



Cite Us



Indian Armed Intervention in East Pakistan and Creation of Bangladesh: A Critical Analysis under International Law

Adnan Rahman *

Tehmina Aslam †

Saqib Shahbaz ‡

Vol. V, No. III (Summer2020)

Pages: 344 – 353

p-ISSN: 2616-955X

e-ISSN: 2663-7030

ISSN-L: 2616-955X



Abstract

This paper aims at analyzing the nature of the Indian armed intervention in East Pakistan under International law. The unilateral armed intervention of the India led to the creation of Bangladesh without any resolution of the UN. Moreover, the controversial unilateral intervention of the India inside the territorial jurisdiction of the Pakistan was also not expressly supported by other significant number of states. There is a need to have a critical analysis of the Indian armed intervention in Eastern Pakistan under UN Charter and other relevant provisions of the International Law. The findings of this research paper will be based upon the critical review of existing literature on the insurgency in Eastern Pakistan, Indian intervention in Eastern Pakistan and the creation of Bangladesh. This study can be very useful and relevant in the future to analyze the role of India in the creation of Bangladesh under International Law.

Key Words: Armed Intervention, East Pakistan, Bangladesh, International Law and Territorial Integrity

Introduction

When Pakistan came into being on August 14, 1947 as an independent dominion, the present sovereign state of Bangladesh was part of Pakistan as East Pakistan. The region of East Pakistan was comprised of East Bengal as half of its part, called as West Pakistan was decided and made part of India in the partition of Indo Pakistan subcontinent of 1947.[§] From August 14, 1947 to December 16, 1971, East Pakistan had remained with its constitutional part and parcel, but the region of East Pakistan was separated from Pakistan and became an independent and sovereign state with the active armed intervention of the Indian state. The political differences, language controversy, and demands of constitutional and political empowerment of the people of East Bengal (East Pakistan) were the factors which gradually transformed into a full-fledged political resistance of the Bengali people under the leadership of Sheikh Mujibur Rahman. (Rainer Hofmann, 2011) Initially, they demanded the constitutional and political empowerment of East Pakistan through the famous six points formula of Sheikh Mujibur Rahman, but after the General Elections of 1970, the situation went out of control in East Pakistan and further aggravated in the months of March 1971 to December 1971 eventually resulted in the Bangladesh through the string economic, diplomatic and military support of India as well as Indian armed intervention inside the territorial boundaries of East Pakistan.

During the so-called war of liberation by the local Bengali people against Pakistan, the Indian state played a very pivotal and defining role. Indian state allowed the activists of Mukti bahini to come to India and get military training and weapons to use them against Pakistan. India also use her Armed forces, including Army, Navy and Air Force to extend complete military support to Bengalis fighting against Pakistan. Moreover, during this

* Faculty Member, Department of Law, Faculty of Humanities and Social Sciences, University of Azad Jammu and Kashmir, Muzaffarabad, Pakistan. Email: mir.adnan.rahman@gmail.com

† Director, Sundar STEM School and College, Lahore, Punjab, Pakistan.

‡ Assistant Professor, Department of Law, Faculty of Social Sciences and Humanities, Mirpur University of Science and Technology (MUST), Mirpur, Azad Jammu and Kashmir, Pakistan.

extensive military support to Bengalis in East Pakistan, India also started a direct war with Pakistan in the borders of Western Pakistan to further engage the armed forces of Pakistan.

The local Bengalis established their provisional Government in Mujibnagar on April 17, 1971, and then the same government was moved to Calcutta, India as the Government in exile was duly recognized and supported by the Government of India. Thereafter, on April 28, 1971, the Indian cabinet officially directed the General Manekshaw Chairman of the Chiefs of Staff Committee to go into East Pakistan to support the ethnic Bengalis to support them in their insurgency against Pakistan and to militarily, economically and diplomatically, support them for the creation of a new state. When the Indian army entered into East Pakistan, the local and low scale resistance and insurgency by the ethnic Bengalis converted into a full scale Indian armed intervention to help Bengalis in the creation of a new state of Bangladesh.

The Instrument of Surrender at Dacca, Bangladesh (Former East Pakistan) was signed between the Military representative of Pakistan and the Military representative of India on December 16, 1971. This Instrument was executed right in the heart of the capital of East Pakistan (Bangladesh) that, established the fact that the Indian Forces were present in the territory of East Pakistan with all the weapons supported by the Indian Air Force and Indian Navy, and Indian forces directly fought with Pakistani forces within the territorial boundaries of Pakistan.

