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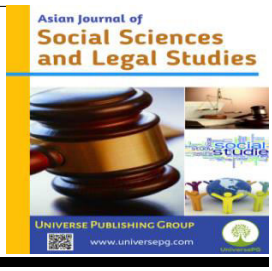

Research Article

Addressing the Residual Legacy of Colonialism During the British Raj of Pre-Bangladesh Era with Transitional Justice

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Abstract

This paper explores the residual impact including enduring socio-economic, cultural, and legal distortions of British colonialism in Bangladesh of British colonialism in the Bangladesh and evaluates the relevance of international law and transitional justice. Using doctrinal research approaches, the study draws upon international legal treaties, historical case analysis, and cross-jurisdictional models. The research concludes that colonial-era policies, such as the *Permanent Settlement Act*, *Jallianwala Bagh massacre* and famine management strategies, constitute gross violations under international law. However, Bangladesh lacks institutional mechanisms for redress. The research finds a normative and institutional gap in redressing colonial harms through legal and policy frameworks. It concludes that the institution of a hybrid transitional justice framework which is necessary to restore historical accountability and equity. Ergo, the paper tried to advocate for implementation of mechanism of transitional justice within national legislations for reconciliation with the past, institutional reform, and sustainable development.

Keywords: Colonialism, Transitional justice, Reparations, International law, and Bangladesh.

1. Introduction

Over 300 years, the British Empire colonized over half of the world's population from the 16th to the early 19th century (Ferguson, 2003; Dalrymple, 2019). However, when it comes to the topic of colonial crimes or compensating the inhabitants of the colonies or aggrieved states, a small amount of ink has spread in the matter (Said, 1994). As cultures deal with the complex inheritance of colonialism and its deep socioeconomic, cultural, and political impacts, the echoes from this challenging period continue. The South Asian nation of Bangladesh remains profoundly affected by its colonial domination. Once known as the Bengal region, comprising East Bengal and parts of Assam during the Mughal period, and later as East Bengal under the British Raj, it eventually became East Pakistan following the partition of India in 1947 (Chatterji, 1994; Talbot and Singh, 2009). For example, policies such as prioritizing export crops over food production, imposing heavy taxes, and disregarding indigenous agricultural practices killed around 100 million people (Davis, 2001), and the 'Partition of Bengal (1905)' and subsequent 1947 was motivated by British colonial methods such as 'Divide and Rule', which sought to undercut nationalist movements and preserve authority (Seal, 1971; Chatterji, 1994). The 1905 separation was reversed owing to considerable resistance, but it laid the framework for future communal divide (Bose, 2006; Sobseh, 2024).

In addition, the colonial-era laws of Bangladesh protect the powerful over the public. These laws, which were originally enacted to uphold British rule, continue to dominate the legal and administrative institutions to this day (Siddiqi, 2000; White, 1996). Such laws sometimes contain ambiguous phrases that provide the government with vast discretionary powers, thus enabling non-accountability and corruption. The effects of this long period of exploitation and domination are still visible today in the country's social, economic, political, and cultural development (Sen, 1999). The notion of transitional justice goes beyond conventional legalistic frameworks and retributive justice approaches and engages with political, cultural, and social processes of repair (Teitel, 2000). There has been a lot of progress that's been made in this arena, both as a field of practice and as a field of academic research. It has pushed the boundaries beyond its focus on the conventional comfort zone of civil and political rights in post-autocratic states (Collins, 2006; Mamdani, 2001). Take, for example, the work being done on transitional justice and economic policy by the World Bank Institute, or the work on transitional justice in rural communities by Yale Law School (Yale Law School, 2016). The instant paper explores the effects of colonization emphasizing Bangladesh and the reason why the country needs reparations and transitional justice. The main point is that reparations and transitional justice define important mechanisms that can help address the historical context of the colonial period and will provide such an opportunity to develop comprehensive reparations with the lapse of time that can help acknowledge atrocities, empower individuals, and support generational healing and overall development.

