Shahid Mustafa Al-Madani Day’ was held on 10...in Dhaka and different districts of the province including Barishal, Chittagong, Jessore, Kushtia and Faridpur throw Fateha, Quran Khani as well discussion

and public meetings. In this connection it may be mentioned that Maulana Saiyd Mustafa Al-Madani, a Vice-President... was shot dead by rebels on 10.08.71 at Abdullahpur bazaar in Dhaka.

191. In observance of the 'Day' a public meeting (1500) was held in front of Baitul Makarram, Dhaka with Moulana Siddiq Ahmed, President, J.U.I.N.I in the chair. Prof. Ghulam Azam, Ameer, EPJI, besides others, addressed the meeting eulogizing the sacrifice of Maulana Al-Madani in the case of Islam. Resolutions were adopted condemning the killing of the Maulana and branding the supporters of rebels as enemies of Islam.

192. It has emerged from the secret report No. 15/1971 para 18 made in the month of September, 1971 by Special Branch East Pakistan, Dhaka marked as exhibit-489 that on 10.09.1971 on the occasion of Mustafa Al-Madiani Day at Baitul-mukarram accused Ghulam Azam addressed the meeting eulogizing the sacrifice of maulana al- madani for the cause of Islam and at his instance resolutions were adopted condemning the killing of maulana and branding the supporters of rebels as enemies of Islam. Such remarks made by accused incited the people to go against the persons who had sided with the independence of Bangladesh.

Count-22

Daily Sangram, 12-09-1971 (copy of paper clipping)

193. Prof. Ghulam Azam said that, presently when there are endeavours to forget the father of the nation, in this situation it is great to see that Islami

Chatra Sangha has organized a exhibition on life and work of the father of the nation. He said, we need fresh teams of activists who will save this country as they did during the time of movement for Pakistan. Indicating towards the workforce of ICS, he expected that one day these forces will permanently establish Pakistan once and for all.

194. Daily Sangram dated 12.09.1971 marked as exhibit-18 published that on 11.09.1971 at a program organized by the Dhaka City Unit of Islami Chattra Sangha at Curzon hall, accused Ghulam Azam expressed the need of new workers to protect Pakistan and by fingering at members of Chattra Sangha he told to establish the ideology of Quaide-Azam in Pakistan forever. Expressing by such excitement he instigated his followers in committing crimes against humanity.

Count No.23

Daily Sangram, 18 Sept. 1971, (copy of paper clipping)

Prof. Ghulam Azam in Razakar Camp

195. Those who-heartedly believe in Muslim nationalism, they alone can sacrifice their lives for the hefajat of Pakistan and the miscreants through their misdeeds have certified that the pure Muslims are valuable assets for the Country. Yesterday, Friday, while addressing the Razakars, EPJI Ameer, Prof. Ghulam Azam said those above words. He was addressing in the Physical Academy Centre in Mohammadpur where the Razakars were receiving their training. Prof.Ghulam Azam said, Alem and the activists of

Islami movement would not have had armed training by getting employed in Rajakar, Mujahid and Police for their self-defence if widespread attacks were not committed upon them. Present situation has forced the administration to feel the importance of the religious (dindar) people and they have felt that, these religious and God fearing people are the faithful and reliable ones for the service of the nation.

196. It has emerged from the evidence of exhibit -19, Daily Sangram dated 18.09.1971 that on 17.09.1971 Ghulam Azam visited Mohammadpur Physical Institution Training Centre of Rajakars stating that this institution was not only a Rajakars training ground but also a name that spread terror in people's mind in 1971. In reality this centre was a torture and killing ground. Countless victims were killed and tortured therein. Accused paid a visit to the training centre of Rajakars to inspire them for taking revenge upon the supporters of independence of Bangladesh.

Count No.24

Daily Sangram, 26,Sept, 1971 (copy of paper clipping)

197. Prof. Gholam Azam Addresses in Reception Establishing Islami Principles and service should be the duty of the Ministers. In the meeting Chief of EPJI Prof. Gholam Azam gave a short speech on why an ideological party like Jamat-e-Islami leaders joined such a Ministerial body where none of the members are elected by the people. He said that the Pakistanis those who lost their lives due to the present turmoils and

destructive activities of the miscreants most of them belonged to Jamaat-e-Islami. Pakistan Jamaat-e-Islami considers Islam and Pakistan are one and indivisible. Pakistan is the house of Islam of the world. Therefore, Jamaat supporters do not consider to live in the world if Pakistan does not exist. Jamaat Chief said that's why the Jamaat supporters are sacrificing their lives to protect the existence and unity of Pakistan. They are working to establish peace and security in the country. They are working through the peace committee and by other means to establish the sense of stability and security in the mind of the general people and hence, with the same purpose in mind, Jamaat has forced two of its senior leaders to take the post of Ministers.

Same in:

Bangladeshi Sadhinotar Juddho-Dalilpotro 7th vol.p.688-689

198. It appears from exhibit-22, Daily Sangram dated 26.09.1971 that on 25.09.1971 during a meeting organized by the Dhaka City Unit of Jamaat-e-Islami at a local hotel in Dhaka, accused Ghulam Azam in presence of two ministers namely Abbas Ali Khan and Maulana A. K. M. Yousuf, expressed his view that Jamaat-e-Islami considered Pakistan and Islam were co-related to each other. He also blamed on duskritikaris for their ongoing destructive activities across the country. Treating the loving people of independence of Bangladesh as Duskritikari he incited his followers to attack them to destroy in whole or in part.

Count No.25

Fortnightly Report 1st half of October, 1971

199. A three day conference (40) of the Majlish-e-Sure of East Pakistan Jamat-e-Islami (EPJI) was held from 03.10.71 at the party office at Nakhalpara, Dhaka with the Provincial Ameer Prof. Ghulam Azam in the chair. In his inaugural speech Prof. Ghulam Azam urged audience to come forward to defend Pakistan and her ideology. He said, the political leaders, who were at the helm of affairs in the party responsible for the present critical condition of the country. The conference decided that the party would participate in ensuing bye-elections and formed a five-man committee with Prof. Ghulam Azam and Maulana Safiullah as its Chairman and Secretary respectively to consider nomination of party candidates.

200. Resolutions, inter alia, were adopted demanding a federal Constitution based on the Holy Quran and the Sunnah and within Legal Framework Order, removal of disparity in all spheres including Central and Defence services within a specified period of time, spending of foreign earnings of the provinces by themselves, particularly by East Pakistan till disparity was removed, introduction of separate electronic system full regional autonomy as envisaged by 8-point programme of PDM (now defunct) and justiciability of fundamental right. In another resolution, it demanded introduction of system of education based on Islamic ideology for the upliftment of the moral values of the younger generation.

Same news different newspapers:

Daily Sangram, 04 Oct.1971, Ex.23**Inauguration of Majlish-e-Sura fo EPJI**

All sorts of sacrifices have to be made for Pakistan: Ghulam Azam

201. Provincial Minister of Education Mr. Abbas Ali Khan and Minister of Taxes and Revenue Mawlana A.K.M Yusuf were attending the meeting as well. Provincial Ameer Ghulam Azam said in his inaugural speech that, self-defence and defending the country and ideology have become synonymous today....Prof. Azam said, this belief is the main driving force behind the participation of Jamaat activists and supporters in their attempt to defend the country.

Daily Ittefaq, 05 Oct.1971, Ex.86 (copy of paper clipping)**Proposal of the Majlish-e-Sura of EPJI**

202. It is reported in news of P.P.I.: the EPJI Ameer in the EPJI Majlish-e-Sura said in his inauguration speech that everyone should be prepared to make ultimate sacrifice for defending the most pure land, Pakistan. He said, God forbid, if we fail to defend the country then we will not be able to protect our existence and our belief.....

203. It has come into evidence by fortnightly secret report No. 17/1971, para-8 on political situation in the 1st half of October, 1971 by Special Branch, East Pakistan marked as exhibit-491, Daily Sangram dated 04.10.1971 marked as exhibit-23 and Daily Ittefaq dated 05.10.1971 marked

as exhibit-86 that on 03.10.1971 accused Ghulam Azam at a meeting of Majlis-e-Sura of the Jammata-e-Islam at Dhaka by using religious sentiment addressed the party activists and followers to prepare themselves for highest possible sacrifice to protect Pakistan from the persons who had sided with the independence of Bangladesh and further expressed that protecting Pakistan was a holy responsibility that would bear in mind of them. The nature of such call made by accused invited his followers to select men and women, a group of people for killing or forcing them out of the country which was started by Pakistani Army since 25th March, 1971. On that day at night many bangalees, hindus, democratic and progressive political activists and various professionals were killed by Pakistani janata. Such heinous crimes had been appreciated by subsequent conduct of the accused. Such urging by the accused to his followers subsequently made a mass-killing upon the innocent people including intellectuals up to 16th December, 1971. Particularly on 14th December, 1971 the followers of accused by such instigation forcibly took away many intellectuals from their houses in the dark night and killed them.

Count No.26

Daily Sangram, 24.11.1971.(copy of paper clipping)

We have to be offensive to be defensive: Ghulam Azam

204. Lahore, 23 November (APP. EPJI Ameer Prof. Ghulam Azam said, defensive war policy will only incite and encourage the enemy. He made this

comment in a meeting with journalists after arriving at Lahore to attend a meeting of the Executive body of JI. Prof. Ghulam Azam said, the best war policy is to defend, at this moment, would be to take offensive role. He said if Pakistan wants to exist as a dignified country in the world then it must play an offensive role. JI leader said, subversive activities are still taking place in East Pakistan which might cause disturbance to hold fresh elections. Prof. Ghulam Azam urged for latest and automatic armouries for all patriots, members of the Peace Committees and the Razakars for keeping the peace in East Pakistan.

205. It has been disclosed by exhibit 28, Daily Sangram dated 24.11.1971 that on 23.11.1971 after reaching Lahore accused Ghulam Azam addressed a meeting organized by Central Executive Committee of Pakistan Jammāt-e-Islami stating that for Pakistan to exist as a nation with honour, there was no other path except to take up an aggressive position and urged patriotic citizen, members of Shanti Committee and Rajakar bahini to be equipped with modern automatic arms so that they could be able to engage themselves in keeping peace throughout the country.

Count No.27

Daily Sangram, 26 Nov.1971 (copy of paper clipping)

206. Ghulam Azam's call to the President: Start attacking India from West Pakistan Lahore, 25 Nov. (APP). EPJI Ameer Prof. Ghulam Azam called to the President Yahya Khan to start counter attack on India from West

Pakistan. He emphasized that, Pakistan must not be satisfied by defending alone, it must start counter- attack with similar degree to force. India will consider Pakistan as weak and coward if counter-attack is not started. While speaking about the law and order situation of Eastern zone, he said, activities of the miscreants were significantly reduced after the military action taken in the last month, however, recently they are rising again. Prof. Azm said, Ayub government had tolerated the destructive and subversive activities of both Mujib and Vasani, and the outcome is in front of us.

Same news different heading

Daily Ittefaq,26 Nov.1971 (copy of paper clipping)

From Pakistan: Suggestion to start counter-attack on India.

207. It has revealed from Daily Sangram dated 26.11.1971 marked as exhibit -28 that on 24.11.1971 accused Ghulam Azam addressed a meeting to honor the members of Central Working Committee of Jammat-e-Islami at a hotel in Lahore, urging president Yahya Khan to remain intact Pakistan by way of counter attack. If the attack was not carried out then the enemies would get the opportunity to slowly achieve their ulterior motive of dividing Pakistan into many pieces. By inviting such calling to attack on India accused provoked the people including Pakistan army to commit crimes against humanity.

Count No.28

Daily Ittefaq, 02 Dec.1971 (copy of paper clipping)

A true call to hold fresh election

Rawalpindi, 1 Dec. (APP).

208. After a 70-minute long meeting with the President, EPJI Ameer Prof. Ghulam Azam said in a press conference that during that meeting he suggested to the President that presently main duty is to eradicate all injustices and to earn the confidence of the people of East Pakistan. President's reaction was encouraging, he said. Terming the so-called 'muktibahini' as enemy force, he said Razakars are enough to take care of them. In this regard he urged to increase the number of razakars.

209. During recording of evidence prosecution has placed a copy of Daily Ittefaq dated 02.12.1971 which has been marked as exhibit -97 by which it was reported that on 01.12.1971 accused Ghulam Azam held a meeting with Yahiya Khan, the then president of East Pakistan for a long seventy minutes. After holding such meeting he told the press in an interview that he had reiterated to the president the need of increasing members of Rajakar bahini to vanish freedom fighters being enemies of Pakistan. He further expected to assist the armed forces by people of Pakistan for facing the crisis in East Pakistan.

Evaluation of evidence and findings.

The Prosecution has mainly relied upon documentary evidence and contextual circumstances to prove charge No. 3 incitement.

210. It is undeniable that accused Professor Ghulam Azam was the Ameer (Head) of East Pakistan Jamaat-e-Islami and an influential member of Central Peace Committee during war of Liberation of Bangladesh in 1971. It is also undeniable that during war of Liberation of Bangladesh accused Professor Ghulam Azam met military rulers of Pakistan in many occasions and made statements and speeches in public. Let us examine whether speeches of the accused amount to incitement to commit genocide or any other crimes specified in section 3(2) of the Act.

211. It appears from the “Daily Sangram” dated 19.07.1971(Ext.9) quoted in Count No.10, that the accused delivered a direct and public speech addressing a gathering of people to the effect that Hindus are always enemies of Muslims and there is no evidence to show that the Hindus are friends of Muslims. The above hateful speech made by the accused manifestly demonstrates that he expressed hatred and communal feeling towards Hindu Community with intent to destroy or deport this religious group from this country. The history of this subcontinent is the best evidence to show that the people belonging to Hindu and Muslims are living together peacefully by maintaining friendly relation to each other for more than last one thousand years.

212. Accused Ghulam Azam delivered speech on 16 August 1971 quoted in count no. 15 (Ext.46) at Karzon Hall to the effect that Bangalee Muslims will not exist if Pakistan extinct. “Those who do not understand this truth, they must be eradicated from the soil of East Pakistan.” The above statement

of the accused is the direct instruction to his followers in public to annihilate the pro-liberation people who have been termed as “those who do not understand the truth”. The above statement amounts to clear incitement to commit crimes against humanity and genocide.

213. Accused Professor Ghulam Azam as Ameer of East Pakistan Jamaat-e-Islami made a comment in a meeting with journalists on 23.11.1971 at Lahore (Ext. no. 28) urging upon the government to supply latest automatic weapons to all patriots, members of Peace Committee and Razakars for keeping peace in East Pakistan.

214. The above statement given by the accused before media persons prominently indicates that the accused urged the government to supply automatic arms to his subordinates namely members of peace committee and Razakars with intent to destroy Bangalee nation i.e. pro-liberation people of Bangladesh. This statement before media persons made by the accused is found to be direct and in public instigating his subordinates to wipe out Bangalee people by using the alleged automatic weapons. The above statement published in a daily newspaper (Ext. 28) amounts to clear incitement to commit crimes against humanity and genocide.

215. Accused Professor Ghulam Azam, the Ameer of East Pakistan Jamaat-e-Islami held a meeting with the President of Pakistan, which was published in the “Daily Ittefaq” on 2 December 1971. Terming the alleged Mukti Bahini as enemy force, the accused said that Razakars are enough to

counter with the so-called freedom fighters. In this regard, he urged to increase the number of Razakars. The above statement of the accused significantly inspired the Razakars to counter with the pro-liberation people. To hold meeting with the head of the state sufficiently implies the superior status of the accused who also urged the president of Pakistan to increase number of Razakars to combat against Liberation struggle of Bangladesh. The above statement amounts to a clear incitement to commit crimes against humanity and genocide during War of Liberation by his subordinate para militia Bahinis.

Since incitement to commit genocide is an inchoate offence, the accused is found guilty to the crime of incitement under international law as specified in section 3(2)(f) of the Act.

XIX. Adjudication of Charge No. 04

[Complicity in commission of the crimes specified in section 3(2) of the Act, 1973]

Summary Charge no. 04: Accused Prof. Ghulam Azam, by his acts and commissions, he was involved in commission of the crimes specified in section 3(2) of the Act and as a result of which crimes mentioned in section 3(2) of the Act were committed in all –over Bangladesh, and , therefore, the accused is charged under section 3(2) (h) read with section 4(1) and 4(2) of the Act for commission of the crime of complicity in commissioning the

crimes specified in section 3(2) of the Act, which is punishable under section 20(2) of the Act.

216. In charge no.4, the allegation brought against accused Prof. Ghulam Azam is that during Liberation War, 1971, he was involved in the commission of the crimes e.g. genocide, crimes against humanity, etc. as specified in section 3(2) of the Act, and as a result of those crimes mentioned in section 3(2) of the Act were committed in all over Bangladesh. But the offence ‘Complicity’ is not defined in the said Act. In USLEGAL, a Free Legal Dictionary (US legal. com), the crime ‘Complicity’ is defined as follows:

Complicity in criminal law refers to when someone is legally accountable, or liable for a criminal offense, based upon the behaviour of another. Criminal complicity may arise in the following situations:

With the intent to promote or assist the commission of the offense:

- (i) a person procures , induces or causes such other person to commit the offense; or
- (ii) a person aids or abets such other person in committing the offense; or
- (iii) having a legal duty to prevent the commission of the offense, a person fails to make an effort he is legally required to make.

Common Law

217. At common law criminal actors were classified as principals and/or accessories. Principals were persons who were present at the scene of the crime and participated in its commission. Accessories were persons who were not present during the commission of the crime but who aided, counseled, procured, commanded, encouraged or protected the principals before or after the crime was committed.

Complicity by aiding or abetting implies a positive action which excludes, in principle, complicity by failure to act or omission. Procuring means is a very common form of complicity. It covers those persons who procured weapons, instruments or any other means to be used in the commission of an offence, with the full knowledge that they would be used for such purposes.

218. Elements of complicity in Genocide, thus:

(i) complicity by procuring means, such as weapons, instruments or any other means, used to commit genocide, with the accomplice knowing that such means would be used for such a purpose;

(ii) complicity by knowingly aiding or abetting a perpetrator of a genocide in the planning or enabling acts thereof;

(iii) complicity by instigation, for which a person is liable who, though not directly participating in the crime of genocide crime, gave instructions to commit genocide, through gifts, promises, threats, abuse of

authority or power, machinations or culpable artifice, or who directly incited to commit genocide.

219. The intent or mental element of complicity implies in general that, at the moment he acted, the accomplice knew of the assistance he was providing in the commission of the principal offence. In other words, the accomplice must have acted knowingly.

Since Eichmann raised the argument in his defence that he was a “small cog” in the Nazi machine, both the District Court and the Supreme court dealt with accomplice liability and found that-

“..... even a small cog, even an insignificant operator, is under our criminal law liable to be regarded as an accomplice in the commission of an offence, in which case he will be dealt with as if he were the actual murderer or destroyer.”

220. Considering all the aspects and views mentioned above, it appears that complicity is a doctrine that operates to hold persons criminally responsible for the acts of others. Complicity encompasses accessorial and conspiratorial liability. Accessorial liability is frequently referred to as accomplice liability. An accomplice is a person who helps another person to commit a crime, accomplice liability involves primary actors who actually participates in the commission of the crime and secondary actors who aid and encourage the primary actors. The aid can be either physical or psychological. The secondary actors are called accomplices.

There are twenty three counts under charge no. 04 which are discussed as below:-

Count No. i: On 04.04.1971, accused Prof. Ghulam Azam was part of a 12-member team consisting of Nurul Amin, Moulavi Farid Ahmed, Khawaja Khayeruddin, A.K.M. Shafiqul Islam, Maulana Nuruzzaman, Hamidul Haque Chowdhury, Mohsinuddin Ahmed, Advocate A.T. Sadi and others met Lt. General Tikka Khan, the then Chief Martial Law Administrator of the “Kha” Zone of occupied Bangladesh at the Governor House of Dhaka. That meeting was held at the time when a large scale genocide had already been committed through ‘Operation Search Light’ by the Pakistani Army. The presence of the accused in that meeting not only demonstrates his acquiescence to all the crimes committed throughout the country from March 25 to April 4, but his assurance of co-operation to the Pakistani Army demonstrate his complicity in the all subsequent atrocities committed in Bangladesh.

Discussion of Evidence

221. P.W.1 Moontassir Uddin Khan Mamun alias Moontassir Mamun has stated that in the first week of April, accused Prof. Ghulam Azam along with other political leaders met Lt. General Tikka Khan when Pakistani Army used to commit killing, looting, rape every day in different areas of Bangladesh. P.W. 2 Mahabub Uddin Ahmed, Bir Bikrom has stated that in the first part of April, accused Prof. Ghulam Azam along with other political leaders having met Lt. General Tikka Khan, supported the ‘Operation Search

Light’, conducted by Pakistani Army since 25th March. P.W. 16 Md. Motiur Rahman (I.O.) has testified that in the night following 25th March, 1971, Pakistani Army, with modern weapons, started committing crimes against humanity, genocide and other crimes on the unarmed bangalees in the name of ‘Operation Search Light’ and in that situation accused Prof. Ghulam Azam along with 12 others having met Lt. General Tikka Khan at the then Governor House, supported those atrocities and assured him that they would co-operate with the Pakistani Army. D.W. 1 Abdullahil Amaan Azmi, the son of accused Prof. Ghulam Azam, has stated in cross-examination that he came to know that on 4th April, 1971, his father met the Military Authority of Pakistan.