This situation was very strange and had many controversies and contradictions via a vis the established principles and relevant provisions of the International law are concerned. At that time, many Lawyers and academicians of International Law raised many queries about the legality and justification of the act of the Indian armed intervention in East Pakistan and the Indian role in the creation of Bangladesh. A few very significant questions are as follows:

What is the nature, scope, and limits of the "Principle of Humanitarian Intervention" under the UN Charter and with relevant decisions of the ICJ? What are the principles and procedure for the Collective Intervention to protect any humanitarian issue under relevant provisions of the International Law? Is there any provision or legal justification to take unilateral humanitarian intervention under International Law? What could be the basis to take unilateral action when unilateral use of force is illegal under International Law except self-defense? Was there any provision of International law to violate the legal restriction on the unilateral use of force to support any movement of self-determination in another state or to stop any violations of human rights in another state? If the unilateral intervention was permissible under international law to support the right to self-determination or protect human rights, what kind of actions and methods were permissible to employ under International Law? Was there any threshold or magnitude of acts, circumstances or state of affairs in the violations of the human rights condition precedent and necessary to use the force under International law? What was the legal justification and basis of the unilateral military action of India against Pakistan in the guise to support the right to self-determination of the ethnic Bengalis of East Pakistan? Why United Nations did not take any legal action in the form of adopting a resolution to condemn the unlawful unilateral military action of India in East Pakistan? Why did Pakistan not take the unlawful unilateral military action of India in the United Nations taken in the garb of the principle of Humanitarian Intervention?

Circumstances Leading to the Creation of Bangladesh

There have been a chronological list of the circumstance and the events that caused the seeds of the alienation and structural oppression among the ethnic Bengalis living in East Pakistan. The disappointment and alienation of the workers and local leaders of the Pakistan Muslim League and establishing of a new political party with the name of the Awami Muslim League (Peoples Muslim League) in 1949 by Maulana Bhashani with Shamsul Huq as its first secretary and Sheikh Mujibur Rahman as its first Joint Secretary. This was the first very interesting development in erstwhile East Pakistan as the Pakistan Muslim League lost its stronghold and local network with this important development. (Umar, 2004) The crisis of Bangladesh was also linked with the creation of Pakistan in 1947 with two limbs of East Pakistan and West Pakistan with a distance of almost 1000 miles between both the limbs and other ethnic, cultural, and linguistic differences with the common denominator of the religion and shared struggle for the a Muslim state where Muslims can live their religious lives peacefully and without any fear and

Then another development was the first report of the Basic Principles Committee (BPC) submitted in 1950, which was rejected by the politicians of erstwhile East Pakistan. These recommendations were so undemocratic and biased that even the politicians of the Muslim League of erstwhile East Pakistan and their supporters also spoke against it openly. This situation caused huge political unease in erstwhile East Pakistan, irrespective of any political or religious affiliations. There were also different class based movants by the Peasants, Nankars and other working classes for their vested rights, and that also developed a certain political and social atmosphere in the erstwhile East Pakistan.

The activism and widespread participation of the Bengali youth, particularly in the University of Dhaka, gave it a very significant impetus and the teachers also played a pivotal role in motivating the youth for the activism and protests for the constitutional and political empowerment of erstwhile East Pakistan. In this context, allegedly, the non-Muslim teachers were most leading in their role of mentors and inciters.

The language movement in erstwhile East Pakistan was also the significant event that paved the way for the separation of East Pakistan and the ultimate creation of Bangladesh on December 16, 1971. When Khawaja Nizamuddin, Prime Minister of Pakistan, visited Dacca in 1952 and addressed a public meeting on January 27, he termed the local popular demand of declaring the Bengali language as one of the state languages of Pakistan as the " Provincialism". This created widespread protest everywhere in erstwhile East Pakistan. The incidents followed as a result of this development made the Muslim League ruling party as completely alienated and irrelevant in all the parts of erstwhile East Pakistan, and that was also one of the factors responsible for the growing sense of alienation and ultimate a separatist's movement in erstwhile East Pakistan. ([Umar, 1974](#))