Theoretical Overview

The legacy of colonialism has been a subject of extensive academic investigation, with scholars from various fields exploring the long-term effects of colonialism and the need for reparatory justice. The expansionist endeavours of European nations, such as Britain, France, Spain, and Portugal, and their colonization of Africa, Asia, the Americas, and Oceania, have been the subject of numerous works. Scholars like Eric Williams and Frantz Fanon have explored the economic, political, and psychological repercussions of colonial supremacy in their respective works (Fanon, 2000; Williams, 1994). Colonialism was characterized by economic exploitation and the extraction of resources, which contributed to the perpetuation of long-lasting disparities. Walter Rodney and Eduardo Galeano have examined the influence of colonialism on economic growth, highlighting the need for reparations as a tool to redress political and economic injustices and promote sustainable development (Galeano & Allende, 2021; Rodney, 2018). Reparations and transitional justice have focused mostly on the violation of human rights that occurred during colonial rule. Aimé Césaire's *Discourse on Colonialism* and Mahmood Mamdani's *Citizen and Subject* contribute to discourses on responsibility, truth-telling, and the role of judicial institutions in resolving past violations of human rights (Mamdani, 1996). The *Handbook of Reparations* and Ruti Teitel's (2000) *Transitional Justice* analyze the legal aspects of transitional justice and reparations, emphasizing the need for international collaboration and the difficulties associated with implementing efficient systems. Additionally, Achille Mbembe's *Critique of Black Reason* and Mamdani's *Saviors and Survivors* critically engage with concepts of victimization and memory, as well as the complexity of resolving past injustices in post-colonial settings (Mbembe, 2017; Mamdani, 2009).

After accentuating the aforesaid backdrops, the studies, however, often overlook the specific atrocities committed in Bengal, such as the Bengal Famine of 1943, the Jallianwala Bagh massacre, the Bengal Famine of 1770, the Permanent Settlement Act of 1793, the Indigo Revolt (1859–1860), and 'Partition of Bengal (1905)', which were major events in the British rule in Bengal and had profound implications for understanding colonial brutality in the region (Mallik, 2022; Naidis & Fein, 1978). The history of colonial crimes in Bangladesh dates back to the inauguration of the British East India Company in the Indian subcontinent. The British Empire's rule was marked by forced labour, land confiscations, and economic exploitation, leading to widespread poverty and hunger. The British also imposed heavy taxes on the local population, suppressing dissent and resistance through violence and repression (Mukherjee, 2011). The Bengal Famine of 1943, a tragic example of colonial neglect, was the result of the British colonial administration's disregard for the lives and

well-being of the local population (Mallik, 2022). The British colonialists enforced discriminatory policies, perpetuating social and racial hierarchies. The Jallianwala Bagh massacre in 1919 further exacerbated anti-colonial sentiments and contributed to the demand for independence (Naidis & Fein, 1978; Wolff, 2021; Bibi and Bibi, 2025).

The crimes committed during colonial rule laid the foundation for economic disparities, social injustices, and political instability that persist today. The legacy of colonialism remains a subject of study and reflection, informing efforts to address historical injustices and build a more equitable and inclusive society. The legacy of colonialism in Bangladesh is multifaceted, encompassing socio-economic disparities, cultural erosion, and governance challenges that continue to shape the country's development and trajectory (Bandyopadhyay, 2009). These aforementioned events resulted in heavy taxation, hoarding, and natural disasters, as well as exploitation of peasants and evictions. Additionally, although the overall effects of colonialism are extensively studied, there is a notable lack of literature that explicitly examines the lasting consequences of colonialism in Bengal, especially during the period before Bangladesh was established. Therefore, the suppression of the Bengali language movement in 1952 was influenced by colonial legacies. Economic exploitation, cultural suppression, military repression, and environmental degradation were also significant issues which were neither scrutinized under the eye of international law concretely nor under transitional justice (Grieves, 2006; Loytomaki, 2013).

Transitional justice is a term that defines the procedures, both legal and non-judicial, that societies utilize in order to cope with historical wrongs that are connected to large breaches of human rights. In the writings of researchers such as (Teitel, 2000; Elster, 2004), essential understandings regarding the frameworks and processes in transitional justice are provided. Truth commissions, reparations, and institutional changes are emphasized as fundamental components of transitional justice. But when we consider the application of transitional justice to circumstances that include colonialism, we find that it has its own unique challenges. This is due to the fact that colonialism has not been universally recognized as a criminal offense within the framework of international law (De Greiff, 2017). It is important to note that reparations and restitution play a significant part in transitional justice since they provide genuine remedies to those who have endured the effects of this time, as well as to the offspring of those individuals (Craemer, 2015). On the other hand, international law is not without its shortcomings when it comes to the classification and management of colonial injustices. To account for this, inventive legal explanations and changes are required (Moran, 2018; Guematcha, 2019).