222. Ext. 33 is a copy of a newspaper clipping of ‘দৈনিক আজাদ’ dated 05-04-1971 wherein it is stated under the caption ‘টিক্ক খান সকাশে নেতৃত্বন্দ’ as follows:

“পূর্ব পাকিস্তানের ‘খ’ অঞ্চলের সামরিক আইন প্রশাসক লেফটেন্যান্ট জেনারেল টিক্কা খানের সহিত আজ ঢাকায় জনাব নূরুল আমিন, খাজা খয়েরউদ্দিন, জনাব গোলাম আজম, জনাব শফিকুল ইসলাম ও মওলানা নুরজ্জামান সাক্ষাৎ করেন বলিয়া আজ রাত্রে রেডিও পাকিস্তানের এক খবরে বলা হইয়াছে।”

223. Ext. 34 is a copy of a newspaper clipping of ‘দৈনিক আজাদ’ dated 06-04-1971 wherein it is stated under the caption ‘লে: জেনারেল টিক্কা খানের সহিত নেতৃত্বন্দের সাক্ষাৎকার’ as under:

“গত রবিবার অপরাহ্নে জনাব নুরুল আমিনের নেতৃত্বে ১২ সদস্য বিশিষ্ট নেতার সমন্বয়ে গঠিত এক প্রতিনিধিদল ‘খ’ অঞ্চলের সামরিক আইন প্রশাসক লেফটেন্যান্ট জেনারেল টিক্কা খানের সহিত সাক্ষাৎ করেন বলিয়া সামরিক আইন কর্তৃপক্ষের এক প্রেস বিজ্ঞপ্তিতে জানানো হইয়াছে।

জনাব নুরুল আমিন ছাড়াও খাজা খয়েরউদ্দিন, জনাব গোলাম আজম, জনাব শফিকুল ইসলাম, মওলানা নুরুজ্জামান ও মওলবী ফরিদ আহমদ প্রমুখ নেতৃবৃন্দ এই প্রতিনিধিদলে সংশ্লিষ্ট ছিলেন। নেতৃবৃন্দ প্রদেশে সম্পূর্ণ স্বাভাবিক অবস্থা ফিরাইয়া আনা এবং জনগণের মন হইতে অহেতুক ও ভিত্তিহীন শঙ্কা দূর করার উদ্দেশ্যে ঢাকায় নাগরিক কমিটি গঠন করার জন্য সামরিক আইন প্রশাসকের নিকট প্রস্তাব দান করেন। প্রদেশের স্বাভাবিক অবস্থা ফিরাইয়া আনার ব্যাপারে সামরিক আইন প্রশাসককে পূর্ণ সহযোগিতা দানেরও তাঁহারা আশ্বাস দিয়াছেন। তাঁহারা পাকিস্তানের আভ্যন্তরীণ ব্যাপারে ভারতের হস্তক্ষেপের এবং ভারতের বিদ্রোহপূর্ণ ও ভিত্তিহীন প্রচারনার তীব্র প্রতিবাদ জানান।

.....।”

224. Ext 99 is a copy of a newspaper clipping of ‘দৈনিক পূর্বদেশ’ dated 06-04-1971 wherein it is reported that Nurul Amin, the then Chief of PDP and a member of the National Assembly in a radio speech stated that India having sent their armed citizens to East Pakistan incited the insurgency prevailing in that province and thereby they proved again that they used to show a little respect to the independence of other countries. India having interfered in the internal affairs of other country set up a bad example of violation of international customs. Nurul Amin warned India about the dire consequences of their said activities.

225. On perusal of Ext. 33 and Ext. 34 it appears that Nurul Amin, Khawaja Khayeruddin, accused Prof. Ghulam Azam, Shafiqul Islam, Maulana Nuruzzaman, Moulavi Farid Ahmed and some others on 04-04-1971 met Lt. General Tikka Khan, the then Martial Law Administrator of 'Kha' Zone at Dhaka and, in that meeting they placed a proposal to him to form an organization named 'Nagorik Committee' in order to support the Pakistan Occupation Forces. The said meeting was held at such a time i.e. on 04-04-1971 when he had the knowledge that a large scale atrocities had already been committed by Pakistani Army through 'Operation Search Light' on March 25 and afterwards. In that meeting, accused Prof. Ghulam Azam and others assured Lt. General Tikka Khan, the then Martial Law Administrator of 'Kha' Zone of East Pakistan to co-operate him fully.

Count No. ii: On 06-04-1971, as Ameer of Jamaat-e-Islami, accused Prof. Ghulam Azam held an one to one meeting with Lt. General Tikka Khan, the then Chief Martial Law Administrator of 'Kha' Zone and extended assurance of full co-operation with the goal to bring back normalcy in the country. In the meeting, the accused expressed concern over the interference of the internal affairs of Pakistan and the armed intruders in Pakistan. The accused assured that the patriotic citizens of the country would assist the Pakistani army to frustrate the on going conspiracy made by intruders which indicates his complicity in all above-mentioned crimes committed in Bangladesh.

Discussion of Evidence

226. P.W. 1 Moontassir Uddin Khan Mamun alias Moontassir Mamun has stated that after March, 1971, mainly Jamaat-e-Islami, different groups of Muslim League, PDP and sections of some other political parties supported the then central government of Pakistan and, accused Prof. Ghulam Azam as the then Ameer of Jamaat-e-Islami played the most important role to assist the Pakistani Army. He has also stated that in the first part of April, accused Prof. Ghulam Azam met Lt. General Tikka Khan twice and thereafter he met Yahya Khan, the then President of Pakistan and he also met the political leaders of Pakistan who supported the commission of genocide. P.W.2 Mahabub Uddin Ahmed, Bir Bikrom has stated that in the first part of April, accused Prof. Ghulam Azam and some other political leaders having met Lt. General Tikka Khan supported the 'Operation Search Light'. P.W. 3 Sultana Kamal has testified that accused Prof. Ghulam Azam used to meet frequently Lt. General Tikka Khan and the leaders of Pakistani Army and discussed with them how to save the unity of Pakistan.

227. Ext. 35 is a copy of a newspaper clipping of 'দৈনিক আজাদ' dated 07-04-1971 wherein it is reported under the caption 'সামরিক আইন প্রশাসক সমীপে আরও কতিপয় রাজনৈতিক নেতা-দেশে স্বাভাবিক অবস্থা ফিরাইয়া আনার কাজে পূর্ণ সহযোগিতার আশ্বাস দান' that on 06-04-1971, some political leaders of East Pakistan separately having met the Chief Martial Law Administrator of the 'Kha' Zone assured him to co-operate with them fully to bring back normalcy in the country. They also expressed concern over the unwanted interference of India about the internal affairs of Pakistan and sending armed infiltrators in the country.

They assured that the patriotic citizens of the country would assist the Pakistani Army to frustrate the Indian conspiracy.

228. Ext. 53 is a copy of a newspaper clipping of 'দৈনিক পাকিস্তান' dated 07-04-1971 and Ext. 100 is a copy of a newspaper clipping of 'দৈনিক পূর্বদেশ' dated 07-04-1971 wherein similar news reports are published as reported in Ext. 35.

229. On perusal of Exts. 35, 53 and 100 it appears that accused Prof. Ghulam Azam on 06-04-1971 met the then Chief Martial Law Administrator of the 'Kha' Zone and assured him to co-operate with them fully to bring back normalcy in the country. It has already appeared from evidence that Pakistani Army in collaboration with Rajakar, Al-Badr, Al-Shams, etc. Bahinis committed atrocities in the country during the Liberation War, 1971.

Count No. iii: On 09.04.1971, the Central Peace Committee was expanded to a 140-member body headed by khawaja khayeruddin as its convener while accused Prof. Ghulam Azam held the third position in that committee. The constitution and control of the local Peace Committees at the Union, Moholla levels was vested in the said Central Peace Committee. The goal of the Peace Committees was to assist the Pakistan occupation forces to attack on civilian people of Bangladesh. As a leader of Peace Committee the accused was involved in the commission of above mentioned crimes.

Discussion of Evidence:

The copies of Newspaper clipping of the 'দৈনিক আজাদ' dated 11.4.1971 (Ext. No. 37) and newspaper clipping of the 'দৈনিক পূর্বদেশ' dated 11.4.1971 (Ext. No. 101) bear the same news.

230. According to Exts. 37 and 101 as stated above, on 09-04-1971, in a meeting held at Dhaka, a Peace Committee was formed consisting of 140 members and Khawaja Khayeruddin was nominated as the Convener of the Committee and accused Prof. Ghulam Azam held the third position in the Committee and, in that meeting the accused and others were present and, at the time of forming the said Committee, it was also decided to form Peace Committees in various areas of Cities, Unions and Mohallas.

Count No. iv : With the intent to conduct its criminal activities more efficiently and extending the organizational activities throughout the country, on 15-04-1971, the name of the 'Nagorik Shanti Committee' was changed to 'Central Peace Committee'. A 21-member Executive Committee was also formed, of which accused Prof. Ghulam Azam held third position. A decision was taken to form units at the district and sub-division levels to execute the plans of the Committee. Accused Prof. Ghulam Azam was one of the main leaders of the Executive Committee of the said Central Peace Committee and since the objective of the Peace Committee was to assist the Pakistani Army to commit crimes and since the Committee itself played a role in the execution of the plan to commit crimes, his complicity in all the above mentioned crimes committed are clearly demonstrated.

Discussion of Evidence :

231. P.W. 1 Moontassir Uddin Khan Mamun alias Moontas sir Mamun has stated that the Peace Committee was spread over from the centre to grass-root levels and the Peace Committee showing paths took the Pakistani Army to different places, killed or assisted to kill, raped Bengali women or assisted to rape them and plundered the valuables, particularly, of the workers of Awami League and Hindu Community and, accused Prof. Ghulam Azam was the key man of the Peace Committee who instigated and inspired Pakistani Army. P.W.2 Mahabub Uddin Ahmed, Bir Bikrom has stated that Peace Committee, Al-Badr, Al-Shams and Rajakar Bahinis along with Pakistani Army committed genocide, killing, rape, arson, looting, etc. in different places of the country and under the leadership of accused Prof. Ghulam Azam those offences were committed. P.W.3 Sultana Kamal has stated in cross-examination that accused Prof. Ghulam Azam had the most important role in forming Rajakar, Al-Badr and Al-Shams Bahinis along with the Peace Committee. P.W. 16 Md. Motiur Rahman (I.O.) has stated that accused Prof. Ghulam Azam was the mastermind of all the criminal activities committed and he was the key man of the Peace Committee and Rajakar, Al-Badr and Al-Shams Bahinis.

232. Ext. 59 is a copy of a newspaper clipping of 'দৈনিক পাকিস্তান' dated 22-04-1971 wherein it is reported that in a meeting of the Executive Committee of the Central Peace Committee, presided over by its Convener Sayed Khawaja Khayeruddin, a Sub-Committee was formed consisting of 6

members including accused Prof. Ghulam Azam, to monitor the day to day activities of the said Executive Committee. The news report is quoted below:

“

কেন্দ্রীয় শান্তি কমিটির ওয়ার্কিং কমিটির দৈনন্দিন কার্যক্রমে যোগদান ও তদারক করার

জন্য কমিটি নিম্নোক্ত ব্যক্তিদের নিয়ে একটি সাব-কমিটি গঠন করেছে :

(১) জনাব এ,কিউ, এম, শফিকুল ইসলাম;

(২) অধ্যাপক গোলাম আযম;

(৩) জনাব এ, আর, খন্দর;

(৪) জনাব এ, এস, এম, সোলায়মান;

(৫) জনাব আব্দুল মতিন;

(৬) জনাব এস, কে, খয়েরউদ্দিন।

.....”

233. Considering all the oral and documentary evidence as discussed above, it is crystal clear that during Liberation War, 1971, accused Prof. Ghulam Azam was a member of the 140-member Central Peace Committee. Besides, he was a member of the 21-member Executive Committee of the Central Peace Committee and he was also a member of the 6-member Sub-Committee of the said Executive Committee and, as such, it appears that the accused having superior status had an important role in those committees to implement its mission through his subordinates.

Count No. v : Accused Prof. Ghulam Azam met with Jamaat-e-Islami leaders at Jessore, Khulna and Dhaka’s Mirpur, Lalbagh, Chawk, Lalmatia

and Thataribazar as part of his tour of various parts of Bangladesh during which he took part in a series of meetings and gave speeches. During such meetings, the accused and other leaders of Jamaat-e-Islami praised the Pakistani Army and stated that the Army had served the country at a moment of crisis. The accused also expressed satisfaction stating that the local people of the then East Pakistan had also assisted the Pakistani Army. Such praising of the Pakistani Army indicates his complicity in the above mentioned crimes committed throughout the country by the Pakistani Army in the guise of protecting the country from the so-called 'shongkot'.

Discussion of Evidence :

234. Ext. 169 is a copy of a newspaper clipping of 'দৈনিক পয়গাম' dated 22-05-1971 wherein it is stated under the caption 'প্রদেশ সফর শেষে জামাত নেতৃবৃন্দের আহ্বান' that at the time of visiting East Pakistan, the leaders of Jamaat-e-Islami urged upon the people to save the country from the destructive activities of the banned Awami League and its Indian associates. Chowdhury Rahmat Elahi, Secretary General of Jamaat-e-Islami and Major (Rtd.) Golam Mostofa visited Jessore, Khulna and Chittagong. Another leader of Jamaat-e-Islami, Major General (Rtd.) Omraw Khan visited different areas of Dhaka city who inspired the people to assist the government. Above mentioned Chowdhury Rahmat Elahi met the people of different levels at Jessore and Khulna where he expressed his satisfaction for the co-operation extended by the people to the Pakistani Army. In a public

meeting held at the Mohammadpur Town Hall, organised by the Central Peace Committee, Major General (Rtd.) Omraw Khan in his speech urged upon the patriotic people to discharge their duties to save the country from the destructive activities of the Indian associates. He having praised the Pakistani Army stated that they had saved the country. Prior to that meeting, Major General (Rtd.) Omraw Khan delivered speeches in different meetings, organised by the Peace Committee, held at Mirpur, Lalbagh, Chawk, Lalmatia and Thataribazar where Khawaja Khayeruddin, Abul Kashem, Prof. Ghulam Azam, Major Afsaruddin, Dewan Orasat Ali were present.

Count No. vi : On 18-06-1971, while addressing journalists at the Lahore airport, accused Prof. Ghulam Azam extended his support towards the nationwide criminal activities and illegal occupation of the Pakistani Army by rejecting the possibility of transferring power to the elected representatives for the sake of bringing an end to the crisis. The accused stated that the true representatives who were unanimously elected had been declared illegal, a declaration which in fact been made on behalf of the occupying Pakistan Army. The accused also informed journalists that he would be informing President Yahya Khan at Rawalpindi of possible steps that could be taken to improve ‘unnayan’ the situation of East Pakistan, which is essence indicates his close proximity to the ongoing incidents in Bangladesh. By expressing his support towards the illegally occupying Pakistani Army, accused Prof. Ghulam Azam termed the whole population supporting the independence of Bangladesh as ‘dushkritikari’ (miscreant)

and their legitimate demands as destructive ‘dhongshattok kaj hishebey’. The accused also demanded that so-called ‘Prokrito’ miscreants be apprehended (‘pakrao’) during the effort to contain the ongoing situation. The promise the accused made committing himself and the auxiliary forces under his control to offer full assistance to the Pakistani Army indicates complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

235. Ext. 3 is a copy of a newspaper clipping of ‘দৈনিক সংগ্রাম’ dated 19-06-1971 wherein it is reported under the caption ‘লাহোর বিমান বন্দরে অধ্যাপক গোলাম আযম-ক্ষমতা হস্তান্তরের সময় এখনও আসেনি’ that accused Prof. Ghulam Azam, Ameer of East Pakistan Jamaat-e-Istami, having opposed the demand of transferring power, told journalists at the Lahore airport that the time did not come for transferring power. The accused informed journalists that he would inform President Yahya Khan at Rawalpindi for taking possible steps so that the situation of East Pakistan could be improved. About the situation of Pakistan, the accused stated that the miscreants were still involved with their destructive activities. The law enforcing agencies should ask for co-operation from the people as most of them were patriots. Accused Prof. Ghulam Azam also stated to journalists that the situation prevailing could only be checked if the actual miscreants were apprehended.

236. Similar news as mentioned above (Ext. 3) is also reported in Ext. 42, a copy of a newspaper clipping of 'দৈনিক আজাদ' dated 19-06-1971, under the caption 'অধ্যাপক গোলাম আজম বলেন- ক্ষমতা হস্তান্তরের জন্য উপযুক্ত সময় আসে নাই', in Ext. 61, a copy of a newspaper clipping of 'দৈনিক পাকিস্তান' dated 19-06-1971, under the caption 'লাহোরে গোলাম আজম'- এখন ক্ষমতা হস্তান্তরের উপযুক্ত সময় নয়', in Ext. 77, copy of a newspaper clipping of 'দৈনিক ইত্তেফাক' dated 19-06-1971, under the caption 'ক্ষমতা হস্তান্তরের সময় আসে নাই-গোলাম আজম' and in Ext. 106, a copy of a newspaper clipping of 'দৈনিক পূর্বদেশ' dated 19-06-1971, under the caption 'গোলাম আজম বলেন ক্ষমতা হস্তান্তরের সময় আসেনি'.

237. From the statements made by the accused as mentioned in the newspapers, Ext. 3 Ext. 42, Ext. 61, Ext. 77 and Ext.106, it is clear like mountains water that the accused was the defacto administrator of East Pakistan at the War time, otherwise he could not say like an authority that proper time not attained for transferring power to party (Awami League). The accused further disclosed to the journalists that he would make proposal to the President about the situation of East Pakistan and the prevailing situation could be cheked if actual miscreants (freedom loving people) were apprehanded.

238. These statements clearly imply that the accused extended all moral and psychological supports to the atrocities committed by occupation army and their local collaborators in all over Bangladesh.

Count No. vii: During accused Prof. Ghulam Azam's exchange with journalists on 19.06.1971, he impressed upon the topics discussed with President Yahya Khan, where he urged upon the government to supply arms and ammunitions to those who believed in the ideal and unity of Pakistan in order to combat the so-called 'dushkritikari'. By referring to those who believed in the ideal and unity of Pakistan, the accused meant members of the Jamaat-e-Islami as well as members of the Peace Committee, Al-Badr, Al-Shams and Al-Mujahid, etc. The accused also stated that those who did not support the ideal of Pakistan were not friends of Pakistan. The accused reiterated the position of the military regime of Pakistan by dubbing the independence loving people of Bangladesh as separatists and miscreants and clearly stated his position to effectively combat them. His demand of arming the so-called patriots 'deshpremikder' so that it would be possible to effectively combat and eliminate the so-called 'dushkritikari', who supported the independence of Bangladesh, demonstrates his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence:

239. Ext. 4 is a copy of a newspaper clipping of 'দৈনিক সংগ্রাম' dated 20-06-1971 wherein it is reported under the caption 'পিন্ডিতে সাংবাদিক সম্মেলনে অধ্যাপক গোলাম আযম-কেবলমাত্র দেশপ্রেমিকদের সাহায্যেই বিচ্ছিন্নতাবাদীদের দমন করা সম্ভব' that in a press conference held at Rawalpindi, accused Prof. Ghulam Azam stated that only with the help of patriotic people, the separatism activities could be

encountered and, as such, he urged upon the government to supply arms and ammunitions to the persons who believed in the ideology and unity of Pakistan. The news report is quoted below:

“রাওয়ালপিন্ডি, ১৯শে জুন (পি পি আই)।- পূর্ব পাকিস্তান জামায়াতে ইসলামী প্রধান অধ্যাপক গোলাম আযম বলেছেন যে, পূর্ব পাকিস্তানে স্বাভাবিক অবস্থা পুনঃপ্রতিষ্ঠিত না হওয়া পর্যন্ত জনগণের নিকট ক্ষমতা হস্তান্তর করা যায় না।

অধ্যাপক আযম প্রেসিডেন্টের সাথে সাক্ষাত শেষে আজ এখানে এক সাংবাদিক সম্মেলনে বক্তৃতা করছিলেন।

তিনি বলেন যে, জাতীয় পরিষদ গঠন হলে জনপ্রতিনিধিদের হাতে ক্ষমতা ন্যস্ত করা যায়।

জামায়াত নেতা অধ্যাপক গোলাম আযম বলেন, দেশের উভয় অংশকে কেবলমাত্র সেই আদর্শের ভিত্তিতেই ঐক্যবদ্ধ রাখা যেতে পারে, যে আদর্শের ভিত্তিতে পাকিস্তান জন্মলাভ করেছে। যেসব লোক এই আদর্শের বিরোধিতা করে তারা পাকিস্তানের বন্ধু নয়।

তিনি বলেন, কেবলমাত্র দেশ প্রেমিক জনগণের সাহায্যেই বর্তমান বিচ্ছিন্নতাবাদী তৎপরতাকে কার্যকরীভাবে প্রতিহত করা যেতে পারে। তিনি দুষ্কৃতিকারীদের মোকাবেলা করার উদ্দেশ্যে দেশের আদর্শ ও সংহতিতে বিশ্বাসী লোকদের হাতে অস্ত্র সরবরাহ করার জন্য সরকারের প্রতি আহবান জানান।

তিনি বলেন, পূর্ব পাকিস্তানে দুষ্কৃতিকারীরা সংখ্যায় কম, কিন্তু তারা পুরোমাত্রায় অস্ত্রশস্ত্রে সজ্জিত এবং সংগঠিত। তিনি আরো বলেন যে, এসব দুষ্কৃতিকারী এখনো তাদের ধ্বংসাত্মক কার্যকলাপ চালিয়ে যাচ্ছে।”

240. On perusal of the news report (Ext.4) as mentioned above, the intention of accused Prof. Ghulam Azam appears through his said speech delivered to journalists about the discussion made with the President of Pakistan, Yahya Khan where he urged upon the government to supply arms and ammunitions to those who believed in the ideal and unity of Pakistan in order to eliminate the so-called 'dushkritikari' (Pro-liberation people). This statement also clearly implies that accused Prof. Ghulam Azam sailed with president Yahya Khan in the same boat with intent to annihilate freedom loving people of Bangladesh in 1971.