After the death of Liaquat Ali Khan, the administration indirectly came in the hands of bureaucracy and military leadership as no towering political personality was present there at that time, and that caused a lot of setback due to the apolitical and undemocratic style of governance. Then in 1957, the military Coup was imposed, which further deteriorated the situation from 1957 to 1970. That is why Sheikh Mujibur Rahman became the most popular leader of erstwhile East Pakistan and bagged almost all the seats in erstwhile East Pakistan, and his party became the majority party in the Parliament of Pakistan. (Sheikh Nadeem Ahmed, 2015) On February 05, 1966, Sheikh Mujibur Rahman, along with his colleagues, presented his six points formula for greater autonomy of erstwhile East Pakistan in Lahore during a conference, but the organizers of the conference rejected to include this demand of Sheikh Mujeeb. ([Umar, 2006](#)) Then Sheikh Mujeeb convened the meeting of the working committee of the Awami League, and the working committee approved the Six Points of Sheikh Mujibur Rahman as a unanimous resolution. This was also a significant development that led to the separation of erstwhile East Pakistan from the rest of Pakistan in 1971. This political development of six points created a widespread popular political movement in erstwhile East Pakistan and proved as the most significant development before the Dacca Fall in 1971. ([Khan, 2001](#)) Another important factor was the allegedly slow response of the Government of Pakistan to the Bhola Cyclone, which occurred in November 1970 and caused severe damage to the lives and property of the local Bengalis. It is also not possible to ignore the result of the general elections of 1970, which caused great controversy and also alienated the Awami League and its political leadership headed by Sheikh Mujibur Rahman.

Another important event was the establishment of the provisional Government in Mujibnagar by local ethnic Bengalis on April 17, 1971, and then the same government was moved to Calcutta, India as the Government in exile duly recognized and supported by the Government of India. This was the highest intensity of the separatism of the local ethnic Bengalis in erstwhile East Pakistan. The final and the most significant event was the unlawful and immoral Indian armed intervention in the internal affairs of Pakistan within its territorial jurisdiction and against the principle of Territorial Integrity. ([Richard Sisson, 1991](#))

Insurgency in East Pakistan and Role of India

The political and constitutional differences and the popular constitutional demand for the maximum constitutional autonomy for erstwhile East Pakistan ultimately resulted into the local uprising and armed insurgency against the Government of Pakistan. The main actors were the political organization of the Awami League and the armed group of Mukti Bahini. When Mukti Bahini and local ethnic Bengalis had started their insurgency in Dacca and other parts of the erstwhile East Pakistan with the support of India and later on India

formally joined that insurgency, and then that eventually became a direct war of India and Pakistan. When local Bengalis established their provisional government of Bangladesh in the month of April, 1971, they also established the military leadership under the headship of General M.A.G Osmani. The defected Bengali personnel and officers of the Pakistani Army in the Bengal Regiment and East Pakistan Rifles formed the main part of the resistance forces in the insurgency in erstwhile East Pakistan along with the trained activists of Mukti Bahini, Awami League and Communist Party of Bangladesh. So, by and large, military, paramilitary, and civilian people were part of the resistance forces who fought against the Pakistan Army. However, all these factors were not capable in terms of strength, capacity, weapons, and training to fight a resistance war with the professional and highly trained armed forces of Pakistan, but Indian forces directly involved in this insurgency and provided the Bengali resistance forces with intelligence, training, weapons and military leadership for strategic decisions and actions till the stage of the actual physical involvement of the Indian forces when that insurgency converted into full-fledged India and Pakistan war. ([Bass G. J., 2013](#))

The Bengali resistance forces also had defected Bengali officers from Pakistan Navy and Air force, and with the support of India, they also announced their Bangladesh Air Force and Bangladesh Navy to wage a multipronged resistance against Pakistan. The martial law was declared in erstwhile East Pakistan on March 25, 1971 and Sheikh Mujibur Rahman was arrested. ([Baxter, 1998](#)) The Pakistan Army also started arresting all those people who were involved in the anti-state activities or had some connection with the Indian agencies directly and indirectly supporting the Bengali insurgency in erstwhile East Pakistan. ([Zakria, 2019](#))