When all other options have been exhausted, the last resort is often to pursue legal action via court lawsuits or historical injustices. These strategies, on the other hand, have the potential to bring to light faults within domestic institutions and prompt public understanding. The literature makes it abundantly clear that the outcomes of cases involving colonial injustices are not uniform. Another significant area that has to be investigated is the shifting conception of legal subjectivity and agency in the context of colonial situations. The identities of individuals who were being colonized were ignored by two different sorts of dominance that occurred throughout the process of colonization. A number of academics, including (Prott, 2009; Vrdoljak, 2008), have brought attention to the vital need of returning items to the civilizations from which they originated. This is because these things are essential components of cultural identity and historical recall. The ever-evolving legal and moral frameworks associated with the restoration of cultural heritage bring to light the significance of techniques that are all-encompassing and engage all individuals. The literature on addressing the lasting effects of colonialism during the British Raj and the pre-Bangladesh era with transitional justice under international law is extensive and complex. Although progress has been made in comprehending and tackling past injustices, there are still important gaps and obstacles that need to be addressed. This literature review emphasizes the importance of implementing legal frameworks that bring about transformation, utilizing non-judicial mechanisms that foster innovation, and adopting multidisciplinary approaches to address colonial harms and promote long-lasting justice and reconciliation. The proposed research seeks to make a valuable contribution to the ongoing discussion by delving

into the unique historical and legal circumstances of Bangladesh. It aims to develop both theoretical and practical approaches to address the challenges of transitional justice in post-colonial societies. Bangladesh's socioeconomic structure has been significantly impacted by colonialism. The British Empire exploited the nation's resources when it was under colonial authority, resulting in enormous economic discrepancies that still exist today (van Schendel, 2015; Pandita, 2017).

Lack of fair recompense for the extraction of agricultural goods and raw minerals prevented local economies from expanding and becoming self-sufficient, which prolonged their reliance on international markets (Sen, 1999). Due to this economic exploitation, there is an uneven distribution of income, restricted access to healthcare and education, and enduring poverty in many areas of the nation (Huque, 1997). In addition, colonialism destroyed Bangladesh's cultural identity and traditions, similar to the way Native American knowledge and customs were devalued by the adoption of Western cultural norms, languages, and educational institutions (Haque, 2018). When their languages, habits, and practices were subjected to the dominant colonial culture, the great cultural variety and distinctive history of the Bangladeshi people suffered (Kabir & Chowdhury, 2021). The population of Bangladesh saw a decline in dignity and self-worth as a result of this cultural disintergration, which also hindered the intergenerational transfer of cultural values, customs, and knowledge systems (Sen, 1999; Mukherjee, 2011).

Moreover, colonialism had a significant influence on Bangladesh's governmental and legal frameworks. The British colonial administration introduced a system of governance that prioritized the interests of the colonizers and perpetuated a hierarchical power structure (Huque, 1997). This legacy is evident in the enduring challenges faced by the country's institutions, such as corruption, bureaucratic inefficiencies, and limited access to justice. The legal systems inherited from the colonial period often perpetuate inequality and fail to adequately address historical injustices, leaving marginalized communities without proper avenues for seeking redress (Pandita, 2017; Kabir and Chowdhury, 2021). In India's post-independence era, the suppression of political violence has led to research on marginalized communities' experiences. Tarlo, (2002) highlights the challenges in uncovering memories of state-inflicted violence against the Naxalbari movement in western Bengal during the early 1970s. The idea of solely relying on narratives for healing traumatic encounters of custodial violence may sterilize and regulate the radical and disruptive nature of acts like rape or torture. Roy's work explores how women's reminiscences often use the body as a tangible embodiment of violence and a surrogate for verbal articulation. Although recollections of violence related to the Naxalbari movement have not been officially commemorated, sites of violence aligning with nationalist narratives have been consecrated in India (Tarlo, 2002). Mookherjee discusses similar sites in Bangladesh, where the 'martyred intellectuals' who lost their lives in the 1971 conflict with West Pakistan have become a central focal point of remembrance. These legacies of colonialism continue to manifest in the present-day socio-political landscape of Bangladesh, hindering the country's progress towards inclusive and sustainable development. The socio-economic disparities perpetuated by colonial exploitation contribute to persistent poverty and hinder equitable growth. The erosion of cultural identity and knowledge systems affects the sense of belonging and cultural pride of the Bangladeshi people. The governance challenges inherited from colonial rule undermine effective administration, accountability, and access to justice. Recognizing the profound impact of colonialism on Bangladesh, it becomes crucial to address these historical injustices through reparations and transitional justice mechanisms. By acknowledging past atrocities, providing restitution, and fostering reconciliation, reparations can play a pivotal role in rectifying the socio-economic disparities caused by colonial exploitation (Mallik, 2022).

