

Fair Trial Issues in International Crimes Jurisdiction: In the Case of Absentia Trial with Reference to the Bangladesh International Crimes Tribunals

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Abstract: *A contentious and unresolved focus on the field of international criminal law jurisdiction has been the idea of an absentia trial. The mechanism of absentee trials was used as an international crimes prosecution tool through various judgments in Bangladesh International Crimes Tribunals (ICT-BD) before commencement one decade after the formation of the historical International Criminal Justice Instruments, i.e., Nuremberg and Far-East tribunal. Since the Former Yugoslavia' tribunal, Sierra Leone special court, and other international crimes tribunals have been banned, the capacity of International Criminal Court to conduct in absentia trials in the context of global crimes has been severely constrained. However, relatively topical contemporary International Crimes Tribunal structures, such as ICT-BD and Lebanon Special Tribunal and the, have notably allowed for absentee trials in connection with the prosecution of international crimes. After the resolve of 53 cases, practically almost all proceedings before the ICT-BD have concluded in absentia rulings, depriving the accused of the right to a fresh trial. Two prominent absentia trial cases—the cases of AbulKalam Azad and Ashrafuzzam Khan @ Naeb Ali Khan and ChowdhuryMueenUddin—as well as a significant number of other absentia trial cases—were one-sidedly resolved by the ICT-BD, where the tribunals heard the prosecution witness and rendered the verdict without the presence of the accused. This is demonstrated by the legal framework of the ICT-BD cases. Bangladesh permits absentia in domestic cases even though it is not a common law nation and does not adhere to common law jurisdiction. The prosecution of an absentia trial raises concerns about whether ICT-BD has been eroding international norms. The retrial is prerequisite under the convention of International Covenant on Civil and Political Rights, who dependent individual before the ICT-BD completely deprived of that right. Bangladesh's domestic legal system permitted trials in absentia, including those for International Crimes Tribunals. In order to address the omission of the right to a retrial, a widely accepted requirement, this research paper compares Bangladesh's usage of absentia proceedings to those of other international criminal tribunals. As a common law nation, Bangladesh should be tried and granted the right to fair trials. Additionally, absentee executions should follow the international criminal justice system's policies and procedures, and absentee trials should have a subsection on retrials that addresses the solemn trial issue. The research study also looks at the provision on the ICT-BD law, which should prevent absentia trials in the context of international crimes trials, allowing for the inclusion of the current Section 10A in a retrial and the elimination of further death sentences rendered in absentia. The International Crimes Tribunals Act 1973 (as amended in 2009, 2012, and 2013), and its Rules of Procedure (RoP) 2010 shall also be taken into consideration when determining the precise location of the accused, properly summoning, compulsorily prosecuting, and hearing defense witnesses, ensuring the right to defense, and ensuring a long enough pre-conviction period to comply with international criminal justice guidelines.*

Keywords: *International Criminal Law, Trials in Absentia, Bangladesh International Crimes tribunals, International Covenant on Civil and Political Rights, Special Tribunal of Lebanon(STL)*

At its core, International Criminal Justice aims to do much more than to punish individual perpetrators of crimes if they are found guilty. In absentia, trials are a way of allowing the international community to pursue justice for grave crimes without permitting the absence of the accused to hamper its aims, and to fight against impunity.

Judge IvanaHrdlickova.¹

1. Introduction:

In 1946, After the completion of second world horror history of war, an Nuremberg and Far-East' tribunal were creation ceremoniously, and the concept of an absentee trial from that time was formally institutionalized for prosecuting international crimes' perpetrators from European Axis criminals. This was done by bringing those responsible for horrendous atrocities to justice. Nuremberg Charter incorporates of article 12 for absentee trials. Permitting absentee trial regarding the international crimes states to this article 12 under Nuremberg charter:

The Tribunal shall have the right to take proceedings against a person charged with crimes set out in Article 6 of this Charter in his absence, if he has been found or if the Tribunal, for any reason, finds it necessary, in the interests of justice to conduct the hearing in his absence.²

