

GENOCIDE

By – Kuldeep Kaur

INTRODUCTION:-

The Genocide committed during the Second World War shocked the whole mankind so much so that the General Assembly in its first meeting affirmed the principles enunciated in the Nuremberg Judgment. In its resolution 96(1), dated 11 December, 1946 the General Assembly declared that “genocide is a crime under international law, contrary to the spirits and aims of the United Nations and condemned by the civilized world.”¹⁹

The main cause of such keen interest taken by the General Assembly in its first session was the Nazi atrocities committed by the Germans during the Second World War.

The Genocide convention entered into force on 12 January, 1951. This Convention has been ratified by India who signed it on 29 November, 1949 and ratified it on 27 August, 1959.

The convention on the Prevention and Punishment on the crime of Genocide has been ratified by 140 countries by 15 December, 2009. Article II of the Genocide Convention defines ‘genocide’ in the following words : “In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such :

- A. Killing members of the group;
- B. Causing serious bodily harm to members of the group;
- C. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- D. Imposing measures intended to prevent births within the group;
- E. Forcibly transferring children of the group to another group.”

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¹See also Raphael Lemkin, “Genocide as a crime under International Law”, A.J.I.L., Vol. 41 (1947) p. 145 at p. 150.

‘Genocide’ a crime under International law

The term ‘Genocide’ was coined by Lemkin a Private Individual whose efforts played a large part in promoting the United Nations work on genocide. The convention probably reflects customary international law.²⁰

In Barcelona traction, Light and Power Co. Case (Belgium v Spain)²¹; speaking about the obligations of a State when it admits into its territory foreign investments of foreign nationals, the International Court of Justice observed.²²:Such obligations derive, for example, in contemporary international law, from the out-lawing of acts of aggression and of genocide as also from the principles and rules concerning the basic rights of human person, including protections have entered into the body of general International law;²³others are conferred by International instruments of a universal or quasi-universal character.”

Article I of the Genocide Convention, 1948, therefore, provides that the contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and punish.

• Under Article III of the Convention following acts are punishable :

- A. Genocide;
- B. Conspiracy to commit Genocide;
- C. Direct and public incitement to commit Genocide;
- D. Attempt to commit Genocide;
- E. Complicity in Genocide.

Article IV of convention provides that persons committing genocide or any of the other acts enumerated in Article III shall be punished whether they are constitutionally responsible rulers, public officials or private individuals.

▪ Other Main Provisions of the Genocide Convention:

- A. The contracting parties of the convention have undertaken to enact in accordance with their respective constitutions, the necessary legislation to give effect to the provisions of the convention

²D.J. Harri’s Cases and Materials on International Law (London, Sweet and Maxwell, 1973), p. 549. ³ I.C.J Reports, 1970, p. 3.

⁴ Ibid., para 34.

⁵ Reservations to the Convention of the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports, 1951, p. 23.

And, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated on Article III.²⁴

- B. Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the state in the territory of which the act was committed, or by such international tribunal as may have jurisdiction with respect to those contracting parties which shall have accepted its jurisdiction.²⁵it is unfortunate that the provision relating to “international penal tribunal” to try persons for genocide, and for that matter any other international crime, has yet not been implemented although 36 years have passed since the adoption of the Genocide Convention.
- C. Genocide and other acts enumerated in Article III shall not be considered as political crimes for the purpose of extradition.²⁶
- D. Disputes between the contracting parties relating to the interpretation, application of fulfillment of the present convention, including those relating to the responsibility of a state for Genocide or any other acts enumerated in Article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.²⁷

As 1 January, 2014, 146 countries have become parties to the convention on the Prevention and Punishment of the Crime of Genocide, 1948.

The International Court of Justice has recognized the principles underlying the convention are principles which are recognized by civilized nations binding on states even without any conventional obligation.

➤ Example of Genocide in Bangladesh

The military regime of Pakistan under General Tikka Khan committed incalculable and unprecedented genocide in Bangladesh. As pointed out by M.K. Nawaz, “The Bengali people have a language and culture different from the people of West Pakistan, can accordingly be considered as ethnic group within the meaning of Article II of Genocide Convention.”²⁸

Justice V.R. Krishna Iyer, former Member of the Indian law commission and retired judge of the Supreme court, has also pointed out, “The Bengali population of East Pakistan probably falls under the national and ethnic group-not merely territorial or linguistic.”²⁹

⁶Article V of the Genocide Convention.

⁷ Article VI.

⁸ Article VII.

⁹ Article IX.

¹⁰ M.K. Nawaz, “Bangladesh and International Law”, I.J.I.L., Vol. 11 (1971), p. 251 at p. 261.

Thus the genocide committed by Pakistan military personnel in Bangladesh was clearly and without a shade of doubt an international crime. As aptly remarked by justice V.R. Krishna Iyer : “ The scenes of blood and bestiality ensuing from the military crack down under general Tikka khan deadly direction was such the like of which no eye had seen and no tongue could adequately tell. Bangladesh is fortunately free today but its ‘sweetest songs’ of freedom are those that tell of ‘saddest thought’ of the millions dead.

The appealing human annihilation perpetrated by military personnel of Pakistan in Bangladesh, its dimensions and dastardliness prima facie constitutes an International crime.”³⁰

▪ **Provisional Measures by World Court against Federal Republic of Yugoslavia for Prevention of Genocide.-**

On 8th April, 1993, the International Court of Justice issued an order on calling upon the federal republic of Yugoslavia to “immediately take all measures within its power to prevent commission of the crime of genocide”.

This order was made unanimously by the court in case concerning Application of the Convention on Prevention and Punishment of Crime of Genocide [Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)].³¹

The world court unanimously also directed that the government of federal Republic of Yugoslavia and the government of republic of Bosnia and Herzegovina “ should not take action and should ensure that no action is taken which may aggravates or extend the existing dispute over the prevention and punishment of the crime of genocide or render it more difficult of solution”.

Moreover, by 13 votes to 1, the court directed that the government of former Yugoslavia should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it , as well as organizations and persons which may be subject to its control, direction, influence, do not commit any acts of genocide, or of complicity in genocide whether directed against.

¹ Law’s Tryst with the Dead in Bangladesh vis-à-vis punishment of Humanicidists”, National Herald, February 4, 1972.

² V.R. Krishna Iyer, J., note 11.

³ I.C.J. Reports, (1993), p. 3.

Muslim population of Bosnia and Herzegovina or against any other national, ethical, racial, or religious group.

On further requests for the indication of provisional measures, the international Court of Justice, on 13th Sept, 1993 reaffirmed the provisional measures indicated on 8th April 1993 and directed that the same be “immediately and effectively implemented.”³²

Conclusion:-

The adoption of the convention on the Prevention and Punishment of the Crime of Genocide, 1948 was a great achievement at the time when the memories of atrocities committed during Second World War still loomed large in the minds of the people.

It is however doubtful whether the convention covers cultural genocide.

Moreover, the concept of ‘complicity in genocide’ is very vague. Last but not the least, failure of the contracting parties to establish, an international penal tribunal to try persons for genocide remains a formidable obstacle in the proper implementation of the convention. Nevertheless the convention has rendered a signal service by making the crime of genocide punishable in time of peace or in time of war. By September 1983, 93 states have expressed their consent to be bound by the convention.

³²Case concerning Application of the Convention on the Prevention and Punishment of the crime of Genocide [Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro), (13th Sept, 1993), ICJ Reports (1993) p. 325.