After the arrest of Mujib, the provisional government of Bangladesh was announced and then moved to Calcutta, India as the exile Government of Bangladesh. The deputy High Commission of Pakistan in Calcutta, India, defected. The Calcutta became the main center of all these Bengalis who were carrying a guerrilla war against Pakistan. They used to go to Calcutta and other parts of India by crossing the international border for basic training, weapons, and financial support. So this insurgency was basically an Indian-sponsored war inside of Pakistan where local Bengalis were fighting with Pakistan Army with the weapons of India. The indirect and secret support of India was then converted into a direct and open war between India and Pakistan after a short period of indirect war. ([Samant, 2019](#)) The Calcutta was the center of all the significant political, military and diplomatic activities of the local Bengalis in their insurgency against Pakistan. During the direct war between India and Pakistan in erstwhile East Pakistan, the Indian Army and local Bengali resistance forces established a joint military command but primarily, the Indian armed forces fought with Pakistan Army with the support of the Indian Air Force, Indian Navy and the local support of the information sharing and reconnaissance of the Mukti Bahini and its allied groups. During this insurgency and then war, the local Bengalis associated with Mukti Bahini were allowed to cross the border and moved to different cities of India regularly without any check and balance for weapons, training, shelters and other logistic support. That is why, India recognized the state of Bangladesh on December 06, 1971 and Bhutan also did the same in the same period on the behest of India.

So India provided overt and covert military support to Bengali insurgency and also participated in the direct war with Pakistan in the battlefield of erstwhile East Pakistan. Moreover, India also provided economic, political and diplomatic support to Bengali Insurgents and the newly established state of Bangladesh.

Indian Legal Argument in UN to Justify Military Intervention in East Pakistan

The Indian state justified her unlawful armed intervention in the erstwhile East Pakistan on the basis of the "Doctrine of Humanitarian Intervention" ([Hehir, 2010](#)) which is baseless and illogical. The Indian use of force for the creation of Bangladesh is expressly the violations of Articles No. 2 (4) and 2(7) of the UN Charter.

If we look at the legal arguments of India, then prima facie, the Indian Government and its legal experts are of the opinion that Pakistan was carrying out the massive violations of human rights in erstwhile East Pakistan and UN had not responded to that violations of the Human rights at all. Under International law, the UN had to take action to support Human Rights, particularly the Right to Self-determination under International law. Moreover, the other states were also silent and not willing to take any step to prevent the violations of human rights in erstwhile East Pakistan, and no state was willing to take the collective humanitarian intervention in erstwhile East Pakistan to prevent the human rights violations according to International law. So, India took this initiative to help the people of erstwhile East Pakistan in their war of liberation to attain a new state of Bangladesh. Besides,

the PM of India was also given the argument in 1971 that there is a well-founded apprehension of migration of thousands of Bengalis to the Indian side of Bengal, so India decided to support the insurgency to also prevent this mass migration. The critical and objective analysis to the legal position taken by India and thereafter, the Indian Scholars to justify and support the Indian involvement in the creation of Pakistan is very important to arrive at an appropriate legal position on the issue of the justification of the Indian armed intervention in the erstwhile East Pakistan and creation of Bangladesh.

The first argument is regarding the violations of human rights in erstwhile East Pakistan. As most of the Indian scholars and the state of India took the stance during the erstwhile East Pakistan crises and after the creation of Bangladesh that ethnic Bengalis were facing severe persecution and discrimination by the Pakistan Army at that time and they tried to claim that Pakistan has committed genocide of ethnic Bengalis in 1971. That why India intervened to protect the lives of the ethnic Bengalis. Now there are various very serious question about these claims and justifications of India to prove her unlawful unilateral intervention and aggression as justified and lawful international law. Was there any provision of International law at that time to intervene in the other state on the basis of the violations of the human rights? The answer to this question is not affirmative as the UN Charter gives more significance to the territorial integrity of the other state. Then, the nature and threshold of the violations of human rights is also relevant in this scenario to take up the matter before the UNSC for the formal authorization of the collective humanitarian intervention to prevent human loss. However, in the case of the erstwhile East Pakistan, the issues of the nature of the violations of human rights and the existence of any genocide are yet to be proved by any independent organization other than the influence of the Indian and Bangladeshi governments. So Indian state acted unlawfully and unilaterally in violation of the UN Charter and intervened within the territorial boundary of Pakistan without authorization of the United Nations. The question of --*///occurrence of a violation of human rights, its patterns, threshold, and nature of victims and ground situation in erstwhile East Pakistan are also subject to a critical legal and factual debate in the backdrop of anti-state armed activities of Resistance forces including military and Mukti Bahini with complete support of Indian Forces and agencies.