Martin Borman, the party secretary of Nazi, for first time was convicted in absentia trial by the Nuremberg Tribunal (IMT)³ in 1946. The IMT was directly accepted throughout the trial in absentia method. After Nuremberg trial, International Criminal Courts are no longer permitted to hold trials in absentia. Ad hoc tribunals, i.e., the former Yugoslavia, Rwanda, and Hybrid Tribunals, i.e., Sierra Leone tribunal, are all barred from conducting absentia trial.⁴With the exception of Lebanon tribunal's decision incorporates article 22 in this regulation and begin a trial in absentia after Nuremberg trial history.⁵Conducting the cases i.e., the Prosecutor v. SalimJamilAyyash and others⁶ of Lebanon special court are the pioneer verdict of absentee trial. The international crimes (Tribunals) of Bangladesh, which are followed by STL adopting Section 10A of the Act, 1973 (as amended in 2009, 2012, and 2013),⁷ and In absentia trials, judicial addresses have been utilized. The Chief Prosecutor v. AbulKalam Azad, alias Bachu, who is a known Islamic politician⁸is the pioneer case of the absentia trial of the international crimes (tribunals) of Bangladesh. Despite the fact that the IMT-Nuremberg and Far East, the Special Court for Lebanon, and the International Crimes Tribunal of Bangladesh allowed indiscriminately absentia trials, the International Criminal Court (ICC), the International Criminal Court for the former Yugoslavia

¹Judge IvanaHrdličková – President, Special Tribunal for Lebanon

²IMT - Nuremberg, Article 12 <http://www.yale.edu/lawweb/avalon/imt/proe/imtconst.htm#art12>

³<http://www.yale.edu/imt/count.asp>, Last visit 2023.

⁴Human Rights Watch, November 17, p.3, 2006.

Absentia%20Trial%20%20under%20international%20crimes/cambodialetter1106web.pdf, www.hrw.org

⁵Herath, Elizabeth, 'Trials in Absentia Jurisprudence and commentary on the Judgment in Chief Prosecutor v.

AbulKalam Azad in the Bangladesh International Crimes Tribunal', Harvard International Law Journal, Online Volume 55, p.2, June 2014

⁶Prosecutor v. JamilAyyash, Case No. STL- 11-01/I/TC, Sources from Herath, Elizabeth 'Trials in Absentia Jurisprudence and commentary on the Judgment in Chief Prosecutor v. AbulKalam Azad in the Bangladesh International Crimes Tribunal', Harvard International Law Journal, Online Volume 55, p 2June 2014

⁷Section 10A of the Act 1973, 'Where a proceeding is commenced under sub-section (1) of section 9, the tribunal, before fixing the date for the trial under sub-section(2) of the said section, has reason to believe that the accused person has absconded or concealed himself so that he cannot be produced for trial, may hold the trial in his absence following the procedure as laid down in the Rules of Procedure made under section 22 for such trial.' <http://www.ict-bd.org/>

⁸The Chief prosecutor vs. AbulKalam Azad alias Bachu, Chief Prosecutor vsAbulKalam Azad, Ict Case No. 05 of 2012, <http://www.ict-bd.org/ict2/judgements.php>, Last visited: 2023

(ICTY), and the International Criminal Court of Rwanda (ICTR) explicitly require the accused to be present before the tribunal or courts at their trial.⁹ This article will analyse case law to establish if Bangladesh's practice of having trials tried in absentia in relation to International Crimes (Tribunals) accords or not with international law. In addition, Section 10(A) of the ICT Act of 1973 (as amended in 2009, 2012, and 2013) is examined, along with its flaws and potential modifications that would take into account international law, absentee jury trials, and case law from international courts. The research study investigates how the prosecution at the Bangladesh International Crimes Tribunals complies with international standards while holding trials in absentia in order to ensure the accused person's right to a fair trial.

2. What was done for research?

This article will introduce the concept of absentia trial analysis and look at two already-resolved cases, namely the cases of Ashrafuzzam Khan, alias Naeb Ali Khan, Chowdhury Mueen Uddin, and AbulKalam Azad, who was found guilty of mass murder by the 1971 commission in East Pakistan (now Bangladesh), in the context of international crimes (Tribunals) in Bangladesh. After reading the essay, I increased my understanding of how the prosecution at the International Crimes Tribunal of Bangladesh complies with global standards while holding trials in absentia to safeguard the accused's rights to a fair trial.

