

DE JURE NEXUS LAW JOURNAL

Author:

Anubhuti Singh

Symbiosis Law School, Noida

2nd Year, BA; LL.B.

**CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE
CRIME OF GENOCIDE – A LEGAL ANALYSIS**

Abstract-

This research paper contains information about the convention on the prevention and punishment of the crime of genocide. By reading it you will get a bit of knowledge about the background of the genocide convention and what exactly is meant by the word genocide in the contemporary world. You can also find various criticisms regarding the UN Genocide Conventions. Also, various recent developments have been included as well for a clearer understanding of the topic.

Background-

The Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) is a piece of international law that formalized the crime of genocide for the first time. The Genocide Convention was the first human rights convention enacted by the United Nations General Assembly on December 9, 1948, and it symbolized the international community's vow to "never again" after the crimes that were held during World War II. Its adoption was a watershed moment in the evolution of international human rights and international criminal law as we know it today.

What is Genocide?

Genocide is the intentional and systematic killing of a group of people because of their ethnicity, nationality, religion, or race. Raphael Lemkin, a Polish-born judge who served as an adviser to the United States Department of War during World War II, created the term, which is derived from the Greek *genos* (“race,” “tribe,” or “nation”) and the Latin *cide* (“killing”). Although the phrase itself is relatively new, genocide has arguably been practised throughout history (though some observers have restricted its occurrence to a very few cases).

Contemporary meaning of Genocide-

In modern international law, genocide is included in the broader category of "crimes against humanity," as defined by the Nürnberg Charter of the International Military Tribunal. The charter gave the tribunal the authority to indict and try Nazi regime leaders for inhumane acts committed against civilians, as well as acts of persecution on political, racial, or religious basis; in doing so, it has also contributed to the international criminalization of other forms of abusive behaviour. The momentum generated by the Nürnberg trials and subsequent revelations of Nazi atrocities led to the passage of Resolution 96-I (December 1946) by the United Nations (UN) General Assembly, which made genocide a punishable crime under international law, and Resolution 260-III (December 1948) by the UN General Assembly, which approved the text of the Convention on the Prevention and Punishment of the Crime of Genocide. More than 130 countries have accepted the treaty, which went into effect in 1951. Despite the fact that the United States played a significant role in the convention's formulation and was an original signatory, the convention was not ratified by the United States Senate until 1988.

What is the Genocide Convention?

According to the Genocide Convention, genocide is a crime that can occur both during war and during peace. The Convention's concept of genocide has been widely embraced at both the national and international levels, including in the International Criminal Court's Rome Statute of 1998. (ICC). Importantly, the Convention imposes on State Parties the obligation to take steps to prevent and punish genocide, such as implementing applicable legislation and punishing perpetrators, “*whether they are constitutionally responsible rulers, public officials, or private individuals*”¹. This commitment, together with the prohibition against committing genocide, has been recognised as standards of international customary law and so enforceable on all states, regardless of whether they have ratified the Genocide Convention.

¹ Article IV of the “Genocide Convention”

The Genocide Convention has had an impact on both national and international law. The definition of the term genocide has been recognised by international and hybrid tribunals, such as the International Criminal Court, and has been integrated into domestic law in a number of countries. Its terms are commonly regarded as reflecting customary law and, as such, are binding on all nations, whether or not they are parties. Similarly, the International Court of Justice has decided that the principles underpinning the Convention constitute a peremptory standard prohibiting genocide that no government can deviate from.

What exactly is included in the Genocide Convention?

Genocide is defined as any of the following acts performed with the goal of annihilating, in whole or in part, a national, ethnic, racial, or religious group:

- Assassinating members of the organisation causing substantial bodily or mental harm to group members;
- Inflicting on the group conditions of life that are designed to cause its physical demise in whole or in part
- Imposing birth-prevention measures inside the group
- Forcibly transferring the group's children to another group

To be more exact, the phrase consists of two components: the physical component — the acts committed — and the mental component — the intent.

India and the Genocide Convention-

Among the genocides linked with India are the Godhara Riots in 2002 and the Sikh Violence in the 1980s. Because they are colonial laws, the IPC and Cr. P C do not include any sections dealing to state-sponsored offences. Furthermore, neither of these laws is designed to deal with crimes perpetrated by huge groups of people or mass crimes. What is terrible is that, even after decades, the judiciary has failed in its duties, and cases are still being probed and committee recommendations are being issued.