Count No. viii : On 20-06-1971, accused Prof. Ghulam Azam raised the issue of the incidents taking place in Bangladesh, the overall situation and what needs to be done in front of journalists during a press conference held at the Jamaat-e-Islami office, Lahore. During his speech the accused informed that so-called 'dushkritikari' were still active in East Pakistan and in order to effectively eliminate them, the arming of the so-called 'shantipriyo' citizens for the sake of security 'nirapottar jonno' was necessary. When referring to 'shantiprio' citizens, the accused meant members of the Peace Committee, Al-Badr, Al-Shams, etc. Although, he justified the arming of the so-called 'shantipriyo' citizens by stressing on the issue of their personal security, he had also in fact revealed his true intent of combating 'protirodh' the activities of the so-called 'dushkritikari' in the same sentence. His clear position in support of the military regime of Pakistan and its evil design to regarding independent Bangladesh and her

independence loving people and call to arm the so-called ‘shantipriyo’ citizens in furtherance of that design indicates complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

241. Ext. 62 is a copy of a newspaper clipping of ‘দৈনিক পাকিস্তান’ dated 21-06-1971 wherein it is reported under the caption ‘পূর্ব পাকিস্তানের ঘটনাবলী সম্পর্কে গোলাম আজম’ that in a press conference held at the Jamaat-e-Islami office, Lahore, accused Prof. Ghulam Azam raised the issue of the incidents taking place in East Pakistan and what needs to be done in front of journalists. In his speech, the accused told that the so-called ‘dushkritikari’ (miscreants) were still active in East Pakistan and in order to effectively combat them the arming of the so-called ‘shantipriyo’ (peace loving) citizens was necessary for the sake of security. The news report is quoted below:

“লাহোর, ২০শে জুন (এ পি পি)।- পূর্ব পাকিস্তান জামাতে ইসলামীর আমীর অধ্যাপক গোলাম আজম আজ এখানে বলেন যে, পূর্ব পাকিস্তানের বর্তমান ঘটনাবলী পাকিস্তান প্রতিষ্ঠার মূল আদর্শ অনুশীলনে আমাদের অবহেলা প্রদর্শনেরই পরিণতি।

আজ এখানে দলের অফিসে এক সাংবাদিক সম্মেলনে ভাষণদানকালে তিনি বলেন, এই উপমহাদেশের মুসলমানরা কোন চাপে পড়ে নয়-বরং স্বেচ্ছায় নিজেদের জন্য একটি পৃথক আবাসভূমি স্থাপনে সম্মত হয়েছিলেন। কিন্তু আদর্শের প্রতি আমাদের নেতৃবৃন্দের বিশ্বাসঘাতকতার দরুণ এক এবং বিশেষ করে সাবেক প্রেসিডেন্ট আইয়ুব

খানের একনায়কত্ব শাসনের দশ বছরে সমাজতান্ত্রিক ও কম্যুনিষ্ট মনোভাবের কারণ সৃষ্টি হয়েছে- যার ফলে জনসাধারণ পাকিস্তানের আদর্শ থেকে দূরে সরে যায়।

.....

তিনি আরও বলেন যে, কর্তৃপক্ষকে অবশ্যই পূর্ব পাকিস্তানের মানুষের আস্থা ও বিশ্বাস অর্জন করতে হবে। তাদের মধ্যে আস্থার মনোভাব ফিরিয়ে আনতে হবে এবং প্রশাসন কর্তৃপক্ষ যে তাদেরকে বিশ্বাস করেন, এটা তাদের জানান দেওয়া উচিত।

তিনি আরও বলেন, পূর্ব পাকিস্তানে এখনও দুষ্কৃতিকারীরা সক্রিয় রয়েছে এবং তাদের কার্যকলাপ প্রতিরোধ করার জন্য শান্তিপ্ৰিয় নাগরিককে নিজেদের নিরাপত্তার জন্য অস্ত্রসজ্জিত করা উচিত।

.....”

242. Similar news as mentioned above (Ext. 62) is also reported in Ext. 43, a copy of a newspaper clipping of 'দৈনিক আজাদ' dated 21-06-1971, under the caption 'লাহোরে সাংবাদিক সম্মেলনে গোলাম আজম-আদর্শ অনুসরণে আমাদের ঔদাসীন্যই বর্তমান পরিস্থিতির জন্য দায়ী'.

243. On perusal of the news reports (Ext. 62 and Ext. 43) as discussed above, it appears that during his said speech, accused Prof. Ghulam Azam told that the so-called 'dushkritikari' (miscreants) were still active in East Pakistan and in order to effectively eliminate them the arming of the so-called 'shantipriyo' (peace loving) citizens was necessary for the sake of security. This statement of the accused appears to be a proof of his complicity in the commission of the atrocities during Liberation War, 1971.

Count No. ix : Accused Prof. Ghulam Azam hailed on 21-06-1971, the role played by the Pakistani Army for destroying the so-called separatist movement in East Pakistan, while giving a speech before members of the Jamaat-e-Islami in Lahore. He stated that there was no other way to save the country from separating without intervention by the Pakistani Army. This unconditional support by him towards all criminal activities by the Pakistani Army indicates complicity in the above mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

244. Ext. 63 is a copy of a newspaper clipping of 'দৈনিক পাকিস্তান' dated 22-06-1971 wherein it is stated under the caption 'সেনাবাহিনীর হাতে আর বিকল্প ছিল না : গোলাম আজম' that on 21-06-1971, accused Prof. Ghulam Azam hailed the role played by the Pakistani Army for eliminating the so-called separatist movement in East Pakistan, while giving a speech before members of the Jamaat-e-Islami in Lahore. He stated that there was no other way to save the country from separating without intervention by the Pakistani Army. He further stated that the chaos created by the banned Awami League in East Pakistan was ten times stronger than the rebellion of 1857. The said news report is quoted below:

“লাহোর, ২১শে জুন (এ পি পি)।- পূর্ব পাকিস্তানে বিচ্ছিন্নতাবাদী প্রচেষ্টা নির্মূল করে দেয়ার জন্য পূর্ব পাকিস্তান জামাতে ইসলামীর আমীর প্রফেসর গোলাম আজম আজ পাকিস্তান সশস্ত্র বাহিনীকে গভীর শ্রদ্ধা জানান।

গতকাল এখানে জামাতের ফাতেমা জিন্নাহ রোড অফিসে কর্মীদের এক সভায় তিনি বলেন যে, সেনাবাহিনীর হস্তক্ষেপ ছাড়া দেশকে বিচ্ছিন্ন হয়ে পড়া হতে রক্ষা করার অপর কোনই বিকল্প কিছু ছিল না।

তিনি বলেন যে, নিষিদ্ধ ঘোষিত আওয়ামী লীগ কর্তৃক পূর্ব পাকিস্তানের সাম্প্রতিক গোলযোগ বাংলার ১৮৫৭ সালের বিদ্রোহ অপেক্ষাও ১০ গুন শক্তিশালী ছিল।

.....।”

245. Similar news as mentioned above (Ext. 63) is also reported in Ext. 5/1, a copy of a newspaper clipping of ‘দৈনিক সংগ্রাম’ dated 22-06-1971, under the caption ‘সামরিক হস্তক্ষেপ ছাড়া দেশকে রক্ষা করার বিকল্প ব্যবস্থা ছিল না : গোলাম আজম’ and in Ext. 44, a copy of a newspaper clipping of ‘দৈনিক আজাদ’ dated 22-06-1971, under the caption ‘লাহোরে কর্মীসভায় অধ্যাপক গোলাম আজম-পূর্ব পাকিস্তানে বিচ্ছিন্নতাবাদী আন্দোলন দমনের জন্য সেনাবাহিনীর প্রশংসা।’

246. On perusal of Ext. 63, Ext. 5/1 and Ext. 44 as mentioned above, the said speech, made by accused Prof. Ghulam Azam, appears to be a proof of his complicity in the offences committed by Pakistani Army in collaboration with para- militia Bahinis during Liberation War, 1971.

Count No. x: In a press conference held at a hotel in Karachi on 22-06-1971, accused Prof. Ghulam Azam urged upon all his followers and everyone else to offer effective assistance and full co-operation to the authorities in order to re-establish so-called ‘shabhabikota’ (normalcy). He also said that the people of East Pakistan would always live together with their West Pakistani brothers for the sake of their own survival. The accused

further stated that the objective of the 6-point demands of the banned Awami League was to separate East Pakistan from West Pakistan. He also demanded that government ban those political parties that had openly engaged in movement in support of the 6-point demands, which he perceived as a separatist movement. The accused urged upon all concerned to take effective steps to bring back a sense of faith amongst the people and also to combat the so-called 'dushkritikari' (miscreants) and anti-state elements 'rashtrobirodhider'. The accused also hailed all the steps and activities of the Pakistani Army which were all of criminal nature. Such a speech made by the accused expressing all out support towards all activities of the military regime of Pakistan, calling all to offer full co-operation to the military authorities and if needed, offer full assistance by directly taking part in criminal activities indicates complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the Auxiliary forces.

Discussion of Evidence:

247. Ext. 6 is a copy of a newspaper clipping of 'দৈনিক সংগ্রাম' dated 23-06-1971 wherein it is reported under the caption 'পূর্ব পাকিস্তানীরা সর্বদাই পশ্চিম পাকিস্তানী ভাইদের সাথে একত্রে বাস করবে' that accused Prof. Ghulam Azam on 22-06-1971, in a press conference, held at a hotel in Karachi, urged upon all concerned to offer effective assistance and full co-operation to the authorities in order to re-establish normalcy. He also said that the people of East Pakistan would always live together with their West Pakistani brothers for the sake of their

own survival. Prof. Ghulam Azam further stated that the objective of the 6-point demands of the banned Awami League was to separate East Pakistan from West Pakistan. Under no circumstances, India could be a friend of the people of East Pakistan. The accused also demanded that government ban those political parties that had openly engaged in movement in support of the 6-point demands. The people of East Pakistan never cast their votes for separation, rather they cast their votes in order to address their needs and grievances. Accused Prof. Ghulam Azam also stated that Quaedde Azam was the noble leader of Pakistan and the people of West Pakistan and East Pakistan jointly established the largest Islamic Country, Pakistan.

248. Similar news as mentioned above (Ext. 6) is also reported in Ext. 78, a copy of a newspaper clipping of 'দৈনিক ইত্তেফাক' dated 23-06-1971.

249. According to Ext. 6 and Ext. 78, the speech, made by accused Prof. Ghulam Azam inspired and incited his followers to extend all out support towards all activities of the Paksitani army, proves his complicity in the crimes committed in Bangladesh by the Pakistani Army and their collaborators during Liberation War, 1971.

Count No. xi: On 06-06-1971, the local Peace Committee organized a meeting at Kushtia Public Library, during which accused Prof. Ghulam Azam dubbed the Awami League and Bangabandhu Sheikh Mujibur Rahman as 'Bharoter dalal' and 'bisshashghatok'. In his speech, he also stressed upon the need of 'qurbani' (sacrificing) for the freeing of Muslims

from the Hindu domination. In the end, the accused classified the Bengali Hindus of occupied Bangladesh as ‘shorojontrokari’. By classifying the Awami League and Bengali Hindus as ‘dushdritikari’ and ‘rashtrobirodhi’, the accused called upon the common people to combat them by co-operating with the Peace Committee and concerned authorities. When referring to the common people, the accused in essence meant members of the Jamaat-e-Islami, Peace Committee, Rajakars and other auxiliary forces over whom he had influence and control. During the meeting, the accused also expressed gratitude towards the Pakistani Army for taking the necessary steps ‘jothashomoye bebostha grohon’ for preserving the unity of Pakistan and also called for Allah’s divine intervention. It was through a speech of this sort that the accused expressed solidarity with the activities of the Pakistani Army and all its criminal activities. In his speech, the accused called upon all to offer full co-operation to the Pakistani military authorities, prayed for Allah’s divine intervention, thanked the Pakistani Army for their acts, fully endorsed his support which indicates complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

250. Fortnightly Report (Ext. 488) was also reported in (Ext. 11) a copy of a newspaper clipping of ‘দৈনিক সংগ্রাম’ dated 08-08-1971, under the caption ‘কুষ্টিয়ার বিরাট জনসমাবেশে অধ্যাপক আয়ম- মুজিব ও আওয়ামী লীগ জনগণের সাথে বিশ্বাসঘাতকতা করেছে’, in Ext. 64, a copy of a newspaper clipping of ‘দৈনিক পাকিস্তান’ dated 08-

08-1971, under the caption 'শেখ মুজিব ও তার দল বিশ্বাসঘাতকতা করেছে:গোলাম আজম' and in Ext. 45, a copy of a newspaper clipping of 'দৈনিক আজাদ' dated 09-08-1971, published same news.

251. The news reported in Ext. 488, Ext. 11, Ext. 64 and Ext. 45 gives a clear indication that the accused had effective control and influences over his subordinates namely members of Jamat-e-Islami, Razakars and Mujaheeds who were relied upon in toto to combat against the 'revels' (freedom loving people). His complicity with the activities of those militia Bahinis is established.

Count No. xii: On 20-08-1971, accused Prof. Ghulam Azam was present at a Jamaat-e-Islami Central Council meeting, held at Lahore, presided over by the party's Assistant Ameer Maulana Abdur Rahim. During that meeting the accused offered full support to the decision taken by the Pakistan government to repress the banned Awami League by armed means 'shoshosro domon'. The repressive measures were of criminal nature and the 'purno shomorthon' offered by the accused towards those measures indicates his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence:

252. Ext 82 is a copy of a newspaper clipping of 'দৈনিক ইত্তেফাক' dated 21-08-1971 wherein it is reported under the caption 'আওয়ামী লীগের বিরুদ্ধে গৃহীত ব্যবস্থায় জামাতের সমর্থন' that on 20-08-1971, a meeting of Jamaat-e-Islami Central

Council was held at Lahore, presided over by the party's Assistant Ameer Maulana Abdur Rahim, where the said party offered full support to the decision taken by the government of Pakistan to repress the banned Awami League for their rebellion in East Pakistan. The said news report is quoted below:

“লাহোর, ২০শে আগস্ট (পি পি আই)।- ভারতীয় যুদ্ধবাজ এবং তাহাদের এজেন্টদের যোগসাজসে বেআইনী ঘোষিত আওয়ামী লীগ পূর্ব পাকিস্তানে যে সশস্ত্র বিদ্রোহ করিয়াছিল, তাহা দমনে পাকিস্তান সরকার যে ব্যবস্থা গ্রহণ করিয়াছেন, জামাতে ইসলামীর কেন্দ্রীয় কাউন্সিল উহার প্রতি পূর্ণ সমর্থন জানাইয়াছে। দলের সহকারী প্রধান মওলানা আব্দুর রহিমের সভাপতিত্বে অদ্য এখানে কাউন্সিলের তৃতীয় দিবস অতিবাহিত হয়।

দলের প্রতিষ্ঠাতা মওলানা সৈয়দ আবুল আলা মওদুদীও সভায় যোগদান করেন।”

Count No. xiii: Accused Prof. Ghulam Azam spoke at a press conference, held at Peshawar on 26-08-1971, during which he dubbed the revolutionaries against Pakistan as ‘Mir Zafar’ and stated that the Pakistani Army had saved East Pakistan from the evil motives of India. He subsequently called the revolutionaries against Pakistan ‘dushkritikari-onuprobeshkari’ and members of the Awami League as ‘fasibadi’. The accused urged to provide full co-operation by Bengali population to the Pakistani Army to eliminate them. By stating the destruction of the ‘dushkritikari’ ‘onuprobeshkari’ and ‘fesibadi’, the accused was infact

referring to the commission of criminal acts against them. His speech signifies full co-operation towards the criminal activities of the Pakistani Army which indicates his complicity in the crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence:

253. P.W.1 Moontassir Uddin Khan Mamun alias Moontas sir Mamun has stated that accused Prof. Ghulam Azam used to say for eliminating ‘dushkritikari’ i.e. freedom-fighters or the supporters of the Liberation War and, for extending support towards the Pakistani Army and their associates. He has also stated that he saw and heard about the brutal activities committed by Rajakars, Al-Badr and the members of the Peace Committees. P.W.2 Mahabub Uddin Ahmed, Bir Bikrom has stated that the Peace Committee, Al-Badr, Al-Shams and Rajakar bahinis along with Pakistani Army committed genocide, killing, rape, arson, looting, etc. in different places of the country and accused Prof. Ghulam Azam was the leader of Jamaat-e-Islami and under his leadership those offences were committed. P.W.3 Sultana Kamal has stated that according to Jamaat-e-Islami, Muslim League, PDP and accused Prof. Ghulam Azam, ‘dushkritikari’ (miscreants) were the freedom-fighters and, as such, they had to be eliminated. P.W. 16 Md. Motiur Rahman (I.O.) has stated that for the continuous wide criminal activities of accused Prof. Ghulam Azam, during Liberation War, thirty lakh people were killed, two lakh women of different ages were raped, one crore people were compelled to deport out, people of

minority community were compelled to convert their religion and thousands of houses, shops, schools, colleges, Universities, mosques, temples, bridges, etc. were destroyed.

254. Ext. 84 is a copy of a newspaper clipping of 'দৈনিক ইত্তেফাক' dated 27-08-1971 wherein it is reported under the caption 'সশস্ত্র বাহিনী পূর্ব পাকিস্তানকে রক্ষা করিয়াছে-গোলাম আজম' that in a press conference held at Peshawar on 26-08-1971, accused Prof. Ghulam Azam, Ameer of the East Pakistan Jamaat-e-Islami, having dubbed the revolutionaries as 'Mir Zafar' (betrayers) said that the Pakistani Army had saved East Pakistan from the evil design of India. The people were extending full co-operation to the Pakistani Army in order to eliminate the miscreants and infiltrators. The people did not rebel, rather the fascist leaders and workers of the banned Awami League rebelled. With the help of India they brought changes in their 6-point demands after the general election in order to separate East Pakistan from West Pakistan. Prof. Ghulam Azam also stated that the workers of Awami League put pressure on and intimidated the voters of East Pakistan to cast their votes in favour of them. The voters of East Pakistan did not cast their votes in favour of Awami League for separation of Pakistan, but for achievement of their legitimate rights.

255. Similar news as mentioned above (Ext. 84) is also reported in Ext. 13, a copy of a newspaper clipping of 'দৈনিক সংগ্রাম' dated 27-08-1971 under the caption 'পেশোয়ারে সাংবাদিক সম্মেলনে গোলাম আজম- পূর্ব পাকিস্তানের জনগণ বিদ্রোহ করেনি', in Ext. 47, a copy of a newspaper clipping of 'দৈনিক আজাদ' dated 27-08-1971

under the caption 'গোলাম আজম কর্তৃক সশস্ত্র বাহিনীর প্রশংসা' and in Ext.111, a copy of a newspaper clipping of 'দৈনিক পূর্বদেশ' dated 27-08-1971 under the caption 'সেনাবাহিনী প্রদেশকে রক্ষা করেছেন।'

256. The evidence of P.W.1, P.W.2 and P.W.16 and the speech, delivered by accused Prof. Ghulam Azam as mentioned above, signifies their full co-operation towards the atrocious activities of the Pakistani Army and their associates which apparently indicates his complicity by instigation.

Count No. xiv: On 26-08-1971, accused Prof. Ghulam Azam as Ameer of the East Pakistan Jamaat-e-Islami extended deep respects towards the Pakistani Army for protecting the unity of Pakistan in the midst of severe constraints and obstacles, at a party members gathering, held at the Town Hall of Peshawar. There he said that chanting slogans would not be enough to address the damages done in East Pakistan by a group of 'bicchinotabadi'. In his speech, he not only expressed unconditional support to all criminal activities of the Pakistani Army, but also urged upon the members of his own political party and others to engage in repressive and criminal activities by stating that the mere chanting of slogans would not suffice. This indicates his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence:

257. Ext. 68 is a copy of a newspaper clipping of 'দৈনিক পাকিস্তান' dated 29-08-1971 wherein it is stated that Prof. Ghulam Azam, Ameer of East

Pakistan Jamaat-e-Islami, in a meeting of the members of his own party, held at the Town Hall of Peshawar, stressed on the necessity of strengthening the Islamic ideology of Pakistan in order to ensure permanent unity of the two wings of Pakistan. He said that Pakistan was created through Islam and it could sustain only in the firm belief of Islam. He also said that chanting slogans would not be enough to address the damages, done in East Pakistan by a group of separatists. He having praised the activities of the Pakistani Army extended deep respects towards them for protecting the unity of Pakistan. The people of East Pakistan agitated for Pakistan and they could never demand for its separation.

258. The speech, delivered by accused Prof. Ghulam Azam as mentioned above apparently indicates his complicity in the crimes committed in Bangladesh during Liberation War, 1971 as he urged upon the members of his own political party and others to engage in repressive and criminal activities by stating that the mere chanting of slogans would not suffice.

Count No. xv : On 30-08-1971, at a press conference held at Hyderabad, accused Prof. Ghulam Azam mentioned the martyrdom of 500-700 volunteers of the auxiliary forces, while trying to protect the unity of Pakistan. The accused demanded the dissolution of the 'Jatiyo Parishad' (National Assembly) and the holding of fresh elections. He also demanded the strengthening of the 'deshpremik O Islam priyo' persons, i.e. those persons who were supporting the unity of Pakistan and were assisting the Pakistani Army. According to him, these persons had helped in bringing the

situation in occupied Bangladesh under control ‘poristhiti niyontron’. By stating ‘poristhiti niyontron’ the accused was in fact referring to the repression of those who supported the independence of Bangladesh whom he dubbed as ‘dushkritikari, rashtrobirodhi O bidrohi’. The accused also mentioned the assisting of the Pakistan Army and the concerned authorities by the so-called ‘deshpremik’ in the efforts to repress those who supported the independence of Bangladesh. By hailing the Pakistani Army, the accused expressed his support towards all their activities. He mentioned the important role played by the Tolabaye Arabiya, Islami Jamiyate Tolaba and Shanti Committee in the process of combating the so-called ‘dushkritikari O Bharotiyo agent’. By stressing upon the importance of the auxiliary forces, the accused confirmed his connection to the criminal activities of the Pakistani Army. His speech also confirms the connecton between the criminal activities of the Pakistani Army and he and his auxiliary forces and indicates his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

259. Ext. 69 is a copy of a newspaper clipping of ‘দৈনিক পাকিস্তান’ dated 01-09-1971 wherein it is stated under the caption ‘হায়দরাবাদে গোলাম আজম-নতুনভাবে জাতীয় পরিষদের নির্বাচন দাবী’ that accused Prof. Ghulam Azam, on 30-08-1971 at a press conference held at Hyderabad, demanded the dissolution of the National Assembly and holding of fresh elections. He said that out of 88 members, elected with the tickets of the banned Awami League, most of

them were not in Pakistan and of them two members meanwhile had died. He demanded the strengthening of the patriotic and Islam-loving people of East Pakistan and said that those persons had assisted to control the situation prevailing in East Pakistan and had extended full co-operation to the Pakistani Army and Administrative authorities in order to subdue the anti-state activities of the miscreants and rebels. Prof. Ghulam Azam having praised highly the Pakistani Army for protecting Pakistan from its breaking into pieces, said that the situation of East Pakistan was being come to normalcy quickly.