Transitional justice mechanisms, including truth commissions, prosecutions, and reparatory measures, can help restore dignity, promote healing, and rebuild trust in the governance and legal systems. Ergo, the legacy of colonialism in Bangladesh is characterized by socio-economic disparities, cultural erosion, and governance challenges. These consequences of colonial rule continue to hinder the country's development and well-being. Acknowledging and addressing these issues through reparations and transitional justice mechanisms is

essential for promoting justice, reconciliation, and sustainable development in Bangladesh.

2. Methodology

I adopted doctrinal research method and quantitative research method for the research. Since the colonial crimes took place around one hundred years ago, the possibility to conduct qualitative research was not possible due to time constraints. Nevertheless, the approach of the paper involved studying history, legal investigation, comparison of case studies, and collecting qualitative data. To begin with, I tried to conduct a comprehensive historical inquiry into the phenomenon of colonialism as well as the history of the Pre-Bangladesh era. This stage involved examining primary and secondary sources, including historical documents, colonial administrative records, and academic papers, in order to track the progression of British colonial power in the Bengal region. Subsequently, I tried to conduct legal analysis to explore the international legal instruments applicable to the acts of colonial brutality in Bangladesh. It was necessary to examine international accords, treaties, and past legal precedents pertaining to crimes against humanity, genocide, and war crimes. I attempted to evaluate the compatibility of colonial activities with these structures and tried to identify challenges in holding previous colonial powers accountable.

Additionally, I tried to analyze the current legislative frameworks pertaining to reparations and transitional justice to create a benchmark of the crimes. To enhance understanding of the use of transitional justice systems in Bangladesh, I tried to do a comprehensive analysis of other post-colonial states that have adopted or will adopt their approaches regarding their policies and strategy.

Through a comparative analysis of these case studies, my objective was to identify the most efficacious strategies used by other nations, as well as their errors and potential challenges. This was intended to enable me to implement transitional justice approaches in Bangladesh. The research tried to use comparative case studies to improve comprehension of the implementation of transitional justice procedures in Bangladesh. Upon gathering the data, I proceeded to evaluate and consolidate all the results.

3. Results

The doctrinal and comparative analysis reveals that the legacy of colonial governance in Bengal (later Bangladesh) is institutionally entrenched and manifests through enduring legal, economic, and cultural asymmetries. Historical inquiry into primary and secondary sources established a pattern of coercive state-building and systemic dispossession, particularly evident in policies such as the Permanent Settlement Act of 1793, the Division of Bengal (1905 and 1947), and the colonial famine response mechanisms during the Bengal Famines of 1770 and 1943. These policies, taken cumulatively, qualify as gross violations under contemporary international humanitarian and human rights law, including the Rome Statute of the International Criminal Court, Articles 7 and 8 (Crimes Against Humanity and War Crimes), particularly in their invocation of starvation as a method of subjugation.

Legal analysis of the relevant international treaties, including ICCPR, ICESCR, and UN Basic Principles on the Right to a Remedy and Reparation (2005), suggests that many of the colonial practices in Bengal fall within the ambit of acts that would today be recognized as triggering the right to reparation. This is reinforced by comparative evidence drawn from reparatory justice frameworks in South Africa (post-Apartheid TRC), Canada (Truth and Reconciliation Commission for Indigenous Peoples), and Guatemala, indicating both state and international responsibilities for historical redress. The absence of such reparative mechanisms in the context of Bangladesh illustrates a conspicuous lacuna in international legal enforcement, despite strong normative foundations.

A cross-national comparative study revealed that transitional justice in post-colonial societies requires a hybrid model, one that integrates both symbolic acknowledgment (truth-telling, memorialization) and material reparations (land reform, educational redress, legal reforms). Notably, South Africa's Promotion of National Unity and Reconciliation Act 34 of 1995, and Canada's restitution policies under Crown-Indigenous Relations and Northern Affairs, demonstrate viable legal and institutional models adaptable to the Bangladeshi context. However, these examples also highlight pitfalls, such as the under-inclusion of economic reparations and the persistence of institutional bias.

Empirical content drawn from legislative reviews and public policy analyses in Bangladesh shows that vestiges of colonial governance, particularly in administrative discretion, police powers, and land tenure systems, continue to disenfranchise historically marginalized populations. Surveys of parliamentary debates and judgments from the Supreme Court of Bangladesh show sporadic recognition of colonial harms but no coherent transitional justice mechanism tailored to Bangladesh's unique colonial past. This reinforces the necessity for a legally codified transitional justice agenda, supported by constitutional and international human rights frameworks.