3. Background of reading:

In the international crimes jurisdiction, the International Crimes (Tribunals) Act, 1973 (as amended in 2009, 2012, and 2013) and its retrospective justice prosecution in absentia trials are obstacles to guaranteeing fair trial concerns. In an effort to prosecute international crimes including genocide, crimes against humanity, and war crimes perpetrated during the 1971 invasion of East Pakistan, which is now Bangladeshi territory, this tribunal was founded under the Act of 1973.¹⁰

4. Research Methodology:

The study used in this paper's technique is judicial and legal. The three different research technique kinds include case law, conceptual, and comparative approaches. In this study, both primary and secondary sources were employed. Through the course of this article, the terms "legal material" shall include, but not be limited to, "case law," "acts," "statutes," "court decisions," "charters," "conventions," "treaties," "legislation," and "textbooks." In addition to existing legal-related literature, doctrines, ideas, theories, and legal experts' opinions, secondary legal resources can also be derived from these sources. This research piece thoroughly analyses international criminal justice and tribunal practice in the context of absentee trials. Under the context of concerns about fair trials under international criminal jurisdiction, this study also takes into account the appeal for the incorporation of universal standards. Falling absentee decisions in this case

5. Trials in Absentia mechanism practice under the International Law:

The fundamental right to a fair trial is protected under the International Covenant on Civil and Political Rights (hence referred to as the "ICCPR"). Accordingly, 3(d) under Article 14 of ICCPR¹¹ Provides:

⁹ Guha, Shouvik Kumar, 'The concept of Trials in Absentia in International Criminal Law and the Special Tribunal for Lebanon: An Overview' Christ University Law Journal, p. 12 1,1, (2012)

¹⁰ Robertson, Geoffrey, Report on the International Crimes Tribunal of Bangladesh, International Forum for Democracy and Human Rights, p9, IFDHR 2015, Last visit : 2023, <http://www.ifdhr.org>

¹¹ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

To be tried in his presence and to defend himself in person or through legal assistance of his own choosing; to be informed if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.¹²

Additionally, General Comment No. 13 of the UN Human Rights Committee (hereinafter referred to as the "UNHRC") states that:

The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defense is all the more necessary.¹³

However, the term "legitimate causes" is not defined in this general comment no.13.¹⁴ Moreover, a particularly active vehicle for establishing standards for international criminal behavior is the European Convention on Human Rights and Fundamental Freedoms (ECHR). Article 6(3) of the ECHR includes rights to fair trials in absentia protection:

To defend himself in person or through legal assistance of his own choosing or, he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.¹⁵

Article 7 of the African Charter on Human and Peoples' Rights (African Charter) added trials of absentia mechanism. Accordingly, the African Charter on Human and Peoples' Rights states that:

1. *Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his Fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in Force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.*

2. *No one may be condemned For an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence For which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.*¹⁶

6. The practice of conducting trials in absentia before the various International Criminal Tribunals and Courts:

Individual trials were being held by the International Military Tribunal Nuremberg, a newly established international crimes tribunal. For the prosecution of absentees, this tribunal introduced Article 12, and under that provision, the tribunal declares the following:

*The tribunal shall have the right to take proceeding against a person charged with crimes set ourin article 6 of this charter in his absence, if he has been not found or if the Tribunal, for any reason, finds it necessary, in the interests of justice, to conduct the hearing in his absence.*¹⁷

Consequently, for the first time, at the International Military Tribunal in Nuremberg under Article 12, Martin Bormann was tried in absentia in 1946, convicted of war crimes and crimes against humanity, and sentenced to death by hanging.¹⁸

¹² International Covenant on Civil and Political Rights, Article 14(3)(d), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹³ General Comment No. 13, Last visited : 2023, <https://www.ohchr.org/en/hrbodies/hrc/home>

¹⁴ Herath, Elizabeth, 'Trials in Absentia Jurisprudence and commentary on the Judgment in Chief Prosecutor v. AbulKalam Azad in the Bangladesh International Crimes Tribunal', Harvard International Law Journal, Online Volume 55, p 3 June 2014.

