



GENOCIDE: CRIMES AGAINST HUMANITY AND NEED FOR DOMESTIC LAW IN INDIA

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ABSTRACT

The research paper examines the topic of genocide and the need for effective legislation to prevent it. The paper provides a historical background on genocide and the various forms it has taken throughout history. It also discusses the existing international legal framework for preventing genocide and provides an analysis of its effectiveness. The paper argues that despite the legal framework, genocidal acts continue to occur in various parts of the world and that there is a need for more comprehensive and effective legislation to prevent such crimes. The research paper also provides recommendations for policymakers and the international community on how to strengthen existing legal frameworks and develop new legislation to prevent genocide. Overall, this research paper highlights the importance of addressing the issue of genocide and the need for effective legal mechanisms to prevent such atrocities.

INTRODUCTION

Genocide can be defined as the deliberate and pre-planned killing or attempted mass murder of people, in whole or in part, because of their race, ethnicity, or race. or religion. To understand the crimes against humanity in India and the legal struggles to stop them, we need to know the meaning and history of the word "genocide". The word "genocide" is a compound word derived from the Latin "cide" (meaning "to kill") and the Greek "genos" (meaning race, nation or tribe). The term "genocide" was first used in 1944 by Polish Jewish activist Raphael Lemkin in his book *Axis Domination in Occupied Europe: Policy, Federal Research, Recommendations*. This book was based on the Nazi program, which included the genocide of ethnic and racial groups, including the mass murder of European Jews.¹

Before that, different terms were used to describe willful killing, such as "genocide", "mass murder" and "crimes against humanity". In August 1941, British Prime Minister Winston Churchill spoke about the Holocaust and World War II, he termed the holocaust as "a crime without a name". This led the international community to draft the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which came into force on 12 January 1951. Penalties for crimes accepted. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide can be considered a human rights document as it was adopted by the UN General Assembly on 9 December 1948, one day before the Universal Declaration of Human Rights.²

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide

¹ T. Fussell, James, "A crime without name" Winston Churchill, Raphael Lamkin and the World War II origins of the word "genocide", available at <http://www.preventgenocide.org/genocide/crimewithoutaname.htm> (visited on 11 April 2023).

² Convention on the prevention and punishment of the crime of genocide, available at <https://www.humanrights.ch/en/standards/un-treaties/further-conventions/genocide-convention/>

defines genocide as one of the following crimes, which is the total or partial destruction of a nation, race, race or religion, for example:

- I. Murder of persons belonging to a group;
 - II. causing serious physical or mental harm to a member of the group;
 - III. Determining the decision to live with the aim of completely or partially destroying the body of a group of people;
 - IV. Measures to prevent group reproduction;
 - V. Forced transfer of children of one group to another³
- According to Article 3 of the Treaty, the following acts shall be punished. Article III:
The following shall be punished:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and overt incitement to commit genocide;
- (d) attempted genocide;
- (e) Complicity in genocide

A special request or "dollar specialis" to destroy a target group, in whole or in part, is murder. This audience is eager to get the attack out of the way. The general purpose of murder, extermination and other crimes defined as murder is destroying the targeted group of people. A person may have intent to kill, exterminate or murder, but unless he has the intent to commit genocide, it cannot be proved, so the intent is important.⁴

The Convention condemns the direct killing of members of a group of people and acts that lead to death. Decisions to end violence and abuse, along with resources necessary for survival, such as food, shelter and clean water, can lead to the extinction of a group. Genocide also includes forced sterilization, castration and other methods used to prevent that group from having children as it would lead to the extinction of that group. Therefore, one of these acts is carried out with the aim of destroying the homeland, religion, race or nation partially or completely and to kill people according to Article 2.⁵

OBLIGATION OF THE STATES IN THE 1948 UNITED NATIONS CONVENTION

In order to comply with the provisions Article II & III of the Convention, punish those who commit mass murder or other acts qualifying as genocide, effectively and in accordance with the law of the country. and Article V is obligatory for the parties, according to the law. The Convention binds the states to enact national laws on genocide under its own laws.