4. Discussion

Colonialism, originating in the 15th century, involved the expansion of a nation's control over another territory for economic or political gain. This practice led to numerous human rights abuses against the populations they colonized, including forced labour, slavery, massacres, and land theft. Indigenous populations were often seen as inferior and subjected to discrimination and subjugation. The history of colonial crimes in Bangladesh dates back to the British Empire, primarily under the British East India Company. The British Empire's rule was marked by forced labour, land confiscations, and economic exploitation, leading to widespread poverty and hunger (Sen, 1999). The British also imposed heavy taxes on the local population, suppressing dissent and resistance through violence and repression (Schendel, 2015).

The Bengal Famine of 1943 is a tragic example of colonial neglect, caused largely by the British colonial administration's disregard for the lives and well-being of the local population (Mallik, 2022). The British enforced discriminatory policies, perpetuating social and racial hierarchies. The *Jallianwala Bagh* massacre in 1919 further exacerbated anti-colonial sentiments and contributed to the demand for independence (Naidis & Fein, 1978). The crimes committed during colonial rule laid the foundation for economic disparities, social injustices, and political instability that persist today. The legacy of colonialism remains a subject of study and reflection, informing efforts to address historical injustices and build a more equitable and inclusive society (Huque, 1997; Pandita, 2017).

The legacy of colonialism in Bangladesh is multifaceted, encompassing socio-economic disparities, cultural erosion, and governance challenges that continue to shape the country's development and trajectory. Bangladesh's socioeconomic structure has been significantly impacted by colonialism. The British Empire exploited the nation's resources when it was under colonial authority, resulting in enormous economic discrepancies that still exist today (Sen, 1999; Pandita, 2017). Lack of fair recompense for the extraction of agricultural goods and raw minerals prevented local economies from expanding and becoming self-sufficient, prolonging their reliance on international markets (Huque, 1997). Due to this economic exploitation, there is an uneven distribution of income, restricted access to healthcare and education, and enduring poverty in many areas of the nation (Kabir & Chowdhury, 2021).

Second, colonialism destroyed Bangladesh's cultural identity and traditions. Similar to the devaluation of Native American knowledge and customs under colonial education systems, Western cultural norms, languages, and institutions supplanted indigenous epistemologies in Bengal (Haque, 2018). When their languages, habits, and practices were subjected to the dominant colonial culture, the great cultural variety and distinctive history of the Bangladeshi people suffered (Mukherjee, 2011; Wolff, 2021). The population of Bangladesh saw a decline in dignity and self-worth as a result of this cultural disintegration, which hindered the intergenerational transfer of values, customs, and knowledge systems (Haque, 2018).

Moreover, colonialism had a significant influence on Bangladesh's governmental and legal frameworks. The British colonial administration introduced a system of governance that prioritized the interests of the colonizers and perpetuated a hierarchical power structure (Schendel, 2015). This legacy is evident in the enduring challenges faced by the country's institutions, such as corruption, bureaucratic inefficiencies, and limited access to justice (Huque, 1997). The legal systems inherited from the colonial period often perpetuate inequality and fail to adequately address historical injustices, leaving marginalized communities without proper avenues for seeking redress (Kabir & Chowdhury, 2021).

In India's post-independence era, the suppression of political violence has led to research on marginalized communities' experiences. Tarlo's, (2002) *Unsettling Memories: Narratives of the Emergency in Delhi* highlights the challenges in uncovering memories of state-inflicted violence against the Naxalbari movement in western Bengal during the early 1970s. The idea of solely relying on narratives for healing traumatic encounters of custodial violence may sterilize and regulate the radical and disruptive nature of acts like rape or torture. Roy's study explores how women's reminiscences often use the body as a tangible embodiment of violence and a surrogate for verbal articulation (Tarlo, 2002). Although recollections of violence related to the Naxalbari movement have not been officially commemorated, sites of violence aligning with nationalist narratives have been consecrated in India (Bandyopadhyay, 2009). Mookherjee, (2011) discusses similar sites in Bangladesh, where the 'martyred intellectuals' who lost their lives in the 1971 conflict with West Pakistan have become central focal points of remembrance. These legacies of colonialism continue to manifest in the present-day socio-political landscape of Bangladesh, hindering the country's progress towards inclusive and sustainable development. The socio-economic disparities perpetuated by colonial exploitation contribute to persistent poverty and hinder equitable growth (Sen, 1999; Pandita, 2017). The erosion of cultural identity and knowledge systems affects the sense of belonging and cultural pride of the Bangladeshi people (Haque, 2018). The governance challenges inherited from colonial rule undermine effective administration, accountability, and access to justice (Huque, 1997; Kabir and Chowdhury, 2021).