260. Similar news as mentioned above (Ext. 69) is also reported in Ext. 85, a copy of a newspaper clipping of 'দৈনিক ইত্তেফাক' dated 01-09-1971 under the caption 'বর্তমান মুহূর্তের আশু প্রয়োজন সম্পর্কে গোলাম আজম'.

261. On perusal of Ext. 69 and Ext. 85, it appears that accused Prof. Ghulam Azam demanded the strengthening of the patriotic and Islam-loving persons and stressed upon the importance of the collaborators of the Pakistani Army and thereby he indicates his complicity with the atrocious activities of the Pakistani Army and their collaborators which were done during Liberation War, 1971.

Count No. xvi : Accused Prof. Ghulam Azam spoke at a press conference at the Karachi office of Jamaat-e-Islami on 31-08-1971, and expressed gratitude towards the Pakistani Army for protecting Pakistan 'Pakistan rokkhay'. By protecting Pakistan 'Pakistan rokkhay', the accused

meant upholding the unity of Pakistan by repressing the people of Bangladesh supporting its independence which also signifies his support towards the criminal activities of the Pakistani Army. The accused dubbed the supporters of the independence of Bangladesh as bad Muslims ‘bhalo Musolman noy’, who according to him were so-called ‘bicchinotabadi’. The accused also mentioned the repression of these persons by so-called ‘ekmona O deshpremik’ persons. His speech confirms his support and connection with the criminal activities repressing those supporting the independence of Bangladesh. His hailing of the activities of the Rajakars also conveys his support towards the crimes they committed and confirms his association and connection to those crimes. Thus his speech indicates his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

262. Ext. 70 is a copy of a newspaper clipping of ‘দৈনিক পাকিস্তান’ dated 02-09-1971 wherein it is reported under the caption ‘করাচীতে গোলাম আজম-বিচ্ছিন্নতাবাদী রাজনৈতিক দল নিষিদ্ধ ঘোষণার দাবী’ that on 31-08-1971 at a press conference, held at the Karachi office of Jamaat-e-Islami, accused Prof. Ghulam Azam, Ameer of the East Pakistan Jamaat-e-Islami, during his speech urged to resolve the National Assembly immediately and to hold fresh elections in all over the country as so as the time would be favourable. He also urged to ban all the separatist political parties and to punish the leaders of those parties. Prof. Ghulam Azam expressed profound gratitude

towards the Pakistani Army for protecting Pakistan and the lives of people. He stated that a good Muslim could not be a supporter of so-called 'Bangladesh movement'. Like minded and patriotic people had been working together to destroy the separatists of East Pakistan. The accused praised the activities of Rajakars. The news report is quoted below:

“করাচী, ১লা সেপ্টেম্বর (এ পি পি)।- গতকাল পূর্ব পাকিস্তান জামাতে ইসলামীর আমীর অধ্যাপক গোলাম আজম অবিলম্বে জাতীয় পরিষদ বাতিল এবং যখনই সময় অনুকূল হবে তার সাথে সাথে সমগ্র দেশে নতুন করে নির্বাচন অনুষ্ঠানের আহ্বান জানিয়েছেন।

.....

তিনি সকল বিচ্ছিন্নতাবাদী রাজনৈতিক দল নিষিদ্ধ ঘোষণা এবং তাদের নেতৃবৃন্দকে শাস্তিদানের আহ্বান জানান।

.....।

অধ্যাপক আজম পাকিস্তান রক্ষা ও মানুষের জীবনের নিরাপত্তার জন্য পাকিস্তান সেনাবাহিনীর প্রতি গভীর শ্রদ্ধা জানান।

তিনি বলেন, কোন ভাল মুসলমানই তথাকথিত 'বাংলাদেশ আন্দোলনের' সমর্থক হতে পারে না। তিনি বলেন, পূর্ব পাকিস্তানে বিচ্ছিন্নতাবাদীদের নির্মূল করার জন্য এক মনা ও দেশপ্রেমিক লোকেরা একত্রে কাজ করে যাচ্ছেন। রাজাকাররা খুবই ভাল কাজ করছেন বলে তিনি উল্লেখ করেন।

.....।”

263. On perusal of Ext. 70 as mentioned above, it appears that accused Prof. Ghulam Azam praised the activities of Rajakars who, amongst others, allegedly committed atrocities throughout the country during Liberation War, 1971 and, therefore, his above mentioned speech indicates his complicity by instigation in the commission of the atrocities.

Count No. xvii : On 03-09-1971, accused Prof. Ghulam Azam and other leaders of the Jamaat-e-Islami agreed to eliminate the so-called revolutionaries and anti-social elements ‘bidrohider’ and ‘shomajbirodhider’, in the efforts to bring back a state of normalcy at a meeting of party leaders at the Dhaka city office of Jamaat-e-Islami located at 91/92, Siddiq Bazar, Dhaka. While addressing the political and law and order situation in the country, the accused stressed upon the importance of efforts to bring back a state of normalcy in the country. When referring to the ‘bidrohi o shomajbidrohi’, the accused meant the people supporting the independence of occupied Bangladesh and the innocent Bengali population. The nature of decisions taken by him during this meeting along with his support, connection to and association with the brutal elimination of persons supporting the independence of Bangladesh indicate his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

264. Ext. 489 is a copy of a Fortnightly report on political situation, for the first half of September, 1971 from Special Branch, East Pakistan, Dhaka

wherein it is stated that a discussion meeting of the Jamaat-e-Islami leaders was held on 03-09-1971 at the office of the Dhaka City Unit of the party at 91/92, Siddiq bazar with Prof. Ghulam Azam and Maulana Abdul Khaleq, Ameer and General Secretary respectively of East Pakistan Jamaat-e-Islami, besides others attending the meeting, discussed political as well as law and order situation and stressed the necessity of strict measures by the government for restoration of normalcy in the country by eliminating the rebels and anti-social elements. It hailed the appointment of Dr. A.M. Malik as Governor of East Pakistan. Prof. Ghulam Azam gave his impression of his recent visit of West Pakistan and said that the Jamaat-e-Islami had strong hold in that Wing.

265. On perusal of Ext. 489 as mentioned above, it appears that the nature of decisions taken by accused Prof. Ghulam Azam and others with the elimination of persons supporting the independence of Bangladesh indicate his complicity by instigation in the commission of crimes in Bangladesh during Liberation War, 1971.

Count No. xviii : Accused Prof. Ghulam Azam issued a statement from Dhaka on 10-09-1971, where he stated intelligent and sharp persons should be included in the Pakistani delegation at the upcoming General Assembly of the United Nations. He stated this because he believed that in the midst of the severe on going crisis there would be many criticism against at the United Nations General Assembly and they would have to attend many debates. Hence, right selecton of Pakistani delegation was a matter to

sustaining of the national unity, not a matter of person or personality. The accused advocated the appointing of ‘bagmi o khurdhar buddhishomponno’ because he knew that they would have to face questions at the United Nations regarding the torture, repression, genocide and crimes against humanity committed against the people of occupied Bangladesh by the Pakistani Army and its auxiliary forces. This is why the accused wanted that a competent delegation be sent capable to explaining such activities. Such prescriptions made by him confirm his association, connection and support towards all criminal activities of the Pakistani Army and its auxiliary forces which indicates his complicity in the above-mentioned crimes committed.

Discussion of Evidence :

266. Ext. 113 is a copy of a newspaper clipping of ‘দৈনিক পূর্বদেশ’ dated 11-09-1971 wherein it is reported under the caption ‘গোলাম আজম-জাতিসংঘ প্রতিনিধিদল মনোনয়নের সমালোচনা’।

267. Ext. 489 is a copy of a Fortnightly Report on political situation, for the first half of September, 1971, from Special Branch, East Pakistan, Dhaka, wherein it is also stated that the leaders of East Pakistan Jamaat-e-Islami were not happy of the selection of members of Pakistani delegation to the ensuing session of the United Nations General Assembly. They were of the views that more eminent persons with political background should have been included in the delegation to suit the occasion and serve the purpose better.

268. Similar news as mentioned above (Ext. 113 and Ext. 489) is also reported in Ext. 17, a copy of a newspaper clipping of 'দৈনিক সংগ্রাম' dated 11-09-1971 under the caption 'গোলাম আজমের বিবৃতি-পাক প্রতিনিধিদলে বিজ্ঞ বাগ্মী ও ক্ষুরধার বুদ্ধি সম্পন্ন সদস্য গ্রহণের সুপারিশ'.

269. On perusal of Ext. 113, Ext. 489 and Ext. 17 as mentioned above, it appears that the above prescriptions made by accused Prof. Ghulam Azam speaks high of his association, connection and support towards all criminal activities of the Pakistani army and its collaborators to resist independence of Bangladesh.

Count No. xix : During mid September of 1971, while congratulating the newly constituted Cabinet under the military regime of Pakistan, accused Prof. Ghulam Azam hailed the operation of the Pakistani Army and mentioned that the central and local Peace Committees were working towards bringing back a sense of normalcy in the country. He also expressed hope that the newly constituted Cabinet would function even better than the Peace Committee. Through his speech, he expressed solidarity with the criminal activities of the Pakistani Army and the Peace Committee thereby clarifying his own association with such activities, and thus indicating his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

270. Ext. 20 is a copy of a newspaper clipping of 'দৈনিক সংগ্রাম' dated 19-09-1971 wherein it is reported under the caption 'নবনিযুক্ত মন্ত্রীদের প্রতি অধ্যাপক গোলাম আযমের অভিনন্দন' that in a statement, Prof. Ghulam Azam, Ameer of Provincial Jamaat-e-Islami, having congratulated the newly constituted Cabinet said that they being Ministers have not only taken the risk, but have also taken the responsibility upon their shoulders to bring back full confidence among the frustrated people. In a normal situation, this responsibility is very much honourable and profitable, but in the complicated situation prevailing at that time, the Ministers would have to work hard to restore the economy of the seriously affected country and to create an environment for establishing a pro-people government. Prof. Ghulam Azam expressed his hope that the Governor and his Cabinet would get all sort of co-operations from the peace-loving citizens in bringing back the normalcy among the people. He further said that the central and local Peace Committees were working hard towards the bringing back a state of normalcy in the country. He also expressed hope that what the Peace Committees could have done till date, the Ministers would be able to do more than that.

271. Similar news as mentioned above (Ext. 20) is also reported in Ext. 72, a copy of a newspaper clipping of 'দৈনিক পাকিস্তান' dated 21-09-1971 under the caption 'মন্ত্রীদের দায়িত্ব সম্পর্কে গোলাম আজম'.

272. On perusal of Ext. 20 and Ext. 72 as mentioned above, it appears that accused Prof. Ghulam Azam expressed hope that the newly constituted Cabinet would function even better than the Peace Committee did. Through his said statement, he expressed solidarity with the criminal activities of the Pakistani Army and the Peace Committee and, thereby he indicated his complicity in the commission of the crimes as mentioned herein before.

Count No. xx : On 25-09-1971, during a reception thrown in the honour of Provincial Education Minister Abbas Ali Khan and Revenue Minister A.K.M. Yusuf at the local Hotel Empire, Dhaka, accused Prof. Ghulam Azam reported about sending of members of the Jamaat-e-Islami to the Razakar Forces and the Peace Committee. The accused went on to say that the two members of Jamaat-e-Islami who had joined the Cabinet were forced to do so by the party members and the objective with which the Jamaat-e-Islami had sent its members to the Rajakar Forces and Peace Committee was identical to the objective behind sending its members to the Cabinet. He stated further that the two Jamaat-e-Islami members were sent to join the Cabinet in line with his own efforts of returning a state of normalcy to the country. The sending members of his own party to forces auxiliary to the Pakistani Army, such as Rajakars Forces and the Peace Committee, in the name of establishing peace, indicates his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

273. P.W.3 Sultana Kamal has stated that in the month of September, during a reception thrown in the honour of two leaders of Jamaat-e-Islami who were included in the newly constituted Cabinet, accused Prof. Ghulam Azam said that the objective with which the Rajakar Force and Peace Committee were formed was identical to the objective behind the including the members of Jamaat-e-Islami to the Cabinet.

274. Ext. 22 is a copy of a newspaper clipping of 'দৈনিক সংগ্রাম' dated 26-09-1971 wherein it is stated under the caption 'সম্বর্ধনা সভায় অধ্যাপক গোলাম আযমের ভাষণ-ইসলামী ন্যায়নীতি প্রতিষ্ঠা ও সেবাই মন্ত্রীদেৱ দায়িত্ব হওয়া উচিত' that on 25-09-1971 a reception was thrown in the honour of Provincial Education Minister Abbas Ali Khan and Revenue Minister A.K.M. Yusuf at a local hotel, Dhaka and, both of them were leaders of East Pakistan Jamaat-e-Islami. In the said reception, Prof. Ghulam Azam, Ameer of East Pakistan Jamaat-e-Islami, stated that due to the crisis prevailing in the country and for the destructive activities of the miscreants, the Pakistanis died, of whom most of them were connected with Jamaat-e-Islami. Jamaat-e-Islami considered Pakistan and Islam are one and indifferent and, Pakistan was considered to be the home of all the Muslims of the world. The accused further stated that the workers of Jamaat-e-Islami had been working at the costs of their lives for the existence and protecting the unity of Pakistan. He further stated that the two members of Jamaat-e-Islami who had joined the Cabinet were forced to do so by the party members and the objective with which the Jamaat-e-Islami had sent its

members to the Peace Committee and other Forces was identical to the objective behind sending its members to the Cabinet.

275. Mr. Sultan Mahmud, the learned Prosecutor, at the time of summing up the prosecution case, having referred to the book named 'বাংলাদেশের স্বাধীনতা যুদ্ধ দলিলপত্র : সপ্তম খণ্ড' edited by Hassan Hafizur Rahman and published by the government of Bangladesh in 2009 at page nos.630-631, submitted that same news has been inserted therein.

276. On perusal of the evidence of P.W.3 and Ext. 22 and the relevant portion of the said book as mentioned above, it appears that accused Prof. Ghulam Azam, Ameer of East Pakistan Jamaat-e-Islami, said in a reception ceremony that the members of his party had been sent to Rajakar Forces and Peace Committee for so-called establishing peace in the country which indicates his complicity in the crimes committed by the Pakistani Army and their collaborators during Liberation War, 1971.

Count No. xxi : During a public meeting organized by the Jamaat-e-Islami at the Baitul Mukarram premises on 16-10-1971, accused Prof. Ghulam Azam stated that in order for the Bengali Muslims to live their lives keeping their livelihood and rights in fact, the preserving of the unity of Pakistan was imperative. He placed blame on the so-called 'choromponthi' of the banned Awami League for all the miseries of the country and stated that the Jamaat-e-Islami was working relentlessly through the Peace Committee to the establishing of a civilian government in the country. This

speech made by him clearly shows his association with the criminal activities of the Pakistani military forces and the Peace Committee indicating his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

277. Ext. 25 is a copy of a newspaper clipping of 'দৈনিক সংগ্রাম' dated 17-10-1971 wherein it is reported under the caption 'বায়তুল মোকাররম প্রাঙ্গণে গণজমায়েতে অধ্যাপক গোলাম আযম- বাঙ্গালী মুসলমানদের অস্থিত অক্ষুন্ন রাখতে হলে পাকিস্তানের সংহতি অবশ্যই টিকিয়ে রাখতে হবে' that on 16-10-1971, a public meeting, organized by Dhaka Jamaat-e-Islami, was held at the Baitul Mukarram premises, where Prof. Ghulam Azam, Ameer of East Pakistan Jamaat-e-Islami, stated that how far improvement of the oppressed Bengali Muslims was made, that was made after the creation of Pakistan. Prof. Ghulam Azam further stated that only the civil government could bring back the state of normalcy in the country. He also stated that Jamaat-e-Islami had been working restlessly through Peace Committees to facilitate for establishing civil government throughout the country.

278. Ext. 492 is a copy of the Fortnightly Report on political situation, for the 2nd half of October, 1971 from Special Branch, East Pakistan, Dhaka, wherein it is stated at para 14 that on 16-10-1971, as mass rally at the instance of City Jamaat-e-Islami was held at Baitul Mukarram, Dhaka with Ameer Prof. Ghulam Sarwar in the chair. Amongst others, prof. Ghulam

Azam, Ameer, East Pakistan Jamaat-e-Islami addressed the rally, inter alia, stressing on the necessity of helping the present regime to restore normalcy in the country. He criticised NAP, PPP and held them responsible for the crisis prevailing in the country. He also criticised Bangabandhu Sheikh Mujibur Rahman, the Chief of Awami League for his lack of foresight and control over his followers, particularly the extremists who raised slogans 'Bangladesh'.

279. On perusal of Ext. 25 and Ext. 492 it appears that the said speech made by accused Prof. Ghulam Azam indicates his pivotal role in the civil administration of East Pakistan through Peace Committee led by Jamaat-e-Islami and thereby he had complicity in the crimes committed in the country by the Pakistani Army and their collaborators.

Count No. xxii : After returning from Lahore, on 26-11-1971, during an exchange with journalists, accused Prof. Ghulam Azam hailed the role played by the Razakars and demanded that they be armed with modern weapons. He stated further that doing so would allow the destruction of the 'dushkritikari'. In 1971, the criminal activities of Rajakars Forces spanned throughout the country and this force was made up of members of the Jamaat-e-Islami under the initiative of the Pakistani military forces. Therefore, by hailing the role played by this organization, his complicity in the above-mentioned crimes committed throughout the country by the Pakistani military forces and the auxiliary forces.

Discussion of Evidence :

280. Ext. 116 is a copy of a newspaper clipping of 'দৈনিক পূর্বদেশ' dated 27-11-1971 wherein it is reported that on 26-11-1971, during an exchange with journalists at Rawalpindi, Prof. Ghulam Azam, Ameer of East Pakistan Jamaat-e-Islami, praised the role played by the Rajakars and criticised those persons who had opposed them (Rajakars). He demanded that the Rajakars should be armed with modern weapons so that they could be able to eliminate the miscreants. This news report is quoted below:

“.....অধ্যাপক গোলাম আজম লাহোর থেকে এখানে আগমনের পর সাংবাদিকদের সাথে আলাপ করছিলেন।.....তিনি রাজাকারদের ভূমিকার প্রশংসা করেন এবং যারা এদের বিরোধিতা করছেন তাদের সমালোচনা করেন। তিনি দাবী করেন যে, রাজাকারদের হাতে সর্বাধুনিক অস্ত্রশস্ত্র দেয়া উচিত। এর ফলে তারা দুষ্কৃতিকারীদের খতম করতে সমর্থ হবে।”

281. It appears from Ext. 116 as mentioned above that accused Prof. Ghulam Azam praised the role played by the Rajakars which indicates his complicity and support by instigation in the crimes committed in the country by the Rajakars and others. He urged the government to supply sophisticated weapons to the Razakars to kill “duskritikari” i.e. freedom loving people of Bangladesh. This statements squarely implies his complicity with the commission of atrocities committed by Razakars.

Count No. xxiii : On 28-11-1971, during a meeting of the United Coalition Party (UCP) held at Rawalpindi, accused Prof. Ghulam Azam admitted that

he and the organizations under his control were involved in assisting the Pakistan Government in taking measures against the ‘bicchinnotabadi’ and ‘rashtroberodhi’ persons because he considered it to be his duty to do so. During his speech Prof. Ghulam Azam stated that the UCP was committed towards upholding the unity of the country under the leadership of Nurul Amin. The accused urged President Yahya Khan to tour East Pakistan in order to obtain the assistance of the so-called ‘deshpremik’ of East Pakistan. He mentioned that all partriotic people of East Pakistan were working unitedly and that a 6-party coalition had been formed there to take part in the by-elections of East Pakistan. In his speech he also stated that members of the United Coalition Party and Rajakars were sacrificing their lives to protect the country. This speech made by the accused indicates his complicity in the above-mentioned crimes committed throughout the country by the Pakistani Army and the auxiliary forces.

Discussion of Evidence :

282. Ext. 31 is a copy of a newspaper clipping of ‘দৈনিক সংগ্রাম’ dated 29-11-1971 wherein it is reported under the caption ‘প্রেসিডেন্টের প্রতি গোলাম আযম-অবিলম্বে পূর্ব পাকিস্তান সফর করুন’ that on 28-11-1971, in a meeting of the United Coalition Party (UCP) held at Rawalpindi, Prof. Ghulam Azam, Ameer of the East Pakistan Jamaat-e-Islami, stated that the UCP, under the leadership of Nurul Amin, was committed towards upholding the ideal and unity of the country. The accused urged President Yahya Khan to tour East Pakistan in order to obtain the assistance of the patriotic people of East

Pakistan. He also stated that all patriotic people of East Pakistan were working unitedly and that a 6-party coalition had been formed there to take part in the by-elections of East Pakistan and, the members of the United Coalition Party and Rajakars were sacrificing their lives to protect the country. Before taking any decision, President Yahya Khan should also consider the recommendations made by those patriotic people and, if the President did so, the patriotic people of East Pakistan, who were engaged in protecting the country, would be more inspired. Prof. Ghulam Azam also stated that they had assisted the government against the separatists and anti-social elements as it was their duty.