According to Article VI local prosecutions of criminal killings have become a matter of international interest, not just national ones. National laws against genocide were not enacted, which had international repercussions. The mayor of Rwanda was tried in a Swiss court in April 1999, but was not found guilty of murder, as Switzerland does not recognize the crime of "genocide" as a distinct crime and does not have a national law or constitution to prosecute acts of genocide. Many countries, including the United

³ Article 2, convention on the prevention and punishment of the crime of genocide, 1948.

⁴ G. H. Stanton, The Ten Stages of Genocide <https://www.genocidewatch.com/tenstages> , Visited on 13.04.2023.

⁵ ICTY in Krstic case, IT-98-33-T, 2001.

States, have domestic genocide laws.⁶

Genocide is a crime defined in Section 1091 of Chapter 50A, United States Code, Section 1091. the group's capacity to use drugs, torture or other means in time of peace or war and with the specific purpose of destroying it, in whole or in part; measures designed to prevent the birth of children from that group, forcing or attempting to force the children of that group into another group, in other cases up to 20 years in prison and a fine, or only a fine not exceeding

\$1,000,000. The law also punishes civilians and directly encourages genocide. These laws apply to anyone who commits murder anywhere in the world, including Americans who commit crimes while traveling.⁷

Some countries, such as Australia, Switzerland or even Bangladesh, have domestic laws that applies recommendations or mandate of the UN Genocide Convention.

On August 27, 1959, India ratified the Genocide Convention. In its interpretation of the reservations to the Genocide Convention, the International Court of Justice (ICJ) concluded that "the principles underlying the Convention are those accepted by civilized people as being bound by the State, even without a treaty or treaty in the Genocide Convention Case 1951."⁸

First of all, because India is a party to the Genocide Convention, it has an obligation to stop the genocide and punish the perpetrators. Secondly, according to the provisions of the Convention, India must pass the necessary laws to enforce the provisions of the Convention and to punish those who commit genocide. lastly, it has the responsibility to create special courts dedicated to punish the offenders.

Although India ratified the Convention in 1959, it failed to pass the anti- genocide law or to take any measures preventing the same.

The mandate of Article 51(c) of the Indian Constitution is to "promote respect for international law and treaties" has not been duly fulfilled.⁹ The country's legislature that is the parliament must pass laws for the construction of self- serving treaties to honour India's commitments under the Genocide Convention. The failure indicates that Indian domestic courts will not prosecute anyone charged with murder, which is not a crime under Indian law. Therefore, those accused of committing murder in India or citizens of India who have committed murder abroad cannot be tried in national courts on a desk basis. The fact that India is not a party to the ICC exempts perpetrators of murders on its territory from the jurisdiction of the ICC.

For this reason, the only solution available for with India is to create and passa legislation that duly recognizes the UN Convention on the crime of genocides. The inaction rather the failure to pass an appropriate legislation dealing with the crimes of genocide indicates that no accused or perpetrator of genocide can be tried and punished in India as there is no domestic law. Hence any Indian citizen who committed any crime under

⁶ Implementing the Genocide Convention in Domestic Law, Prevent Genocide International (Human rights advocacy group working for prevention of genocide), available at <http://preventgenocide.org/law/domestic/index.htm#asia-pacific>, accessed on 11.04.2023

⁷ United States Code; Chapter 50A - Section 1091. Genocide.

⁸ 1951 I.C.J. 15

⁹ Constitution of India 1950.

the definition of genocide whether in India or outside India and in foreign soil cannot be punished, which clearly defies every mandate of the UN Convention on genocide. Since India is not a party to International Criminal Court, it indirectly protects perpetrators of genocide who may be living in the Indian soil and also put every such perpetrators outside the jurisdiction of ICC. For that reason, there's only one remedy left with Indian people and that is to file a lawsuit in a nation which recognizes as well as have appropriate legislation to prosecute perpetrators of genocide as it once happened when the similar application was made in the United States for the 2002 Gujrat Riots and 1984 Sikh Killings to be recognized as crime of genocide. Therefore, promoting and achieving steady and peaceful relations among people as well as ensuring mutual understanding, and peace depend on raising public awareness about all that matters for the above cause. Fundamental change could be affected to almost all the social evils and other crucial matters of public importance among the populace through increased understanding of human rights.