Recognizing the profound impact of colonialism on Bangladesh, it becomes crucial to address these historical injustices through reparations and transitional justice mechanisms. By acknowledging past atrocities, providing restitution, and fostering reconciliation, reparations can play a pivotal role in rectifying the socio-economic disparities caused by colonial exploitation. Transitional justice mechanisms, including truth commissions, prosecutions, and reparatory measures, can help restore dignity, promote healing, and rebuild trust in governance and legal systems. Ergo, the legacy of colonialism in Bangladesh is characterized by socio-economic disparities, cultural erosion, and governance challenges. Acknowledging and addressing these issues through reparations and transitional justice mechanisms is essential for promoting justice, reconciliation, and sustainable development in Bangladesh.

Paradigm of International Law

The role of law in addressing the legacies of colonialism remains deeply ambivalent. Historically, international and domestic legal systems have been criticized for their partiality, structural biases, and capacity to reproduce rather than correct historical injustices. Yet, these same systems also contain tools that can facilitate accountability and recognition. Critical legal scholars argue that law embodies both domination and potential emancipation: while its foundations often reflect colonial power, it also offers mechanisms that can be reinterpreted to seek justice for past wrongs. Judge McCombe's observation in the *Mau Mau* litigation underscores this paradox that the persistent inaction of authorities, despite their ability to prevent abuse, may itself constitute policy (*Mutua v Foreign & Commonwealth Office* [2011] EWHC 1913 (QB)). Hence, legal reform and reinterpretation may become essential avenues for redress. Both formal judicial mechanisms and alternative procedures such as truth commissions, inquiries, and reconciliation initiatives require well-defined frameworks to classify historical acts consistently and evaluate claims of harm or injustice. As noted in the *National Inquiry into Missing and Murdered Indigenous Women and Girls* (NIMMIWG, 2019), the process of categorization plays a decisive role in ensuring that findings and acknowledgments are credible, particularly for the descendants and communities affected by colonial violence.

Despite its evolution, international law still exhibits substantial limitations in addressing colonial wrongs. Acts that are today recognized as international crimes were not necessarily framed as such in earlier legal orders, and colonialism itself has not been universally codified as a crime. These constraints, however, are not immutable. The interpretation of causation and temporality, as the (NIMMIWG, 2019) report suggests, depends on value-based judgments and the willingness of states to relax legal barriers such as statutes of limitation. Historical injustices may require a flexible under-

standing of time, especially when the harm's structure prevented victims from seeking justice earlier. While litigation often functions as a last resort, it can illuminate the deficiencies of domestic systems and prompt societal reflection. In a notable French case concerning the country's role in the slave trade and slavery in Martinique, the court distinguished between moral and legal responsibility: although no enforceable duty to provide reparations was found, the state was nevertheless recognized as sharing responsibility for these historical wrongs and for preserving their memory (Bessone, 2019; Duffy, 2018; ECCHR, 2019). Such proceedings demonstrate that legal action, even when limited in remedial capacity, can still contribute to public recognition, stimulate dialogue, and create space for multidirectional remembrance (Rothberg, 2009). Recent legal developments show movement in three main areas: the relationship between justice and time, evolving conceptions of legal subjectivity, and the treatment of cultural artifacts obtained through colonial processes. Rigid adherence to historical norms can perpetuate injustice, but interpretive flexibility such as contextual readings of older laws or exceptions to the intertemporal rule (*tempus regit actum*) can allow the law to address structural wrongs (Goldmann & von Loebenstein, 2020; Venzke, 2012).

As discussed by some judges in *Cameroon v Nigeria* (ICJ Reports 2002), *jus cogens* principles may justify limiting the intertemporal rule's application. Likewise, the spirit of the Radbruch formula can guide the re-evaluation of norms that once enabled oppression. Dutch jurisprudence provides concrete examples of this shift. In cases such as *Rawagede*, *South Sulawesi*, and *East Java*, courts rejected the assumption that claims for colonial-era violence are automatically barred by evidentiary or temporal obstacles (van den Herik, 2018). The Hague Court of Appeal's 2019 rulings further clarified that statutes of limitation should not preclude justice when the wrongdoing was extraordinary, when the state had knowledge but failed to act, or when applying strict limitation rules would be fundamentally unfair (*Children of Executed Men v The Netherlands*, 2019; *Heirs Java Torture Victim v The Netherlands*, 2019). These decisions highlight the emerging principle that fairness and good faith can constrain domestic legislators from silencing historical claims entirely.