The legal analysis of the situation of erstwhile East Pakistan under International Humanitarian Law implies that the situation fulfilled the requirements of an Internationalized Non International Armed Conflict which then became an International Armed conflict between India and Pakistan. In that situation, the parties to the conflict can target combatants, and that is also permissible under the International Humanitarian Law; however, the civilians, women, and children can be attacked under the relevant provisions of the International Humanitarian Law. If the situation of erstwhile East Pakistan was a non-international or intentional armed conflict, then the argument of Human Rights violations losses its relevance, and the whole conflict needs to be analyzed as per International Humanitarian Law. Moreover, the relevant facts, ground situation, and the estimated death toll with the categorization of the military, paramilitary, armed civilians, and innocent civilians would help a lot to analyze the nature and threshold of the killings to be qualified as "Genocide". ([Linton, 2010](#))

The second point of the arguments pertains to the Indian claim that the silence and inactiveness of the United Nations and other leading states of the world was also the reason of unilateral humanitarian intervention by the Indian state inside the territorial boundaries of Pakistan. ([Nanda, 1972](#)) This Indian argument also lacks legal validity and shows the defiance of the Indian state to the world political and legal order as well as established multilateralism. The United Nations was the result of the cold war global politics as USSR was supporting India openly. That is why western powers remained silent on the aggression of India on Pakistan and the unlawful unilateral intervention of India within the territory of Pakistan. As far as the silence of the states on the issue of erstwhile East Pakistan is concerned, that was also rooted in the complex and divided global politics in 1971 due to the cold war dichotomy of the world. Besides, the silence and inactiveness of the United Nations and the leading states of the world did not give any legal and diplomatic authorization and justification to the Indian state to take unlawful unilateral humanitarian intervention in the territory of Pakistan.

The third legal argument is related to the application of the principle of Humanitarian Intervention to protect the violations of human rights in the erstwhile East Pakistan. The provision of the collective humanitarian intervention is permissible on the basis following conditions:

- a) The violations of the human rights in any territory if it reaches at a certain threshold or intensity which may amount to “genocide” or “ethnic cleansing” or any other highly aggravated form of persecution. ([Kuperman, 2001](#))
- b) The decision to carry out the collective humanitarian intervention by the authorization of the United Nations after careful and legal-specific analysis of the ground situation in order to prevent the prevent or thwart any possibility of humanitarian crises or any form of genocide to ultimately protect the International peace and security.

On the other hand, India which is a rival enemy of Pakistan right from 1947 and had also fought two wars with Pakistan in 1947 and 1965 as well as carried out large scale killings of the Muslims in Jammu, Hyderabad, Junagadh, and other significant regions of India claimed to had carried out an impartial and neutral analysis of the situation of erstwhile East Pakistan under International law and then allegedly acted in good faith under International law to rescue the lives of thousands of ethnic Bengalis who were at the mercy of Pakistani forces. This whole argument of India to justify its aggression and unlawful unilateral intervention against Pakistan is very illogical, baseless and contradictory. This is also against the provisions of the UN Charter, established practices and customs of the UN and international community and practice of the principle of collective humanitarian intervention at that time. The objective and critical analysis of the act of India against Pakistan reveals that the act of India was an act of aggression, unlawful unilateral intervention, and violations of the UN charter and also a malicious act to take revenge from Pakistan by using the ethnic Bengalis by providing those training, weapons and complete military support. There was also a role of the Indian agencies in exploiting the sentiments, socio – economic inequalities, ethnic and cultural differences and political alienation of the ethnic Bengalis against the power bureaucratic, political and military elite of the West Pakistan. ([Mishra, 2013](#))

The erstwhile East Pakistan crisis is a seminal example to legally analyze and critically debate the core concepts of Human Rights, Aggression, Collective Humanitarian Intervention, Genocide ([Bose, 2011](#)), Self-determination, Sovereignty, and Territorial integrity in detail. A few very important legal notions and preconditions are necessary for taking any important decision under International law. First of all, the question of authorization has prime importance. This is not the responsibility of India to enforce human rights within the territory of Pakistan, so taking unilateral act by India against Pakistan is unlawful, and a perfect example of might is right. India tried to pass a resolution from United Nations Security Council (UNSC) under Chapter VII but UNSC did not pass any resolution against Pakistan to allow the states to take the option of collective humanitarian intervention inside Pakistan for protecting the rights of the ethnic Bengalis in erstwhile East Pakistan.