283. It appears from the speech, made by accused Prof. Ghulam Azam as mentioned in Ext. 31, that the accused in his said speech stated that the members of the United Coalition Party and Rajakars had been sacrificing their lives to protect the country, which indicates that the accused had complicity with Pakistani army and Razakars who in the name of protecting Pakistan, killed millions of unarmed civilians during war of liberation of Bangladesh.

Evaluation of evidence and findings:

284. The prosecution has mainly relied upon documentary evidence to prove charge no.4 complicity in the commission of international crimes specified in section 3(2)(h) of the Act.

On perusal of the documentary and oral evidence discussed above, it is found on scrutiny that accused Ghulam Azam in his autobiographic book named “ Jibone-e-ja-dekhlam” volume-III page 133(Exhibit-H) has frankly described his knowledge and experience about the horrendous atrocities committed by Pakistani army in Dhaka in the following 25 March 1971. Despite of having obtained knowledge about horrendous atrocities committed by Pakistani army accused Ghulam Azam and his associates intentionally met Tikka Khan, CMLA on 04.04.1971 (Ext. 33, 34 news report) and gave assurance to provide all assistance to him. It is well proved that accused had knowledge about the atrocities which were carried upon the unarmed civilians of Bangladesh since 26 March 1971.

285. It is a fact of common knowledge that Pakistan army with the aid of local collaborators directed attacks upon unarmed civilians and killed them in a large scale with intent to destroy Bangalee nation. It is undeniable that accused had direct knowledge about the atrocities which were carried upon unarmed civilians but he repeatedly praised the role of Pakistan army and Razakars which was published in the Daily Pakistan dated 29.04.1971 and 01.09.1971 (Ext.68 and 64 respectively). It is true that a sensible man on earth cannot praise role of killer force. But fact remains that accused Ghulam Azam intentionally used to praise the role to Pakistan army and its collaborators during war of liberation of Bangladesh.

286. It is further proved by documentary evidence (Ext.No.4and 116) that accused urged upon the government to supply modern weapons for true

patriots and Razakars to kill Duscritikari i.e. freedom loving people of Bangladesh. It is evident that the accused's complicity with the atrocities committed by Pakistan army and paramilitia Bahinies has been established.

287. Mr. Imran Siddique, the learned counsel for the defence submits that complicity is not an inchoate offence but the prosecution has failed to identify any specific offence which was committed pursuant to any action of the accused.

288. On perusal of the documentary evidence discussed above, we are inclined to hold that prosecution has submitted a lot of evidence on atrocities committed by Pakistan army and paramilitia Bahinis, namely Peace committed, Razakars, Al-Badr and Al-Shams in all over Bangladesh. It is also proved that the accused as Ameer of Jamaat-e-Islami had effective control over the said paramilitia Bahinis which were mostly maned by the Jamaat-e-Islami Chhatra Sangha. We hold that 'nexus' is not required to prove genocide and widespread killing when attack was directed against unarmed civilian population.

289. Nevertheless, Prosecution has proved news report clipping about mass graves and genocide (Ext.Nos.117-159,193-196,206-249) News report clippings about rape and repression upon woman which have been marked as (Ext.nos.162-165,170-184). From the news relating to genocide and crime against humanity discussed in paragraph nos.64 to 87 of the judgment which squarely prove that attacks were directed against unarmed civilians by direct participation of Razakars and Al-Badr who being subordinates to the

accused acted pursuant to his direction. The accused's complicity in the commission of crimes and its nexus requirement are thus proved.

290. In view of the discussions made above, we are inclined to hold that accused Ghulam Azam intentionally with awareness contributed to the commission of crimes against humanity and genocide by aiding, abetting and incitement to the perpetrators during War of Liberation and as such he is found guilty for his complicity with the commission of those offences as specified in section 3(2)(h) of the Act.

XX. Adjudication of Charge No. 05

[Murder of Siru Miah and three other civilians as crimes against humanity specified in section 3(2)(a) of the Act, 1973]

Charge No. 05 : After the crackdown on March 25, 1971, seeing the Pakistani Army moving towards Mohammadpur Police Station at 11.00 p.m., Sub-Inspector of Police Siru Miah went to his house at Chamelibagh and on March 28, 1971, he along with his wife Anwara Begum, minor son Anwar Kamal and other relatives went to his village at Ramkrishnopur, P.S. Homna, District Comilla and started helping the people who were leaving the country as refugee. On October 25, 1971, the said Siru Miah along with his son Anwar Kamal and others in order to go to India left their homes and they had two revolvers, one with Siru Miah and another with Nazrul Islam and they were apprehended by Razakars at Tantar checkpoint of Kashba P.S. on October 27, 1971 at about 10.00 in the morning and were taken to the

Razakars camp. At that time 5-6 members of the Pakistani Army came there and took the two revolvers from them and they were fastened with wire and kept in a truck going towards Brahmanbaria and at about 12 noon they were taken to Brahmanbaria court. They were abused like anything and the wristwatch and ring which they possessed were forcefully taken from them and they were taken to Razakars Manzil and people were told that a special force with arms had been captured and from then every morning they were taken to the house of one Dana Miah and tortured which was looked into by Jamaat-e-Islami leader and Shanti Committee (Peace Committee) member Peyara Miah and the torture continued for the whole day and then taken to thana hazat. After 2-3 days they were taken to jail. Accused Prof. Ghulam Azam being the Ameer of East Pakistan Jamaat-e-Islami and a central leader of the Peace Committee, the wife of Siru Miah Anwara Begum developed an idea that if the accused try then all of them may be released and Siru Miah's wife came to Dhaka in the house of her sister whose husband was a teacher of the accused's two sons, Azmi and Amin and the accused was requested by the said teacher and the accused said that he all knew it and he asked the said teacher to meet him after two days. After two days when the teacher met accused Prof. Ghulam Azam, he went to the office of Jamaat-e-Islami at Nakhalpara and gave the said teacher an enclosed envelope asking him to give it to Peyara Miah and when the said envelope was given in the hand of Peyara Miah, reading that letter he showed another official letter written by the accused where it was written to kill Siru Miah and his son as they were

freedom fighters. Then Peyara Miah told that this letter contained nothing new and told Siru Miah's wife to go home and pray. Ultimately those persons along with others, a total of 40 persons, were taken out of the jail. Subsequently, one person named Shafiuddin was released as he knew Urdu and others were taken to Pourotola and were shot at by Razakars and Al-Badars and one survived and the remaining 38 were killed. Thus, under the direct instruction of the accused, S.I. Siru Miah, Anwar Kamal, Nazrul Islam and Abul Kashem, in total 38 persons, were killed, Anwar Kamal was also tortured and, therefore, accused Prof. Ghulam Azam committed crimes of murder and torture as crimes against humanity under section 3(2)(a) of the International Crimes (Tribunals) Act 1973, which is punishable under section 20(2) of the Act.

Discussion of Evidence:

291. P.W.7 Dr. Munia Islam Chowdhury has stated that on 02-08-2010 at about 2.00 p.m. the investigation officer, Motiur Rahman having come to their house at 36, Chamelibagh Paradise Kamal House talked to her mother Anwara Begum (wife of deceased S.I. Siru Miah) and seized from her a photograph of S.I. Siru Miah (Ext. 496), two photographs of Anwar Kamal (Ext. 496/1 and Ext. 496/2), photo copy of a letter dated 01-11-1971 written by Anwar Kamal to his mother Anwara Begum (Ext. 496/5), a photograph of Martyr Nazrul Islam (Ext. 496/3), a joint photograph of Anwara Begum and her son Anwar Kamal (Ext. 496/4), etc. under a seizure list. She has proved the said seizure list Ext. 495 and her signature therein Ext. 495/1.

She has also filed an enlarged copy of the above mentioned letter and the same has been marked as Ext. 497.

292. P.W. 9 S.I. Md. Aminul Islam has stated that on 09-01-2011 he was on duty as Reserve Officer-2 at the S.P. office, Millbarak, Dhaka and on that date the investigation officer, Motiur Rahman having come to his office seized from the said office in front of him the photo copy of Memo No. 3599/R dated 14-08-1996 along with other papers attached thereto relating to service records of S.I. Siru Miah (Ext. 513) with a seizure list. He has proved the seizure list Ext. 511 and his signature therein Ext. 511/1.

293. P.W. 11 Shafiuddin Ahmed has stated that his home is situated at village Ramnagar under Homna police Station of district Comilla and in the neighbouring village Ramkrishnapur, there was a temporary camp of freedom-fighters at the house of martyr S.I. Siru Miah. He has further stated that on 25-10-1971 at night he himself, martyr S.I. Siru Miah and his son martyr Anwar Kamal, Martyr Nazrul Islam, martyr Abul Kashem and Jahangir Selim in order to go to India left their homes and they had two revolvers, one with S.I. Siru Miah and another with Nazrul Islam and they were apprehended by 20/25 Rajakars at Tantar checkpoint and 5-10 minutes after, 5-6 members of the Pakistani Army came there with a military jeep from Comilla and took the two revolvers from them and kept them in a truck going towards Brahmanbaria and thereafter they were taken to Brahmanbaria court. He has also stated that at the court premises they were abused like anything by Peyara Miah and his 5-7 associates took their

wristwatch and ring forcefully and thereafter they were taken to Rajakars Manzil and people were told that 6 members of special force with arms had been captured. On the next date at about 10.00 a.m. they were taken to the house of Dana Mia which was a torture camp of Army and they were tortured therein by Army personnel for 2/3 days and thereafter they were sent to Brahmanbaria jail. On 21st November in the Eid-ul-Fitre day at night, Pakistani Army having come to that jail took out 39 prisoners therefrom and kept him in cell No. 4 and on the following day he came to know that those 39 prisoners had been killed and after Liberation of Brahmanbaria he was released from the jail and thereafter he came to know that out of said 39 prisoners one prisoner namely Chinu had survived and 4/5 months after, he met him at Dhaka and at that time Chinu showed him the mark of bullet injury on the left side of his chest and told that 38 persons had been killed and buried at Pourotola. He has further stated that he also came to know from Chinu that his companions namely, martyr S.I. Siru Miah and his son martyr Anwar Kamal, martyr Nazrul Islam and martyr Abul Kashem had been within said 38 persons who had been killed. He has further stated that he having been released from jail came to know that Peyara Miah of whom he talked about was a member of the Peace Committee and he also came to know from the wife of martyr S.I. Siru miah that she had brought a letter from accused Prof. Ghulam Azam to save her husband and son. He identified the accused in the dock.

294. P.W. 11 in cross-examination has stated that he went to the place first time wherefrom they were apprehended. He has denied the defence suggestion that having been tutored by the prosecution he has stated that he came to know from the wife of martyr S.I. Siru Miah that she had brought a letter from accused Prof. Ghulam Azam to save her husband and son.

295. P.W.12 Sona Miah has stated that his village is Pourotola Dakkhinpara under police station and district Brahmanbaria. In the year 1971, during Liberation War, at the night of Eid he heard noise of vehicles and coming and going of people and on that night Panjabees killed persons by bullet shots. On that night he heard the bullet shots and on the following day in the morning he came to know about the occurrence and saw the same and at that time the Rajakars asked them why they had come to the place of occurrence and, at that time the Rajakars were digging holes and many dead bodies were lying there. He has further stated that the Rajakars buried 38 dead bodies there and he could identify one Rajakar, Ruhul.

296. P.W. 12 in cross-examination has stated that in the morning he went alone to the place of occurrence to see the occurrence. He has further stated that Rajakar Ruhul has died.

297. P.W. 13 Anwara Begum has stated that S.I. Siru Miah was her husband and Anwar Kamal was her son. On 25th March, 1971 her husband was posted at Mohammadpur police station and at that time her son Anwar Kamal's age was 14 years and he was a student of class X of Motijheel Govt. High School. On 28/29th March, she, her husband S.I. Siru Miah and

son Anwar Kamal and her sister's family went to their own village, Ramkrishnapur and one week after S.I. Siru Miah went to India. S.I. Siru Miah having stayed for 15/20 days in India came back to his own village as a freedom-fighter and he was incharge of the areas of five police stations to supervise the freedom-fighters. She has further stated that there was a camp of freedom-fighters at their village home and her husband S.I. Siru Miah used to arrange food and lodging for the freedom-fighters and send many people to India. She has also stated that on 25th October, 1971, S.I. Siru Miah, Anwar Kamal, Nazrul, Kashem, Jahangir Selim and Shafiuddin left for India, but 2 days after, one Jharu Miah, a cousin of S.I. Siru Miah, having come to her house told her that her husband and son along with others who had been going to India were apprehended by the Rajakars and thereafter they were taken to the camp, situated at Brahmanbaria, by the Pakistani Army; her brother Fazlur Rahman went to that camp to see them and at that time her son Anwar Kamal having written a letter (Ext. 497) on the white paper of a cigarette-packet sent the same to her through said Fazlur Rahman; thereafter she along with her father came to Dhaka to the house of her sister, Monwara Begum, wife of Md. Mohsin Ali Khan who was a teacher of Motijheel Govt. High School and thereafter he retired as a teacher from Khilgaon Govt. High School. She has further stated that he knew earlier and also heard from said Md. Mohsin Ali Khan that two sons of accused Prof. Ghulam Azam were students of said Md. Mohsin Ali Khan and in order to save her husband and son, on her request Md. Mohsin Ali

Khan having gone to the house of accused Prof. Ghulam Azam requested him for releasing S.I. Siru Miah and Anwar Kamal and then the accused advised him to come to him again after two days and, accordingly two days after Md. Mohsin Ali Khan again went to the house of the accused and then the accused took him to his office at Nakhalpara, behind the old Parliament Bhaban, and after having written a letter, the accused handed over the same to him and, thereafter Md. Mohsin Ali Khan gave the letter to her. She has further stated that thereafter her brother Fazlur Rahman with the said letter went to Brahmanbaria and handed over the same to Peyara Miah, the president of the Peace Committee and then Peyara Miah having shown him another letter, wherein there was a direction of accused Prof. Ghulam Azam that they were freedom-fighters, let them be killed, told him that the letter brought by him carried no value and, as such, her brother came back home; two days after when her brother went to Brahmanbaria to see S.I. Siru Miah and Anwar Kamal, the clothes of them were returned to him and then she came to know that her husband and son had been killed. She has further stated that after independence of the country, Shafiuddin having been released from jail met her from whom she came to know that on 21st November, in the Eid-ul-Fitre day, at night 38 persons along with her husband and son had been killed by bullet shots at Pourotola and their dead bodies had been buried. She has also stated that Ahmed Imtiaz Bulbul (P.W. 14) was also in Brahmanbaria jail while her husband and son were therein

and at that time he was a student of class X from whom she heard about the above mentioned occurrence.

298. P.W. 13 has stated in cross-examination that Mohsin Ali Khan was present in his working place at Dhaka during Liberation War; after her second marriage she gave birth to a baby girl; she was first acquainted with Shafiuddin Ahmed (P.W.11) during Liberation War and one month before 25th October, 1971 she was first acquainted with martyr Nazrul Islam. She has further stated that he has no acquaintance with Ahmed Imtiaz Bulbul (P.W.14), but she talked to him over telephone after having watched a T.V. programme where he was talking about the killing of her husband and son; she came to know from Shafiuddin Ahmed that her husband and son along with others had been tortured in the house of Dana Miah; she heard first the name of Peyara Miah from her brother and said Peyara Miah was the president of the Peace Committee and her brother alone went to Peyara Miah with the letter of accused Prof. Ghulam Azam. She has also stated that she heard the name of Prof. Ghulam Azam before and after 1971. She has denied the defence suggestion that Mohsin Ali Khan was never a school teacher of the sons of accused Prof. Ghulam Azam nor did the accused give him any letter nor did her brother Fazlur Rahman gave that letter to Peyara Miah nor did Peyara Miah show any letter of accused Prof. Ghulam Azam to Fazlur Rahman.

299. P.W. 14 Ahmed Imtiaz Bulbul has stated that he is a tuner, lyricist and a music director and during Liberation War, 1971, he was a student of class X

of Westend High School, situated at Azimpur, Dhaka; he and his elder brother Iftekhar Uddin Ahmed Tultul were freedom-fighters. He has further stated that in the 1st week of August, Manik, Mahbub, Khoka and he went to India and returned back to Dhaka after having got training therefrom and joined Sajib Bahini and started work at the area of Lalbag; thereafter on 29th October, while again they had been going to India, they were apprehended by the Pakistani Army and Rajakars at the Tantar checkpoint, situated between Comilla and Brahmanbaria and they were tortured severely by them there and thereafter they were taken to Brahmanbaria head quarter and then they were sent to Brahmanbaria jail where he saw amongst others Nazrul (martyr), Kamal (martyr) and his father Siru Miah (martyr), Baten, Shafiuddin and he proved the photograph of Siru Miah, Kamal, Nazrul and others as Ext. 496; he came to know that said Nazrul, Siru Miah and Kamal had been apprehended from Tantar checkpoint. He has also stated that on the next day he was taken to the house of Dana Miah at Brahmanbaria and was tortured by said Dana Miah who after one hour sent him to the Army Cell Office where he was again tortured and thereafter they were tortured regularly; on the Eid-ul-Fitre day after evening, Pakistani Army entered into the Brahmanbaria jail and having left him and 3 others in a cell, took out 40 prisoners including said Siru Miah and his son Kamal (Anwar Kamal) and Nazrul and on the next day he came to know that those prisoners had been killed at Pourotola except one who had been released from the jail gate. He has further stated that two days after, the rest 4 prisoners including himself

were taken again to the office of Dana Miah and tortured there and on that night they were able to escape therefrom and then he went to the house of his friend Mahbub's sister and on the next day he came to Azimpur, Dhaka and met her mother and at the middle of night he was again apprehended by the Pakistani Army and tortured and after Liberation of the country he was released on 17th December from Ramna police station. He has also stated that in the year of 2008 while he was talking about the said occurrence in a T.V. programme, Anwara Begum, wife of Siru Miah and mother of Kamal, having watched that programme made contact with him over telephone and then he told her some of the said occurrence.

300. P.W. 15 Sheikh Farid Alam has stated that his house is at 141, West Nakhalpara and his father purchased 2.10 kathas of land in his (P.W. 15) name at 142, Nakhalpara wherein he had a semi-pacca building and a tin-shed. He has further stated that there was a Madrassa and an office of Jamaat-e-Islami in the said building and tin-shed and the said office space was rented by his father.

301. P.W. 16 Md. Motiur Rahman is the investigation officer of this case. He has stated that on 02-08-2010 at 2.00 p.m. he seized with a seizure list, photographs of S.I. Siru Mia, Anwar Kamal, Nazrul Islam and Anwara Begum (P.W. 13) and certified photocopy of a letter as produced by said Anwara Begum from 36, Chamelibag, Paradise Tomal House, 4/C, P.S. Paltan, Dhaka in presence of witnesses. He has proved the said seizure list Ext. 495 and his signature therein Ext. 495/2. He has further stated that the

photographs and the letter have already been exhibited as Exts. 496 to 497. He has also stated that on 03-08-2010 he recorded the statement of the witness Mohsin Ali Khan s/o Reasat Ali Khan and said statement has been received in evidence by this Tribunal under section 19(2) of the International Crimes (Tribunals) Act, 1973. He has proved the said statement Ext. 523 and his statement therein Ext. 523/1.

302. P.W. 16 has stated in cross-examination that Siru Miah was a Sub-Inspector in 1971; the distance between the then Brahmanbaria jail and Pourotola, where 38 persons were killed, is about 2 k.m.; the letter written by martyr Anwar Kamal to his mother Anwara Begum was reached her through her brother Fazlur Rahman; Tantar checkpoint is within Koshba police station. He has further stated in cross-examination that Mamun Azmi and Amin Azmi, both sons of accused Prof. Ghulam Azam, passed S.S.C Examination from Khilgaon Govt. High School in 1969 and 1970 respectively. He has also stated that he does not know whether Mohsin Ali Khan was a house tutor of said two sons of accused Prof. Ghulam Azam, but he was their school teacher. He denied the defence suggestions that Mohsin Ali Khan was not a teacher of Khilgaon Govt. High School in 1971 and, that Mohsin Ali Khan did not meet Prof. Ghulam Azam in 1971 and, that Mohsin Ali Khan never made any statement to him (I.O.).

Evaluation of evidence and findings:

303. The prosecution has examined as many as 8 witnesses (P.W. Nos. 7, 9, 11, 12, 13, 14, 15 and 16) to prove the charge No. 05 relating to the killing

of S.I. Siru Miah and his son Anwar Kamal, Nazrul Islam and Abul Kashem, in total 38 persons and also torturing said Anwar Kamal made by Pakistani Army and the members of Rajakar and Al-Badr bahinis and Peace Committee under the direct instruction of accused Prof. Ghulam Azam. P.W. 11 Shafiuddin Ahmed is a very important witness in respect of charge No. 05 as he has claimed that he was also apprehended with S.I. Siru Miah and his son Anwar Kamal and others by the Rajakars and he was all along with them till they were killed. P.W. 11 having supported the allegations brought against accused Prof. Ghulam Azam in charge No. 05, has stated that on 25-10-1971 at night he himself, martyr S.I. Siru Miah and his son martyr Anwar Kamal, martyr Nazrul Islam, martyr Abul Kashem and Jahangir Selim in order to go to India left their homes and they had two revolvers, one with S.I. Siru Miah and another with Nazrul Islam and they were apprehended by 20/25 Rajakars at Tantar checkpost and thereafter Pakistani Army came there and took the revolvers from them and kept them in a truck going towards Brahmanbaria and then they were taken to Brahmanbaria court. He has also stated that at the court premises they were abused like anything by Peyara Miah and thereafter they were taken to Rajakar Manzil. On the next morning at about 10.00 they were taken to the house of Dana Miah which was a torture camp of Army and they were tortured therein for 2/3 days and thereafter they were sent to Brahmanbaria jail. He has further stated that on 21st November, in the Eid-ul-Fitre day at night, Pakistani Army having come to the jail took out 39 prisoners therefrom and on the following day he came

to know that those 39 prisoners had been killed and after Liberation of Brahmanbaria he was released from the jail and thereafter he came to know that out of aforesaid 39 prisoners one prisoner namely, Chinu had survived and 4/5 months after, he met him at Dhaka when Chinu showed him the mark of bullet injury on the left side of his chest and told that the rest 38 persons including S.I. Siru Miah and his son Anwar Kamal, Nazrul Islam and Abul Kashem had been killed and buried at Pourotola. He has also stated that he having been released from jail came to know that Peyara Miah had been a member of the Peace Committee and he also came to know from the wife of martyr S.I. Siru Miah that she had brought a letter from accused Prof. Ghulam Azam to save her husband and son.