¹⁵ European convention of on Human Rights and Fundamental Freedoms, Article 6(3)

¹⁶ African charter on Human and Peoples' Rights, Article – 7.

¹⁷ The Statute of International Military Tribunal, Article- 12.

After that, the Special Tribunal for Lebanon fully incorporated the mechanism of the absentia trial. The statute of STL incorporated in Article 22 states that:

1. The Special Tribunal shall conduct trial proceedings in the absence of the accused, if he or she: (a) Has expressly and in writing waived his or her right to be present; (b) Has not been handed over to the Tribunal by the State authorities concerned; (c) Has absconded or otherwise cannot be found and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge.

2. When hearings are conducted in the absence of the accused, the Special Tribunal shall ensure that: (a) The accused has been notified, or served with the indictment, or notice has otherwise been given of the indictment through publication in the media or communication to the State of residence or nationality; (b) The accused has designated a defence counsel of his or her own choosing, to be remunerated either by the accused or, if the accused is proved to be indigent, by the Tribunal; (c) Whenever the accused refuses or fails to appoint a defence counsel, such counsel has been assigned by the Defence Office of the Tribunal with a view to ensuring full representation of the interests and rights of the accused.

3. In case of conviction in absentia, the accused, if he or she had not designated a defence counsel of his or her choosing, shall have the right to be retried in his or her presence before the Special Tribunal, unless he or she accepts the judgement.¹⁹

Article 22 of the Absentia Trial permits the Special Tribunal for Lebanon's law to be used. Judges of the Special Tribunal for Lebanon (STL), headquartered in the Netherlands, concluded that Salim Ayyash was a key player in the 2005 bombing in Beirut that resulted in the death of Rafic Hariri.²⁰ A court handed down Salim Ayyash's life term in jail while he was away on December 11, 2020. Following international military trials in Nuremberg and the Far East, the most notable tribunals established by the UN were the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Article 21 (4)(d) of the ICTY provides in absentia trial that:

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.²¹

With the exception of the French request to permit proceedings in absentia with an automatic retrial when the accused is arrested, compromise instruments regarding the problem of trial in absentia were adopted by civil law, common law, and international jurisdictions during the formulation of the ICTY legislation.²²

The United Nations Secretary General's Report on the establishment of the ICTY and its statute stated that :

A trial should not commence until the accused is physically present before the international tribunal. There is a widespread perception the trials in absentia should not be provided for in the statute [of the International

¹⁸<https://www.google.com/search?client=firefox-b-d&q=martin+bormann+proceedings>, Last visited : 2023

¹⁹<https://www.stl-tsl.org/en/documents/legal-documents/statute-of-the-tribunal>, Article – 22, Last Visited: 2023

²⁰ <https://www.bbc.com/news/world-middle-east-55271428>

²¹ <http://hrlibrary.umn.edu/icty/statute.html>, last visit dated 11th February, 2023

²² Anne L. Quintal, Rule 61: The 'Voice of the Victims' Screams Out for Justice, 36 Colum. J. Transnat'l L. 723, 743 (1998), sources by www.hrw.org, Report on November 17, 2006.

Criminal Court for the former Yugoslavia] as this would not be consistent with Article 14 of the International Covenant of Civil and Political Rights, which provides that the accused should be tried in his presence.²³

In addition to the referral made in the Prosecutor v. Delalic case under Article 21(4)(d) of the ICTY legislation, the defendant absconded from the trial one morning for an unspecified cause. There were several defendants in that case, and the prosecutor suggested surrendering papers; nevertheless, the court postponed and determined that the defendants had the right to attend the trial.²⁴

Radovan Karadzic and Ratko Mladic, two other suspects under the authority of the ICTY, are not in the tribunal's custody.²⁵ Despite the fact that accused persons have delayed their trials, they will be brought into custody.