Changing conceptions of legal personhood and agency are equally significant. Colonial frameworks historically denied many communities the status of legal subjects, treating them instead as objects of governance. Yet, many of these communities such as chiefdoms, kingdoms, and tribal confederations possessed well-developed systems of authority and law that did not fit European categories of sovereignty (Cobb, 2005; Hébié, 2015; Hobbs, 2019). Recognizing these systems challenges the Eurocentric assumptions embedded in international law's historical development. In settler colonial contexts like those of Australia, New Zealand, Canada, and the United States, treaty processes have become mechanisms to confront historical injustice and support reconciliation, a movement exemplified by Australia's *Uluru Statement from the Heart* (Hobbs, 2019). These shifts are mirrored in debates about the ownership and return of cultural objects taken during colonial rule. As Prott (2009) observes, such artifacts act as "witnesses to history," embodying the cultural narratives of the communities from which they originated. Their restitution is not merely material; it restores dignity and transforms formerly colonized peoples from passive subjects into active participants in shaping historical memory.

The rights to restitution and participation are also rooted in broader legal principles, including equality, self-determination, and cultural rights (United Nations, 2007). Under the *United Nations Declaration on the Rights of Indigenous Peoples* (2007), communities have the right to access and control their cultural heritage. From a relational standpoint, claims for the return of artifacts are not only retrospective but prospective grounded in the ongoing relationship between people, history, and identity. This logic underpins arguments in cases concerning the Parthenon Marbles and the *Venus of Cyrene*, where cultural property has been linked to a community's right to self-definition and sovereignty (Webb v Ireland [1988] IESC 1; *Government of Iran v Barakat Galleries Ltd* [2007] EWCA Civ 1374).

Transitional Justice in Bangladesh

Efforts to achieve transitional justice in Bangladesh stem from the country's long-standing pursuit of accountability for the atrocities of the 1971 Liberation War. During that conflict, grave violations of human rights and humanitarian law were

perpetrated, including targeted killings, disappearances, and acts of sexual violence. In the years following independence, the state sought to confront these crimes by adopting the International Crimes (Tribunals) Act of 1973 (ICTA), a statute designed to prosecute serious international offenses under domestic law (International Crimes [Tribunals] Act, 1973).

The ICTA represented one of the earliest attempts in the Global South to integrate principles of international criminal justice into a national legal framework. However, political transitions and institutional instability delayed its practical enforcement (Teitel, 2000). Decades later, Bangladesh reactivated the Act by creating a special tribunal empowered to address war-era crimes (Human Rights Watch, 2013). Although the tribunal's authority derived from domestic law, it mirrored aspects of international criminal procedure. Nevertheless, several observers identified short-comings particularly the absence of comprehensive appeal mechanisms, independent appellate oversight, and strong protection for witnesses and victims (Amnesty International, 2013). From a juris-prudential perspective, the tribunal's activities helped establish national interpretations of complex offenses such as genocide and crimes against humanity. However, its engagement with inter-national precedents especially from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) was uneven. Influential decisions such as *Prosecutor v. Tadić* (ICTY, 1999) and *Prosecutor v. Delalić* (ICTY, 2001) articulated doctrines of command responsibility and collective criminal liability that the Bangladeshi tribunal could have incorporated more systematically. Despite its contribution to ending impunity, the overall app-roach remained largely punitive, focusing on criminal accountability without parallel initiatives for truth recovery or societal reconciliation (United Nations General Assembly [UNGA], 2005).

This prosecutorial focus has meant that many affected populations such as survivors of sexual violence, religious minorities, and displaced persons have received limited recognition or redress (Saikia, 2011). The lack of formal truth-seeking or reparations programs also challenges Bangladesh's compliance with global norms, including the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation (UNGA, 2005) and Article 14 of the International Covenant on Civil and Political Rights (United Nations, 1966). These gaps have prevented the emergence of a comprehensive framework capable of addressing both the material and psychological consequences of past violence. Furthermore, Bangladesh's transitional justice practice has yet to adopt restorative or community-based mechanisms that promote reconciliation and collective remembrance (Skaar *et al*., 2016). Other post-conflict contexts demonstrate that sustainable peace depends on inclusive processes of dialogue, historical acknowledgment, and institutional reform. The absence of such measures in Bangladesh has kept the process fragmented focused primarily on punishment rather than social transformation or national healing (Duthie, 2010).