Then, the presence of the mitigating factors like the migration of refugees to India by crossing the international border of India and Bangladesh, an armed insurgency of local ethnic Bengalis against Pakistan, imposing of martial law by Pakistan in erstwhile East Pakistan and launching of search operations against the anti-state elements ([Hossain, 2017](#)) and targeting of members of Bengali resistance forces including Mukti Bahini with huge collateral damage does not also give any justification and warrant to the neighboring state of Pakistan like India to take a unilateral humanitarian intervention under the provisions of the International law. ([Beachler D., 2007](#)) The nature, scope, and limits of the "Principle of Humanitarian Intervention" under the UN Charter and with relevant decisions of the International Court of Justice are very necessary to understand to decide about the humanitarian intervention as unless and until there is no well-founded and justified fear of massive humanitarian crises, the resolution to permit collective humanitarian intervention cannot be presented and approved by the UNSC. ([Hartle 2010](#)) Similarly, the principles and procedure for the Collective Intervention to protect any humanitarian issue under relevant provisions of the International Law are also necessary to analyze the act of any state. In the context of erstwhile East Pakistan, we need to analyze the basis to take unilateral action when unilateral use of force is illegal under International Law except for self-defense. So if unilateral action can only be taken in self-defense, then there cannot be any justification and legal excuse to use the force unilaterally.

Applicability of the Doctrine of Humanitarian Intervention in East Pakistan

Humanitarian Intervention is the most contested and debatable notion under International law and other disciplines where this concept is also relevant and have some significance. ([Menon, 2016](#)) The notions of humanitarian intervention, military intervention, and military action are considered related to each other, but all

these concepts are quite different in their nature, scope, and application under the various provisions of International Law. (Kolb, 2018) There is one consensus in International law on the supremacy of the territorial sovereignty of the states and the fact that International law considers all the sovereign states as equal. The most important article of the UN Charter is Article 2 (4), dealing with the respect of the territorial integrity and political independence of the states. The practice of humanitarian intervention was different during the period of the cold war era and no significant example of authorized collective humanitarian intervention is available in the world. (Rodley, 1973) However, on the other hand, the post-cold war era has seen a different attitude of the United Nations and the world regarding the practice of the principle of humanitarian intervention, and there have been many cases where United Nations allowed and warranted the humanitarian intervention to halt any humanitarian crises when the concerned state is either not willing or not capable to halt any humanitarian crises by itself. (Heinze, 2009)

The case of the erstwhile East Pakistan is also very pertinent and significant as it happened in the cold war era, and at that time, the response of the United Nations and the western states was not very positive towards the principle of the humanitarian intervention on the basis of the bipolar nature of the world. The relationships and the orientation of the states of the world was determined on the basis of its relationships with the USSR or the USA. That is why, the erstwhile East Pakistan crises also divided the world as USSR was with India and USA and the UK were supporting Pakistan to some extent. This divide had helped India to execute her unlawful armed intervention in Pakistan.

The objective and critical analysis of the definition of the “Humanitarian Intervention” is very important to discuss its application on the erstwhile East Pakistan crises. The Humanitarian Intervention can be defined as “the military action taken by a state, group of states or non-state actor, in the territory of another state, without that state’s consent, which is justified, to some significant extent, by a humanitarian concern for the citizens of the host state.” (Schultz, 2017) There is no hard and fast definition of humanitarian intervention, and every feature of its definition is contested and subject to debate and criticism. (Erdogan, 2007) The most salient controversy is around the adjective term “humanitarian” in the humanitarian intervention. (Nollkaemper, 2012) Despite all these controversies and differences of opinion about the meaning, definition and scope of the principle of humanitarian intervention, it has become a reality in the post-cold war era, and there have been many examples of humanitarian intervention in the post-cold war era. (Beachler D. W., 2011) After the end of communism, the bipolar world became unipolar and the relationship of the states and the international financial and political support of the western world was based on the following two important conditions'

- a) Human Rights situation of the state within its domestic jurisdiction,
- b) Democratic profile of the state as per the standards of the liberal democracy set out by the Western world.