INDIAN CONSTITUTION AND HUMAN RIGHTS REGARDING GENOCIDE

The Constitution is the supreme document that guides the country towards the approach in tackling and ensuring Human rights which are also ensured by national laws, fundamental rights, fundamental responsibilities and principles. The doctrine outlines the main objectives, but the fundamental rights and principles of law relating to the responsibility of the state for individual human freedom, independence, right to life with dignity and personal liberty. The Constitution does not only provide these rights but also ensures that a person if deprived of her fundamental right can approach the judiciary and get it upheld and ensure that her fundamental right which is also a human right life.

The provisions provided hereunder protects human rights:

- I. Art. 14, Equality before law
- II. Art. 15, Non-discrimination on ground of religion, race, caste, sex, and place of birth;
- III. Art. 16, Equality of opportunity
- IV. Art. 19, Freedom of speech, expression, assembly, association, movement, residence, acquisition, and disposition of property, practice of any profession, carrying out any occupation, trade, or business
- V. Art. 23, Prohibition of trafficking and forced labor;
- VI. Art. 25, Freedom of religion;
- VII. Art. 30, The right of minorities to run educational institutions;
- VIII. Art. 41, The right to work, education and public assistance in certain circumstances.

Awareness and access to information have a great impact on preventing crimes against humanity. According to the United Nations, efforts to spread human rights awareness "aim to create a global culture of human rights by spreading knowledge, wisdom and behaviour. "These initiatives are designed to create peace, promote understanding, respect, gender equality and friendship, enable everyone to participate freely in society, and strengthen respect for human rights and fundamental freedom. It also enables people to facilitate their individual thinking and approach towards such matters of great public importance. It encourages and promotes good relations and peace in society. Ensuring security,



promoting tolerance, understanding and peace depends on raising public awareness of human rights.

INCIDENTS IN INDIA THAT CAN BE RECOGNIZED AS GENOCIDE

Each nation has its own culture and national identity. Here we can see the unity of different cultures, but due to diversity people have different levels of thought which is sometimes the source of conflict between them. These conflicts often lead to serious persecution of people's religion or race. India has a long history of violent crimes based on religion, caste, language or politics. They are examples of genocide in India, from the Battle of Kalinga to the attacks of the medieval rebels and the famine in Bengal during British rule.¹⁰ The history of mass crimes or crimes against the groups of people goes back to when the country was divided into India and Pakistan, when Hindus, Muslims and Sikhs were both criminals as well as victims of grave and mass violence and murders. In fact, this is a period of great public violence against the masses, public violence, also known as mob violence, is committed or organized against groups of people on the basis of race, religion, ethnicity, social status or geography. All of the above cases establish that the main issue or cause behind all these incidents whether it is the human rights violations, mass killings and exodus of Pandits in Kashmir or the horrors of partition or other incidents qualifying as genocide is the state inaction, collusion and sheer failure to create and implement legislations preventing such incidents. If one critically analyses or study the mass killings or genocidal crimes one would find that they are often surprisingly so the results or state action or inaction, the same state which bears the responsibility of preventing the same.

ETHNIC CLEANSING OF HINDUS IN KASHMIR

During Pakistan's independence, tribal attacks led to mass killings, rapes and loots resulting in Pakistan's illegal occupation over one-third of Kashmir's territory which was by document of accession signed between the ruler of Kashmir and the Indian govt., given to India. After this illegal and forced accession the terrorists and intruders became cancer for Kashmir people specially minority of Kashmir which were Kashmiri Pandits. There has always been blatant infringement of human rights and violation of mandate of the Constitution by the outsiders as well as the locals in Kashmir. They started organized and pre-planned targeting and attacking Kashmiri Pandits by all means available to them, around 300 Kashmiri pandits were brutally murdered in violent attacks between 1989 and 1990.

Early 1990s the local Kashmiris were either lured or forced to fight, murder and plunder for Jihad against local Hindu minority and India, all Hindus were threatened to leave the region and get out of Kashmir according to the advertisements and warnings published in local Urdu newspapers AFTAB and AL-SAFA. Masked terrorists with AK-47s then started killing Hindus who refused to leave Kashmir. The Hindus who refused to leave their home and homeland were shot dead by the terrorists. Pamphlets instructing them to leave their homes and Kashmir within 24 Hrs. or face death were delivered in homes of Hindus. Since then, around 3,00,000 Kashmiri have fled Kashmir due to threat and intimidation by the jihadis. This is India's largest ethnic cleansing since independence. The Kashmiri population in the Kashmir Valley was 15% at the time of independence, but has dropped

¹⁰ Tharoor, Shashi, "Inglorious Empire. What the British did to India "Scribe (2023).

below 0.1% since mass violence based on religion began in Kashmir during the insurgency.