Various criticisms/opinions on Genocide Convention-

Although the convention has received nearly unanimous international support, and the prohibition of genocide has become a peremptory norm (jus cogens [Latin: “compelling law”) of international law, the convention has been frequently criticised for excluding political and social groups from the list of possible victims of genocide. The “intentionality clause” in the

convention's definition of genocide—the part that cites the “intent to destroy, in whole or in part, a national, ethnical, racial, or religious group”—is also problematic. Two of the most prevalent criticisms are that such intent might be difficult to show and that assigning such intent to individuals makes little sense in modern society, since violence can be caused by anonymous societal and economic factors as well as by human choices. In support of the first point, some scholars have emphasised that governments do not publicly admit to performing genocidal acts, which is supported by historical evidence. Saddam Hussein's Iraqi administration, for example, framed its use of chemical weapons against Kurds in the 1980s as an effort to restore law and order, while the Ottoman and subsequent Turkish governments claimed that the Armenians slaughtered in the massacres were casualties of war. Even the Nazi regime in Germany did not make public its killing of Jews and other groups. In contrast, supporters of the intentionality clause have maintained that “a pattern of purposeful action” resulting to the annihilation of a large portion of the targeted group is sufficient to demonstrate genocidal intent, regardless of the reasons offered by the perpetrator government.

Supporters of the second argument say that a completely intent-based approach misses the “structural violence” of social systems, in which massive political and economic imbalances can lead to the entire marginalisation, if not elimination, of specific populations. Defenders of the intentionality clause argue that it is crucial for distinguishing genocide from other types of mass killings and developing successful anti-genocide efforts. The discussions between advocates and opponents of the genocide convention have significant policy ramifications, as evidenced by the question of the link between war crimes and genocide. Although many of the convention's complaints are valid, they should not be allowed to overshadow its strengths. The genocide convention was the first legal instrument to separate the most heinous crimes against humanity from the "war-nexus" requirement, which had limited the Nürnberg tribunal's jurisdiction to cases in which a crime against humanity was committed concurrently with a crime against interstate peace. Instead, the convention reaffirmed that genocide is an international crime “whether perpetrated in peace or in war.”

Developments in the recent times-

Despite the fact that it contains provisions for the UN to implement it, the genocide convention lacked effective enforcement measures for the first 50 years after its ratification. Although the convention decided that people charged with genocide should be tried before an international penal tribunal or a tribunal of the state in which the crime was committed, no permanent penal

tribunal existed at the international level until the early twenty-first century, and prosecutions at the domestic level were unlikely except in the rare case where a genocidal regime was overthrown and a genocidal regime was overthrown and a genocidal regime was overthrown and a genocidal regime was overthrown.

The genocide convention was first cited before an international tribunal in 1993, when the government of Bosnia and Herzegovina argued to the International Court of Justice that the Federal Republic of Yugoslavia had violated the agreement's provisions. During the 1990s, the international community became increasingly aggressive in prosecuting alleged genocide crimes. The United Nations Security Council established two separate tribunals, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), both of which contributed to the clarification of the material elements of genocide as well as the criteria for establishing individual criminal responsibility for its commission. According to the Rwandan tribunal, genocide includes "subjecting a group of people to a subsistence diet, systematic expulsion from homes, and reducing vital medical services below the minimal requirement."

Another most recent development is the Rohingya crisis or the Rohingya genocide. In an August 2018 report, UN investigators accused Myanmar's military of carrying out mass executions and rapes with "genocidal intent." The International Court of Justice (ICJ) case, filed on behalf of dozens of other Muslim countries by the small Muslim-majority nation of The Gambia in West Africa, called for emergency measures to be taken against Myanmar's military, known as the Tatmadaw, until a fuller investigation could be launched. When Aung San Suu Kyi appeared in court in December 2019, she denied claims of genocide. However, the court's initial judgement in January 2020 required Myanmar to adopt emergency measures to safeguard the Rohingya from persecution and killing. While the International Court of Justice (ICJ) only hears disputes between governments, the International Criminal Court (ICC) has the ability to prosecute people accused of war crimes or crimes against humanity. In November, the body approved a complete probe into the Rohingya crisis in Myanmar. Despite the fact that Myanmar is not a member of the court, the ICC determined that it had jurisdiction in the case since Bangladesh, where the victims fled, is a member.



De Jure Nexus

LAW JOURNAL