Similarly article 20(4)(d) of the statute of ICTR includes that:

To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it.²⁶

Therefore, article 17(4) of the statute of the Special Court of Sierra Leone also provides that:

To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her own choosing; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require, and without payment by him or her in any such case if he or she does not have sufficient means to pay for it²⁷ and also Rule 60 of the Special Court's Rules of Procedure and Evidence further states that Trial in the Absence of the Accused (amended 1 August 2003) :

(A) An accused may not be tried in his absence, unless: (i) the accused has made his initial appearance, has been afforded the right to appear at his own trial, but refuses so to do; or (ii) the accused, having made his initial appearance, is at large and refuses to appear in court.²⁸

(B) In either case the accused may be represented by counsel of his choice, or as directed by a Judge or Trial Chamber. The matter may be permitted to proceed if the Judge or Trial Chamber is satisfied that the accused has, expressly or impliedly, waived his right to be present.²⁹ Both international crimes Ad hoc tribunals are similarly followed the rights in absentia trial for accused .

The International Criminal Court (ICC) was founded on July 1, 2002, under the Rome Statute, which was adopted on July 17, 1998, with the goal of prosecuting international crimes such as crimes against humanity, genocide, war crimes, and crimes against aggression. The International Criminal Court prohibits trials in absentia except in narrow circumstances.

²³ Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993), UN Doc. S/25704, May 3, 1993, and Report of the Secretary-General pursuant to paragraph 2 of Security Council Resolution 808 (1993): Corrigendum, UN Doc. S/25704/Corr.1, July 30, 1993, Part V.A., para. 101, sources by www.hrw.org, Report on November 17, 2006.

²⁴ Prosecutor v. Delalic, International Criminal Tribunal for the former Yugoslavia (ICTY), Case No.IT-96-21, Transcript, November 4, 1997, T. 8967-8976.

²⁵ Human Rights Watch, The Legacy of Srebrenica, Nov. 7, 2005, <http://hrw.org/english/docs/2005/07/11/serbia11364.htm>

²⁶ <https://ihl-databases.icrc.org/en/ihl-treaties/icttr-statute-1994/article-20?activeTab=undefined>, Last visit dated 11th February, 2023

²⁷ <https://ihl-databases.icrc.org/pt/ihl-treaties/scsl-agreement-2002/article-17?activeTab=default>, Last visited: 2023

²⁸ file:///C:/Users/ctgtechno/Downloads/Rules-of-proced-SCSL.pdf, Last visited : 2023

²⁹ Ibid

Article 63 states that:

1. The accused shall be present during the trial.

2. If the accused, being present before the Court, continues to disrupt the trial, the Trial Chamber may remove the accused and shall make provision for him or her to observe the trial and instruct counsel from outside the courtroom, through the use of communications technology, if required. Such measures shall be taken only in exceptional circumstances after other reasonable alternatives have proved inadequate, and only for such duration as is strictly required.³⁰ There were three opposing views on trials in absentia at the time of the debate over the formation of the Rome Statute in 1998.³¹ Three competing groups opined that:

Some delegations believed in absentia hearings should be impermissible in all cases, except where the accused disrupted the trial. These delegations believed that trials in absentia would degenerate into show trials and would quickly discredit the ICC. A second group believed trials in absentia were of little practical value because the accused would have the right to a new trial upon appearance before the court. A third group believed that due to the nature of the crimes in the statute, it would often be impossible to compel the appearance of the accused. Thus, for the court to promote peace, justice, and reconciliation, it would be necessary to hold trials in the absence of the defendants. The first view prevailed.³²

6. Civil and common law Jurisdictional practice in absentia trials:

Absentee trials are prohibited in common law nations such as the United Kingdom, yet there is a focus on the accused even in unusual cases when absentee trials are tolerated. Despite the need that the accused be present during his trial for a severe offense in common law nations like the United Kingdom and Australia.³³ On the contrary, a civil law country such as France has permitted an absentia trial without the accused disappearing before the court.³⁴ Furthermore, due to the inadequacy of trials with international human rights norms, the International Criminal Justice Institutions are not interested in trials in absentia involving international crimes.³⁵

7. Jurisdiction of absentia trials of International Crimes (tribunals) of Bangladesh:

International Criminal Courts were formed in Bangladesh in 2010 under the Act of 1973, which was amended in 2012 to include Section 10A³⁶ to punish those absentee accused of genocide, war crimes, and crimes against humanity. Section 10A(1) of the International Crimes Tribunal act 1973(as amended 2009,2012, and 2013) stated that:

³⁰https://legal.un.org/icc/statute/99_corr/cstatute.htm , Under Article -63

³¹ Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, (Baden-Baden: Nomos Verlagsgesellschaft, 1999), p. 806. Source from: www.hrw.org , report on November 17, 2006.