The jihadis has killed Kashmiri Pandits in various atrocities, including the 1998 massacre of Wanyama and the Amarnath pilgrimage in 2000. Some scholars have observed termed these incidents as ethnic cleansing.

ANTI-SIKH RIOTS OF 1985

The anti-Sikh riots of 1984 allegedly were a series of state-sponsored deliberate killings of Sikhs in response to the killing of the then Prime Minister Indira Gandhi by Sikh bodyguards. According to the govt. data and figures, more than 3,000 people have died throughout India, including 2,100 in Delhi itself. The CBI even said in the reports that the government agents were involved in the above acts. Till date 10 govt. committees for inquiry have been established to get the clearer picture of the incidents and act on it. According to govt. data, more than 400 people have been convicted in trial till 2015. Responsibility for suppressing the Sikh riots of 1984 passed from Prime Minister PV Narasimha Rao to the police, who chose to do nothing or support the perpetrators.

GUJRAT RIOTS 2002

In February 2002, Sabarmati Express was burned at a railway station named Godhra in Gujarat, killing 58 Hindu Karsevak who were returning from Ayodhya after karseva. Months of unrest, riots and religious killings were erupted in Gujarat. The violence killed more than 2,000 people and displaced more than 150,000, most of them Muslims. Violence and conflict are allegedly not publicly recognized and may also have been encouraged or ignored by the authorities responsible for preventing the same, according to several independent reports. Police investigating the crime were accused of being dishonest and being responsible for their involvement in the attack.

DENIAL FOR RECOGNITION AND CONSEQUENCES

The absence of a dedicated domestic law to prosecute perpetrators or mass killings and genocide crimes has led to many atrocities in India. G.H Stanton laid down ten levels of genocides to understand and prevent the same.

Classification and symbolization are the first and second of the 10 stages. Indian society is fragmented by religion, culture and caste. Religious and ethnic distinctions are the most important. Our religion has a huge impact on our social life and it is easy to distinguish between our societies and lifestyles.

In India, Hindus, Muslims, Christians and Sikhs are separate sects and there have been many conflicts between them.

According to a study of one prominent organization Genocide Watch on India, India is a diverse nation, polarized by religion, region, ethnicity, and economic history. The political dehumanization of religious institutions in India is the third form of genocide. Discrimination by civil society groups and other religious leaders is rampant in India, further polarizing the country and fueling hostility among religious groups. Also, the attack by others on the holy place of the religious community is believed to have divided India into two main religious communities, Hindus and Muslims.

NEED FOR RECOGNITION OF MASS KILLINGS AS GENOCIDE

Justice for the victims of mass killings or genocide becomes almost impossible for there is no legal framework or legislation in place to deal with the same. These acts of violence against a group are not considered part of an overall plan to destroy them, in whole or



in part, but are individual crimes, such as murder under Section 302 of The Indian Penal Code coupled with unlawful assembly, Criminal Conspiracy, rioting done by any group of individuals. Since Genocide is not considered as crime in absence of appropriate legislation, most culprits are tried under individual crimes mentioned hereinabove. Because the commission of these crimes was in the eyes of law was by suspected individuals or local criminals, goons and not by the actual perpetrators of the genocide, there cannot be implied evidence by the actual perpetrators of the murder in all cases recorded through the FIR. These criminals are often tried individually which defeats the whole idea of recognition of genocide and eventually it results into actual perpetrators not getting justice they deserved. Because of the crime of genocide in India, there is a need for the implementation of a national law on genocide and the establishment of special courts dealing with genocide. Therefore, individuals who break the law and criminals with the capacity to break the law are accused of committing acts of violence and other such criminal acts but they comfortably escape the charges and collective liability and criminal charges for genocide. Harming religion, race, ethnicity or nationality is not a crime under the law. In the absence of local laws against murder, penalties and charges are imposed on other crimes that occur every day, and crimes such as impunity for murder are allowed to be committed. According to G.H Stanton, *"research by genocide scholars show that denial of a past genocide paired with impunity for its perpetrators is the single strongest predictor of future genocide. 'Genocide Deniers' are three times more likely than other regimes to commit genocide again."*¹¹

As a result, the infinite cycle of violence, atrocities and mass murders will continue. The rejection did not serve India's goal of ratifying the "never again" Genocide Convention; it will happen "again and again" as long as the implementation of the same is denied. The failure on the part of the government leaves the victims of genocide violated and having no way to get justice. In the absence of appropriate reparations and justice, the never-ending cycle of revenge and killing continues. It is imperative to point out and note that only compensation is not enough to the victims but retrospective justice should be there and the state is responsible to ensure the same.