304. P.W. 7 Dr. Munia Islam Chowdhury is a daughter of Anwara Begum (P.W. 13). She has stated that on 02-08-2010, the investigation officer, Md. Motiur Rahman seized from their house the photo copy of a letter dated 01-11-1971 written by Anwar Kamal to his mother Anwara Begum (Ext. 496/5) along with some photographs of S.I. Siru Miah, Anwar Kamal and others. Ext. 497 is the enlarged copy of said letter. P.W. 16 Md. Motiur Rahman (I.O) having corroborated the evidence of P.W. 7 stated that on 02-08-2010 he seized photographs of S.I. Siru Miah, Anwar Kamal, Nazrul Islam, Anwara Begum and certified photocopy of a letter as produced by said Anwara Begum from her house. The said letter (Ext. 496/5 and Ext. 497) written by Anwar Kamal shows that after their apprehension he and his father were severely tortured. The said letter is as follows:

“

০১-১১-৭১

আম্মা,

সালাম নিবেন। আমরা জেলে আছি। জানি না কবে ছুটব। ভয় করবেন না।
আমাদের উপর তারা অকথ্য অত্যাচার করেছে। দোয়া করবেন। আমাদের জেলে অনেক
দিন থাকতে হবে। ঈদ মোবারক।

কামাল”

305. Ext. 523 is the statement of Mohsin Ali Khan, who is now dead, recorded by the investigation officer, has been received in evidence by this Tribunal under section 19(2) of the Act, 1973. Having considered the legal aspects of the said statement of a witness, we are of the opinion that the statement of a witness received under section 19(2) of the Act, 1973 alone does not form the basis of conviction, but such statement may be used as corroborative evidence to prove a particular occurrence. In the instant case the said statement of the witness, Mohsin Ali Khan, who is now dead, has corroborated the evidence of P.W. 13 Anwara Begum. He has stated in his statement that on 1st May, 1968 he joined as an Assistant Teacher in Khilgaon Govt. High School and he remained posted there till 1989 and, S.I. Siru Miah was the husband of his wife's sister; Azmi and Amin, sons of Prof. Ghulam Azam, were the students of his school and they were his students also and with reference to that, after 15 ramadan, S.I. Siru Miah's wife Anwara Begum came to his house at Khilgaon Chowdhury Para and told him that S.I. Siru Miah and his son Anwar Kamal had been in

Brahmanbaria jail and asked him to request Prof. Ghulam Azam to release them from the jail. He has further stated that thereafter he went to the house of Prof. Ghulam Azam at Mogbazar and requested him to release S.I. Siru Miah and his son Anwar Kamal; then Prof. Ghulam Azam told him that they had been freedom-fighters and they had been apprehended with arms at the border and asked him to come again after two days and accordingly he again went to the house of Prof. Ghulam Azam who then took him to the tin-shed office of Jamaat-e-Islami at Nakhalpara, near old Parliament Bhaban and after sometime he having given him a letter enclosed in an envelop asked him to give the same to Peyara Miah who was a leader of Brahmanbaria Peace Committee and Jamaat-e-Islami and then he came back with the letter and handed over the same to Anwara Begum who thereafter went to Brahmanbaria with the letter. He has also stated that thereafter he came to know that on 21st November in the Eid-ul-Fitre day at dead of night, Pakistani Army had killed S.I. Siru Miah and his son Anwar Kamal along with many others at Pourotola and then their associates, Al-Badr and Rajakars had buried them there.

306. Upon scrutiny of the oral and documentary evidence as discussed above, it is evident that on 25th October, 1971, S.I. Siru Miah and his son Anwar Kamal, Nazrul Islam and others in order to go to India left their home and on the way they were apprehended by Rajakars at Tantar checkpoint and taken to the Rajakars camp and thereafter they were sent to Brahmanbaria by the Pakistani Army and Rajakars and subsequently they were kept in

Brahmanbaria jail. Ultimately, under the direction of accused Prof. Ghulam Azam, on the Eid-ul-Fitre day at night, S.I. Siru Miah and his son Anwar Kamal, Nazrul Islam and Abul Kashem, in total 38 persons were killed by the Pakistani Army and their associates Rajakars and Al-Badars and, said Anwar Kamal was also tortured. It is argued by the defence that the prosecution could not prove the killing of 38 persons and, as such, it is doubtful about the killing of S.I. Siru Miah and his son Anwar Kamal, Nazrul Islam and Abul Kashem. This argument does not fit to the context prevailing during Liberation War in 1971. Besides, even a single murder or killing or torturing one person constitutes an offence of crime against humanity if it is found to have been perpetrated as a part of attack targeting unarmed 'civilian population'. It is now settled jurisprudence that even a single or limited number of acts on the accused's part would qualify as a crime against humanity. The Appeal Chamber of ICTR has observed in the case of Nahimana, Barayagwiza and Ngeze (November 28, 2007, para 924) as follows:

“A crime need not be carried out against a multiplicity of victims in order to constitute a crime against humanity. Thus an act directed against a limited number of victims, or even against a single victim, can constitute a crime against humanity, provided it forms a part of 'widespread' or 'systematic' attack against a civilian population.”

307. It is evident on record that accused Professor Ghulam Azam as the Ameer of Jammata-e-Islami could have saved the lives of victim Siru Miah, and 3 other civilians by giving direction to his subordinate Peyara Miah but he intentionally facilitated and substantially contributed in killing Siru Miah and 3 others by giving negative signal to his subordinate Peyara Miah, who was the leader of Peace Committee, Brahmanbaria. Having considered all attending facts and circumstances, we are inclined to hold that the accused is criminally liable under section 4(1) of the Act and found guilty for the murder of Siru Miah, and 3 others under the crimes against humanity as specified in section 3(2)(a) of the Act.

A Theoretical Discourse on Command Responsibility and Civilian's Superior Responsibility:

308. It is an agreed position that the present case is a unique of its kind before the International Crimes Tribunal, Bangladesh as it involves complex legal question as to civilian's superior responsibility, command responsibility and other intricate legal issues that are unusual and unbeknown to this case to settle the legal interpretation/position of these almost alien legal principles. We cannot be oblivious of the fact that the whole nation has been waiting for what this Tribunal opines regarding these issues. We are also concerned of the legal system of Bangladesh. We are vested with this arduous and glorious task to understand and explain these complex legal issues in the context of our country and of the Act itself. The jurisprudence with that regard in our country is still in its embryonic stage.

Hence, we took this opportunity in the fact that the international community is also curious to see how this got any civilian superior responsibility as has been charged for, it is important to explain elaborately what doctrine of command responsibility is, what is civilian superior responsibility and what elements are to be fulfilled to hold a person responsible for the acts of his subordinates. Tribunal resolves and allocate responsibility of the atrocities that took place in 1971 in the territory of Bangladesh.

Command Responsibility in general:

309. Often, the repeated and systematic occurrence of crimes in war-time contexts happens to be the result of a criminal policy or plan from the highest echelons exercising command and control over the perpetrators. However, the commission of crimes on a large scale or the systematic violations of the laws of war can also be, on the contrary, the ‘trivial’ consequence of the lack of a clear chain of command and control. Both the exercise of the powers of command and control (in the case of criminal plan or policy), and the failure to exercise them may imply criminal responsibilities upon superiors and commanders in the presence of the specific requirements under international law. “Command responsibility is an umbrella term used in military and international law to cover a variety of ways in which individuals in positions of leadership may be held accountable” (M. Damaska, *The shadow side of command responsibility*, *The American Journal of Comparative Law*, 2001, p.455).

310. Under International Law and International Humanitarian Law (IHL) commanders have a duty to ensure that their troops respect that body of law during armed conflict and hostilities. Failure to do so may give rise to liability. A mere “breach of duty,” whereby the commander has not fulfilled the responsibilities expected of his rank, is usually dealt with through disciplinary action. However, where a commander fails to prevent or punish violations of IHL by subordinates, criminal proceedings are likely, and the punishment to be meted out will reflect the gravity and nature of the crime committed by the subordinate (ICTY Appeals judgment in Celebic’ Case, Case No. IT-96-21-A, 20 February 2001, at 226).

311. From an IHL perspective, it took another thirty years or so to have these principles codified in a convention. By 1977 the doctrine of command responsibility was accepted as customary international law and was codified in the Additional Protocol I to the Geneva Conventions, relating to the International Armed Conflicts. Its status as customary law was confirmed with the explicit inclusion of command responsibility in article 7(3) of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) and article 6(3) of the Statute of the International Criminal Court (ICC). It should be noted that international law recognizes the principle of command responsibility both in international and in internal armed conflict.

Conditions of establishing command responsibility:

312. From the jurisprudence emanating from the international criminal Tribunals, it is generally agreed that four elements must be proven for a

person to be held responsible as superior. In general terms, these are: (1)an international crime has been perpetrated by someone other than the accused;(2) there existed a superior-subordinate relationship between the accused and the perpetrator;(3) the accused as a superior knew or had reason to know that the subordinate was about to commit such crimes or had done so; and (4) the accused as a superior failed to take the necessary and reasonable measures to prevent such crimes or punish the perpetrator.

(Prosecutor vs. Oric, ICTY, Case number-IT 03-68-T293).

Superior subordinate relationship:

313. Depending on the origin of the command structure (or, the source of authority), the superior subordinate relationship may be established in two independent ways (1) De-jure: if the commander has structural authority over its subordinates and (2) De Facto: if the commander got no lawful or structural authority over the subordinates, but in reality got actual command and influence over the subordinates. How a commander or superior may de facto exercises commands over his subordinates/followers will be elaborately explained in the later part of this judgment.

Development of Command or Superior Responsibility:

314. Provably the most famous and controversial case of conviction on the basis of the principle of command responsibility is that of Japanese General Yamashita, who was condemned to death by an American military tribunal because he “unlawfully disregarded and failed to discharge his duty as a

commander to control the operations of the members of his command, permitting them to commit the brutal atrocities and other high crimes” (The United Nations War Crimes Commission, Law Reports of Trials War Criminal 1974-48 (Law Reports), vol. IV, p.3 ff). According to W.H. Parks, the most important legacy of the Yamashita trial is to have recognized, with regard to military officers in positions of command, the existence of an affirmative duty to take such steps as are within their power and appropriate to the circumstances to control those under their command for the prevention of violations of the law of war. The doctrine of command responsibility was largely used against Japanese war criminals during the Tokyo trial. In particular, abuses of prisoners were attributed to both civil and military superiors for having failed to prevent them.

315. With regard to the jurisprudence after Second World War, it is interesting to note that for the first time not only military but also civilian authorities were found guilty of war crimes and crimes against humanity committed by underlings. However, the development of civilian’s superior responsibility will be discussed later.

The First international instrument that expressly codified command responsibility is article 86(2) of the I Additional Protocol of 1977 to the 1949 Geneva Conventions.

316. Command responsibility was then included in the Draft Code of Crimes against peace and Security of Mankind of 1996 elaborated by the International Law Commission; in its commentary the Commission stated

that military commander can be held criminally liable for the unlawful conduct of his subordinates if he contributes directly or indirectly to the commission of a crime by his subordinates and that he “ contributes indirectly to the commission of a crime by his subordinates by failing to prevent or repress the unlawful conduct.”

ICTY and ICTR jurisprudence:

317. The most significant developments regarding this mode of liability were achieved through the extensive jurisprudence of the two International ad hoc Tribunals. Both the statutes of the ICTY and ICTR contain an express provision on superior responsibility in article 7(3) and article 6(3), which states that:

“The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superiors of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.”

318. It is undisputed today that superior responsibility extends also to civilian political leaders, as Heads of State or party or Government officials or other civilians holding positions of authority. The trial chamber of the ICTR in Kayishema and Ruzindana (ICTR-95-1-T) judgment holds that.....

“The principle of superior responsibility applies not only to military commanders, but also encompasses political leaders and other civilian superiors in positions of authority. The crucial question is not the civilian status of the accused, but the degree of authority he or she exercised over his or her subordinates.”

319. Moreover, not only de-jure but also de-facto commanders and superiors may incur criminal liability under this doctrine. The judges of the ad hoc Tribunals, in fact, consistently found that the mere absence of formal legal authority over the perpetrators of the crimes does not rule out the imposition of superior responsibility on the subject, as long as he exercised effective control over them, in the sense having the material ability to prevent and punish the commission of offences. No doubt, a chain of command or authority and control is a necessary prerequisite to impute superior responsibility. However, according to this jurisprudence, criminal liability can attach to the superior also with regard to acts perpetrated by subjects who are not directly subordinate to him in the chain of command.

Superior responsibility under article 28 of the Rome Statute of the International Criminal Court:

320. Superior responsibility under article 28 of the Rome Statute of the International Criminal Court (ICC) provides for an independent basis for individual liability distinct from the other modes of liability under article 25 of the Statute. According to the wording of article 28, a superior shall be

criminally responsible for crimes within the jurisdiction of the Court committed by his subordinates as a result of his failure to exercise properly where he knew or should have known that the crimes were being committed, or about to be committed and he failed to take all necessary and reasonable measures within his power to prevent or repress the crime or to submit the matter to the competent authorities.

Command Responsibility of Civilian Superiors:

321. Yael Ronen have rightly pointed out the doctrine of superior responsibility grew out of the military doctrine of command responsibility. By now it has been part of the customary international humanitarian law that the military doctrine of command responsibility is also applicable for the civilian superiors in slightly varied form. Article 87(1), 86(1) and 86(2) of the Additional Protocol I to the Geneva Conventions encompasses the doctrine of superior responsibility.

Apparently these provisions are not limited to military superiors only. ICTR Statute Article 6(3) and ICTY Statute Article 7(3) (hereinafter Article 6/7(3)) contain a provision resembling Article to 86(2).

322. Both tribunals have interpreted their respective statutes in numerous cases before them and concluded that the responsibility enshrined in their respective statutes were for both military and civilian superiors. For the ICTY, Delalic, Case No. IT-96-21-T, 363, For the ICTR, Prosecutor, v. Bagilishema, Case No. ICTR-95- 1A- T, Judgment, 42 (June.7, 2001).

Section 4(2) of the International Crimes Tribunal Act, 1973 Bangladesh, provides that:

“4(2). Any commander or superior officer who orders, permits, acquiesces or participates in the commission of any of the crimes specified in section 3 or is connected with any plans and activities involving the commission of such crimes or who fails or omits to discharge his duty to maintain discipline, or to control or supervise the actions of the persons under his command or his subordinates, whereby such persons or subordinates or any of them commit any such crimes, or who fails to take necessary measures to prevent the commission of such crimes, is guilty of such crimes.”

323. Considering the sentence structure and wording of section 4(2) of the ICT Act, 1973 and also the context and intention of the legislators it is for the tribunal to interpret whether section 4(2) of the Act imposes superior responsibility to the civilian superiors. We will explain it in the later part of the judgment.

324. The history of the doctrine of command responsibility dates back to antiquity, but international prosecutions based on the doctrine did not occur until the aftermath of World War. II. Post- World War II jurisprudence was overwhelmingly concerned with superiors in the military. The criminal responsibility of civilians only arose in full force in the ICTY and ICTR.

325. Despite the absence of express provisions on superior responsibility in its statute, the International Military Tribunal for the Far East (Tokyo Tribunal) convicted a number of individuals –both military personnel and civilians-on that basis. Count 55 in Tokyo tribunal alleged that the defendants “deliberately and recklessly disregarded their legal duty to take adequate steps to secure the observance and prevent breaches” of the laws of war. Prime Minister Tojo, and Foreign Ministers Hirota and Shigemitsu were convicted on the basis of civilian’s superior responsibility in the Tokyo tribunal. Foreign Ministers Hirota and Shigemitsu were convicted under Count 55 for their failure to adequately act upon reports of war crimes. The Tribunal held that the circumstances made Shigemitsu suspicious that the treatment of the prisoners was not as it should have been, yet he took no adequate steps to investigate the matter. The Tribunal emphasized Shigemitsu’s failure to take adequate steps to investigate the matter “although he, as a member of government, bore overhead responsibility for the welfare of prisoners.” It held both ministers responsible for failing to induce the government to discharge its obligation to ensure the well-being of prisoners-of-war and civilians under its control.

ICTY Case Law:

326. In *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-T, and in *Prosecutor v. Delalic*, Case No. IT-96-21-T, the defendants were the de facto commanders of prison camps where combatants and civilians were detained. They were responsible for conditions in the camps, with de facto authority

over the officers, guards, and detainees. In both cases, the defendants were held responsible for failing to repress crimes that their subordinates had committed. They were also held directly responsible for other crimes. In a few other cases where civilians were indicted under the principle of superior responsibility, they were all acquitted.

327. The ICTY Trial Chamber found in both the cases of Cordic and Boskosk; that though they were civilian leaders but they did not have effective control over the direct perpetrators of the Crimes and thus both of them were acquitted of their responsibilities as superiors.

ICTR Case Law:

328. Jean Paul Akayesu was bourgmestre of Taba. He was indicted for both direct and superior responsibility for crimes against humanity and war crimes committed by the Interahamwe, whom the judgment referred to as “armed local militia.” According to the indictment, Akayesu knew that the crimes were being committed, facilitated them, and encouraged them. The ICTR found that “a superior/subordinate relationship existed between the Accused and the Interahamwe who were at the bureau communal.” The ICTR then noted that there was no allegation in the indictment that the Interahamwe were subordinates of the accused, although the indictment relied on Article 6(3). Accordingly, it acquitted Akayesu of responsibility as a superior (Prosecutor v. Akayesu, Case No. ICTR-96-4-T).

329. Two other civilian defendants were Serushago and Musema. In the case of Prosecutor v. Serushago, case No.98-39-S, accused Omar Serushago was a defacto leader of the Interahamwe in Gisenyi. The ICTR convicted him under both Articles 6(1) and 6(3) of genocide and crimes against humanity for having ordered the Interahamwe to execute victims. In the case of Prosecutor v. Musema, Case No. ICTR-96-13-A, accused Alfred Musema was the director of the public Gisovu Tea Factory and member of various regional government authorities that addressed socioeconomic and development matters. According to the indictment, at various locations and times, Musema directed armed individuals to attack Tutsis seeking refuge. He also personally attacked and killed persons seeking refuge; committed acts of rape; and encouraged others to capture, rape, and kill Tutsi woman. The ICTR convicted Musema of genocide and crimes against humanity. The Trial Chamber found him responsible under Article 6(1) of the Statute for having ordered and, by his presence and participation, aided and abetted in the crimes. In addition, the Chamber found that Musema incurred superior responsibility under Article 6(3) of the Statute with respect to acts by employees of the Gisovu Tea Factory, whom the Chamber identified as Musema's subordinates.

330. Ferdinand Nahimana was born in Rwanda in 1950. From 1977 until 1984, he held various posts at the National University of Rwanda. He was also member of the (MRND) political party. In 1990, he was appointed Director of the Rwandan Office of Information and remained in that post

until 1992. He and others then initiated the establishment of the Radio Television Libre des Mille Collines (RTLM) radio station, owned largely by members of the MRND party. RTLM started broadcasting in July, 1993 and was a popular source of information. Its broadcasts engaged in ethnic stereotyping, branding Tutsis as the enemy and Hutu opposition members as their accomplices. After April 6, 1994, the virulence and the intensity of RTLM broadcasts propagating ethnic hatred and calling for violence increased, and the ICTR found that certain RTLM broadcasts in that period constituted direct and public incitement to genocide. The ICTR found that Nahimana had been a superior of the RTLM staff. It also found that Nahimana knew or had reason to know that his subordinates at RTLM were going to engage in incitement to genocide. For these reasons, it convicted him on superior responsibility grounds for not having taken reasonable and necessary steps to prevent the incitement or punish its perpetrators (Prosecutor vs. Nahimana, Case No. ICTR-99-52-T).

331. The above case references from the ICTY and ICTR show that the doctrine of command responsibility is also applicable to the political leaders and other civilian superiors in position of authority. The crucial question is not the civilian status of the accused but the degree of authority he or she exercised over his or her subordinates. By the adaptation of this civilian superior responsibility in numerous international instrument and through volumes of judgments from international tribunals it has now become part of customary international law that the military doctrine of command

responsibility is also applicable to civilians in the form of civilian superior responsibility.