Due to these two factors, the domestic issues of the human rights and democracy of the states can become an international issue, and it already happened during the last thirty years in the post-cold war scenario. However, the erstwhile East Pakistan crises was different altogether and there was the justification of applying the principle of Humanitarian Intervention on the following important reasons, inter alia:

- a) India took the unlawful act of humanitarian intervention unilaterally, which is against the concept of multilateralism, which is the true character of the global political order.
- b) India acted in its unlawful unilateral act without the prior permission and authorization of the United Nations Security Council.
- c) India tried to justify its controversial conduct on the basis of the "humanitarian crises," but how a partisan state of India leveled the allegations of "humanitarian crises" against its rival enemy Pakistan without the Independent and objective observations about the nature, categories, threshold and intensity of the violations of the human rights in erstwhile East Pakistan. This is a great paradox and contradiction. (Bass G. J., 2015)
- d) The act of India was a violation of the Article 2 (4) of the UN Charter as India unlawfully intervened in the territorial jurisdiction of Pakistan by violating the territorial integrity of Pakistan.

Indian Armed Intervention and Territorial Integrity of Pakistan

The Indian unlawful act of intervening in the territory of Pakistan was against the territorial integrity of Pakistan

as per the Article 2 (4) of the UN Charter. There is no legal justification and moral basis of secretly sponsoring an insurgency, training citizens of another state, giving them weapons and relevant information and input for carrying out guerrilla attacks and other anti-state activities and then eventually, attacking the other state in support of that insurgency and to break away a part of the neighboring state. This was the worst example of unlawful and immoral interference in the affairs of the other state and to wage a full-fledged war in violation of International law. ([Nations, 1945](#))

Article 2 (4) of the UN Charter states that "all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations. ([Pattison, 2010](#)) This is a general principle and it has only two exceptions:

The first exception is provided by the Article 51 of the UN charter which says that, "nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security." So self-defense is the first exception to the general cardinal principle of the respect for the territorial integrity. On the other hand, the second exception to this general principle is the authorized collective humanitarian intervention to halt any humanitarian crises within the territory of sovereign state if the concerned state is either unable or unwilling to halt that humanitarian crisis itself.

The second exception is the enforcement measures taken by the UNSC under Chapter VII of the UN Charter. There have been many examples of the UN-authorized collective humanitarian intervention in post-cold war milieu of 1989. The Indian armed intervention was neither in self-defense under Article 51 of the UN Charter nor an authorized collective humanitarian intervention under Article No 42 of the UN Charter, so this act was the violation of the Article 2 (4) of the United Nations Charter which recognizes the principle of the territorial integrity and political independence of all the sovereign states in the world.

Conclusion

The collective humanitarian intervention is a very complex legal concept under International law and legal scholars have their different views about its legal basis, nature and scope. As far as the concept of unilateral humanitarian intervention is concerned, majority of the legal scholars do not give importance to the unilateral humanitarian intervention as it is against the basic spirit of the UN charter and also in violation of the principle of Multilateralism which is the true basis of the current international political order. Moreover, the way India had unilaterally intervened in the territorial jurisdiction of Pakistan in 1971 that was a severe violation of the Article No 2 (4) of the UN Charter. The Indian act of supporting the Bengali insurgency in erstwhile East Pakistan was unlawful and not legally justified on the basis of two very important reasons: Firstly, the act of the India was not authorized and unilateral in its nature which has limited scope under International law during the cold war period. However, the situation of the post-cold war politics is different from the cold war politics due to the change in the global politics and nature of the relationships of the state. Secondly, the unlawful act of the India was a grave violation of the Principle of the territorial integrity and political Independence as espoused in the Article 2 (4) of the UN Charter.

However, the Pakistan could not take any action against the unlawful act of India in the United Nations due to two major factors: Firstly, the UNSC was also divided due to the divided global politics and secondly, the post 1971 war's crises of thousands of Prisoners of Wars forced Pakistan to sign Shimla Agreement with India to respect the territorial sovereignties of each other in future and also to settle all the bilateral disputes peacefully under the provisions of UN Charter.