RESPONSIBILITY FOR CRIMES AGAINST HUMANITY (MURDER)

The responsibility of people for violent crimes is a crucial part of this study. Individual criminal liability is an important aspect of international criminal law and laws dealing with genocide as well. The main objective of classical international law is to regulate relations between states and ensure harmony and sovereign integrity. The prosecution and trial of the people for violation of international laws during and after World War-2 at the tribunals in Nuremberg and Tokyo can be termed and used as a proof of separation between International criminal law and Public International law.¹²

Individuals are subjected to the international criminal law, and they can comfortably be held accountable for the crimes under international law.

Although, to establish the accountability, imposition of personal criminal liability is necessary.

The following was stated by ICTY Appeals Chamber in the case of Prosecutor

¹¹ G. H. Stanton, *The Ten Stages of Genocide* <https://www.genocidewatch.com/tenstages>.

¹² Kriangsak Kittichaisaree, *International Criminal Law*, (2001) 9 Oxford University Press.

v. Tadic:

“The main assumption must be that the source of criminal liability in international law, as well as in the state legal framework, is the principle of individual culpability: nobody should be held criminally responsible for acts or transactions in which he has not individually engaged or in some other way participated directly or otherwise (nulla poena sine culpa).”

Article 25 The Rome Statute of the International Criminal Court establishes the criminal responsibility of the individual:

1. According to this Statute, the Court has the jurisdiction over natural persons.
2. Person committing crime within the jurisdiction of this court is personally responsible for punishment under this statute.
3. A person shall be criminally liable for punishment within this court’s jurisdiction if that person:
 - (a) commits such offense in individual capacity, jointly or with others, even if others have been held to be individually responsible for an offense;
 - (b) in the case of commission or attempted commission of an offense, to order, abet or instigate the commission of such an offense; or
 - (c) assisting, abetting or otherwise instructing, or attempting to commit, an offense, including by facilitating the commission of an offense;
 - (d) otherwise assisting a community with the intent to commit or attempt to commit such a crime. These programs must be intentional and:
 - (i) made with the intent to further the criminal activity where such activity or purpose involves the commission within the court’s jurisdiction as mentioned hereinabove
 - (ii) information and intention to commit an offense.
 - (e) directly and publicly inciting others to commit genocide
 - (f) Attempting to commit such an offense by committing an act that was not originally a criminal offence. On the other hand, if a person who does not attempt to commit a crime or refrains from committing a crime completely and willingly abandons the purpose of the crime, he will not be punished for attempted crime according to this Law.
4. Nothing in this article relating to personal criminal liability shall alter the international legal responsibility of the States. Overview of the concept of individual criminal responsibility related to the development of international criminal law as the international justice community's response to violence against all people.
Charter and the Nuremberg Tribunal's decision recognize personal liability for crimes under international law. The adoption of this law now allows for the prosecution and punishment of persons who violate international law.
The Nuremberg precedent also established many other important principles aimed at holding individuals accountable for crimes under international law, such as exclusion of individual official standing, including heads of state or other high-ranking officials, or simply existence of orders superior to that, or a justifiable ground for excluding a person of responsibility of such crimes.
The Second International Criminal Tribunal continued to try individual criminals under international law, including the ad-hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and the Ad Hoc International Criminal Tribunals (ICTR) for

Rwanda. Personal liability in international criminal law was further enhanced with the adoption on 1 July 2002 of the 1998 Rome Statute of the International Criminal Court, which permanently established the Convention with international capabilities.