³² Ibid

³³Lawrence v. The King, [1999] A.C. 699. Source from Guha, Shouvik Kumar. `` The concept of Trials in Absentia in International Criminal Law and the Special Tribunal for Lebanon: An Overview `` Christ University Law Journal, 1,1(2012), P 5

³⁴Report on the `Experts` Roundtable on the Trials in absentia in the International Criminal Justice, September 2016, IBA International Criminal Court International Criminal Tribunal, p.3 [Absentia%20Trial%20%20under%20international%20crimes/document.pdf](#)

³⁵ Ibid , p 5

³⁶ Section 10A of the International Crimes (Tribunals) (Second Amendment) Act, 2012

where a proceeding is commenced under subsection (1) of section 9, the tribunal, before fixing the date for the trial under subsection (2) of the section, has reason to believe that the accused person has absconded or concealed himself so that he cannot be produced for trial, may hold the trial in his absence following the procedure as laid down in the rules and procedure made under section 32 for such trial.³⁷

Under Section 32 of the rules and procedures permitted to the tribunal, it states that:

If the accused, despite publication of notice in daily newspapers, fails to appear before the Tribunal on the date and time so specified therein, and the Tribunal has reason to believe that the accused has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect for arresting him, the trial of such accused shall commence and be held in absentia.³⁸ November 3, 2013, the Bangladesh International Crimes Tribunal Two (ICT-2) delivered the absentia judgment on the significant absentia cases, Ashrafuzzaman Khan @ Naeb Ali Khan, Chowdhury Mueen Uddin, and January 21, 2013, Abul Kalam Azad, in the context of international crimes for genocide and crime against humanity after the formation of the international tribunals. A number of absentee cases are now being heard under the International Crimes Tribunal of Bangladesh (ICT-BD).

Discussing cases:

A) Prosecutor vs. Abul Kalam Azad

On January 21, 2013, the dependant Abul Kalam Azad, an Islamic politician and cleric, was found guilty of genocide and crimes against humanity.³⁹ After completion of the investigation on the basis of the report and documents submitted therewith by the investigation agency, the Chief Prosecutor of International Crimes Tribunal-2 submitted a formal charge on the second September under existing section 9(1) of the act of 1973 before the tribunal that the accused Abul Kalam Azad @ Bachchu as a noteworthy fellow of Razaker, the auxiliary force and also as a distinct had commissioned the violations of crimes against humanity, genocide including the offense of the providing contribution and moral support to the accomplishment of such crimes in different places of Faridpur district during the period of the war of independence in 1971.⁴⁰ Then, under Rule 29(1) of the Rule of Procedure (RoP) 2010, the tribunal took notice of the offenses listed in Section 3(2)(a)(b)(h), and under Rule 30 of the RoP, it issued a warrant. The warrant could not be carried out because Abul Kalam Azad, the accused, was not present.⁴¹ Thereafter, in compliance with Section 10(A) of the legal requirement for holding an absentia trial by appointing state defense counsel to defend the escaped accused, the tribunal heard both sides on framing eight charges against Abul Kalam Azad @ Bachchu by its order dated November 4, 2012, and then trial commenced for the absentee accused of Abul Kalam Azad @ Bachchu.⁴² Before charges against the accused Abul Kalam Azad, the prosecution submitted an execution report before the Tribunal in the Abul Kalam Azad case, stating that:

Dhaka Metropolitan Police (DMP) submitted the execution report before the Tribunal stating that the accused Abul Kalam Azad @ Bachchu could not be arrested as he has already absconded and he is learned to have left the country instantly before earlier warrant for arrest issued by this Tribunal. In this context, the Tribunal, as required under Rule 31⁴³ of the

³⁷ Ibid, Section 10A(1)

³⁸ Section 32 of the international crimes tribunal rules of procedure, 2012

³⁹ Chief prosecutor v. Abul Kalam Azad @ Bachhu case, Last visited: 2023.