References

- Bass, G. J. (2013). *The Blood Telegram: Nixon, Kissinger, and a Forgotten Genocide*. Alfred A. Knopf. 978-8184005769.
- Bass, G. J. (2015). *The Indian Way of Humanitarian Intervention*. Yale Journal of International Law .
- Baxter, C. (1998). *Bangladesh From A Nation To A-State* (1st ed.). Routledge.
- Beachler, D. (2007). The politics of genocide scholarship: the case of Bangladesh. *Patterns of Prejudice*, 41(5). DOI: <https://doi.org/10.1080/00313220701657286>
- Beachler, D. W. (2011). *The Genocide Debate Politicians, Academics, and Victims*. Palgrave Macmillan.
- Bose, S. (2011). The question of genocide and the quest for justice in the 1971 war. *Journal of Genocide Research*, 13(4), 393-417. DOI: <https://doi.org/10.1080/14623528.2011.625750>
- Erdogan, B. (2007). Humanitarian Intervention and Responsibility to Protect. *Springer International Publishing* .
- Hartle, A. E. (2010). *Waging Humanitarian War: The Ethics, Law, and Politics of Humanitarian Intervention*. State University of New York Press, 40(1).
- Hehir, A. (2010). *Humanitarian intervention: an introduction*. Basingstoke: Palgrave Macmillan.
- Heinze, E. A. (2009). *Waging Humanitarian War The Ethics, Law, and Politics of Humanitarian Intervention*. Albany: State University of New York Press.
- Hossain, M. S. (2017). Extra-judicial killings and human rights law: Bangladesh perspective. *International Journal of Law and Management*, 59(4). doi:10.1108/IJLMA-11-2016-0140
- Khan, H. (2001). *Constitutional and Political History of Pakistan* (Vol. III). Oxford University Press.
- Kolb, A. S. (2018). *The UN Security Council Members' Responsibility to Protect*. Springer. <https://link.springer.com/book/10.1007/978-3-662-55644-3>
- Kuperman, A. (2001). *The Limits of Humanitarian Intervention: Genocide in Rwanda*. Brookings Institution Press. <https://www.brookings.edu/book/the-limits-of-humanitarian-intervention/>
- Linton, S. (2010). Bangladesh and the Prosecution of International Crimes from the 1971 War of Independence from Pakistan. *Criminal Law Forum*, 21(2), 187–190. <https://doi.org/10.1007/s10609-010-9121-1>
- Menon, R. (2016). *The Conceit of Humanitarian Intervention*. Oxford University Press.
- Mishra, A. (2013). Dead reckoning: memories of the 1971 Bangladesh war. *Contemporary South Asia*, 21(1), 73-77. DOI: <https://doi.org/10.1080/09584935.2012.758473>
- Nanda, V. P. (1972). A Critique of the United Nations Inaction in the Bangladesh Crisis. *Denver Law Review* , 6-15, <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=3395&context=dlr>
- Nations, U. (1945). *CHARTER OF THE UNITED NATIONS AND STATUE OF THE INTERNATIONAL COURT OF JUSTICE*. San Francisco. <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>
- Nollkaemper, J. H. (2012). *Responsibility to Protect: From Principle to Practice*. Amsterdam: Pallas Publications .
- Pattison, J. (2010). *Humanitarian Intervention and the Responsibility To Protect: Who Should Intervene?* Oxford University Press.
- Rainer Hofmann, U. C. (2011). *Minority Rights in South Asia*. Law, Economics & Management.
- Richard Sisson, L. E. (1991). *War and Secession Pakistan, India, and the Creation of Bangladesh*. California University Press.
- Rodley, T. M. (1973). After Bangladesh: The Law of Humanitarian Intervention by Military Force. *The American Journal of International Law*, 67(2), 273-305. DOI: <https://doi.org/10.2307/2199432>
- Samant, C. M. (2019). *Operation X : The Untold Story of India's Covert Naval War in East Pakistan*.
- Schultz, D. (2017). The Conceit of Humanitarian Intervention. *New Political Science*, 39(3), 420-424. DOI: <https://doi.org/10.1080/07393148.2017.1339418>
- Sheikh Nadeem Ahmed, S. B. (2015). Historical Perspective of Political and Constitutional Development in Pakistan. *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, 20(2), 77-89. https://www.academia.edu/27361957/Historical_Perspective_of_Political_and_Constitutional_Development_in_Pakistan
- Umar, B. (1974). *Politics and Society in East Pakistan and Bangladesh*. Mowla Bros.
- Umar, B. (2004). *The emergence of Bangladesh : class struggles in East Pakistan, 1947-1958*. Karachi : Oxford University Press. <http://www.loc.gov/catdir/toc/fy044/2003344711.html>

- Umar, B. (2006). *The Emergence of Bangladesh: Volume 2: The Rise of Bengali Nationalism, 1958-1971*. Oxford University Press.
- Zakria, A. (2019). *1971: A People's History from Bangladesh, Pakistan and India*. Penguin Random House India Private Limited.