The International Military Tribunal of Nuremberg held war criminals responsible for international crimes, marking the beginning of modern international law of war; It puts an end to the practice of *act of state doctrine* that governments have used in the past to avoid international criminal responsibility. The laws of war or conflict also involve the interests of humanity, and from crimes separate but linked from international criminal law, international humanitarian law emerged and is now part of international law.¹³

According to article 7 of the Rome Statute, the main subject matter of crimes against humanity is “crimes against humanity” means any of the following acts as part of a planned attack or attack against any civilian population with the knowledge of the attack:

(a) Extermination (b) Murder; (c) Slavery; (d) Deportation or forced displacement of nationals; (e) Imprisonment, deportation or other deprivation of liberty in violation of fundamental rights under international law; (f) Abuse;

(g) rape, slavery, forced adultery, forced pregnancy, forced sterilization or other serious sexual abuse; Persecution against an identifiable group of people, or persecution that is not generally considered permissible in relation to any act or violation of this section. under the jurisdiction of the court; (i) forced to disappear; (j) apartheid; (k) other similar misconduct against human.

Meaning of limbs includes body parts. Crimes against humanity means physical elimination of a group as a whole. Crimes against humanity, cannot be committed until a continuous series of acts of killing, wounding, grave injury etc. have been committed for the original purpose defined in Article 7. These crimes within the purview of international law or humanitarian law have been evolving continuously with time as the societal and political fabric changes and it has to be kept in mind while dealing with the crimes against humanity.

International law of war and crimes against humanity is developed and changed in the context of international human rights law or peace law, a branch of international law that has entered a period of rapid growth and expansion.

The principles of human rights law governing international crimes and responsibilities are not always clear enough. One of the biggest problems is the legalization of international crimes committed by people who are considered serious human rights violations. In fact, the world today is facing a serious conflict in Crimes that are not as global as it once was; what matters here is the distribution of different crimes, that is, the line between war and violence against the plight of the people. loss. However, these crimes, including murder, fall within the scope of the law.

The category of crimes against peace is excluded because of its greater ambiguity and specificity it offers in relation to issues of jus ad bellum.

NEED FOR DOMESTIC LAW ON GENOCIDE IN INDIA

¹³ Daniel C. Turack, “The criminal responsibility of individuals for violations of international humanitarian law”, T.M.C. Asser Press. 2003. PP. XXIV, 437

Murder under Section 300 of the Indian Criminal Code requires that death be caused by an act of the perpetrator with such intent or knowledge as to produce such bodily injury that would likely cause death; or is imminently dangerous or sufficient in usual course to cause death.¹⁴ The homicidal nature of Indian laws: Under Section 300 of Indian Penal Code, homicide requires the death to be caused by the perpetrator's conduct that intentionally or knowingly caused bodily injury which could lead to death; or dangerous, or often enough to cause death. The line between murder and genocide is thin, based on knowledge and experience. On the other hand, murder is not the same as genocide or mass murder.

If the culprit causes death or his actions cause the same, he will be charged with murder, culpable homicide or attempted murder under Indian Penal Code. By contrast, murder, recognized and previously discussed by G.H. Stanton, is the last of the nine stages after denial. Each of these stages can lead to "will or knowledge" causing death in the crime and liability for a group of convicts other than the "special intent" to destroy or injure. Article III of the 1948 Convention lay down the ingredient. According to the article, perpetrators of genocide can be prosecuted for some of the actual crimes committed intentionally to murder or for some of the crimes of preparation for serious crimes. Examples of such activities are conspiracy and incitement to commit murder, attempted murder, and conspiracy to commit genocide with the sole objective of crimes against a group.

These acts are called "incomplete crimes". Even if it is not an actual crime, some acts or practices are considered a crime and those who commit crimes can be punished as murder. All it takes is a target to completely or partially destroy the group. This is the difference between other crimes and genocide.

A person is accused by the victims or their relatives and in every case of murder or death by murder an FIR is recorded, there are some certain reasons that make it almost impossible to prosecute and convict perpetrators of genocide under Indian law.

1. Some influential criminals absent from the crime scene may avoid prosecution because there is no specific evidence against them.

2. Without linking these acts that ultimately lead to murder, it will be difficult to bring to justice all criminals who are partially or fully involved in killing people. It is often associated with gun possession, public violence, etc. They are accused of petty crimes such as

3. In any case, there is no subsequent evidence, it is difficult to identify the real criminals who ordered and participated in the murders and massacres. Therefore, it is difficult to prove that these people participated in illegal meetings or committed crimes of aiding and abetting all the crimes that occurred in the process of killing people.