⁴⁰ Chief Prosecutor vs Abul Kalam Azad, Ict Case No. 05 of 2012, Page No. 2, para- 1, <http://www.ict-bd.org/ict2/judgements.php>, Last visited: 2023.

⁴¹ Ibid, Page No. – 2, Para- 2

⁴² Ibid, Page – 2, Para- 2

⁴³ Rule 31 of international crimes tribunal rules of procedure, 2010, Last visited: 2023

ROP, ordered to publish a notice in two daily newspapers, one in Bangla and another in English asking the accused to appear before this Tribunal within ten (10) day from the date of publication of such notice.

Therefore, the notice has been published on October 25 issue of "The Daily Janakantha" (Bengali Daily) and "The Daily Star"(English Daily). But despite publication of such notice the accused has not appeared before this Tribunal.⁴⁴ Subsequently, tribunal is framing the Charges of the in absentee accused of AbulKalam Azad , tribunal ordered for holding absentia trial by appointing state defense counsel under section 12⁴⁵ to defend on behalf of the absconded accused and has the ability to hold trials in absentia is such a way to refrain from violation of human rights norms which is guaranteed by the International Covenant on Civil and Political Rights and other international agreement.⁴⁶

Prosecution examined Azad's cases twenty witness and the state defense counsel cross examination as well of the all prosecution witness and he would not present any defense witness.⁴⁷ Having considered all evidence and arguments, the Tribunal consistently finds the accused AbulKalam Azad is found guilty of offences crimes against humanity and for the offence of genocide and he will be convicted and sentenced to death and be hanged by neck till he is dead under section 20(2) of the International Crimes (Tribunals) Act, 1973 and since the convicted accused has been absconding the sentence of death as awarded above shall be executed after causing his arrest or when surrenders before the tribunal, whichever is earlier.⁴⁸

B) Chief Prosecutor vs Ashrafuzzamab khan @ Naeb Ali Khan and Chowdhury MueenUddin.

Ashrafuzzamab khan @ Naeb Ali Khan was a non- resident student of Dhaka University and was a central committee member of IslamiChatraSangha and also he was allegedly assigned with the responsibility of member of Al- Badar high command in Dhaka and ChowdhuryMueenUddin was a student of Dhaka University till independence of Bangladesh and he also had served as staff reporter of the Daily purbadesh and he was also allegedly a central leader of IslamiChatraSanga (ICS).⁴⁹ Following an investigation, the investigation agency of the International Crimes tribunals of Bangladesh separately submitted reports concluding that Asrafuzzamab Khan @ Naeb Ali Khan and ChowdhuryMueenUddin were prima facie responsible for the atrocities of intellectual killing between December 10, 1971, and December 15, 1971.⁵⁰ According to rule 36 under the Rules of Procedure 2012 , the Chief Prosecutor filed a formal single charge detailing the nature and pattern of the identical atrocities committed by both defendants.⁵¹ According to rule 29(1) of the rules of procedure (RoP), the tribunal then took cognizance of the charges listed in section 3(2)(a)(b)(h) of the

⁴⁴ Chief Prosecutor vs AbulKalam Azad, IctCase No. 05 of 2012, Page No. 8, para- 20, <http://www.ict-bd.org/ict2/judgements.php>, Last visited: 2023

⁴⁵ Where accused person is not represented by counsel, the Tribunal may , at any stage of the case, direct that a counsel shall be engaged at the expense of the Government to defend the accused person and may also determine the fees to be paid to such counsel.