A constructive way forward would be to establish a Truth and Reconciliation Commission (TRC) tailored to Bangladesh's unique historical experience. Such a body could examine not only wartime abuses but also the structural legacies of colonialism and inequality that continue to shape the nation. Comparable examples, such as South Africa's Truth and Reconciliation Commission (formed under the Promotion of National Unity and Reconciliation Act of 1995) and Australia's post-1997 responses to the Stolen Generations, illustrate how public hearings, narrative disclosure, and reparations can foster reconciliation (Summerfield, 1997; Allais, 2011; Welch, 1988). In Bangladesh, a TRC could be constituted under which upholds democracy and human dignity as guiding principles. Its mandate might encompass the documentation of colonial and postcolonial injustices, including economic deprivation, cultural marginalization, and systemic discrimination against indigenous and agrarian communities. The commission's objectives would combine restorative and reparative dimensions encouraging open testimony from victims, facilitating the release of historical archives, and recommending institutional and educational reforms (Norval, 1998; Kaminer *et al.*, 2001). For legitimacy, the TRC should remain autonomous, adequately funded, and operate in accordance with established international norms such as the UN Basic Principles (UNGA, 2005). The precedent set by the domestication of international law through the ICTA provides a model for embedding such

mechanisms within national legal structures. To consolidate its constitutional basis, the proposed Truth and Reconciliation Commission Act could invoke Article 25, which emphasizes respect for international law and the pursuit of peace. Embedding the TRC within a formal legal framework would enhance its authority and enable its recommendations to shape national policy, memorialization efforts, and civic education programs (Eskauriatza, 2019; Pityana, 2018).

Recognizing the intergenerational impacts of colonial exploitation especially in land, education, and governance also aligns with the evolving concept of transformative justice, which prioritizes inclusive and forward-looking forms of redress (Murphy, 2022; Carstens and Trigger, 1994). In implementing such a framework, Bangladesh must ensure that amnesty provisions, if considered, do not undermine victims' rights or perpetuate systemic inequality. Addressing enduring disparities, particularly those rooted in land dispossession and indigenous exclusion, is essential for achieving meaningful transformation. By pursuing a restorative and historically grounded transitional justice strategy, Bangladesh could begin to confront the enduring silences surrounding both colonial and postwar traumas.

6. Conclusion

The colonial legacy in Bangladesh is not a matter of historical abstraction; it constitutes an active, structural condition that perpetuates inequality, institutional inefficiency, and cultural marginalization. This study demonstrates that British colonial policies particularly through economic extraction, cultural erasure, and legal institutionalization have resulted in deeply embedded injustices that remain inadequately addressed by contemporary legal and political frameworks. The Bengal Famine of 1943, the Jallianwala Bagh massacre, and exploitative legislative frameworks such as the Permanent Settlement Act of 1793 illustrate that these were not isolated events but symptoms of a systemic regime of racialized exploitation. The paper underscores that meaningful redress requires moving beyond symbolic apologies or one-time tribunals. Drawing on models such as South Africa's TRC and Australia's reparations for the Stolen Generations, this research advocates a comprehensive transitional justice framework in Bangladesh. Such a framework must include truth commissions, formal recognition of colonial atrocities, restitution for socio-economic harm, and the repatriation of cultural heritage. Importantly, it must reflect the principles of *corrective justice* rooted in both tort law and international human rights law to ensure that reparations are targeted, proportionate, and historically anchored. Furthermore, this paper argues for the evolution of international legal norms to recognize colonialism not merely as a historical phenomenon, but as a legally actionable wrong. This requires judicial and scholarly engagement with intertemporal doctrines, the expansion of legal subjectivity to colonized peoples, and the redefinition of collective harm under international law. In this context, Bangladesh emerges not only as a case study but as a compelling site for the development of a new paradigm in transitional justice, one that bridges law, memory, and post-colonial responsibility. By situating the legacy of colonialism within a broader international legal discourse and aligning it with comparative frameworks, this paper contributes to a decolonial jurisprudence that seeks accountability, redress, and healing. It is now incumbent upon Bangladesh and similarly affected nations to institutionalize these insights and pursue a reparative future grounded in justice, recognition, and sustainable transformation.

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8. Conflicts of Interest

No conflicts of interest.

9. References

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