Since only a few cases have resulted in convictions and those that have been found to be considered mass murders, repatriation and compensation are not available or are very rare in such good circumstances.

Most of the injured are classified as victims of violence and few are sent back, rehabilitated or reintegrated into society.

The Local Investigation defeats the idea of an independent tribunal established by the 1948 Convention to investigate crimes of genocide, raising suspicions of injustice.

¹⁴ The Indian Penal Code, 1860.

The main reason for the ratification of United Nations General Assembly resolution 96(1) in 1946 was the recognition of Lemkin's theory of genocide, which states that genocide is separate crimes against peace or war, separate from crimes against public or private. He can be punished and held accountable for his actions. Denial of genocide, like the 1984 Sikh riots, is a breach of India's obligations under the 1948 Convention.

CONCLUSION

Existing laws do not recognize the crime of Genocide, so the new law against Genocide to prevent should be enacted under the 1948 convention, since there is no genocide law in India. August 1959, the Government of India ratified the UN Convention on genocide hence under the Article V of the convention it is the duty of the Indian govt. to enact appropriate law to prevent and prosecute the perpetrators of genocide. The Constitution of India provides the state is to honour the international conventions and law which is provided under Article 253. The Indian Constitution also gives the Parliament the power to "make laws for enforcing the mandate of such treaties and conventions.

Second, under the Convention's obligations, India should develop relevant laws to punish perpetrators of genocide in accordance with the provisions of the Convention. Finally, a competent court should be established to punish those who commit Genocide. Although India ratified the Genocide Convention in 1959, it made no effort to create a genocide law under which genocide could be prosecuted. In the absence of this law, Indian courts cannot prosecute anyone accused of murder, which is not a crime under Indian law. For over 100 years, there has been no law against genocide in Kashmir that led to mass immigration and killings, the Sikh riots of 1984 and the Gujarat massacre of 2002. It is still difficult to pass a law to deal with such cases and bring the perpetrators to justice. This evidence shows that the Indian government was wrong for not enacting legislation under Article V of the Genocide Convention, which the Indian government signed in 1948 and ratified in 1959. The Genocide Convention requires states parties to implement their national legislation in accordance with the provisions of the Genocide Convention. common opinion; But India did not do this. Although the provisions of the Genocide Convention are part of international law and thus Indian law, they are not self-enforcing in the sense that they can be easily applied in the Indian justice system. Genocide and its accompanying practices must be recognized in Indian law, punishments must be given, and a "legal authority" must be established to prosecute these crimes.

BIBLIOGRAPHY

1. Article 2, convention on the prevention and punishment of the crime of genocide, 1948.
2. Convention on the prevention and punishment of the crime of genocide, available at <https://www.humanrights.ch/en/standards/un-treaties/further-conventions/genocide-convention/>
3. Daniel C. Turack, "The criminal responsibility of individuals for violations of international humanitarian law", T.M.C. Asser Press. 2003. PP. XXIV, 437
4. G. H. Stanton, The Ten Stages of Genocide <https://www.genocidewatch.com/tenstages> , Visited on 13.04.2023.
5. G. H. Stanton, *The Ten Stages of Genocide* <https://www.genocidewatch.com/tenstages>.
6. ICTY in Krstic case, IT-98-33-T, 2001.



7. Implementing the Genocide Convention in Domestic Law, Prevent Genocide International (Human rights advocacy group working for prevention of genocide), available at <http://preventgenocide.org/law/domestic/index.htm#asia-pacific>, accessed on 11.04.2023
8. Kriangsak Kittichaisaree, *International Criminal Law*, (2001) 9 Oxford University Press.
9. Kriangsak Kittichaisaree, *International Criminal Law*, (2001) 9 Oxford University Press.
10. T. Fussell, James, “A crime without name” Winston Churchill, Raphael Lamkin and the World War II origins of the word “genocide”, available at <http://www.preventgenocide.org/genocide/crimewithoutaname.htm> (visited on 11 April 2023).
11. Tharoor, Shashi, “Inglorious Empire. What the British did to India “Scribe (2023).
12. The Indian Penal Code, 1860.