⁴⁶ Ibid, Page No. 11, Para- 26

⁴⁷ Ibid, Page No. 11, Para- 28

⁴⁸ Ibid, Page No. 111, Para -

⁴⁹ Chief Prosecutor vs Ashrafuzzamab khan @ Naeb Ali Khan & ChowdhuryMueenUddin , ICT Case No. 01 of 2013 , Pp. (8-9) , Para- (16-17) , <http://www.ict-bd.org/ict2/judgements.php>, Last visited : 2023

⁵⁰ Ibid, Para- 17

⁵¹ Ibid, Para- 18

Act of 1973 against Ashrafuzzamab Khan @ Naeb Ali Khan and ChowdhuryMueenUddin, and issued an arrest warrant for the accused so that they may appear in tribunal.⁵²

Due to the accused's absence, the Dhaka Metropolitan Police's enforcement unit was unable to carry out the arrest warrant. In accordance with the law, Dhaka Metropolitan Police submitted an execution report to the tribunal, stating that the accused could not be detained because they had fled the country and were believed to have done so for a long time. As required by Rule 31, the tribunal then ordered notice to be published in two daily newspapers, one in Bangla and another in English, requesting that the accused appear before the tribunal within 10(ten) days of the notice publication.⁵³ In accordance with section 10A(1) of the International Crimes (Tribunals) Act 1973 (as amended 2009,2012,and 2013) and section 32 of the Rules of Procedure, the tribunal ordered the trial against the accused be conducted in absentia and appointed a state defense counsel to represent absentee defendants because it had reason to believe the accused had fled and could not be detained and produced before the tribunal.⁵⁴ At the hearing, 11 (eleven) charges were brought against the accused who were not present by both the prosecution and the state defense counsel tribunals.⁵⁵ The state defense counsel cross-examined each of the 25(twenty five) witnesses called by the prosecution, including the investigating officer also , but he refused to call any defense witnesses.⁵⁶ After considering all evidence and arguments, the tribunal unanimously finds that there would be a failure of justice in case ` capital punishment' is not awarded for all murders forming ` large scale killing' and the accused persons Ashrafuzzamab Khan @ Naeb Ali Khan and ChowdhuryMueenUddin who have been found all 11(eleven) charges guilty beyond a reasonable doubt are condemned to a `single sentence of death' under section 20(2) of the Act 1973 and since the accused persons have been absconding the ` sentence of death' as awarded above shall be executed after causing their arrest or when the surrender before the tribunal, whichever is earlier.⁵⁷

8. Concluding Remarks and Suggestion

Conventions regulating the international criminal justice system typically forbid in absentia trials; nevertheless, Lebanon Special tribunal and Bangladesh's international crimes tribunal permits the practice of in absentia trials of international crimes.Despite the fact that Bangladesh is a signatory to the convention and has also amended this treaty, the inclusion of the International Crimes Tribunal of Bangladesh in Section 10A(1) violates the rights of the accused as stated in the International Civil and Political Rights (ICCPR) underarticle 14(3)(d) . Defendants are given fundamental rights to a fair trial and the opportunity to appear in court under international criminal law norms. It is claimed that speedy trial and the administration of justice are crucial fair trial rights under international criminal law and are thus protected while adopting an in absentia procedure. When considering Section 10A(1) of International Crimes Tribunals Act 1973 (as amended in 2009, 2012, and 2013) and Section 32 of its 2010 rule of procedure, there is a gap or gray area in an absentia trial under the International Crimes. That act or technique is either added to a section for a retrial and appeal or deleted from Section 10(A) in accordance with the immediately modification and revision of the ICT-BD and its rules and procedures to reflect the adoption of ICCPR recommendations and guidelines.

In the two cases discussed in the paper, the defendants received "single sentences of death" after being found guilty under Section 20(2) of the Act of 1973. Because the defendants have been

⁵² Ibid, Para- 20

⁵³ Ibid, Para- 21

⁵⁴ Ibid, Para- 22

⁵⁵ Ibid, Para- 24

⁵⁶ Ibid, Para- 25

⁵⁷ Ibid, Para- 451-453

evading justice, the "single sentences of death" as awarded above will be carried out after their arrest or when they appear before the court, whichever occurs first. Single death sentences are an unsettling procedural restriction that occasionally prevents prisoners from receiving a fair trial and denies them their access to justice. Therefore, The International Crimes Tribunals Act 1973(as amended 2009, 2012, and 2013) and its Rules of Procedure (RoP) 2010, as well as the elimination of death sentences handed down in absentia, shall also be taken into concern when determining the exact location of accused, properly summoning, compulsorily prosecuting, and hearing defense witnesses, ensuring the right to defense, and ensuring a lengthy enough pre-conviction period to comply with international criminal justice.

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