XXI. A CIVILIAN SUPERIOR NEED NOT TO BE THE OFFICIAL SUPERIOR OF THE PERPETRATORS RATHER A DE FACTO COMMAND OVER THE PERPETRATORS IS ENOUGH TO HOLD SOMEONE RESPONSIBLE:

332. For a person to be regarded as a superior, he must have a position of command (in a military context) or authority a more general term, applicable in both military and civilian settings. Subsequent jurisprudence appears to have dropped two elements of the Celebici interpretation. The first is the relevance of de facto authority to quasi-state structure as a substitute for de jure authority in true-state structure. The other is the requirement of hierarchy or rank. Nonetheless, the ICTY has on numerous occasions such as in *Prosecutor v. Delalic*, *Prosecutor v. Oric*, *Prosecutor v. Kordic*, *Prosecutor v. Kayishema* indicated that where the influence reaches the level of “effective control,” it may also fulfill, or replace, the requirement of de facto authority. For example, in *Aleksovski*, the trial chamber said that “[effective] authority can be inferred from the accused’s ability to give [the direct perpetrators] orders and to punish them in the event of violations.” Similarly, in *Musema*, the ICTR held that “a superior’s authority may be merely de facto, deriving from his influence or his indirect power.” It added that “[t]he influence at issue.... Often appears in the form of psychological

pressure.” In both cases, influence went to the issue of authority rather than to that of effective control.

333. In the case of Prosecutor v. Nahimana, Case No. ICTR-99-52-T, The ICTR accepted as fact that Nahimana held no official function at RTLM.208. This led to the question of whether he had exercised de facto authority. The tribunal answered this in the affirmative, relying on several factors. First, the ICTR found that Nahimana was “the brain behind the project” and “the boss who gave orders.” This description referred to Nahimana’s status in RTLM prior to the commission of the crimes. It expressly noted that Nahimana’s membership in the RTLM’s Steering Committee had not vested him with de jure authority but did suggest “defacto a certain general authority within RTLM.” Nahimana had played a role of primary importance in the creation of RTLM in 1993 and had control over RTLM company finances. Moreover, Nahimana’s de facto authority was largely a substitute for the Steering Committee’s de jure authority. Thus, although RTLM was a private organization rather than a state organ, the ICTR could rely on the “trappings” of de jure authority. The ICTR’s conclusions on Nahimana’s superior responsibility are thus straightforward and raise no particular difficulties **to hold that de facto authority over the actual perpetrators is enough to hold someone responsible for the crime committed by his subordinates.**

The knowledge requirements: military commanders vs. other superiors.

334. Traditionally, the extent and nature of the “knowledge” required of a superior regarding the actions of subordinates was the same for both military commanders and civilian superiors, irrespective of office held for both categories of superiors to attract liability, it had be shown that the superior either knew or had reason to know. Interestingly, the Rome Statute of the International Criminal Court (ICC), in its Article 28, advances two separate standards. For military commanders, the test remains that the person either knew or, owing to the circumstances at the time, should have known that the forces under his or her command were committing or about to commit such crimes. They should have known is not dissimilar to the traditional had reason to know. By contrast, for other superiors- that is no-military commanders- to incur liability, it must be shown that the person either knew, or consciously disregarded information that clearly indicated that the subordinates were committing or about to commit such crimes. This approach was followed in the ICTR’s Kayishema &Ruzindana case.

335. The ICC Statute thus introduces additional elements that must be met to establish that a non- military superior had the requisite mens rea to be held liable through command responsibility. It must be shown not only that the superior had information in his possession regarding acts of his subordinates, but that the superior consciously disregarded such information, in other words, that he chose not to consider or act upon it. The information must also clearly indicates that the subordinates committed or were about to commit the crimes. To some extent this goes further than the majority

standard elaborated by the ICTR or the ICTY by which the information need merely put the superior on notice of possible unlawful acts by his subordinates. An element of certainty rather than possibility vis-à-vis the commission of the crimes will therefore have to be met under the ICC Statute for non-military superiors. However this can not be said to be the part of customary international law.

336. By contrast, the International Crimes Tribunal Act, 1973 in its section 4(2) doesn't require the commander or superior to have knowledge or had reason to know that his/ her subordinates were committing such crimes or about to commit such crimes. The prosecution may argue that since the law itself is silent about the knowledge requirements, the Tribunal can not import an additional element of knowledge to hold a superior responsible for the acts of his subordinates. However, the tribunal thinks that it would be highly repugnant to common sense and natural justice to hold some one responsible for the crimes committed by his subordinates which was unbeknown to him. The crux of the doctrine of superior responsibility (be it civilian's or be it military) is that the superior has a specific duty to maintain/ ensure that his/her subordinates respect the body of International Laws. Deviations from this responsibility may incur criminal liability upon the superiors. The liability to maintain the subordinates in line with the prescription of law of the liability to punish the violations of it arises only if the superiors have knowledge or have reason to know that such crimes were committed or were about to commit.

337. Section 4(2) of the ICT Act, 1973 provides that any commander or superior officer, who orders, permits, acquiesces or participates in the commission of any of the crimes specified in section 3 or is connected with any plans and activities involving the commission of such crimes or who fails or omits to discharge his duty to maintain discipline, or to control or supervise the actions of the persons under his command or his subordinates, whereby such persons or subordinates or any of them commit any such crimes, or who fails to take necessary measures to prevent the commission of such crimes, is guilty of such crimes.

338. Apparently section 4(2) is silent about the knowledge part of the superiors. But this tribunal thinks that the “Judges of the common law shall supply the omission of the legislatures.” The tribunal is quite competent to import an additional element of knowledge to hold the superior responsible for the crimes committed by his subordinates if it is found that not doing so would frustrate the ends of justice and doing so would be conforming to natural justice and customary international laws.

339. However, we have to bring it in our mind that knowledge is an abstract thing and there can not be any concrete proof or evidence to show that a particular thing was within someone’s knowledge. Hence the Tribunal has to infer the knowledge of the accused from the facts, circumstances and from the context of the case. Especially if the Tribunal has to examine constructively as to whether the accused had reason to know of a particular fact, it has to infer it from the facts, circumstances and the context of the

case. The burden is more upon the Tribunal to infer than on the prosecution to produce evidence specifically, as the knowledge requirement was primarily not mentioned in section 4(2) of the ICT Act, 1973 explicitly. This Tribunal will evaluate the produced evidence to conclude whether the accused knew or had reason to know that his subordinates were committing or were about to commit crimes mentioned in section 3(2) of the Act in due course of time.

Heavier sentences for superiors:

340. International humanitarian law and international criminal justice place upon superiors a greater responsibility than that of their subordinates in ensuring that the law is not violated. Superiors, by virtue of their elevated position in the hierarchy, have an affirmative duty to ensure that IHL is duly respected and that breaches are appropriately repressed. Their failure to do so can be interpreted as acquiescence in the unlawful acts of their subordinates, thereby encouraging further breaches and developing a culture of impunity. Courts have taken into account the “command position” of an accused in sentencing. Whilst recognizing that the length of a sentence is to be determined on the basis of the nature and gravity of the crime, case law of the international criminal tribunals seems to dictate that the status as a superior will in itself be considered an aggravating factor.

341. A command position may justify a harsher sentence, in particular if the accused held a high position within the civilian or military command structure. In *Prosecutor v. Jean Kamabanda*, Case No. ICTR 97-23-S, and in

Prosecutor v. Jean Paul Akayesu, Case No. ICTR -96-4-T, The Tribunals have explained that when a commander fails in his duty to prevent the crime or to punish the perpetrator thereof, he should receive a heavier sentence than the subordinates who committed the crime. The justification in imposing a harsher sentence stems from the fact that where a commander fails to punish his subordinates for committing crimes or to prevent them from doing so, this creates an impression of tolerance, acquiescence or even approval vis-à-vis the actions of the subordinates. The Tribunals have concluded that it would be inconsistent to punish a simple perpetrator with a sentence equal to or greater than that of the commander. In the case of Prosecutor v. Tihomir Blaskic, Judgment, Case No. IT-95-14-T, the Tribunal observed that:

“Therefore, when a commander fails in his duty to prevent the crime or to punish the perpetrator thereof he should receive a heavier sentence than the subordinates who committed the crime insofar as the failing conveys some tolerance or even approval on the part of the commander towards the commission of crimes by his subordinates and thus contributes to encouraging the commission of new crimes. It would not in fact be consistent to punish a simple perpetrator with a sentence equal or greater to that of the commander.”

342. As such, the consequences of a person's acts are necessarily more serious if he is at the apex of a military or political hierarchy and uses his position to commit crimes. Because he is a leader, his conduct is that much more reprehensible. In the case of Prosecutor v. Clement Kayishema & Obed Ruzindana, Sentence, Case No. ICTR-95-1-T the tribunal opined that :

“This Chamber finds as an aggravating circumstance that Kayihema, as Prefect, held a position of authority. This chamber finds that Kayishema was a leader in the genocide in Kibuye Prefecture and this abuse of power and betrayal of his office constitutes the most significant aggravating circumstance.”

343. The case law points to a simple conclusion, namely that civilian and military commanders are deserving of harsher sentences than their subordinates. The mere fact of being in a position of responsibility will be seen as an aggravating factor. In Blaskic case the Tribunal observed:-

“Command position must therefore systematically increase the sentence or at least lead the Trial Chamber to give less weight to the mitigating circumstances, independently of the issue of the form of participation in the crime.”

If all elements are fulfilled, the superiors are liable to be awarded heavier sentences even than that of the actual perpetrators.

The scope of section 4(2) of the International Crimes (Tribunals) Act 1973: Is section 4(2) applicable to civilian superiors as well?

344. It has been settled well that the International Crimes (Tribunals) Act 1973 is applicable to civilians as well. Now, the question as to whether section 4(2) of the Act encompasses a civilian superior and gives the Tribunal jurisdiction to hold a civilian superior responsible for the crimes committed by his subordinates is yet to be resolved categorically.

345. It was mentioned earlier that the doctrine of command responsibility is also applicable to the political leaders and other civilian superiors in position of authority. The crucial question is not the civilian status of the accused but the degree of authority he or she exercised over his or her subordinates. It is also a settled position of law that civilian superior responsibility has now become a part of customary international law. So the question as to whether there is scope to hold a civilian superior responsible under section 4(2) of the Act should have not been arisen at all. But the defence emphatically argued that the wording and the sentencing pattern of section 4(2) of the Act is quite dissimilar to that of article 6(3) of the ICTR statute, article 7(3) of the ICTY statute and article 28 of the Rome statute of the ICC. The defence continued to argue that the use of the word “**Superior officer**” instead of ‘**Superior**’ in section 4(2) of the Act bear a clear indication of the intention of the legislators that section 4(2) was meant for military commander only. To substantiate their argument the defence referred to the resembling article 6(3) of the ICTR statute, article 7(3) of the

ICTY statute, article 28 of the Rome statute and numerous domestic legislation where the word ‘officer’ was shown and defined to indicate only military personnel or person holding government office.

346. Both the ICTR and the ICTY statute used only **superiors** instead of **superior officer** unlike section 4(2) of the ICT Act, 1973. Both the ICTY and ICTR interpreted the term superior to encompass military and civilian superiors. Article 28 of the Rome statute also provides that:

a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by his subordinates as a result of his failure to exercise control properly where he knew or should have known that the crimes were being committed, or about to be committed, and he failed to take all necessary reasonable measures within his power to prevent or repress the crime or to submit the matter to the competent authorities.

Thus it is shown that none of the above three statutes used the term **superior officer**. Rather they used the term **superior** to include civilian superiors.

347. So the term **superior officer** used in section 4(2) of the Act deserves an interpretation and explanation by this Tribunal. What is the significance of this word “**officer**”?

Section 4(2) of the ICT Act, 1973 provides that:

“Any commander or superior officer who orders, permits, acquiesces or participates in the commission of any of the crimes specified in section 3 or is connected with any plans and activities involving the commission of such crimes or who fails or omits to discharge his duty to maintain discipline, or to control or supervise the actions of the persons under his command or his subordinates, whereby such person or subordinates or any of them commit any such crimes, or who fails to take necessary measures to prevent the commission of such crimes, is guilty of such crimes.”

348. To interpret section 4(2), we have to bear in mind that the cardinal principle of interpretation is that a provision of a statute is not be construed in isolation; a statute must be construed as a whole in its proper context. Generally speaking, the context with reference to a provision of statute consists of the preamble, the prior state of the law, the provision of other statutes in **pari material** on the same matter, the evil that the provision is meant to cure or remedy and the other provision of the said statute which together throw light on the meaning of the provision intended by the legislature. So, when a question arises as to the meaning of any provision of a statute it should be construed reading the statute as a whole so that all the provision of the statute can be operative and no part of it becomes superfluous (World Tel Bangladesh Ltd vs. Bangladesh 58 DLR 14, Janab Ali vs. State 12 DLR 808).

349. Now, if we read the International Crimes (Tribunals) Act 1973 as a whole, and in special section 4(2) and section 5(2) together, we will see that the words **superior officer** used in section 4(2) have been used in isolation of the rest of the statute bearing no special meaning to indicate military officers only. Section 5(2) provides: *that the fact that the accused acted pursuant to his domestic law or to order of his government or of a superior shall not free him from responsibility but may be considered in mitigation of punishment if the tribunal deems that justice so requires.* What is noteworthy is unlike section 4(2), section 5(2) does not use the word **Officer**. If the intention of the legislators was to supply emphasis on the word **Officer** in section 4(2) for a special meaning there must have been a reiteration of the word **officer** in section 5(2) as well. The word **Officer** was not used in section 5(2) which clearly indicates that the use of the word **Officer** in section 4(2) is mere incidental having no special significance.

350. Of all the rules of interpretations the paramount rule remains that every statute, even every word of the statute is to be expounded according to its manifest and expressed intention. (For references, see Attorney General for Canada vs, Hallett & Carey ltd, 1952, AC 427).

In SA Haroon vs. collector of Custom, the Pakistan Supreme Court observed that:

“all rules of interpretation have been devised as aids to the discovery of the legislative intents behind an enactment. Where the words are plain and unambiguous, that intent can best be

judged by giving full effect to the ordinary grammatical meaning of those words. But when this is not the case, an attempt should be made to discover the intent by considering the relevant provisions in the context of the whole Act in which it appears and by having regard to the circumstances in which the enactment came to be passed, the previous state of the law, the mischief sought to be suppressed and the new remedy provided are relevant factors to be given due considerations.”(11 DLR, SC, 200).

351. Mr. Imran Siddique, the learned defence counsel submits that the words “Any commander or superior officer” have been used in section 4(2) only to indicate military officer and not indicating any civilian superior, if the legislators had such intention they could have amended section 4(2) by inserting ‘civilian superior’ as amended section 3(1) by inserting “individual of group of individuals” (civilian) in 2009.

352. Let us find out the true meaning of the word **Officer** used in section 4(2) of the Act, we are to take the whole statute together and construe the said word as a part of the Act. We shall have to interpret the word **Officer** literally at the first instance, but if we find that as a result of such literal interpretation certain consequence do arise which in result will frustrate the actual intention of the enactment of the Act, we will then inquire the intention of the law makers to see if there is any special significance of that word. We shall have to find the answer from a consideration of the object of

the legislation and the mischief it was enacted to remedy. Doing so, we have seen that the Act was not passed to prosecute the military officials only. Section 3(1) of the Act made it clear that this Tribunal got jurisdiction to try and punish any individual or group of individuals irrespective of his/her civilian or military status. Even a plain reading of the introductory speech of the then law minister's statement in the parliament would suggest that the Act is an open ended legislation so far civilian and military status of the accused is concerned. It is unconceivable to hold that the legislators intended to hold a civilian personally liable for his crimes and reserved superior responsibility for only the military personnel. The intention of the legislation can be found in section 3(1) of the Act which is open ended for both civilian and military persons. So if there exists two alternative interpretations of a word of which one enable the Tribunal to hold a civilian superior responsible for the crimes committed by his subordinates and the other exclude the jurisdiction of the court over civilian superiors, the Tribunal will lean to accept the previous one as it would be in conforming with the intention of the legislation. Thus, if we read section 3(1) and section 4(2) of the Act together, we will see that the word **Officer** was not meant to be army military officers only. Rather a person who holds an office in civilian capacity in any organization can be called as officer. It will not be irrelevant to mention that the learned counsellors for the litigant parties are also called as the officers of the court. Ameer (Head) of a political party is no doubt a post and the person in that post is certainly holding an office for the purpose

of this Act. Hence, the then Ameer of Jamat-e-Islami is a superior officer in its true sense for the persons with whom he had a superior subordinate relationship.

353. In present case, we shall have to consider the established legal principle of customary international law that a civilian superior can be held responsible for the acts of his subordinates. By the adaptation of civilian superior's responsibility in numerous international instrument and through volumes of judgments from international tribunal it has now become part of customary international law that a civilian superior can be held responsible for the crimes committed by his subordinates. So, if there exists two alternative interpretation of the word **Officer** used in section 4(2) of the Act of which one is compatible with the customary international law and another does not, the tribunal will accept the previous one. In that point of view, also, the word **Officer** used in section 4(2) of the Act can not be given any meaning so that it excludes civilian superiors.

354. In conclusion, we have no hesitation to hold that section 4(2) is an open ended section so far military and civilian status of the accused is concerned. We hold that the superior responsibility mentioned in section 4(2) of the Act encompasses civilian superiors as well.

XXII. The status of accused Ghulam Azam

355. From the submissions of the learned lawyers of both the parties as well as from the documents submitted by both the parties, it is an admitted

fact that accused Ghulam Azam was the Ameer (Head) of the then East Pakistan Jamaat-e-Islami during 1969 to 1971. It is also undisputed that the accused was a prominent member of the 140-member central peace committee which was also published in the Daily Purbodosh on 11.4.1971 (Ext.101). It is also undisputed that he was a member of the 21-member Executive committee of the said central peace committee and he was also a member of the 6 –member sub-committee of the said Executive committee. Newspaper clippings (Ext. Nos. 41,57,59) corroborate the inclusion of the accused in the said committees.

356. P.W. 1 Moontassir Uddin Khan Mamun alias Moontassir Mamun, Professor of History Dhaka University, P.W.2 Mahabub Uddin Ahmed (Bir Bikrom) and P.W.3 Sultana Kamal, Advocate have categorically testified that during War of Liberation of Bangladesh the accused was the Ameer of Jamaat-e-Islami as well as influential member of central peace committee who played a significant role in forming Militia Bahinis such as Razakar, Al-Badr, Al-shams and peace committees in collaboration with Pakistan occupation forces. D.W.1 Abdullahil Amaan Azmi, the son of accused Ghulam Azam, has admitted that peace committee was formed in 1971 and his father was one of the members of central peace committee. The evidence as to status of the accused lead us to hold that the accused became an indispensable person as well as defacto administrator to run the civil administration of the then East Pakistan by virtue of his civil superior status.

357. Mr. Emran Siddique submits that undisputedly professor Ghulam Azam was the Ameer of Jamaat-e-Islami during War of Liberation but the alleged Militia Bahinis such as Razakar, Al-Badr, Al-shams, etc. were not subordinate organs of Jamaat-e-Islami and the accused had neither knowledge nor control over the activities of those Bahinis and as such accused's failure to take measure against the alleged perpetrators does not arise at all.

358. Let us examine some citations from nationally and internationally reputed news reportings as well as citations from books written by renowned writers to have a true picture about the role of the accused and Jamaat-e-Islami during the War of Liberation. In this regard some citations are quoted below:

“The Jamaat-e-Islami and specially its student wing, Islami Jamaat-e-Talaba (IJT) joined the military's efforts in May 1971 to launch two para military counter insurgency units. The IJT provided a large number of recruits. The two special brigades of Islamist cadetes were named Al-shams (the sun in Arabic) and Al-Badr (the moon). A separate Razakars Directorate was established. Two separate wings called Al-Badr and Al-shams were recognized. Well-educated and properly motivated students from the schools and Madrasas were put in Al-Badr wing, where they were trained to

undertake specialized operations, where the remainders were grouped together under Al-shams, which was responsible for the protection of bridges, vital points and other areas. Bangladeshi scholars accused the Al-Badr and Al-shams militias of being fanatical. They allegedly acted as the, Pakistan army's death squads and "exterminated leading left wing professors, journalists, litteratears and even doctors."

Source:- "Pakistan between Mosque And Military" written by Hossain Haqqani, page 79 published in 2005, Washington D.C. USA.

359. Mr. Hossain Haqqani, the author of the book, was a adviser to Pakistani Prime Ministers Ghulam Mostafa Jatoi, Nawaz Sharif and Benzir Bhutto. This book is an authoritative and comprehensive account of the origins of the relationship between Islamist groups and Pakistani army. The above citation testifies that Jamaat-e-Islami had played a substantial role in organising and establishing its notorious wing Al-Badr, the death squad in execution of common policy and plan. Admittedly, the accused was the Ameer of East Pakistan Jamaat-e-Islami and as such it is unbelievable that he had no knowledge about the activities of Al-Badr which acted as an armed squad under Jamaat-e- Islami.

360. Fox Butterfield sent a report which was published in the New York Times on 3 January 1972. Now it is Quoted below:-

“Al-Badr is believed to have been the action section of Jamaat-e- Islami carefully organised after the Pakistani crackdown last March”.

Source:- Bangladesh documents vol-II page 577.

361. Mr. John Stone House, British Labour M.P. told to PTI in an interview in New Delhi on 20 December 1971 which is quoted below:-

“during his visit to Dacca yesterday (December-19) he got the names of these Pakistani Army officers who organised the murders and members of Al-Badr, an extremist Muslim Group, who carried out these heinous crimes just before the surrender of Pakistani forces in Dacca”.

Source:- The Hindustan Times, New Delhi, 21 December , 1971 published in Bangladesh documents vol. II.

362. The report titled “Butchery By Al-Badr” was published in the PATRIOT, New Delhi on 23 December 1971 which manifestly demonstrates the role of Jamaat-e-Islami and its armed wing Al-Badr that perpetrated the murder of leading intellectuals, the best sons of the soil. The report speaks that:-

“When the Pakistanis were over powered, they left the killing to the fascist Al-Badr, the armed wing of Jamaat-e- Islami. This fascist body has already butchered about

200 leading intellectuals, doctors, professors, and scientists, including such eminent men like Sahidulla Kaiser and Munir Chawdhury.”

Source:- ‘PATRIOT’ New Delhi 23 December 1971 also published in Bangladesh Documents page 573.

363. Accused Prof. Ghulam Azam, the Ameer of East Pakistan Jamaat-e-Islami delivered a reception speech at a local hotel which was published in the “Daily Pakistan” on 26.09.1971 under the caption:- “জামাত বাঙ্গালী জাতীয়তাবাদ মেনে নিতে রাজী নয়” That report is quoted below:-

“পূর্ব পাকিস্তান জামাতে ইসলামীর আমির অধ্যাপক গোলাম আজম বলেছেন, জামাতে ইসলামীর কর্মীরা মুসলিম আদর্শকে বিসর্জন দিয়ে বাঙ্গালী জাতীয়তাবাদকে মেনে নিতে রাজী নয়। তিনি বলেন জামাত কর্মীরা শাহাদাৎ বরণ করে পাকিস্তানের দুশমনদের বুঝিয়ে দিয়েছে যে তারা মরতে রাজী তবুও পাকিস্তানকে ভেঙ্গে টুকরো টুকরো করতে রাজী নয়। গতকাল শনিবার স্থানীয় হোটেল এম্পায়ারে ঢাকা শহর জামাত কর্তৃক প্রাদেশিক শিক্ষামন্ত্রী জনাব আব্বাস আলী খান ও রাজস্ব মন্ত্রী মাওলানা এ,কে,এম ইউসুফ-কে প্রদত্ত সম্বর্ধনা অনুষ্ঠানে অধ্যাপক গোলাম আজম ভাষণ দিচ্ছিলেন। তিনি বলেন, সারা প্রদেশ সামরিক বাহিনীর পূর্ণ নিয়ন্ত্রনে আসার পরেও যে কয়েক হাজার লোক শহীদ হয়েছেন তাদের অধিকাংশই জামাতের কর্মী। আইন সভার মাধ্যমে যে মন্ত্রীসভা গঠিত হয়নি, সেই মন্ত্রীসভার জামাতের যোগদান সম্পর্কে তিনি দলের নীতি নির্ধারণ করেন। তিনি বলেন, বর্তমানে এদেশের জনসংখ্যা শতকরা যে ২০ ভাগ লোক সক্রিয় রয়েছে তারা দুভাগে বিভক্ত। একদল

পাকিস্তানকে ধ্বংস করতে চায় আর একদল পাকিস্তানকে রক্ষার জন্য প্রাণ দিতে প্রস্তুত। জামাতে ইসলামী শেষোক্ত দলভুক্ত। তিনি বলেন, জামাতের যে দুজন সদস্য মন্ত্রিসভায় যোগ দিয়েছেন তাদেরকে দলের পক্ষ থেকে এই দায়িত্ব গ্রহণে বাধ্য করা হয়েছে। অধ্যাপক গোলাম আজম বলেন, যে উদ্দেশ্যে নিয়ে জামাত রাজাকার বাহিনীতে লোক পাঠিয়েছে, শালিড় কমিটিতে যোগ দিয়েছে, সেই উদ্দেশ্যেই মন্ত্রিসভায় লোক পাঠিয়েছে। দেশে শালিড় ফিরিয়ে আনার জন্য আমরা যে কাজ করছি সেই কাজে সাহায্য করার জন্যই দুজনকে মন্ত্রিসভায় প্রেরণ করা হয়েছে। তিনি বলেন, এই মন্ত্রীপদ ভোগের বা সম্মানের বস্তু নয়। আমরা তাদের বিপদের মুখে ঠেলে দিয়েছি।

পাকিস্তান জামাতে ইসলামীর ডেপুটি আমির মাওলানা আব্দুর রহিম বিশ্বের মুসলমান পাকিস্তানের জনগন, বিশেষ করে জামাতের মন্ত্রীদ্বয়ের জন্য দোয়া করে মোনাজাত করেন।”

Source:- Dalil Patra (Govt Pub), volume no.VII page-630-631.

Same news also published in the Daily Sangram (Ext.22).

364. It appears from the news report mentioned above, that the accused has candidly admitted that Razakar Bahini and peace committes were formed by the people belonging to Jamaat-e-Islami and he also compelled his two subordinate party leaders to join the Cabinet of Ministers. Though the accused did not hold any portfolio of the government of Pakistan, nevertheless, he could make his party men ministers and he also used to send partymen for forming para-military Bahinis to resist independence of

Bangladesh. The mode of exercising power leads us to hold that the accused was the defacto civil administrator of East Pakistan in 1971.

Accused Prof. Ghulam Azam visited Razakar Training Camp stationed at Mohammadpur Physical Training Centre and addressed the Razakars stressing the need for joining Razakar Bahini, Muzahed and Police Bahini during the war of liberation of Bangladesh.

Source:- Clipping of the Daily Sangram published on 18.09.1971. (Exbt No-19)

365. The above cited news report gives a clear impression about the civilian superior status that the accused held in 1971. The accused gave religious sermon to the trainee Razakars which indicates that the accused had defacto superior responsibility over the Razakars though he was not designated officer of the department concerned.

Accused Prof. Ghulam Azam as chief of the East Pakistan Jamat-e-Islami made a joint statement urging upon the patriotic people of Pakistan to destroy the Indian intruders on sight. The above report was published in the "Dainik Azad" on 08.04.1971.

Source:- The clipping of the daily Azad published on 08.04.1971. (Exbt No-36).

366. The above news reporting gives an impression to hold that the accused had administrative authority to direct the people including his

subordinates to wipe out Indian intruders i.e. pro-liberation people of Bangladesh.

367. The investigation officer seized a coupon of subscription with other documents from Bangladesh National Museum, Dhaka on 20.04.2011 under a seizure list. (Ext. No-498). It appears from the said coupon (Ext. No-505) that Jamaat-e-Islami used to collect subscription by using the coupon under the signature of accused Prof. Ghulam Azam for the purpose of protecting Pakistan's ideology. This document (coupon No-505) testified itself that the accused was one of the defacto rulers of Pakistan, otherwise, a coupon containing the name of accused would not be issued for protection of Pakistan.

368. The Jamaat-e-Islami, a religion based political party and brain child of controversial Islamist thinker Maulana Maududi was significantly pro-active in its mission to destroy the Bangalee nation in the name of safeguarding Pakistan in collaboration with the Pakistan occupation army. We deem it indispensable to get a scenario on the role and stand of the Jamaat-e-Islami in 1971, particularly when it established various militia Bahinis, namely Peace Committee, Razakars, Al-Badrs, Al-shams and Al-Mujaheed, etc. in association with Pakistan Army.

369. The vital role of Jamaat-e-Islami in creating the para-Militia Bahinis is also reflected from the narrative of the book titled "Sunset at Midday" which is cited below:

“To face the situation, the Razakar Bahini consisting of pro-Pakistani elements was formed. Al-Badr Bahini was formed mainly with the workers of the student wing of Jamaat-e-Islami, named Islami Chhatra Sangha (I.C.S. now Islami Chhatra Shibir). The general public belonging to Jamaat-e-Islami, Muslim League, Nizam-e-Islami, etc were called Al-shams and the urdu speaking generally known as Biharis were called Al-Mujaheed.”

Source:- ‘Sunset at Midday’, written by Mohiuddin Chowdhury a former leader of peace committee of Noakhali District, published in 1998, Karachi Pakistan.

370. The documentary evidence discussed above, bear a testimony that the accused being head of Jamate-e-Islami, exercised his superior power in forming Militia Bahinis namely, Peace Committee, Razakars, Al-badrs and Al-Shams by the members of Jamaat-e-Islami and its student wing Islami Chhatra Shangha. It is also evident, as a religious leader, he had command and control over the members of those Militia Bahinies. It is further evident on record that Pakistan occupation army in collaboration with the said Militia Bahinis launched attacks on unarmed civilian and killed millions of Banglees. On the contrary, the defence could not produce any document to show that the accused as a head of political party ever asked his subordinates not to kill any unarmed civilian or took disciplinary measure against any member of his party or subordinates to prevent him from committing crimes against humanity or genocide during the War of Liberation .

XXIII. Role of Jamaat-e-Islami during independence struggle of Pakistan and Bangladesh.

371. The history of this sub-continent witnesses that while movement for independence of Pakistan was started, the Ameer of Jamaat-e-Islami Maulana Mawdudi opposed the idea of a separate state for Muslims based on two nation theory. Infact, Muslims of Bengal mainly faught for the independence of a separate homeland for Muslims. As soon as Pakistan got its independence in 1947, the Jamaat-e-Islami claimed itself as only Islamic patriotic political party of Pakistan. While people of East Pakistan again started struggle for self determination and independence, the Jamaat-e-Islami as a political party whole heartedly tried to resist independence of Bangladesh in collaborration with Pakistan occupation army. But as soon as Bangladesh got its independence in 1971at the cost of millions of lives then Jamaat-e-Islami claims itself as a true patriotic party of Bangladesh, terming those pro-liberation parties as to be Indian agents.

372. It is an irony to note that during independence of both Pakistan and Bangladesh, Jamaat-e-Islami played a foul role in two great occasions having no contribution to the creation of the said two states. It can be safely observed that Jamaat-e-Islami utterly failed to realise the pulse of the common people in both the historic occasions mentioned above, probably for the lack of its far-sightness caused by fanaticism.

373. It is gathered from facts of common knowledge and evidence on record that under the leadership of accused Prof. Ghulam Azam almost all

the members of Jamaat-e-Islami along with its subordinate organs actively opposed the very birth of Bangladesh in 1971 and after 42 years, it is noticed that some of the anti-liberation people are still staying in the helm of Jamaat-e-Islami as a result young generation belonging to Jamaat-e-Islami are being psychologically reared up and nurtured with anti-liberation sentiment and communal feeling which is a matter of great anxiety for a nation. There is no proof before the nation that those who played anti-liberation role in 1971, have ever changed their attitude towards liberation war by expressing repentance or by showing respect to the departed souls of 3 million martyrs.

374. In the interest of establishing a democratic as well as non-communal Bangladesh, we observe that no such anti-liberation people should be allowed to sit in the helm of Executives of the Government, social or political parties including government and non-government organisations. We are of the opinion that the Government may take necessary steps to that end for debarring those anti-liberation persons from holding the said superior posts in order to establish a democratic and non-communal country for which millions of people sacrificed their lives during the War of Liberation.

375. Taking the contextual circumstances coupled with documentary evidence into consideration, we are led to observe that Jamaat-e-Islami as a political party under the leadership of accused Prof. Ghulam Azam

intentionally functioned as a ‘Criminal Organisation’ especially during the War of Liberation of Bangladesh in 1971.

XXIV. Conclusion:

376. It transpires from the foregoing discussions made above and citations mentioned under the caption ‘The status of accused Ghulam Azam’, that admittedly he was the Ameer (Head) of the then East Pakistan Jamaat-e-Islami during 1969 to 1971. It is also undeniable that the accused was the most influential member of Central Peace Committee which was formed with intent to resist the independence of the contrary. The news reports of the ‘Daily Sangram’ (Ext. 22) and the “Daily Pakistan” dated 26.09.1971 show that the accused sent his party men to join Razakar Bahini and Peace Committees for combating pro-liberation people. It is well proved that the accused as Ameer of Jamaat-e-Islami exercised his superior power in forming para Militia Bahinis namely, Peace Committee, Razakars, Al-Badr and Al-Shams by the members of Jamaat-e-Islami and its student wing, Islami Chhatra Sangha. It is also proved by documentary evidence that Pakistan occupation army in collaboration with Militia Bahinis launched attacks on unarmed civilians and killed millions of Bangalees during the War of Liberation of Bangladesh.

377. From the facts of common knowledge, we hold that any order or direction given by a religious leader like accused Ghulam Azam was always considered as more powerful than that of an Army General. It is found on

evidence that para Militia Bahinis were mostly formed by his subordinates and as such their superior-subordinate relationship was duly established.

378. On the contrary, the defence could not produce any document to show that the accused as Ameer of Jamaat-e-Islami ever asked his subordinates not to kill any unarmed civilian nor he took disciplinary measure against any member of Jamaat-e-Islami or its subordinates to prevent them from committing crimes against humanity or genocide during the War of Liberation. Thus, we hold that the accused as civilian superior is criminally liable under section 4(2) of the Act for the crimes committed by his subordinates as he failed to prevent them from committing atrocities in all over Bangladesh.

379. In the above context, Ms. Tureen Afroz, the learned prosecutor argued that during 1971, accused Prof. Ghulam Azam functioned as the “light house” of atrocities and the rays of such mountainous atrocities quickly spread out all over Bangladesh through his subordinates. In our opinion, the above comment is not unfounded one.

380. Mr.Imran Siddique, the learned counsel for the defence submits that the prosecution could not examine any eye witness to prove the charges brought against the accused and the alleged news reports are the product of hearsay and as such do not carry any probative value for relying upon it.

381. Ms. Tureen Afroz, the learned prosecutor submits that the news reports submitted by the prosecution are more than thirty years old

documents and those were reported in the Dailies before beginning any litigation, as such those documents bear probative value to rely upon. In support of her contention, she referred to a decision in the case of Trustee of German Township (1953) where the U.S. Court of Appeal (Ohio) admitted an old community newspaper as part of record. The Court of Appeal in the same case held the newspaper admissible because “ it is necessary and trustworthy, relevant and material”.

382. It is undisputed that the provision of section 19(1) of the Act empowers this Tribunal to admit news report published in news papers and other materials in evidence if it deems to have probative value. Therefore, we hold that news report based on hearsay evidence is to be weighed in the context of its credibility. Keeping this legal position in mind, we are of the opinion that the news reports as old evidence carry significant probative value which tends us to hold that accused Prof. Ghulam Azam as civilian superior masterminded all the atrocities committed in the soil of Bangladesh through his subordinates in 1971, and we are convinced to hold that accused Prof. Ghulam Azam was the pivot of crimes and all the atrocities revolved round him during the War of Liberation. It is also proved beyond reasonable doubt that accused Ghulam Azam had complicity with the perpetrators in making planning, conspiracy and incitement which resulted massive atrocities in Bangladesh during the War of Liberation.

383. Mr. Imran Siddique the learned defence counsel forcefully submits that the Exhibit documents of prosecution show that the term miscreants,

rebels, separatists, enemies, anti-state elements and intruders were used in 1971 to refer freedom fighters only who were neither protected group nor stable in character to become a group as required under Genocide Convention as well as under section 3(2)(c) of the Act of 1973 and as such the charge of planning and incitement to commit genocide does not hold good against the accused.

384. We have already addressed the submission in foregoing discussions. However, we reiterate the same issue that in the night following 25 March, 1971 the Pakistan army launched war with intent to destroy targeting Bangalee nation as a whole or in part and subsequently the Pakistan army along with its collaborators attacked upon unarmed civilians targeting Hindu Community as a religious group with intent to destroy the said group. It is evident that Bangalee nation as well as Hindu Community as religious group both are protected groups as required under Genocide Convention and also under section 3(2)(c) of ICT Act of 1973. As such the defence's submission as to alleged absence of protected group during the War of Liberation is not sustainable in law.

385. Accused Prof. Ghulam Azam as a defacto superior acted in such a manner which tends us to hold that his prime object was to annihilate the Bangalee nation in the name of protecting Pakistan. The accused was the head of East Pakistan Jamaat-e-Islami, but that stand did not give him licence to form Militia Bahinis with intent to attack upon unarmed civilians

which resulted offences of genocide and crimes against humanity through out the country in 1971.

386. On scrutiny of the evidence on record, we have found that the prosecution has successfully proved the status of accused Prof. Ghulam Azam that he had superior responsibility over his subordinates but he failed to prevent them from committing atrocities as contemplated in section 4(2) which substantially aided and contributed to the commission of crimes against humanity, genocide and other class crimes as specified in section 3(2) of the Act during the War of Liberation in 1971. We are convinced to hold that prosecution has proved all the broad charges (five charges) brought against the accused beyond reasonable doubt.

XXV. Verdict on conviction

387. Having considered all evidence and materials on record and the arguments advanced by the learned lawyers of both the parties, we unanimously hold that the prosecution has successfully proved all the five broad charges brought against accused professor Ghulam Azam beyond reasonable doubt.

Charge Nos. 1 and 2:

The charge No. 1 Conspiracy contains 06 counts while charge No.2 Planning contains 03 counts. The accused is found GUILTY to the offences of conspiracy and planning for involving himself in the commission of

crimes as specified in section 3(2) read with 4(2) of ICT Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.3

Incitement contains 28 counts. The accused is found GUILTY to the offence of incitement for involving himself in the commission of crimes as specified in section 3(2) read with 4(2) of the ICT Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.4

Complicity contains 23 counts. The accused is found GUILTY to the offence of complicity for involving himself in the commission of crimes as specified in section 3(2) read with section 4(2) of the ICT Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

Charge No.5

The accused is found GUILTY to the offences of murder and torture which fall within the purview of crimes against humanity as specified in section 3(2)(a) read with section 4(1) of the ICT Act of 1973 and he be convicted and sentenced under section 20(2) of the said Act.

XXVI. Verdict on Sentence

388. From the foregoing discussions and documentary evidence disclosed above, it is well-proved that accused Ghulam Azam as a defacto superior in the name of preserving Pakistan played the role of an architect in forming Peace Committee, Razakars, Al-Badr and Al-shams by the members of Jamaat-e-Islami and its student wing Islami Chhatra Sangha who in fact

acted in support of Pakistan occupation forces in carrying out atrocities during nine months' War of Liberation in 1971. It is also proved that Pakistan occupation forces in collaboration with the said para-Militia Bahinis launched attacks upon unarmed civilians and killed millions of Bangalees, but the accused intentionally did not take any measure to prevent his subordinates from committing those crimes as specified in section- 3(2) of the Act.

389. Mr. Syed Haider Ali, the learned Prosecutor lastly submits that the prosecution has successfully proved that accused Ghulam Azam was the master mind of all atrocities who knowingly by exercising his superior status committed the barbaric offences through his subordinates during the War of Liberation and as such the highest punishment as provided under law should be inflicted upon him.

390. We have already found that accused Ghulam Azam is guilty to the offences relating to conspiracy, planning, incitement, complicity and murder of Seru Miah and 3 others mentioned in charge Nos. 1 to 5 in the commission of those crimes against humanity and genocide as specified in section 3(2) of the Act.

Now a pertinent question is before us to decide what punishment can be awarded to the accused which shall meet the ends of justice reflecting the requirement of law as well as aspiration of the victims' families of the country.

391. In Blaskic case, the Tribunal observed that if the elements of military commanders or civil superiors are fulfilled, the superiors are liable to be awarded heavier sentences even than that of the actual perpetrators. In the context of trial relating to international crimes, we are of the opinion that the plea of old age or belated prosecution does not diminish the guilt of the accused.

392. Having considered the attending facts, legal position and the gravity and magnitude of the offences committed by the accused, we unanimously hold that he deserves the highest punishment i.e. capital punishment as provided under section 20(2) of the ICT Act of 1973. But in the same breath, we cannot overlook the mitigating circumstances which have come up before us for its due consideration.

393. Undisputedly, accused Ghulam Azam is now aged 91 years. It is evident on record that the accused was taken into custody on 11 January 2012 by the order of this Tribunal but the Prison authority sent him to the Prison cell of Bangobandhu Sheikh Mujib Medical University (BSMMU) Hospital on the same date for his proper treatment. Since then the accused has been kept in the said prison cell for providing him constant treatment to the complications due to his old age.

394. Facts remain that the accused is now an extremely old man of 91 years coupled with his long ailment. These two aforesaid factors are considered by this Tribunal as an extenuating circumstances for taking lenient view in the matter of awarding punishment to the accused. Having regards to the above facts and circumstances, we are of agreed view that the ends of justice would be met if mitigating sentence is inflicted upon the accused.

Hence it is

ORDERED,

that accused Professor Ghulam Azam, son of late Maulana Ghulam Kabir of village- Birgaon, Police Station- Nabinagar, Dist. Brahmanbaria, at present 119/2 Kazi Office Lane, Mogbazar Police Station-Ramna, Dist. Dhaka, being a defacto superior is held guilty to the offences mentioned in all charge Nos. 1, 2, 3, 4 and 5 for the Commission of crimes as specified in section 3(2) read with section 4(1), 4(2) of the International Crimes (Tribunals) Act, 1973. The accused is awarded punishment showing period

of imprisonment for each charge proportionate to the gravity of offences as mentioned below:-

Charge Nos-1 and 2.

The accused is held guilty to the offences of conspiracy (charge No. 1) and planning (charge No. 2) together in the commission of crimes as specified in section 3(2) read with section 4(2) of the ICT Act of 1973 and for the afore-said two offences, he is convicted and sentenced to suffer imprisonment for ten years each of the offences totalling 20 years under section 20(2) of the said Act.

Charge No.3

The accused is held guilty to the offence of incitement in the commission of crimes as specified in section 3(2) read with section 4(2) of the ICT Act of 1973 and he is convicted and sentenced to suffer imprisonment for 20 years under section 20(2) of the said Act.

Charge No.4

The accused is held guilty to the offence of complicity in the commission of crimes as specified in section 3(2) read with section 4(2) of the ICT Act of 1973 and he is convicted and sentenced to suffer imprisonment for 20 years under section 20(2) of the said Act.

Charge No.5

The accused is held guilty to the offence of murdering Seru Miah and 3 others in the commission of crimes against humanity as specified in section 3(2)(a) read with section 4(1) of the ICT Act of 1973 and he is convicted and sentenced to suffer imprisonment for 30 years under section 20(2) of the said Act. The total period of sentences of five charges is 90 years.

The period of aforesaid sentences awarded to the accused shall run consecutively or till his death.

Let a certified copy of the judgment be furnished to the convict and the prosecution free of cost at once.

Let another copy of the judgment be sent to the District Magistrate, Dhaka for information and necessary action.

Let the convict accused be sent to the Central Jail, Dhaka for undergoing above-mentioned sentences along with a conviction warrant accordingly.

Before parting with the case, we express our gratitude to the learned lawyers of both the parties for their sincere co-operation and assistance to us.

(A.T.M. Fazle Kabir, Chairman)

(Jahangir Hossain, Member)

(Anwarul Haque, Member)